

**GENDER-BASED PERSECUTION IN ASYLUM LAW AND POLICY  
IN THE UNITED STATES**

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University of Pittsburgh, 2006

A gender revolution has transformed the institution of asylum in the United States. The introduction of gender-based persecution laws and policies in the past decade ushered in a new era of politics in asylum decisions. Facilitated by recent laws and policies, immigrant women may gain asylum and legal entry into the U.S. by claiming they are persecuted based on factors such as female circumcision, honor killings, domestic violence, coercive family planning, forced marriage, or repressive social norms. Immigrant advocates have championed these laws and policies as reflecting the canonical feminist declaration that women's rights are human rights. The legal recognition that certain human rights abuses are gendered because they overwhelmingly happen to women has emerged as the benchmark for gendered equality in asylum adjudication. However, legal recognition of gender-related persecution is only half the story. A study of the implementation of gender-based persecution laws and policies makes visible certain assumptions about femininity, masculinity, sexuality, race, class, and nation in which asylum seekers, immigration attorneys, service providers, immigration judges, and asylum officers engage when making, preparing, and adjudicating asylum claims. In this dissertation, I offer empirical evidence of how gender structures the legal institution of asylum in the United States.

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## PREFACE

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## 1.0 INTRODUCTION

At the age of sixteen, Rodi Alvarado Peña, a Guatemalan citizen, married a man who beat, raped, and sodomized her daily. Rodi's husband used his position of power in the military to intimidate her by reminding her of the widespread abuses he was accustomed to performing and threatened to find her if she left him. On numerous occasions throughout her marriage, she ran away, even to other towns and cities, only to be found by her husband who used his connections as a former soldier in the Guatemalan military to locate her. The threats and violence worsened each time she was found; he dislocated her jaw, whipped her with an electrical cord, threatened to cut off her arms and legs with a machete, broke mirrors over her head, and pistol-whipped her for leaving him. When running away was no longer a viable option, Rodi sought help from local police and even a judge, all of whom responded to her pleas for help in near unity: "We don't involve ourselves in domestic matters" (Wright 2004: 1). As a last resort, Rodi left Guatemala for the United States in an effort to save her own life.

Upon arriving in the United States in 1995, Rodi obtained legal counsel who prepared her asylum application where she detailed the horrors of the violence she suffered in Guatemala. In accordance with asylum law, Rodi Alvarado demonstrated that she was not safe anywhere in Guatemala since each time she attempted to leave her husband, he had been able to find her. Moreover, she followed expected legal procedure by seeking help from the local authorities. In 1996, less than one year after the Immigration and Naturalization Service (INS) proposed an

internal policy that recognized domestic abuse, in addition to other “gender-based” forms of harm as persecution, an immigration judge in San Francisco granted Rodi asylum based on the legal argument that she was persecuted on account of her membership in the social group of battered spouses. While this grant appeared to be the end of Rodi’s troubles, the INS assistant district counsel who represented the government during her trial reserved the right to appeal the judge’s decision (Musalo 2004).

In a narrow reading of the law, the INS attorneys argued that she was not eligible for asylum because she did not establish that the abuse she endured was on account of her membership in a particular social group, one of the five possible reasons that someone can be persecuted and legally qualify for asylum.<sup>1</sup> The INS’ appeal of Rodi’s case seemingly contradicts its own policy. The appeal was not based on whether domestic violence *per se* constituted persecution. Instead, the issue was whether battered women are a social group. The INS district assistant counsel claimed that the government reserved the right to appeal the case because of how the judge applied the law, not because there was any uncertainty regarding the facts of the case. The INS believed that Rodi was beaten by her husband. The INS representatives were satisfied that Rodi had sought safety in other parts of the country and that she qualified for asylum because the Guatemalan government was unwilling to protect her from her husband. In its written appeal, the INS concluded that Rodi Alvarado “has been terribly abused and has a genuine and reasonable fear of returning to Guatemala” (Wright 2004: 1). However, the INS took issue with the judge’s order that granted her asylum based on her membership in the social group of battered spouses.

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<sup>1</sup> The remaining four are race, religion, nationality, and political opinion.

In 1999, Rodi's case was heard by the Board of Immigration Appeals (BIA), the appellate board for all immigration courts in the United States. Unfortunately for Rodi, the BIA overturned the lower immigration court's decision and issued a deportation notice. The judges on the BIA agreed with the INS' reasoning that battered women did not constitute a social group, and that therefore, Rodi had no legal ground to seek asylum. In January of 2001, then-Attorney General Janet Reno issued a second order vacating the BIA's decision, rendering it moot until new regulations were to be issued by the Department of Justice. Yet no such regulations have been finalized and issued to date, and Rodi's status remains indeterminate. The INS' appeal of Rodi's case initiated the longest legal battle for a woman seeking asylum for domestic abuse in the history of U.S. asylum decisions. Rodi endured ten years of violence during her marriage, and has now waited another ten to learn whether she will be allowed to stay in the U.S. as a legal migrant seeking asylum or if she will be deported back to her persecutor in Guatemala.

Rodi's case illuminates the complexities of how asylum laws and policies are applied when women seek asylum from gender-based persecution. This case is the example most widely covered in the media of a woman fleeing gender-based persecution and seeking asylum from this harm in the United States. It challenges the fundamental principles on which asylum law in the U.S. rests because it questions whether gendered harm is persecution; if an intimate, such as a husband or family member, can be the persecutor; and if women are a social group. Gender-based asylum claims illuminate broader issues of immigration, citizenship, and human rights because these cases show how migration is structured by gender; reveal the ways in which asylum policies contribute toward nation building; and locate human rights activism both within and outside of the nation-state.

Asylum is timely because it addresses the recent national anxiety about immigration in our post-September 11<sup>th</sup> world that questions who should be allowed entry into the U.S., regardless of the motivation for migrating. United States policy makers have capitalized on American's fear of terrorists to mitigate immigration policies that admit asylum seekers.<sup>2</sup> The U.S. is increasingly mirroring the policies and practices of fortress Europe in its anti-immigration practices that detain and deport immigrants, including those seeking asylum from persecution.

I became interested in this topic after reading Rodi's story and the stories of many others who had experienced various forms of sexual violence, had applied for relief, and yet were denied asylum in the United States because gender is not one of the legally recognized grounds of persecution (Anker 2001). In preliminary research on gender-based asylum claims, I found that academic debates about gender-based persecution and asylum originated and have overwhelmingly remained within the disciplinary boundaries of legal studies (Anker, 2001; Goldberg 1993; Kelly 1993). Legal scholars understand gender-based asylum laws and policies within the context of U.S. case law, international law, and INS regulations, making the law—not people—the subject of inquiry. Such a focus ignores the social relations and networks of people who make, implement, use (and misuse), and rely upon the law. My training as a qualitative social scientist led me to ask different questions about gender-based persecution than those asked by legal scholars. Unlike legal scholars who focus on the outcome of a case, I privilege process over outcome in my research questions and design. By this, I mean that I am less interested in laws and policies *per se* and more interested in how human beings who created, implemented, and relied upon these laws and policies understand gender-based persecution.

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<sup>2</sup> I use the term “American” throughout the dissertation to refer to those living in the United States, not Canadian, Central, or South Americans who may identify as “American” because they are located in some part of the Americas.

Instead of focusing on the passage of gender-based asylum policies and laws as a final outcome (a worthy endeavor indeed given the countless efforts of scholars and activists whose advocacy brought about institutional change), I take gender-based laws and policies as a point of departure to inquire about their implementation. Three research questions guide this project: How are gender-based asylum laws and policies applied by asylum officers and immigration judges? How do differently situated participants, such as asylees, immigration attorneys, immigrant service providers, immigration judges, and asylum officers interpret gender-based persecution? How are narratives of persecution created in gender-based asylum claims?

In order to answer these questions, I spent two years in Los Angeles, California doing participant observation with immigrant service organizations and human rights groups, observing immigration court hearings, and conducting interviews with asylees, immigrant service providers, immigration attorneys, immigration judges, asylum officers and supervisors, and human rights organization employees and activists. I examine how gender is interpreted and negotiated for asylum seekers by providing evidence of how these participants articulate their understandings of gendered harm.

In this dissertation, I draw from a variety of disciplinary and interdisciplinary scholarship to argue how race, ethnicity, nationality, sexuality, and class mediate understandings of gender-based harm. Chapter two, Gendered Harm and State Protection, provides background data on asylum in the United States and lays the groundwork for the theoretical arguments about gender which I draw from throughout the dissertation. Because legal scholars were among the first to engage debates about gender-based persecution, I address their arguments and situate their assumptions about gender within a larger framework of feminist theorizing about gendered harm.

Chapter three, Research Methodology, describes the research design and methodology of this study.

Chapter four, Narratives of Persecution, focuses on how narratives of persecution are created in asylum claims. In this chapter, I rely on sociolegal studies, drawing in particular from the work of Patricia Ewick and Susan Silbey, who argue that narratives must conform to a story that the law recognizes. Consequently, the story of persecution that asylum seekers must tell in order to gain asylum is often not their own, but rather, one that follows the rules of legal implementation. This chapter reveals the contestation over issues of gender, persecution, and the authority to narrate. Because all asylum seekers must be credible (believable) in order to gain asylum, I examine what constitutes believability in asylum adjudication.

Chapter five, Ruling Relations in Immigration Court Asylum Hearings, examines the hidden criteria that govern asylum hearings in immigration court. In this chapter, I rely on Dorothy Smith's theory of ruling relations to analyze immigration court asylum hearings. I argue that asylum hearings are governed by extra-legal ruling relations that determine decisions about persecution for asylum seekers. This chapter focuses exclusively on immigration court hearings using excerpts from six hearings before five judges that show how gender, race, class, and nation structure assumptions about persecution.

Chapter six, The Gender Regime of Asylum, illuminates the major findings on how gender is understood and articulated in asylum discourses and practices. I use sociologist R. W. Connell's notion of gender regime to argue that a gender regime of asylum practices structures the process of asylum. In this chapter, I draw from a variety of scholars, such as Lata Mani, Uma Nayaran, and Chandra Talpade Mohanty, whose ideas about gendered, racial, and national formations help to illuminate what constitutes difference in gender-based persecution claims.



Chapter seven, the Conclusion, outlines the implications this research has for human rights, citizenship, and transnational migration studies and addresses the changes in asylum policy, law, and practices in the aftermath of the September 11<sup>th</sup>, 2001 terrorist attack. Appendix A includes tables with data for all interviews. Appendix B includes the interview schedules for all tape-recorded interviews.

## **2.0 GENDERED HARM AND STATE PROTECTION**

This chapter focuses on the gendered character of asylum in the United States through data on male and female asylum seekers and laws and policies that circumscribe women's claims. The first section is an overview of asylum in the United States that includes a discussion of international law and data on asylum seekers. I address how gender-based asylum was introduced in the U.S. and identify key gender-based asylum laws and policies. The second section focuses on scholarly work on gender-based harm and state protection. Because legal scholars were among the first to engage debates about gender-based persecution, I address their arguments and situate their assumptions about gender within a larger framework that includes transnational and postcolonial feminist perspectives found in the scholarship of Inderpal Grewal, Caren Kaplan, Chandra Talpade Mohanty, and Uma Narayan.

### **2.1 ASYLUM IN THE UNITED STATES**

Asylum is a form of protection offered to non-citizens who fear they would be persecuted if they returned to their home country. Throughout history, people have migrated *en mass* from one place to another because their group affiliation (i.e. religious, political, or ethnic) placed them in such danger that leaving one place for another became their only alternative (Zolberg et al 1989). Terms such as “asylum” and “refugee” have been used nearly interchangeably in explanations of

persecution-based migrations. In his discussion of the term “refugee” in early modern Europe, Aristide Zolberg (1989) speculates that its use, in the context of granting asylum to foreigners, may be traced to the migration of the Huguenots, persecuted Calvinists, from France into England in the sixteenth and seventeenth centuries. The term “asylum” originated from the French word “*asile*” that in the Middle Ages referred to a protected place of refuge (Zolberg 1993). The term “*azilum*” was first used in the United States in 1793 by loyalists who feared persecution after the French Revolution left France and settled on the banks of the Susquehanna River in northern Pennsylvania (Murray 1940).

The characterizing feature of asylum seekers and refugees is that their motivation for leaving one country for another is based on fear of persecution. Asylum seekers are distinguished from refugees in that they tend to migrate alone while refugees move in larger groups. The legal difference between classification as a “refugee” and as an “asylee” is circumscribed by definitions based on where the application is filed: refugees file their applications prior to entering the country where they seek protection, and asylees file after their arrival. Asylum seekers—like all migrants—must marshal the necessary resources to make their way from one country to another. They are similar to other migrants in that they, too, often seek better economic opportunities and desire reunification with family members living in other nation-states. However, despite these shared economic and familial reasons for migrating, refugees and asylum seekers differ from other immigrants in that they either experienced harm or feared they would experience harm if they did not leave.

Fear of persecution distinguishes asylum seekers from other migrants. They are treated as a special category of immigrants under international law and policy, in part, because lawmakers decide to treat this distinction as a significant one that matters in law. The policies

and conventions that protect asylum seekers are derived from those created for refugees. The United Nations' definition of who gets to claim refugee status determines the procedure for adjudicating asylum claims. Refugee legislation was codified in international law at the end of World War II as a response to the exodus of persecuted populations from Nazi Germany. The 1951 United Nations Refugee Convention Relating to the Status of Refugees and the 1967 United Nations Protocol Relating to the Status of Refugees serve as the cornerstone of refugee legislation. Although neither document requires members to provide asylum, each explicitly prohibits *refoulement*—forcible return. *Refoulement* to the country of origin where one's life or freedom would be threatened is a violation of the spirit and the letter of these documents.

The United Nations cannot force nation-states that are signatories to the Convention and Protocol to admit asylum seekers. Instead, nation-states decide who may gain asylum and under what circumstances. Nation-states capitalize on the vagueness of the term “well-founded fear,” employed to define persecuted populations. For example, U.S. foreign policymakers during the cold war made use of that vagueness to define persecuted populations as those fleeing communist governments; from 1951 to 1980, refugees and asylees who gained entry into the United States were overwhelmingly from communist nation-states. In 1980, the United States passed the Refugee Act introducing national legal standards for adjudicating refugee and asylum claims based on the definition of a refugee found in the Immigration and Nationality Act (INA Section 101a[42]). According to this section of the Immigration and Nationality Act, a refugee is defined as follows:

[a]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country on which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, or membership in a particular social

group, or political opinion (Germain 2000: 9–10).

According to the United Nations High Commissioner for Refugees (UNHCR), the United States was among the top asylum receiving nation-states from 1985 through 2000 (UNHCR 2002; UNHCR 2000). Table 1 shows the number of asylum applications for eleven nation-states that received the greatest number of applications from 1985 through 2000 in five year intervals (UNHCR 2002; UNHCR 2000; UNHCR 1993). The United States received the third greatest number of asylum applications in 1985, the second greatest number in 1990, and the greatest number in 1995 and 2000.

**Table 1: Asylum Applications in Eleven Asylum-Receiving Nation-States from 1985-2000<sup>3</sup>**

<b>Country</b>	<b>1985</b>	<b>1990</b>	<b>1995</b>	<b>2000</b>
Australia	> 50	12,100	7,600	6,700
Austria	6,700	22,800	5,900	18,200
Belgium	5,300	13,000	11,400	42,700
Canada	8,400	36,700	26,100	34,300
France	25,800	54,800	20,200	38,800
Germany	73,900	193,100	167,000	117,600
Netherlands	5,700	21,200	29,300	Data Not Available
Sweden	14,500	29,300	9,000	16,300
Switzerland	9,700	35,800	17,000	32,400
United Kingdom	5,500	38,200	55,000	Data Not Available
United States	16,600	106,800	224,000	122,200

Source: *United Nations High Commissioner for Refugees*, 1993, 2000, and 2002.

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<sup>3</sup> All data are rounded to the nearest hundreds.

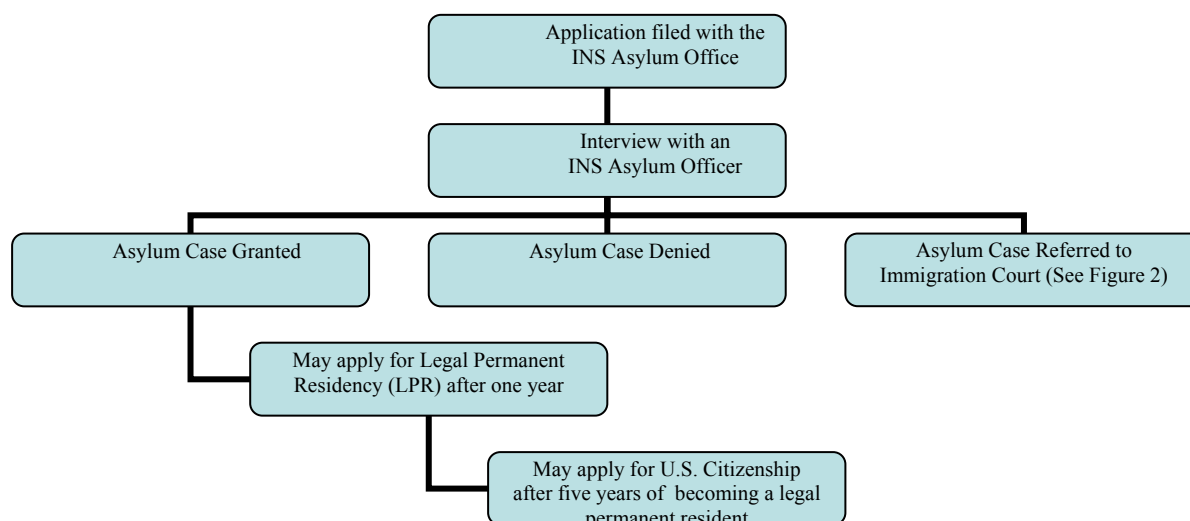
Table 1 shows the variation in the number of asylum applications received among nation-states and within a particular nation-state from 1985 through 2000. The variation may be explained, in part, by nation-states' policies on immigration that facilitate or impede asylum seekers ability to enter the country and file an application (Roberts 1998).

While the number of asylum seekers worldwide has increased since the 1970s, the proportion of asylum applications granted has simultaneously declined (Roberts 1998). Nation-states have moved away from policies of awarding permanent asylum towards a commitment to granting temporary protection. Between 1985 and 1995, more than five million asylum applications were filed in the industrialized nation-states of Western Europe and North America (with the exception of Mexico). Nearly one million of the applications filed are still pending, leaving one-fifth of the asylum-seeking population to await the adjudication of their claims (Roberts 1998).

Although industrial nation-states are reluctant to grant formal asylum status to migrants, they are also unwilling to deport those who claim persecution. Consequently, these nation-states grant fewer migrants asylum status, a status which would afford them certain rights and privileges. For example, in the United States, asylees are eligible to apply for Legal Permanent Residency (LPR) after one year of their asylum grant and may apply for citizenship after five years of gaining legal permanent residency (Germain 2000). Throughout asylum-receiving nation-states, many asylum seekers remain in those countries, as illegal migrants, with limited access to participating in the polity, and with restrictions on their ability to seek and maintain employment that would secure their livelihood in the place where they have sought refuge (Roberts 1998).

Migrants seeking asylum in the United States apply through two bureaucratic organizations that include the asylum office of the Immigration and Naturalization Service (INS) and the immigration court of the Executive Office for Immigration Review (EOIR). On March 1, 2003, the INS was divided into three agencies—the United States Citizenship and Immigration Services (CIS), the United States Immigration and Custom Enforcement (ICE), and the Bureau of Customs and Border Protection (CBP)—and moved from the Department of Justice to the Department of Homeland Security. The INS Asylum Office is now part of USCIS. Under bureaucratic reorganization in 1983, the Department of Justice created the Executive Office of Immigration Review (EOIR) which established immigration courts independent from the earlier Immigration and Naturalization Service (INS). These two bureaucracies are independent of each other; each with its own set of internal policies, the implementation of which is required only within each agency. For example, in the next section, I discuss the INS gender guidelines for asylum officers that were created for adjudicators within the INS, such as asylum officers and supervisors (Coven 1995). Immigration judges located in the EOIR are not obligated to adhere to INS policies. Likewise, INS asylum officers do not observe internal regulations within the EOIR. Adjudicators in both the INS asylum office and the EOIR immigration courts are required to implement immigration laws created by Congress, the Board of Immigration Appeals (BIA), the appellate court for all immigration courts in the United States, U.S. Circuit Court of Appeals, and the Supreme Court of the United States. Figure 1 shows the procedure for adjudicating affirmative asylum cases, claims submitted to the INS asylum office.

**Figure 1: Affirmative Asylum Procedure**



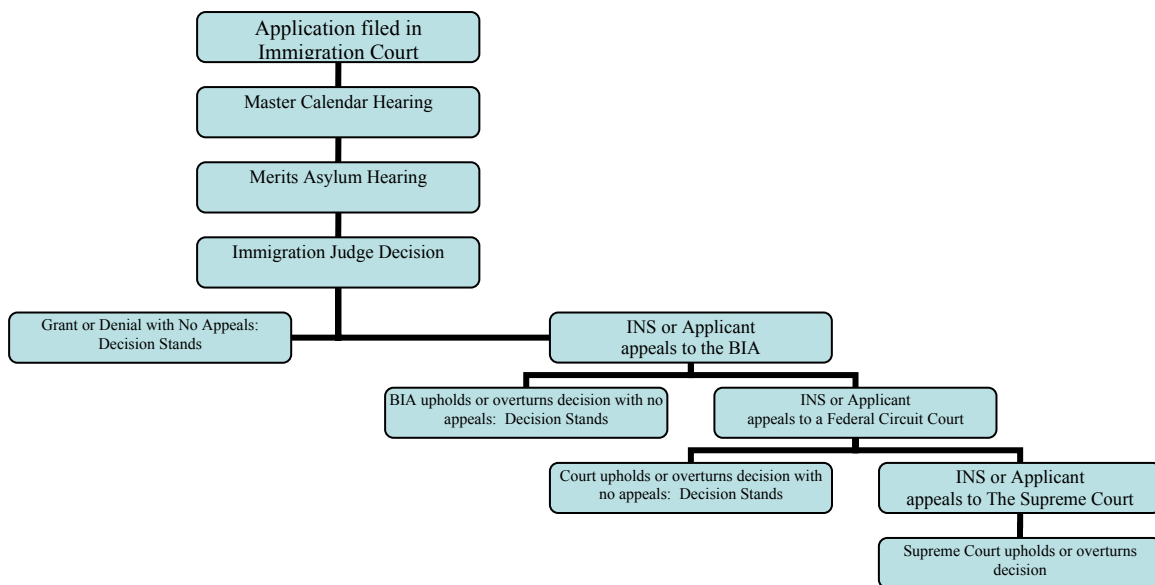
Source: *Winning Asylum Cases*, 1998

The INS asylum office receives affirmative asylum applications which are claims that an asylum seeker initiates before an order or deportation has been issued by the INS. In 1991, the U.S. asylum corps was created within the INS to adjudicate asylum claims separate from other immigration applications. After an asylum application is complete, the attorney (or asylum seeker) submits it by mail to an INS service center. The closest INS service center to Los Angeles is in Laguna Niguel, located approximately sixty miles southeast of Los Angeles in Orange County. After the application is received, the service center has twenty-one days to enter it into the INS asylum office processing system. The service center schedules the original interview for the applicant at the INS asylum office and notifies asylum seekers by mail about their appointment. Two weeks after the asylum interview is completed, asylum seekers return to the asylum office where they receive notification of the asylum officer's decision. If an asylum seeker is granted asylum, she is eligible for refugee benefits (these are discussed in Chapter 3) and may apply for Legal Permanent Residency (LPR) after one year of her asylum grant and



apply for U.S. citizenship five years after becoming a legal permanent resident. Asylum claims submitted to the INS asylum office are denied only when the applicant has a legal immigrant status when the application is under consideration, such as a student visa. If the asylum officer is unable to reach a decision about the claim, it is referred to immigration court. Figure 2 outlines the procedure for defensive asylum cases, claims submitted to immigration court.

**Figure 2: Defensive Asylum Procedure<sup>4</sup>**



Source: *Winning Asylum Cases*, 1998

Asylum claims in immigration court include referred cases from the INS asylum office and new claims by migrants in INS detention facilities. Similar to the prompt scheduling of interviews at the INS office, immigration courts tend to schedule a master calendar hearing, the initial hearing and point of contact for asylum seekers in immigration court, approximately two weeks after receiving the application.<sup>5</sup> Master calendar hearings are like arraignment hearings, plaintiffs enter a plea and have an opportunity to notify the judge of problems such as access to

<sup>4</sup> Similar to the affirmative asylum application process, immigrants granted asylum at any stage of a defensive court proceeding, with no appeal from the INS, may apply for Legal Permanent Residency (LPR) after one year of their asylum grant and for U.S. Citizenship after five years of becoming a legal permanent resident.

<sup>5</sup> The INS and the EOIR are legally bound to commence the initial asylum interview or hearing within 45 days after it is filed.

legal representation or ability to produce required documentation. Immigrant representatives may request additional master calendar hearings until all problems are resolved and the plaintiff is prepared for a merits hearing.

Merits hearings are scheduled after the master calendar hearing is completed. There is no time requirement for scheduling a merits hearing. These hearings are scheduled according to the judge's availability and are often done months after the master calendar hearing is completed. Merits hearings are like interviews at the INS asylum office where asylum seekers are required to disclose why they are applying for asylum and discuss the persecution they faced or fear they would face if returned to their home country. Unlike interviews at the INS asylum office whose participants include the asylum seeker, an asylum officer, a legal representative (if the applicant has one), and a language interpreter (if needed), an assistant district counsel, the attorney who represents the government in immigration court, is also present during merits hearings. In Chapter 6, I discuss the social interactions that take place in immigration court hearings.

After an immigration judge adjudicates a case, the applicant or the INS may appeal the judge's decision to the Board of Immigration Appeals (BIA). The BIA relies on court transcripts and documentation filed in immigration court (by both the INS and the applicant) when upholding or overruling an immigration judge's decision. There is no oral testimony from applicants or the INS during BIA adjudication. If an applicant or the INS appeals the BIA's decision, the case is heard in the U.S. Circuit Court of Appeals that the immigration court that initially ruled on the case is located. For example, if a case that was adjudicated in the Los Angeles immigration court is appealed after the BIA's decision, the case is referred to the Ninth Circuit Court of Appeals. Applicants or INS representatives who appeal decisions by circuit

court judges may bring their case before the U.S. Supreme Court. If there are no appeals, the most recent decision stands as the final judgment on the case.

Asylum law in the United States derives its authority originally from international law based on the 1951 United Nations Refugee Convention and the 1967 Protocol. The Refugee Act of 1980, contained within the Immigration and Nationality Act, is the statutory source of domestic federal law for asylum found in Section 208 of the United States Federal Code of Regulations (Germain 2000). Asylum officers and immigration judges are legally bound to follow the statute, decisions issued by the Board of Immigration Appeals (BIA), and Circuit Court of Appeal decisions from the respective circuit where a particular asylum office or immigration court is located. All immigration laws are federal laws, and published federal law cases are precedent cases and therefore legally binding. When an immigration case is published by the BIA, it is legal precedent for the entire country, and when a U.S. Circuit Court of Appeals case is published, it is legal precedent for that circuit. Decisions made in immigration courts are not published cases and are not legally binding for those court or any others in the U.S. When BIA cases are overturned by a U.S. Circuit Court, those cases are only “good law” for those circuits. For example, in *Fatin v. INS* (1993), this third circuit published case set a legal precedent that feminism is a form of political opinion that is only legally-binding in asylum offices and immigration courts in the geographical boundaries of the third circuit. However, during my fieldwork, I noticed that many attorneys cited the *Fatin* case in applications in Los Angeles immigration courts, located in the ninth circuit and not under the authority of the third circuit. When I inquired with one attorney about why she included this in the asylum applications she prepared, she responded "you never know what's going to stick." Yet when I

asked the same question to an immigration judge, his response was "I don't know why they [immigration attorneys] put that in. It doesn't help the respondent at all."<sup>6</sup>

Table 2 shows recent data for the number of asylum applications received, adjudicated, and the percent granted in the U.S., using data from the Statistical Yearbooks of the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) from 2000 through 2003 (INS 2003a; INS 2002; INS 2001a; INS 2000; EOIR 2003; EOIR 2002; EOIR 2001; EOIR 2000).<sup>7</sup>

**Table 2: Asylum Applications in the U.S. from 2000-2003<sup>8</sup>**

<b>Application Type</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003<sup>9</sup></b>
<b>INS/USCIS (Asylum Office)</b>				
Number Received	46,423	62,984	63,197	46,272
Number Adjudicated	37,846	46,959	52,336	39,456
Percent Granted	44%	43%	36%	29%
<b>EOIR (Immigration Court)</b>				
Number Received	51,900	61,832	74,127	65,153
Number Adjudicated	52,109	47,432	55,353	68,093
Percent Granted	37%	40%	37%	37%

Sources: *Immigration and Naturalization Service and Executive Office for Immigration Review, 2000-2003.*

There is a discrepancy between the UNHCR data and the INS/EOIR data on asylum applications in the United States. This discrepancy is because there are different organizations collecting the

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<sup>6</sup> I discuss examples like this in chapters 4-6 where immigration attorneys (in addition to other participants in the asylum process) make non-legal based decisions when preparing and adjudicating asylum claims.

<sup>7</sup> INS and EOIR data are fiscal year data beginning July 1.

<sup>8</sup> The percent granted is based on the number of adjudicated applications.

<sup>9</sup> In 2003, there were 2,940 more cases adjudicated than received by the EOIR. Asylum applications are not always adjudicated in the fiscal year that they are received. Therefore, there may be more adjudicated cases than received cases for some years.

data and, as each organization indicates in its report, the data are preliminary and collecting data on asylum seekers is often inaccurate. Moreover, the EOIR data includes both primary applications of asylum seekers in detention centers and secondary, or referred, applications that originated at the INS and were later adjudicated in the immigration courts.

The data from Table 2 show three findings. First, more than one-third of asylum applications are approved at the asylum office and in immigration courts. Second, after the September 11<sup>th</sup> 2001 terrorist attack, which ushered in more stringent policies and screening procedures into the INS asylum office, the INS office grant rates dropped from 43% in 2001 to 36% in 2002 to 29% in 2003. The rate of court approval, however, remained at about the same level as before. Third, there was a decrease in received cases to the INS and EOIR in 2003. The decrease in the number of received applications may be due to asylum seekers choosing other nation-states after the increased security measures in the aftermath of the September 11<sup>th</sup> terrorist attacks; indeed, the number of asylum applications in other asylum receiving nations increased after that date. Table 3 shows data for asylum claims in 2001 and 2002 for nine nation-states (UNHCR 2004). The United Kingdom received the most applications and Belgium received the least in 2001 and 2002 combined.

**Table 3: Asylum Applications in Nine Asylum-Receiving Nation-States in 2001 and 2002**

<b>Nation</b>	<b>2001</b>	<b>2002</b>	<b>Total</b>
United Kingdom	91,600	103,100	194,700
Germany	88,300	71,100	159,400
France	47,300	51,100	98,400
Canada	44,000	39,500	83,500
Austria	30,100	39,400	69,500
Sweden	23,500	33,000	56,500
Netherlands	32,600	18,700	51,300
Switzerland	20,600	26,100	46,700
Belgium	24,500	43,300	43,300

Source: *United Nations High Commissioner for Refugees, 2004.*

Nearly all data on asylum from UNHCR and the INS are available by nation-state in the form of sending and receiving countries. There are few data by sex.

Table 4 shows data by sex for affirmative applications to the INS from 1998 through 2002 (INS 2003b). These are the only INS data on asylum by sex and are not available in the statistical yearbook; I was able to procure them from the INS headquarters during my fieldwork. These data are preliminary and therefore do not match the data from Table 2.

**Table 4: Affirmative Applications for Asylum in the U.S. by Sex from 1998-2002<sup>10</sup>**

<b>Sex</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Female</b>					
Number Received	17,388	14,785	17,312	23,261	24,036
Number Adjudicated	11,972	12,204	15,091	21,699	22,123
Percent Granted	28%	44%	48%	47%	40%
<b>Male</b>					
Number Received	37,564	25,977	30,686	41,135	40,608
Number Adjudicated	23,066	19,577	25,600	37,721	36,281
Percent Granted	21%	35%	41%	41%	41%

Source: *Immigration and Naturalization Service*, 2003.

The data in Table 4 show that men submit more applications than women. For every year, approximately one-third of the asylum seeking population is female and approximately two-thirds is male. This may be due to men's greater access to mobility, including access to resources that would enable them to migrate across national borders (Martin 2004; Indra 1999). A theme in the migration literature is that women's mobility is regulated and restricted because of their sex (Indra 1999). For example, there are a number of nation-states with laws that restrict women's

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<sup>10</sup> The percent granted is based on the number of adjudicated applications.

travel. Women often need permission of a male relative, usually a husband, father, or brother, in order to obtain a passport (Seager 2003). Joni Seager (2003) names twenty nation-states that require women, but not men, gain permission of a male relative in order to travel abroad.<sup>11</sup> Of the 27,551 asylum applications filed with USCIS (formerly INS) asylum office in 2004, only 813, just 3 percent of the total, were by applicants from one of these twenty nation-states (USCIS 2004). Therefore, nation-states with restrictions on women's travel comprise significantly less of the asylum seeking population than do nation-states without those same restrictions.

The higher number of male asylum seekers may also be because the INS and EOIR nearly always consolidate spousal claims under the husband's application for asylum applications. In my many inquiries about this phenomenon, I was told that asylum officers and judges are not legally required to consider the spouse with the claim of persecution as the primary applicant. However, in practice, judges and asylum officers consider the male applicant as primary in the asylum claims of married couples. Therefore, the gendered method of data collection by the INS and EOIR make it nearly impossible to know if women's asylum claims are underrepresented. According to Monica Boyd (1999), who has written extensively on female refugees and asylum seekers, "refugee determination procedures frequently reproduce existing gender hierarchies where men are considered heads of households and women are viewed as dependents" (11-12). Nancy Kelly (1993) argues that the "claims of women are often presented as derivative of the claims of their male partners" and this is problematic because "the woman is rendered entirely dependent upon her male partner for her status" and "risks expulsion if the relationship fails" (629, 630).

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<sup>11</sup> The twenty nation-states Seager lists are Algeria, Nigeria, Libya, Gabon, Democratic Republic of Congo, Swaziland, Uganda, Sudan, Djibouti, Qatar, Iran, United Arab Emirates, Oman, Yemen, Syria, Jordan, Saudi Arabia, Kuwait, Egypt, and Thailand.

While men comprise a greater percentage of asylum applicants than women, they represent a smaller percentage of legally admitted immigrants who enter the U.S. for permanent residency and a smaller percentage of those who naturalize to U.S. citizenship. Table 5 shows data for immigrants lawfully admitted to the United States by sex for fiscal years 1998 through 2002 from the Statistical Yearbooks of the Immigration and Naturalization Service (INS 2002; INS 2001a; INS 2000; INS 1999; INS 1998).

**Table 5: Immigrants Legally Admitted for Permanent Residence by Sex from 1998-2002**

<b>Sex</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Female</b>	353,426	355,600	470,854	587,187	577,868
<b>Male</b>	299,946	290,225	476,876	485,596	378, 259
<b>% Female</b>	54%	55%	50%	55%	60%

Source: *Immigration and Naturalization Service*, 1998 - 2002.

Immigrants who are legally admitted for permanent residence include those who migrate to the U.S. because of family reunification, employment, overseas refugee processing, and who qualify for diversity purposes.<sup>12</sup> For nearly every year, women comprise just over half of all immigrants admitted for permanent residency. Table 6 shows data for immigrants who became U.S. citizens by sex for fiscal years 1998 through 2002 from the Statistical Yearbooks of the Immigration and Naturalization Service (INS 2002; INS 2001a; INS 2000; INS 1999; INS 1998).

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<sup>12</sup> Unlike asylum seekers who apply for asylum after their arrival in the U.S., refugees are classified as such prior to arriving in the U.S., and therefore, are considered legal immigrants according to the INS. These applications are processed through the Overseas Refugee Processing program of the INS.



**Table 6: Naturalization to U.S. Citizenship by Sex from 1998-2002**

<b>Sex</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Female</b>	254,958	432,635	452,453	308,502	301,466
<b>Male</b>	195,882	342,480	391,787	283,754	264,443
<b>% Female</b>	57%	56%	56%	52%	53%

Source: *Immigration and Naturalization Service*, 1998 - 2003.

There are five ways that an immigrant may naturalize that includes becoming a U.S. citizen, court ceremonies, administrative hearings, derivation through the naturalization of parents, acquisition at birth abroad to a U.S. citizen parent, and legislation conferring citizenship to specific groups. The data in Table 6 include all five types of naturalization. Like the data by sex for legal immigrants, for nearly every year, women comprise just over half of all naturalized immigrants. The INS does not collect data by sex for other immigrant groups such as nonimmigrants and those who are detained, arrested, or deported.<sup>13</sup>

Examining data across immigrant categories by sex is interesting because it shows variation in sex ratios for different classifications of immigrants. The practice of consolidating women's asylum claims under their husband's may occur for immigrants other than asylum seekers. If spousal claims are consolidated for immigrants other than asylum seekers, data on the percentage of female immigrants may be underestimated for legal immigrants and naturalized immigrants, as well as for asylum seekers. More importantly, if spousal claims are consolidated for immigrants other than asylum seekers, spousal consolidation does not explain why women represent a larger percentage of legal immigrants and a smaller percentage of asylum seekers.

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<sup>13</sup> Nonimmigrant admissions include foreign nationals who enter for a temporary time period, such as tourists, students, and business travelers.

Women may comprise a higher percentage of legal immigrants and naturalizations because women have access to certain forms of mobility, such as marriage to foreigners, that are much less common for men (Constable 2005; Constable 2003). In her study of cross-border marriages of Asian women to American men, Nicole Constable (2003) shows that “marriage migration to the United States almost tripled between 1960 and 1997, increasing from 9 percent to 25 percent of all immigration” (4). In 1997, well over half (61% of those marrying U.S. citizens and 85% of those marrying legal permanent residents) were women (Constable 2003). Marriage migration is a new form of mobility for women who enter the U.S. as legal residents. Therefore, the higher numbers of women among legal immigrants may be explained, in part, because of new gendered global marriage patterns.

Data by sex are limited in that they only reveal information about the sex of the applicant, not the substance of the claim. No INS or EOIR data are made available by type of harm or ground or persecution for men or women.

### **2.1.1 The Introduction of Gender-Based Persecution in Asylum Law and Policy**

The idea of including gender-based persecution in asylum law and policy can be traced to the mid-1980s when a number of Non-Governmental Organizations (NGOs) and the United Nations High Commissioner for Refugees (UNHCR) requested that Carol,<sup>14</sup> an NGO employee, document gendered violence in refugee camps. The impetus for this request came from employees of NGOs and UNHCR protection officers working in refugee camps who were becoming increasingly aware of pervasive rapes of female refugees. Because protection is a chief concern of UNHCR, United Nations (UN) officials were concerned about women's security

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<sup>14</sup> See Appendix A for this interview and all succeeding interviews.

in refugee camps. The data on gendered violence in refugee camps was used in the UNHCR *Guidelines on the Protection of Refugee Women* (1991) which addressed issues of sexual violence during displacement. In this document, sexual violence against refugee women was recognized as an effect of migration, not only its cause.

The UNHCR *Guidelines on the Protection of Refugee Women* (1991) were intended to protect refugee women who experienced sexual violence during exile and displacement in the refugee camps because women comprised the greatest percentage of forced migrants. The guidelines were not intended to serve as a tool for asylum seekers to claim persecution based on gendered harm. However, with their publication, immigrant advocates worldwide capitalized on the increasing transnational awareness of gendered harm and began national campaigns to implement gender-based asylum laws and policies (Crawley 2001). Non-governmental organizations (NGOs) were particularly influential. Organizations such as the Center for Gender and Refugee Studies, Amnesty International, Human Rights Watch, The International Gay and Lesbian Human Rights Commission, The Lawyer's Committee for Human Rights, and The American Immigration Lawyer's Association, have played an instrumental role in making gender-based harm a visible and legitimate form of persecution. Human rights organizations are institutionally different from government organizations, in part, because human rights activists and organization employees do not adjudicate asylum claims. However, human rights organizations – Human Rights Watch and Amnesty International, in particular – are important sites of power in asylum adjudication because these organizations issue reports on human rights abuses that asylum officers and immigration judges use when deciding whether someone would be persecuted if they returned home.

Human rights groups contribute toward awareness and assistance in gender-based asylum cases in a variety of ways, including issuing reports and monitoring INS processing centers. The Center for Gender and Refugee Studies (CGRS), housed at the University of California – Hastings Law School, has created the most comprehensive database available for gender-based asylum cases. Legal scholars at CGRS assist immigration attorneys with gender-based asylum applications, write *amicus curie* briefs, and make gender-based asylum case information at the lower courts available through the aid of attorneys who represented those cases.

Feminist activism from within governmental bureaucracies was also an impetus for policy changes that recognized gender-based persecution. Carol, a policy analyst for the Institute for the Study of International Migration at Georgetown University, described how gender-based asylum policies originated due to women’s leadership in key positions of power:

Around the time the guidelines [INS gender-guidelines] were introduced, the Commissioner of the Immigration and Naturalization Service, the Assistant Secretary of the Office of Refugee Resettlement, and the Assistant Secretary of State for Consular Affairs were all women – that’s three women in senior positions on immigration and refugee policy in the U.S. government who were clearly concerned for refugee women and asylum seekers and made [gender-based asylum] a major issue, not just part of some routine bureaucratic process.

These campaigns by media and human rights groups have focused attention on asylum seekers fleeing gender-based harm, although this group comprises only a small percentage of all refugees. Based on Carol’s estimate, at the time the 1991 UN Guidelines were published, 99% of all refugees were living in developing countries, while only 1% sought asylum in industrialized nation-states. Thus, one outcome of national gendered-based laws and policies was to displace focus from migrant women in refugee camps to those seeking asylum from gender-based harm. These groups reflect the global class divide between female refugees and asylum seekers who experience gendered harm. Unlike many asylum seekers who can marshal

sufficient resources to migrate to an asylum-receiving country, refugees tend to be poor and without resources for migration.

Legal scholar Alexander Aleinikoff (unpublished paper), argues that the five original grounds of persecution (e.g. race, religion, nationality, political opinion, and membership in a social group) reflect the different groups of persecuted populations in Nazi Germany, designating the category social group as a euphemism for homosexual. One immigrant advocate, interpreted the absence of gender as the following: "I doubt that they [the drafter's of the UNHCR refugee definition] even gave consideration to the concept that you might be persecuted on account of your gender."

In 1985, the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) adopted Conclusion No. 39, the first initiative to address gender-based persecution regarding asylum:

States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a "particular social group" within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention (cited in Macklin 1999: 274).

The UN cannot enforce this or any other guideline it has issued. Instead, nation-states decide who may gain asylum and under what circumstances. The first country to introduce gender-based persecution guidelines was Canada, in 1993, and the U.S. followed two years later in 1995 with the INS guidelines for asylum officers (Coven 1995). Currently, nine countries have either accepted or introduced gender-based guidelines as part of their asylum adjudication process: Canada, the United States, Australia, United Kingdom, South Africa, Norway, Sweden, Ireland,

and the Netherlands.<sup>15</sup> In 2002, approximately 39% of all asylum seekers submitted their claim in eight of the nine countries that have either accepted or introduced gender-based guidelines (UNHCR 2004).<sup>16</sup>

One way to have gender-based asylum claims recognized as forms of persecution, is through domestic laws and policy. Domestic law includes congressional acts and judicial case law. Policy refers to Immigration and Naturalization Service (INS) regulations and executive directives. In 1995, the INS introduced “gender guidelines” in a memorandum that provided “guidance and background on adjudicating cases of women having asylum claims based wholly or in part on their gender” (Coven 1995). Issued by the INS as guidelines for asylum officers, this proposal has not been accepted into the Federal Code of Regulations and currently remains as a guideline and not as policy. As of 2006, these regulations are under review by the U.S. Attorney General. Although the Department of Homeland Security, the overseer of the U.S. Citizenship and Immigration Services, has recommended acceptance, there has been no final approval as yet from the Department of Justice (Swarns 2004).

After the gender guidelines were drafted, the INS incorporated a lesson plan on Female Asylum Applicants and Gender-Related Claims in the required asylum officer training. The following lesson plan from November 30, 2001 is the most recent version. In this lesson plan, the gendered language of harm was changed to include men. The lesson plan introduces gender-based claims as the following:

In addressing gender-related issues, this lesson primarily focuses on female asylum-seekers, because these issues most commonly arise in the context of adjudicating women's asylum claims. However, it is recognized that gender-related issues may also be present in claims brought by men, and many of the principles

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<sup>15</sup> The Center for Gender and Refugee Studies at the University of California Hastings Law School maintains the most current information on national and international law on gender-based asylum. This information may be found at the following website: <http://www.cgrs.uhastings.edu>.

<sup>16</sup> No data are available for South Africa.

addressed in this lesson may apply equally to claims raised by male or female asylum seekers (INS 2001b: 5).

Although the policy guidelines were updated to include men, during my interviews with asylum officers and judges, none were able to provide me with examples of gender-based claims submitted by male asylum seekers. The inability to recall examples of gendered persecution claims by men, on the part of asylum officers and judges, may reflect how the addition of men to recent policy directives on gendered asylum claims may exist more in theory than in practice.

The decentralized and multifaceted legal system in the United States provides other arenas for immigrant activists, policymakers, and scholars. Case law is one area in which important decisions regarding gender-based persecution have been made. For example, when the Board of Immigration Appeals (BIA), the appellate board for all immigration courts in the United States, granted Fauziya Kassindja asylum for fleeing female circumcision, it created a precedent (*Matter of Kasinga*, 21 I. and N. Dec. 357 BIA 1996).<sup>17</sup> Because the Kasinga case was not appealed, it established the legal basis for extending protection to any immigrant woman claiming asylum for herself on the basis of a fear of female circumcision (future persecution), the occurrence of circumcision (past persecution), or the fear that her daughters would be circumcised in the future.<sup>18</sup>

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<sup>17</sup> The spelling of Kassindja and Kasinga are incongruent. The asylum seeker's last name is spelled Kassindja and the legal case is spelled Kasinga because the INS airport inspector who processed Fauziya's application spelled her last name incorrectly when she arrived in the United States. See Fauziya Kassindja and Layli Miller Bashir's *Do They Hear You When You Cry?* for details of Fauziya's interactions with the INS that led to this discrepancy.

<sup>18</sup> All immigration laws are federal laws, and published federal law cases are precedent cases and therefore legally binding. When an immigration case is published by the Board of Immigration Appeals (BIA), it is legal precedent for the entire country, and when a U.S. Circuit Court of Appeals case is published, it is legal precedent for that circuit. When BIA cases are overturned by a U.S. Circuit Court, those cases are only "good law" for those circuits. For example, in *Fatin v. INS* (1993), this third circuit court of appeals published case set a legal precedent that feminism is a form of political opinion that is only legally binding in asylum offices and immigration courts in the geographical boundaries of the third circuit.

Congressional law is also an avenue for passing gender-based persecution relief. In 1996, the Illegal Immigration Reform and Responsibility Act (IIRRA) outlined stringent changes in the asylum system that included the “one-year rule” mandating that immigrants file an asylum application within one year of arrival to the United States. This act also created expedited removal, or summary removal, of immigrants arriving with false or no documentation who do not explicitly express a fear of persecution at their port of entry. Within this generally restrictive legislation, however, is a significant gain for those asylum seekers fleeing coercive population control. An amendment to this Act defines forced abortions and involuntary sterilization as acts of persecution; a gain made possible by the influence of the pro-life lobby, demonstrating how legal advances in gender-based asylum law are made by the right as well as the left.

The INS gender guidelines and U.S. Congressional law benefit only those who seek asylum in the United States. There has been an international push by scholars and activists to include gender, in addition to race, religion, nationality, political opinion, and membership in a social group, in the UN refugee/asylee definition (Stevens 1993). Yet immigration rights activists are anxious about adding gender to the list of protected grounds, for both international (United Nations Convention) and national (Immigration and Nationality Act) law, at this time when anti-immigrant sentiment from the Bush administration and the United States population in the aftermath of September 11<sup>th</sup> may result in more stringent criteria for deciding what constitutes persecution and who may be considered eligible for asylum. Immigration advocates in the United States fear that opening the status of the refugee definition would necessitate a debate over what constitutes a well-founded fear, currently defined as a “reasonable possibility” which translates numerically as a “1 in 10” chance that persecution would happen (Germain 2000, 28). They fear that the narrower definition of a “more than likely chance” interpreted by



other humanitarian forms of relief such as the Torture Convention would instead be included. Further, opening the definition of refugee/asylee, they fear, may result in more restrictive policies. Under U.S. asylum law, the persecutor may be an agent of the State or an agent from whom the State is unwilling or unable to protect a person. If the definition is opened for discussion, it could be restricted to refer exclusively to a person suffering persecution by agents of the State, which is the case now for other signatories to the Convention, such as Germany. Opening the definition with the intent of adding gender as a basis for persecution could thus do more harm than good for all asylum seekers, including women. Opening the definition allows any changes to the current Convention -- changes that may facilitate or impede migrants' ability to gain asylum -- to be heard before the signatories to the Convention.

In the next section, I outline the legal studies literature on gender-based asylum and feminist responses to gendered harm. I draw from the theories and debates in the scholarly literature on transnationalism and postcolonialism to critique legal scholars' arguments about gendered harm.

## **2.2 TRANSNATIONAL, POSTCOLONIAL, AND LEGAL CRITIQUES OF GENDERED HARM**

The passage of gender-based policies and laws were a victory for immigrant advocates. However, feminist scholars are critical of the assumptions about the category of "woman" that activists and policy makers engaged in order to bring about institutional change for female asylum seekers. In this section, I first outline the legal scholarship on gender-based persecution. I rely on non-legal feminist scholars, such as Susan Moller Okin (2000) and Carole Pateman

(1992), to explain ideas such as androcentrism and the public/private dichotomy that legal scholars use to explain gender-based asylum. I then argue that transnational and postcolonial feminist scholars can provide a more nuanced understanding of gender than most legal scholarship.

### **2.2.1 Legal Studies and Gender Based Persecution**

Feminist legal scholars have made a number of important critiques of the use of “gender-specific persecution” in U.S. asylum law (Boyd 1999; Macklin 1999; Meyer 1998; Ericson 1998; Malone 1997; Wilets 1997; Stark 1996; Kelly 1993; Neal 1988). Three themes are central: androcentrism; the public/private dichotomy; and conceptualizing women as a social group.<sup>19</sup>

The first theme in the legal scholarship on gender-based persecution is that asylum law is androcentric because it assumes that men and their experiences circumscribe the types of harm that constitute persecution (Boyd 1999; Malone 1997; Wilets 1997; Kelly 1993; Stevens 1993). In her essay that traces the convergences and disparities between international human rights covenants and grassroots organizing, Susan Moller Okin (2000) calls for a mandatory “rethinking of human rights” given the widespread global attention to women’s human rights (26). Okin argues that the fundamental problem with incorporating women’s human rights into an existing human rights framework is that theories, laws, and ideas of what constitute human rights follow a male model. This male model, also referred to as androcentrism, assumes that men’s experiences provide the framework for rights under which women’s experiences are

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<sup>19</sup> One understudied topic in feminist legal studies is how asylum law may not recognize forms of gendered harm that tend to happen to men, such as forced conscription. Instead, the focus on gendered harm is exclusively directed at understanding the forms of harm that women tend to experience. In chapter 6, I discuss how a male asylum seeker’s case based on a fear of persecution because of his sexual orientation could also be considered gendered harm.

subsumed. Based on Okin's theory, asylum law is androcentric to the extent that it does not recognize as persecution the full range of the types of harm that women face, such as rape, female circumcision, forced marriage, domestic violence, and forced sterilization. If the law does not recognize these harms as persecution that necessitate state protection, many women who experience gender-based persecution are unlikely to receive asylum.

A second theme is that asylum law privileges "public" acts of persecution and subordinates "private" acts of persecution. In her critique of liberalism, Carole Pateman (1992) argues that liberalism promotes a public/private dichotomy that is gendered, with women's activities relegated to the private realm of domesticity and men's to the public world of power and politics. In her essay on asylum in the United Kingdom, Heaven Crawley (1999) relies on Pateman's notion of a public/private dichotomy to understand gender-based persecution. According to Crawley, liberal human rights' policies and laws "rest[s] on and reproduce[s] various dichotomies between the public and private spheres" (310). Crawley argues that because "traditional rights law has so sharply distinguished the public sphere from the private sphere of the home, courts are likely to characterize familial violence as a personal dispute" (319). The implication for women who apply for asylum is that their "experiences are conceptualized as 'private' – private to personal relationships, private to cultures, and private to states – and therefore beyond the scope of international protection efforts" (329). Crawley's reading of the gendered character of asylum is interesting for distinguishing how the state differentiates women's and men's practices. If women's persecution is private and men's public, it follows that international law that only protects "public" persecution will privilege men's asylum claims. The link between a public/private schema of social life and women's human rights is that the types of persecution women face, such as domestic violence, forced marriage, and female

circumcision, overwhelmingly take place in “private” institutions such as the family. If the harms women face occur in a sphere of privacy that render these acts invisible, legal redress via international instruments is incomprehensible through a rhetoric of rights that only considers “public” acts of harm worthy of enforcement.

The third theme is that persecution becomes a legitimate basis for asylum claims only if women are conceptualized as a social group. Because international agreements, such as the 1951 Refugee Convention and its 1967 Protocol, do not currently recognize gender specific persecution as a criterion for granting asylum status, gender persecution has overwhelmingly come to be understood under the rubric of “membership in a social group.” Under asylum law, being part of a social group has come to mean “a group of persons all of whom share a common, immutable characteristic” that “members of the group cannot change, or it must be one that the members should not be required to change because it is so fundamental to the members’ individual identity or conscience” (Kelly 1993: 648-9). There is some dispute considering how useful the rubric of social group is for adjudicating gender-based asylum claims. While some legal scholars, such as David Neal (1988), argue that the legal framework for adjudicating gender-based claims is already in place if women are conceptualized as a social group, others, such as Nancy Kelly (1993), claim that understanding women as a social group is still androcentric and that adjudicating gender-based claims under this rubric is thus problematic. David Neal’s and Nancy Kelly assume that it is possible (even if undesirable) to treat all women as a social group. Neither discusses the theoretical implications of viewing women as constituting a group.

### **2.2.2 Critiques of Gendered Harm**

Transnational and postcolonial feminist scholars pay particular attention to how gender is central to understanding the asymmetries and inequalities of power in global processes such as nationalism (Grewal and Kaplan 1994), race (Stoler 2002), citizenship (Ong 1999), culture (Narayan 2000; Yeğenoğlu 1998; Spivak 1985), democracy movements (Mohanty and Alexander 1997), human rights (Grewal 2005), migration (Pessar and Mahler 2003; Hondagneu-Sotelo 1997), and knowledge production (Mohanty 2003; Bulbeck 1998; Mohanty 1991).

The term transnational is generally used to explain the movement of capital, goods, people, and ideas across national borders (Smith 2001; Smith and Guarnizo 1998; Appadurai 1996; Basch et al 1994). The term was first introduced to explain the emergence of multinational corporations organized by capital ownership in the first world and the search for cheap labor in the third world (Guarnizo and Smith 1998). The transnational movement of capital sparked a debate on the role of the nation-state, in particular, the demise of power of third world nation-states in the context of global capitalism.

Postcolonialism is the study of the effects of colonization on societies that are now independent nation-states that were once ruled by European countries. Postcolonial scholars have taken literature as their primary focus to show how colonial powers altered indigenous cultures by distorting the experiences and realities of those populations (Said 1978; Bhabha 1990). These scholars encourage a re-writing of history that emphasizes the subjectivity of the oppressed and view their central mission as one that encourages the colonized to articulate their own identity and reclaim their past (Mani 1998; Spivak 1985).

A significant body of postcolonial feminist scholarship critiques Western feminists for speaking on behalf of third world women in the name of feminist solidarity (Spivak 1985;

Mohanty 1991).<sup>20</sup> Similar to the ways in which postcolonial scholars use literature to critique colonial imperialism, postcolonial feminist scholars take Western feminist scholarship as their point of departure to critique Western feminists for using their own culture as the yardstick for measuring third world women's status. Transnational feminist scholars challenge U.S.-centric feminist scholarship that is uncritical of dualities such as West and nonWest, modernity and tradition, and global and local (Grewal and Kaplan 1994). According to Inderpal Grewal and Caren Kaplan (1994), these binaries are problematic for feminist scholarship because they allow conceptualizations of gender to operate explicitly within a U.S. framework that "dangerously correspond[s] to the colonial-nationalism model that leaves out certain subaltern groups" (11). The subaltern groups that Grewal and Kaplan refer to are women outside of the United States. Transnational feminists are critical of how American feminists are unreflexive about how the United States operates as an invisible uncontested site of power in transnational processes (Grewal and Kaplan 1994). They argue that the U.S. is invisible and uncontested in that American feminists assume an ethnocentric view of gender as it pertains to issues of migration, human rights, citizenship, and other transnational processes.

Patricia Pessar and Sarah Mahler (2003) offer a framework that allows for a critique of U.S. hegemonic power in their work on gendered geographies of power. Pessar and Mahler expand on transnational migration scholarship to account for how nation-states and citizenship, in addition to migrants and the migration process, are gendered. They urge advocates of transnational frameworks to incorporate what they term a gendered geography of power that situates gendered migration in a specific location in transnational space, and emphasizes how

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<sup>20</sup> Postcolonial feminist theory addresses three critiques of anti-imperialism that include a critique of orientalist Western feminism, masculinist nationalisms and ethnocentric patriarchies, and simple and singular binaries that ignore intersectionality and the multiplicity of social life. In this dissertation, I draw primarily from postcolonial scholars who critique Western feminism.

gender, in relation to other power hierarchies, organizes migration. While they do not specify how the U.S. is a global site of hegemonic power, their framework for understanding states, gender, and power hierarchies has great potential for illuminating the hegemonic power of the United States which makes it a destination for so many of the world's migrants.

The emphasis on androcentrism, the public/private dichotomy, and women as a social group subordinates differences based on class, race, and nation to differences based on sex. Postcolonial feminist scholars are particularly sensitive to these issues, as evidenced in their discussion of the problematic of three themes that include essentialism, views of the third world as barbaric, and conceptual Othering that can be used to critique the legal rationale of gendered harm.

The first theme is essentialism. Scholars such as Nira Yuval-Davis (1993; 1989) and Floya Anthias (1989), warn against homogenizing the category of "woman." The deconstruction of the category "woman" has long been a staple of feminist theorizing (hooks 2000; Collins 2000; Mohanty 2003; Mohanty 1991). Chandra Mohanty (1991) states that treating "woman" as a category of analysis assumes that "all of us of the same gender, across classes and cultures, are somehow socially constructed as a homogenous group," perpetuates a unified notion of "woman" (56). The term "woman" as a category of analysis need not imply that all women are identical nor that they have no other significant attributes. Mohanty is critical of how some Western feminists use the term in ways that ignores diversity, such as national and racial differences, within the category. Scholars of asylum law would benefit from a more integrated and nuanced conceptualization of the term woman since gender alone is an insufficient category of analysis for examining and critiquing asylum practices.

The second theme is idea that the third world is barbaric. In his celebrated work *Orientalism*, Edward Said (1978) captures a key feature of social relations when he states that the “development and maintenance of every culture require[s] the existence of another” (331). Throughout the text, Said argues that an image of the Orient emerged in relation to an image of the West (specifically, Great Britain and France). The West created images of the East through literature, travel essays, journalism, and scholarship, among other venues of communication, that revealed how the West viewed Eastern culture vis-à-vis Western culture. In Said’s vision, the complexity of Orientalism, which he describes as “a way of coming to terms with the Orient that is based on the Orient’s special place in European Western experience,” can only be understood when East and West are analyzed in relation to each other (1).

Postcolonial feminists build on Said’s argument about knowledge and power and extend it to argue that Western feminists assume that Western democracies are safe havens from a barbaric and torturous third world. In Chandra Talpade Mohanty’s (1991) essay “Under Western Eyes,” she critiques Western feminist scholarship for creating an “average third world woman” and thus implying a universal non-western experience (56). Mohanty outlines numerous dimensions that render third world women “victims” (57). The implication for gendered harm and asylum is that women from third world countries are automatically assumed victims of backward, pre-modern practices.

For example, in 1996, when the Board of Immigration Appeals, or BIA , the appellate board for all immigration courts in the United States, granted Fauziya Kassindja asylum from Togo for fleeing female circumcision, it created a precedent and established the legal basis for extending protection to any immigrant woman claiming asylum for herself on the basis of the occurrence of circumcision (past persecution), a fear of female circumcision (future persecution),



or a fear that her daughters would be circumcised in the future. The court found that intact genitalia are a characteristic so fundamental to the individual identity of a young woman that she should not be required to change it. The board also ruled that female circumcision results in permanent disfigurement and poses a risk of serious, potentially life threatening, implications, and as such, serves as the basis for a claim of persecution. Three months later, in September of 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act which made the practice of female circumcision on a person under eighteen years of age a crime in the United States.

One analysis of Fauziya's case is that the United States recognized a private practice as persecution, reflecting the canonical feminist declaration that women's rights are human rights. The legal recognition that certain human rights abuses are gendered because they are overwhelmingly experienced by women has emerged as the benchmark for gendered equality in asylum adjudication. Yet an alternative reading is that the U.S. government was distancing itself from "foreign" cultural practices.

This alternative interpretation is understood through the third theme of Othering. Similar to the ways in which Edward Said argued how Orientalism "has less to do with the Orient than it does with 'our' world," Fauziya's case tells us more about what it means to be an American based on the cultural practice of female circumcision: female circumcision is not something "Americans" do. As Janet Dench, a member of the Canadian Council on Refugees, states "the more different a practice is from what's done in our society, the easier it is to call it a human-rights abuse" (Davidson 1994: 24). While Dench's interpretation of how practices are understood as human rights abuses may be true in some instances, human rights organizations often recognize and work toward eradicating domestic practices as human rights abuses. For

example, Amnesty International treats capital punishment, a U.S. practice, as a human rights abuse.

Uma Narayan (2000) argues that notions of culture, tradition, and gender are inextricably linked in ways that make any comprehension of one as an independent dimension nearly impossible. She focuses on Western constructions of third world societies as “totalizing cultures” that depict an essentialism of cultural practice tied to place. She traces the ahistorical and apolitical appropriation of *sati* by Western feminists as endemic to women’s subordination in India. The problem with equating *sati* with female oppression is not grounded in a defense of the practice per se, according to Narayan, but in a plea for understanding the ways in which *sati* is deployed as an example of the subjugation of Indian women by certain Western feminists. The simultaneous gendering and Othering of third world women by some Western feminists is captured by Mohanty who purports that third world women become “objects-who-defend-themselves” and third world men as “subjects-who-perpetrate-violence” (58). The significance of Mohanty’s analysis is that Western feminists often make an “analytic leap” from descriptive practices, to generalizable assumptions of women’s universal oppression. The “leap” is problematic because Western feminists often ignore the social and historical specificity that give meaning to violence in a particular context.

For example, some Western feminists depict female circumcision as a patriarchal practice that men perpetuate in order to control women’s sexuality (Lightfoot-Klein 1989; Hicks 1993). The problem with this analysis is that ignores how women facilitate acts of violence by performing circumcisions on women and girls. Moreover, Mohanty argues that the practice itself need not signify oppression because not all women (in particular those who have been circumcised) may consider female circumcision an act of violence. I discuss Mohanty’s

argument again in chapter 6 where I offer examples of women who gained asylum because of female circumcision as a form of persecution and show the different ways that they understand the practice.

Some scholars disagree with postcolonial, poststructural, and postmodern scholars' critiques of essentialism (MacKinnon 2006; Collins 1998). Patricia Hill Collins (1998) argues that the value of an essentialist position is that it serves to support political claims of the oppressed. The potential for women to lose their ability to claim asylum in the absence of an essentialist narrative of harm could be viewed by these critics as one way that a postcolonial view on gendered harm could undermine women's asylum claims. In chapter 6, I address how female circumcision claims are often based on essentialist stereotypes of third world women as victims of barbaric practices and how the ability to grant claims on this basis does not necessitate a narrative of victim status.

In this section, I have argued that postcolonial critiques of gendered harm offer a more nuanced framework than that posed by legal feminist scholars for understanding gender-based asylum claims. These critiques are more nuanced because of their potential for showing how essentialist and ethnocentric understandings of gender and gender-based persecution permeate the asylum adjudication process. Relying on postcolonial feminist arguments, I will show how gendered understandings of race, class, nation and sexuality inform the practices of asylees, immigration attorneys, immigrant service providers, asylum officers, and immigration judges when applying for, preparing, and adjudicating gender-based asylum claims. I situate the United States in global and local space by offering empirical evidence of how the United States is a site of transnational practices regarding migration and gender based harm. In the next chapter, I describe the research methodology.

### **3.0 RESEARCH METHODOLOGY**

In order to learn how gender-based asylum policies and laws are applied and interpreted, I designed a multi-method ethnographic study based in Los Angeles that included participant observation through volunteer work with immigrant service organizations and human rights groups; observations of immigration court hearings; semi-structured interviews with asylees (persons with a grant of asylum), immigrant service providers, immigration attorneys, immigration judges, asylum officers and supervisors, and human rights organization employees and activists; and document analysis of asylum application materials, asylum officer training manuals, and human rights organizations' detention-monitoring reports. I collected data in Los Angeles from August 2001 to April 2003, and completed interviews with human rights organization employees and policy makers in Washington DC, New York, and San Francisco in June 2003. I supplemented my fieldwork with interviews with policy analysts at the Institute for the Study of International Migration in Washington DC, human rights organization employees at Human Rights Watch and the International Rescue Committee in New York, and the International Gay and Lesbian Human Rights Commission, Amnesty International, and legal scholars at the Center for Gender and Refugee Studies in San Francisco.

I chose a multi-method study in order to gain greater insight into how persecution is articulated by differently situated participants in the implementation and responses to asylum laws and policies. Participant observation allowed me access to the workplace bureaucracy of

immigrant service provider and human rights organizations. Observations of immigration court hearings gave me unique insight into the structure of asylum hearings and the interactions among asylum seekers, judges, attorneys, and language interpreters. Documentation such as asylum applications provided textual narratives and information on the various components of what constitutes evidence of persecution.

I chose Los Angeles as the fieldwork site because of its high volume of asylum applications. In fiscal years 2001 and 2002, the Anaheim asylum office and Los Angeles immigration court received the highest number of asylum applications in the United States. Table 5 shows the number of asylum applications received and the percentage of the U.S. total in Los Angeles in fiscal years 2001 and 2002 (INS 2003a; 2002; EOIR 2003; 2002).

**Table 7: Asylum Applications Received and the Percentage of U.S. Total in Los Angeles in 2001 and 2002<sup>21</sup>**

<b>Application Type</b>	<b>2001</b>	<b>2002</b>
<b>INS (Asylum Office)</b>		
Number Received (U.S.)	62,984	63,197
Number Received (Los Angeles)	18,184	16,213
Los Angeles Applications as Percentage of U.S. Total	29%	26%
<b>EOIR (Immigration Court)</b>		
Number Received (U.S.)	61,832	74,127
Number Received (Los Angeles)	18,056	19,341
Los Angeles Applications as Percentage of U.S. Total	29%	26%

Sources: Immigration and Naturalization Service and Executive Office for Immigration Review, 2002-2003.

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<sup>21</sup> Percentage granted is rounded to the nearest tenths.

Asylum applications in Los Angeles comprise nearly one-third of all asylum applications submitted to the INS asylum office and immigration court.

Applications submitted to the INS Los Angeles office for other types of immigration adjustment statuses, such as those for permanent residency and those for naturalization to U.S. citizenship, comprise a smaller percentage of the total of all U.S. cases. The following table shows data for the number of immigrants admitted to the U.S. and to Los Angeles in 2001 and 2002 (INS 2002; INS 2001).

**Table 8: Immigrants Admitted by Area of Intended Residence in the U.S. and Los Angeles in 2001 and 2002<sup>22</sup>**

<b>INS</b>	<b>2001</b>	<b>2002</b>
U.S.	1,064,318	1,063,732
Los Angeles <sup>23</sup>	98,997	108,613
Immigrants Admitted to Los Angeles as Percentage of U.S. Total	9%	10%

Sources: Immigration and Naturalization Service 2001-2002.

Unlike applications filed in the INS asylum office and immigration court, which are done after the immigrant enters the U.S., immigrants request consideration to enter the U.S. for permanent residency prior to their arrival. The number of applicants who expressed Los Angeles as their intended area of residence comprised 9% of the U.S. total in 2001 and 10% of the U.S. in 2002.

The following table shows data for the number of people who naturalized to U.S. citizenship in the U.S. and Los Angeles in 2001 and 2002 (INS 2002; INS 2001).

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<sup>22</sup> Percentage granted is rounded to the nearest tenths.

<sup>23</sup> Data includes Long Beach, California.

**Table 9: Naturalization by Metropolitan Area in the U.S. and Los Angeles in 2001 and 2002<sup>24</sup>**

<b>INS</b>	<b>2001</b>	<b>2002</b>
U.S.	608,205	888,788
Los Angeles <sup>25</sup>	77,331	136,892
Naturalizations in Los Angeles as Percentage of U.S. Total	13%	15%

Sources: Immigration and Naturalization Service 2001-2002.

Of the total number of naturalizations to U.S. citizenship in 2001 and 2002, Los Angeles represented 13% and 15%, respectively. Yet for those same years, asylum claims in Los Angeles comprised nearly one-third of all asylum claims submitted to the INS (29% in 2001 and 26% in 2002).

There is a similar pattern for claims submitted to the Los Angeles immigration court. The following table shows data for the total number of immigration court matters in the U.S. and Los Angeles in 2001 and 2002 (EOIR 2003).

**Table 10: Total Immigration Court Matters in the U.S. and Los Angeles in 2001 and 2002**

<b>EOIR</b>	<b>2001</b>	<b>2002</b>
U.S.	282,584	290,652
Los Angeles	24,820	28,299
Court Matters in Los Angeles as Percentage of U.S. Total	9%	10%

Sources: Executive Office for Immigration Review, 2003

Approximately one-tenth of all immigration court matters in the U.S. were submitted in the Los Angeles immigration court in 2001 and 2002 (9% and 10%, respectively). Yet the Los Angeles

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<sup>24</sup> Percentage granted is rounded to the nearest tenths.

<sup>25</sup> Data includes Long Beach, California.

immigration court received nearly one-third (29% in 2001 and 26% in 2002) of all asylum claims submitted in the U.S. for those same years.

In addition to the high volume of asylum claims submitted to the Los Angeles INS asylum office and immigration court, it is difficult to know whether and how Los Angeles may differ from other potential sites for research on gender-based asylum. Los Angeles is distinct from New York City, the site that receives the second highest number of asylum applications, regarding policies on detention. Prior to March 2003, asylum seekers in detention facilities in Los Angeles were released until the time of their asylum hearing. Conversely, asylum seekers in New York City have been held in detention centers for months, and sometimes years, before their court hearing prior to the March 2003 changes in the Los Angeles INS processing center (Dow 2004). The implication for this research is that I may have had greater access to asylum seekers if fewer migrants were detained in Los Angeles.

### **3.1 RESEARCH DESIGN**

I chose a qualitative approach for this study because my research questions cannot be answered with the available INS and EOIR data. Data such as that found in INS and EOIR statistical yearbooks provide information on how many women and men apply for and either gain or are denied asylum, but not on how gender-based persecution laws and policies emerge, how they are implemented, or how law and policy makers, asylees, and human rights activists respond to them.

During my interview with Michael, an asylum supervisor at the Anaheim office, he explained that "in our database, asylum officers have to mark which grounds the person claimed.



If you want to know how many gender persecution cases were granted or denied, you are not going to get any usable figures out of this system because it only says race or nationality. I granted a domestic violence case once for religious reasons. If you searched the database for that application, it would show religious persecution, not domestic violence." By "marking the grounds," Michael refers to the five legally accepted grounds of persecution that include race, religion, nationality, political opinion, membership in a social group. His example of domestic violence demonstrates that type of harm is not recorded, only the ground on which that harm is based. This means that the INS and EIOR have no publicly available data on how many types of gender-based asylum claims, such as female circumcision, honor killings, or domestic violence, are adjudicated.

In this project, I examine gender-based persecution at multiple levels of analysis. I use a micro-approach, focusing on individual experiences, by interviewing individuals, observing behavior, and analyzing documents about those who gain asylum. I also approach this project from a macro-level perspective by exploring laws, policies, organizations, and social movements. I analyze data on individuals and the structures they negotiate to show how gender-based persecution is articulated at different levels of analysis.

I situate this study in what sociologist Barry Glaser and Anselm Strauss (1967) termed grounded theory, a mode of inductive inquiry. This method of inquiry begins with observations and then seeks to discover patterns based on those observations. There are no dependent or operationalized variables. However, my initial notions about gender-based persecution guided the data collection (as demonstrated in the next section on my interactions with immigration attorneys) process. I attempted to let as many possible understandings of gender-based harm emerge during by asking opened-ended questions during interviews that allowed participants in

the asylum process to describe how they engage practices that define gender and persecution. I focus on struggles over the meanings of gender and persecution instead of offering operationalized definitions of these concepts.

The sampling method was purposive, with the sample size determined by availability of subjects, sampling of legally recognized gender-based claims, and multiple-sites of snowball sampling. Probability sampling was impossible for at least two reasons: First, because of how the INS and EOIR collect data, there is no way to know how many or what types of gender-based claims are received. No list of all gender-based asylum claims is available in the United States to serve as a sampling frame. Second, asylum seekers who have experienced legally recognized gender-based harm do not reveal this information in their application. Rape, for example, is form of harm asylum seekers often exclude in their applications.

### **3.2 ENTRÉE INTO THE FIELD**

Upon arriving in Los Angeles, I made contact with the following people and organizations who work with asylum seekers. I emailed the district director of the San Francisco INS asylum office, whom I met during a summer program on refugee studies at York University. The director put me in touch with a supervisor at the Anaheim office, who facilitated my interviews with asylum supervisors, and an administrator at INS headquarters in Washington, D.C., who provided me with data on asylum by sex through the INS asylum database system. When I inquired whether data were available for gender-based claims, the administrator replied that "the INS is not a research center. We don't keep that kind of data." Michael, the supervisor at the Anaheim asylum office, put me in touch with another supervisor who met with me in October of

2001, and made arrangements for me to have copies of the asylum officer training materials, memos and letters regarding gender-based asylum claims, and other documentation such as copies of the Code of Federal Regulations pertaining to asylum. I met with Michael in November and he agreed that I could interview him and other supervisors, but would need approval from INS headquarters before he would allow me to interview current asylum supervisors. By September of 2002, there was no reply from INS headquarters and Michael made arrangements for me to interview him and five other supervisors, all of whom had previously served as asylum officers in their career.

In September of 2001, I contacted four refugee resettlement organizations in Los Angeles and inquired whether they serve asylees. Of the four organizations, two served asylees through direct services, one provided a legal clinic for asylum seekers detained in INS processing facilities, and one only served refugees. I met with personnel of the two resettlement agencies that provide direct services in October and made arrangements to work as a volunteer for the organizations. One immigrant service provider whom I met with, Snezana, a case manager for a resettlement agency that serves refugees and asylees, provided me contact information for three immigration attorneys employed by a non-governmental organization that provides free legal services for asylum seekers. I also met with the clinical director of a domestic violence shelter that offers services for immigrant women. She provided me with contact information for an attorney employed by a University legal clinic who works in the area of family law. From this contact, I was given the name of the director of the asylum program employed by the same University clinic. The director of the resettlement agency that served refugees exclusively, provided me with contact information for an organization that serves torture survivors to which she refers asylum seekers. I met with the clinical director of the torture survivor program in

October and made arrangements to work as a volunteer. During our meeting she provided me with the names of three private practice immigration attorneys who represented clients of the organization. After a few weeks of leaving telephone messages, I was able to contact a Priest who works for the organization that provides legal services for detained asylum seekers. He provided me with contact information for two immigration attorneys employed by the organization.

These five organizations served as initial sampling points from which I was able to locate asylees and immigration attorneys. I located other immigration attorneys through a website database of gender-based asylum cases supported by the Center for Gender and Refugee Studies. This database included names and locations of immigration attorneys. I contacted three attorneys from the Los Angeles area from this database. The attorney from the University Clinic provided me the name of an INS processing center administrator who served as my contact for interviewing supervisors at the detention center in San Pedro. After many months of data collection, I made contact with immigration reform activists who provided me with contact information on former INS border patrol agents whom I later interviewed over the telephone.

I contacted Amnesty International in September of 2001 and was provided with the names of two activists, Thomas, who organized a detention monitoring team, and Phyllis, who organized a women's rights conference. The Amnesty activists told me about their meetings and upcoming events. I contacted Human Rights Watch in March of 2002 through a paralegal contact, and immediately began attending their meetings and events. I located other human rights groups through activists in Amnesty International and immigrant service providers.

All asylees were contacted through immigration attorneys, immigrant service providers, human rights activists, and other immigrants. While I only conducted interviews with asylees, I

met with asylum seekers through volunteer work with immigrant service organizations and observed asylum seekers in immigration court hearings.

In an effort to understand the patterns that structure everyday social exchanges, sociologist Harold Garfinkle (1967) advanced ethnomethodology as a reflective method of data collection. Garfinkle demonstrated how taken-for-granted understandings of concepts operate in verbal exchanges among friends, students and parents, consumers and store clerks. Throughout this study, my exchanges with INS supervisors, judges, attorneys, service providers, and activists took the form of Garfinkle's questioning techniques regarding the meaning of gender. For example, an exchange with one attorney over the telephone was as follows:

Connie: I was given your name by \_\_\_\_\_ because I am writing a dissertation on gender-based asylum. He/she mentioned that you've represented these types of cases.

Attorney: What do you mean by gender-based claims?

Connie: I mean cases like honor killings, female circumcision, or domestic violence.

Attorney: I've never had a domestic violence case.

Connie: What about other types of gender claims?

Attorney: I've never had any of those cases.

Connie: Do you know other attorneys who have had those type of cases who you could put me in touch with?

Attorney (Pauses before responding): I've had clients who were raped, is that what you mean?

Connie: Yes, I'm interested in rape cases.

Attorney: I don't know if I would call that a gender case, most of my clients have been raped.

This exchange supports Garfinkle's contention that familiar social interactions are structured by assumptions that merit a sociological inquiry in its own right. While my contacts with attorneys and service providers were for the purpose of gaining access to asylees with gender-based claims, these exchanges also provided data by answering my research question regarding what constitutes gender-based harm. This example reveals a paradox about gender-

based claims by showing how rape, a legally recognized form of gender-based harm, is not initially understood as such because of its pervasiveness across all asylum claims. Moreover, in my insistence that rape cases should be included, this exchange reveals my pre-conceived notions about what types of acts are considered gender-based harm. Responses by attorneys who did not inquire what I meant by gender also gave responses that indicated that gender is a narrow dimension of asylum. For example, one attorney described a case of a client who gained asylum because of female circumcision as "it wasn't a strict gender case, I went outside the guidelines," and another described an asylum case of a client based on honor killing and domestic violence as "unusual because not many cases are strictly based on gender."

Throughout the project, I presented myself as a graduate student writing a dissertation on gender-based asylum claims. There were no circumstances when I engaged in covert research tactics to mislead anyone about my intentions as a researcher. While I did not communicate all interactions with each person I came into contact with during the research process, on numerous occasions I informed judges and INS asylum supervisors that I volunteered with immigrant service organizations and human rights groups and told immigrant advocates and immigration attorneys that I was interviewing judges and INS personnel. Although I was open about my reasons for volunteering, after working with organizations extensively and establishing contacts with many of those interviewed in this project, I suspect that some interviewees and others I discuss in this study "forgot" that I was a researcher, evidenced by examples of confiding to me information about themselves and others that could prove problematic for their asylum case. In her essay on ethnographic methodology, feminist sociologist Judith Stacey (1996) illuminates the limitations of reflexivity in social science research. According to Stacey (1996), ethnographic methods "can expose subjects to far greater danger and exploitation than more positivist,

abstract, and masculinist research methods. And the greater the intimacy, the apparent mutuality of the researcher/researched relationship, the greater the danger" (92).

Throughout the study, few people requested that I provide identification documentation. Two of the immigrant service organizations for whom I volunteered photocopied my driver's license and one photocopied my automobile insurance card to ensure that I had accident coverage while providing transportation for their clients. One former asylum supervisor requested that I bring identification to our initial meeting. No current INS asylum supervisors, immigration judges, immigration attorneys, immigrant service providers (except those with which I volunteered), or human rights organization employees or activists requested I that provide identification or proof that I was a Ph.D. student. With no proof of identity, I gained access to asylees, their asylum applications, and to those who serve asylum seekers solely on the basis of my explanation of being a student researching gender-based asylum claims. It is difficult to know why some immigration attorneys and immigrant service providers did not insist that I provide identity documentation, especially those whose with whom contact was restricted to telephone communication. I suspect that busy schedules and lack of staffing may account for why some attorneys and service providers did not request identification. In the section on asylum application materials, I discuss how I handled case files that were mailed to me that included the applicant's personal information.

### **3.3 METHODS OF DATA COLLECTION**

I used participant observation, interviews, and document analysis as the three methods of data collection. I was unable to tape or video record most observations and took field notes during

and after observations of immigration court hearings, INS asylum office visits, and meetings and functions at immigrant service organizations and human rights groups. These notes were essential for recalling conversations and behavior for times when I could not record what was said or how people were acting and interacting. In this section, I discuss the challenges in collecting ethnographic data. My goal was to collect data across sources; ideally, I would observe an asylum seeker's hearing, interview her after she gains asylum, obtain her application, and interview her attorney, service providers, and the judge who adjudicated the case. Unfortunately, this was not possible for at least three reasons. First, the time span between filing an asylum application and its adjudication in immigration court can take years and the data collection was limited to eighteen months. Second, all subjects in the project were willing participants and some asylees, attorneys, and judges whom I approached refused an interview. Third, I was unable to locate some participants for interviews: attorneys lost contact with clients, asylees couldn't remember their judges' names, and human rights activists were no longer in touch with the detainees they assisted.

### **3.3.1 Participant Observation**

In order to gain access to asylees, I volunteered with three organizations that assist asylum seekers. These organizations included a domestic violence shelter that served immigrant women, a resettlement agency that assisted refugees and asylees, and a clinical program for torture survivors. I attended meetings and functions hosted by other immigrant service provider organizations for which I did not volunteer. I did limited volunteering and attended meetings, fund raisers, speaker and film events with human rights groups and sponsors including Amnesty



International, Human Rights Watch, Captive Daughters, and the Visual Artists Guild. I also attended asylum hearings at the Los Angeles immigration court.

### **3.3.1.1 Immigrant Service Organizations**

The first of the immigrant service organizations I volunteered with was a domestic violence shelter for immigrant women. I located the shelter through a web-based search on refugees in Los Angeles that produced the organization's information. The domestic violence shelter is one of many programs sponsored by a local resettlement agency. I met with the clinical director of the shelter in October of 2001 and she informed me that in order to qualify as a volunteer in the State of California, it was necessary to pass a forty hour training course on domestic violence. Because I agreed to volunteer for the shelter, the organization paid my \$100 fee for the training which I completed in January of 2002. I volunteered with the shelter from February 2002 through March of 2003. The clientele at the domestic violence shelter were migrant women of various legal statuses including U.S. citizens, legal permanent residents, refugees, asylees, asylum seekers, VAWA claimants, and those who were undocumented.<sup>26</sup> Women located the shelter through personal contacts, their affiliation with the resettlement agency, or referral from other shelters. I typically volunteered one day per week, from February 2002 through March 2003. I also attended a five week domestic violence training course in order to volunteer with the agency and thirteen functions hosted by the organization that included immigrant support and informational sessions on post-September 11<sup>th</sup> INS policies, speakers from the United Nations High Commissioner for Refugees (UNHCR) office, fundraisers, and domestic violence awareness events.

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<sup>26</sup> The 1994 Violence Against Women Act (VAWA) has a provision for immigrant women who are abused by their husbands if he is a U.S. citizen or a legal permanent resident. VAWA claimants are women who may adjust their legal status independently of their husband's immigrant or citizen status.

As a volunteer, I was responsible for providing transportation for clients to family court hearings, documentation offices to obtain birth records and criminal records, benefits offices such as CALWORKS (the California State aid agency) women, infants, and children (WIC), Social Security Administration offices, and meetings with their attorneys. I was also responsible for making phone calls to various bureaucratic offices and helping women negotiate state and local agencies, attending group sessions, completing paperwork on the day's activities, and being available to talk and listen to the clients and their children. The shelter was a long-term (typically a nine month stay) transitional shelter. Unlike emergency shelters that provide immediate assistance for domestic violence survivors and temporary shelters that provide short-term assistance, transitional shelters provide long-term assistance. Clients in transitional shelters are expected to establish housing and employment arrangements upon completion of the program making them independent from their batterers. Women who experience domestic violence often leave their batterers temporarily before severing the relationship permanently. Women in transitional shelters are more likely to have previously been in emergency and temporary shelters only to return to their batterers until they arrive in a transitional shelter. The shelter housed as many as six women and their minor children at any given time. During my thirteen months of volunteering, there were a total of thirteen women and fourteen children housed at the shelter. Of the thirteen women, two were U.S. citizens, three were refugees, six were VAWA claimants, two were undocumented, and one was an asylum seeker. I interviewed two of the six VAWA claimants, one refugee, and one employee who had gained asylum because of domestic violence from the shelter for this study.<sup>27</sup>

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<sup>27</sup> I interviewed immigrants other than asylees (VAWA claimants, refugees, and a trafficking survivor) in order to make comparisons about different types of immigration statuses for women who experience gendered harm. While I do not make use of these interviews in this dissertation, I plan to use them in future research projects and publications.

The second organization I worked with was a voluntary refugee resettlement agency (VOLAG). I was familiar with the organization from my master's thesis research on refugees and made initial contact with the Los Angeles office in October of 2001. The clientele at the resettlement agency were migrants who were legally classified as refugees or asylees prior to contact with the Los Angeles office. In June of 2000, the Office of Refugee Resettlement (ORR), located under the Department of Health and Human Services (DHH), announced that asylees would be eligible for refugee assistance and services beginning on the date they are granted asylum. Refugee clients tended to be those who were resettled by the organization prior their entry into the United States and were given contact information of the local office in the city where they were resettled. Unlike refugees who are familiar with resettlement agencies, because it is these organizations that facilitate their arrival from the refugee camps to the United States, asylees discover resettlement agencies by referrals from their attorneys, case workers, or in their own immigrant communities.

The primary project of the agency was its matching grant program structured by the goal of making refugees and asylees economically self-sufficient in the United States. Under the program, ORR provides \$2.00 for every \$1.00 raised by the agency designating 20% of the total in cash assistance and 80% in volunteer services for refugees and asylees. Clients are encouraged to enroll in the matching grant program which replaces the refugee cash assistance program. The matching grant program provides cash assistance for 120 days. Because day one of the first 30 day period begins with the first day of arrival in the United States, the first 30 days are covered by the refugee cash assistance program and \$750 is allotted for the second 30 days, \$550 for the third 30 day period, and \$340 for the remaining 30 days of the program for a single adult. In exchange for the assistance, clients are expected to seek and retain employment with

the aid of job placement and skill services provided by the organization. The ORR documentation on the matching program states that eligibility requires ability to communicate in English, desire to work, and a cooperative attitude. Enrollees will be dismissed if they fail to attend job counseling, training programs, and office appointments; accept appropriate job interviews and placement; keep appropriate jobs without cause; or are fired for lack of attendance or poor performance.

Part of my work as a volunteer was helping asylees locate employment. In addition to helping refugees and asylees locate employment, I also assisted with phone calls to the Social Security Administration office that issued social security numbers to refugees and asylees with "Valid for Work Only with INS Authorization" stamped on the card. The Office of Refugee Resettlement issued several letters to resettlement agencies alerting them that the Social Security Administration (SSA) was issuing restrictive cards to refugees and asylees and that their clients should return the card to the issuing office, along with a copy of the SSA policy manual, and request a non-restricted card be issued to the client (DHH 2000). The improper restriction stamp on refugees' and asylees' social security cards reflects the problems with decentralized bureaucracies and national assumptions about the welfare state. Because bureaucracies tend to be decentralized in that agencies are responsible for specific tasks, any particular agency is limited in knowing the policies and practices of other agencies. Unlike ORR, whose population, at least initially, are all non-citizens, the SSA assumes that its population is exclusively U.S. citizens, and therefore is presented with a conundrum over refugees regarding their eligibility to work. Moreover, the SSA is managing the mobility of newly arrived refugees and persons granted asylum by interfering with their ability to gain employment.

I volunteered with the resettlement agency from January to July of 2001. During this time, I worked with seven refugees and asylees in the matching grant program. I interviewed one refugee and four asylees who were clients, and two employees of the resettlement agency, one of whom was a refugee, for this study. I also attended four events that included two fundraisers and two information meetings about the organization.

The third organization I volunteered with was a clinical program that provided psychological services to torture survivors. I was referred to the program by a refugee resettlement agency that did not work with asylees. My initial contact with the organization was in October of 2001 and my first volunteer assignment was in January of 2002. The clientele at the clinical program were migrants, regardless of legal status, who had been tortured. Asylum seekers overwhelmingly find out about the program because their attorneys refer them for a psychological evaluation to include in the asylum application. Clients also discover the program through personal contacts in their own immigrant communities. The program's primary focus is to provide psychological services to survivors of torture which include individual, family, and group therapy sessions. In addition, the organization also orchestrates free medical services provided through community clinics for their clients. Therapists write reports for asylum applications and testify on behalf of their clients in immigration court. Upon gaining asylum, a case manager refers clients to a resettlement agency so that they may receive their asylee benefits and receive assistance locating employment. Throughout the time when I served as a volunteer, the majority of the clientele were asylum seekers. While the staff encourages clients to continue their therapy after they gain asylum, the staff reported that clients tend to discontinue their visits soon after a grant of asylum. As a volunteer, I was responsible for providing transportation to/from INS asylum interviews in Anaheim, asylum hearings in immigration court, and medical

visits. I also assisted one client with locating employment. I volunteered from January 2002 through March 2003. I provided transportation to asylum interviews at the Anaheim INS office, asylum hearings in immigration court, medical appointments, and employment assistance. I also attended functions sponsored by the organization that included speakers and torture survivor awareness events. From this organization, I interviewed five clients after they gained asylum, two therapists who provided psychological counseling, one case worker, one administrator, and one medical doctor responsible for documenting physical evidence of torture.

In addition to these three organizations, I also attended functions with ten other immigrant service organizations including meetings, fundraisers, speakers, films, and informational presentations. I interviewed five service providers, five attorneys, and two paralegals employed by eight immigrant service organizations. I also interviewed four asylees and one trafficking survivor from three of these organizations.

Because of the extensive volunteering that I did with three of the immigrant service organizations, participant observation as a method of data collection was often centered on the workplace. In this sense, my data was similar to what I would have collected for an ethnography of workplaces rather than asylum claims. Ironically, the most frustrating aspect of volunteering as a means of data collection was when I was treated as an employee of an organization. One supervisor, in particular, treated me with the same lack of professional ethics as she did paid employees at the organization. For example, many employees told me that they were regularly asked to "volunteer" their time when they had worked the required forty hour work week so that the organization would not have to compensate for overtime pay, perform duties not in their job description such as providing transportation for clients, and to withhold legal complaints regarding late and irregular paychecks. Because I was not an employee, I was not on the

organization's payroll and consequently never had problems with late checks. However, I was asked regularly to volunteer more days than in my original negotiation with the clinical director of the shelter, and to provide monetary donations to the shelter. Fortunately, these activities were restricted to one organization and the other two organizations with which I volunteered did not have these problems.

Volunteering afforded me the opportunity to observe extensive interactions between asylum seekers and their service providers. In the spirit of client advocacy, I was occasionally drawn into disagreements between clients and their service providers and attorneys. While organizations expect employees and volunteers to support their clients, I was sometimes presented with situations in which I was expected to concur with service providers and attorneys concerning the assumed best interests of their clients. While volunteering for one organization, I was drawn into the following conflict between an asylum seeker and her attorney.

During a master calendar hearing for a woman seeking asylum from Cameroon whom I accompanied to court, her attorney requested a continuance in anticipation of documentation that her client had been employed in Nigeria just before she fled to the U.S. This documentation was important as evidence that the claimant had filed her asylum claim within the legally accepted time frame. The 1996 Illegal Immigration and Reform Act legislated the "one-year rule" that requires all asylum seekers to file an application within one year of their arrival in the United States. The judge offered a hearing date three days from the calendar hearing, advising that the documentation might not matter in that the greater issue was one of resettlement in Nigeria, not of timeliness in filing the application. However, at the attorney's insistence, the judge issued a continuance for three months, and the applicant, attorney, and I retreated to a nearby waiting area outside the courtroom.

The applicant became angry with her attorney and yelled for her to "go back in there and tell the judge I want to be heard in three days. I am tired of waiting." The attorney responded with a similar sentiment, yanked her cell phone from her briefcase and began dialing the number for the asylum seeker's psychologist, curtly telling the applicant that it was her responsibility to make sure her therapist was available to testify, that her testimony be ready, and that all documentation be available. I witnessed this exchange with the assumed gaze of invisible researcher until the attorney turned to me and exclaimed: "Tell her. Tell her that there is no way I can prepare her case in three days with all that I would have to do. I don't even have her work papers from Nigeria and I still have to prepare her testimony. If we go forward in three days we will lose. Tell her it is better to wait. You have been to court. You know how asylum works." I turned to the Cameroonian woman who stood in silence with tears pouring down her face and told her that I knew that she was frustrated for having to wait, but that postponing a hearing could not hurt her case, but a premature hearing could prove problematic.

In this exchange, my expertise in having "been to court" was invoked by the attorney in an effort to persuade the applicant to continue her hearing in three months, not three days. Throughout the data collection process, I was presented with the challenge of responding to conflicts among asylum seekers, their attorneys, and service providers, which rendered my role as researcher indistinguishable from the research. One challenge of ethnographic data is the imperative for the researcher to remain cognizant that her presence affects and is part of data collection.

The immigrant service organizations I encountered in Los Angeles were narrowly focused in that each served a specific population. Organizations tend to serve groups by singular dimensions of identity such as nationality, religious affiliation, or type of migration, for example.



Service providers cite limited resources as the primary reason for this phenomenon. Rarely are organizations financially able to include the variety of services required for the diverse population of all asylum seekers. Consequently, some asylum seekers may fall through the gaps when no organization can accommodate their needs. For example, one attorney employed by an organization that serves gay, lesbian, and transgender asylum seekers revealed during our interview that the organizations that provide mental health assistance for sexual minorities are unfamiliar with asylum and cannot complete the required assessment for asylum applications. Additionally, organizations that provide mental health services for asylum seekers, in this attorney's opinion, were often homophobic and always transphobic making them incapable or unwilling to assess persecution based on sexual orientation. Clients suffer the repercussions of these service organization gaps as they are shuffled among organizations.

The last feature of immigrant service groups are conflicts between organizations. Organizations that receive certain types of funding, such as resettlement organizations, are required to produce evidence of clients in order to receive federal funds. If an organization refers its clients to another organization, then the organization may lose funding for that client. During my fieldwork, there was one resettlement organization that put asylum seekers in touch with immigration attorneys who were associated with the agency. The attorneys would charge a reduced fee for filing an asylum application for the agency's clientele. When I inquired with immigrants and service providers who were familiar with this particular organization concerning why asylum seekers did not seek legal assistance with one of many organizations in Los Angeles that provided free legal services, I was told that the agency could not include referred clients in their reports requesting funding, and therefore would not refer clients to other organizations.

### **3.3.1.2 Human Rights Activism**

Many immigrant service organizations make the claim that they are engaging in human rights work in their services and programs. I separate immigrant service groups from human rights groups based on whether the organization provides direct services to immigrants, such as legal aid, counseling, or employment assistance. The human rights groups I volunteered with do not provide direct services to asylum seekers.

During my fieldwork, I volunteered with Amnesty International (AI), and Human Rights Watch – Young Advocates (HRW-YA). The Young Advocates (YA) are a group of professionals in their twenties and thirties interested in participating in HRW activities, but who do not have the financial means to pay the required \$5,000 annual dues to become a member of the Southern California Committee (HRW's Los Angeles office).

I attended ten meetings with local AI groups and Amnesty's Greater Los Angeles District (GLAD) administrative body, eight meetings with HRW women's division and HRW-YA, and was active in protests that AI organized after September 11<sup>th</sup> concerning the treatment of immigrant communities in Los Angeles. I attended functions sponsored by human rights groups that included AI, HRW, HRW-YA, Captive Daughters, Friends of Tibet, Friends of Nepal, and the Visual Artists Guild.

I made contact with Amnesty International in September of 2001 after arriving in Los Angeles. The director of the Los Angeles office gave me contact information for two local members, Thomas, who was active in Amnesty's refugee campaign and had organized a detention monitoring team for the INS processing center in San Pedro that housed all detained female immigrants in Los Angeles, and Phyllis, who was active in Amnesty's women's human rights campaigns and organized a women's rights conference. I interviewed them both and they provided additional contacts within the organization. I was referred to Human Rights Watch

through a paralegal who was familiar with the organization and informed me that the Los Angeles office was primarily a fundraising office, unlike the main offices in New York and Washington DC. My initial contact with Human Rights Watch was through an invitation to a fundraiser by an intern employed by the organization. At the fundraiser, I met a member of the YA's who put me in touch with Barbara, a YA member who organized a detention monitoring team in the INS Processing Center in San Pedro in 1999.

Unlike the California Committee of HRW, an organization that did not build coalitions with other organizations while organizing and sponsoring events, AI was active in coalition building and it is through their contacts that I located Captive Daughters, Friends of Tibet, and the Visual Artists Guild. Captive Daughters disseminates information on global child trafficking movements through informational and fundraising events and speaker series. I attended two events sponsored by Captive Daughters and interviewed a board member for this study. Friends of Tibet and The Visual Artists Guild, a group that organized a Tiananmen Square Memorial event, are organizations that sponsor limited informational speaker events. I attended two events sponsored by these organizations. I interviewed a total of four human rights activists in Los Angeles, two from Amnesty International, one from Human Rights Watch-Young Advocates, and one from Captive Daughters. I interviewed three asylees, one former employee of Amnesty International, and one former employee of the Justice department through contacts from activists in human rights groups in Los Angeles.

### **3.3.1.3 Immigration Court**

There are a total of fifty-two immigration courts in the United States. California has the greatest number, with eight immigration courts. The Los Angeles immigration court is located in the downtown area and shares space with other commercial businesses housed in the same building.

The Los Angeles court has the greatest number of immigration judges in the United States. Over the course of my observations there were approximately twenty-five judges at any time. The fluctuation in the number of judges was due to retirement, relocation, or stepping down from the bench. At the end of my data collection in March 2003, there were nine female and fourteen male judges.<sup>28</sup> There are approximately eighty assistant district counsels assigned to the Los Angeles immigration court, with slightly more women than men. Assistant district counsels represent the U.S. government in immigration court. According to an assistant district counsel supervisor who serves as one of four supervisors to the assistant district counsels, 60% of the 80 assistant distinct district counsels are female and all are U.S. citizens. No data were available for the race or national origin of the assistant distinct counsels.

I observed a total of sixty-eight immigration court hearings, including seventeen asylum merits hearings, three asylum oral decision hearings, two cancellation of removal hearings, three adjustment hearings, seven master calendar hearings, and thirty-six continuances. Of the seventeen merits hearings, four were seeking asylum based on gender-based persecution including two female circumcision claims, one domestic violence, and one coercive family planning claim. Currently, asylum cases in immigration court are mostly referred affirmative cases. An affirmative case is a claim that the immigrant initiates prior to being placed in deportation proceedings and is adjudicated by an asylum officer. A referral to immigration court is neither a grant nor a denial but used when asylum officers are unable to make a decision on a claim due to lack of information or documentation. Cancellation of removal is a form of relief created by the Illegal Immigration Reform and Immigrant Responsibility Act (1996) that replaced Suspension of Deportation. Cancellation of removal allows migrants to remain in the

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<sup>28</sup> The data on the number and sex of immigration judges are from my field notes. The EOIR website (<http://www.usdoj.gov/eoir/>) maintains a list of current immigration judges.

United States legally by canceling their deportation order. Cancellation offers no status adjustment opportunities such as the ability to petition to become permanent residents or citizens that asylum offers. Cancellation of removal may be granted for an asylum seeker who has committed certain crimes that render the applicant ineligible for asylum. Adjustment of status hearings are a change in immigrant status, usually to permanent resident. None of the cancellation of removal cases or adjustment hearings I attended was asylum-related. An oral decision is the judge's final order on a case that is read before the court. A continuance occurs when the hearing cannot be completed during one session. Master calendar hearings are like arraignment hearings where migrants enter a plea and other administrative matters may be attended.

I was able to observe as many as sixty-eight hearings because multiple hearings are scheduled simultaneously in immigration court. For example, one day I was able to observe twelve hearings that included one oral decision, one adjustment of status, and ten continuances in two different courtrooms. Continuances are ordered by immigration judges for a variety of reasons, including bureaucratic problems on the part of the INS such as lost case files and incomplete identity checks, mandatory rescheduling of non-asylum cases that take legal precedence over non-asylum immigration claims, and absenteeism of claimants and their attorneys. The Illegal Immigration and Responsibility Control Act (1996) created expedited removal that legislated a 180-day time limit for asylum adjudication. Because asylum takes precedence over all other immigration cases, judges are legally bound to adjudicate asylum claims and consequently schedule continuances for all non-asylum cases so that an asylum merits hearing may proceed.

During my observations, a number of claimants and attorneys did not appear in court for their scheduled hearings. Of the thirty-six continuances I observed, seven were due to absenteeism of the claimant and five were due to absenteeism of the claimant's attorney. According to the EOIR Statistical Yearbook (2003), in 2002, 25% of all claimants in U.S. immigration courts failed to appear during their scheduled hearing. In addition to the absenteeism, I observed attorneys who were late for their client's hearing, attorneys who would schedule simultaneous hearings in different courts, and attorneys requesting continuances for a variety of reasons the most common of which was not feeling well the day of the hearing. When attorneys were absent or late for their clients' hearings, judges were overwhelmingly sympathetic toward the immigrants, demonstrated in their responses to claimants such as "I'm not going to deport you, it's not your fault" and "Don't worry, I won't take this out on you, I never do." While most judges schedule a continuance when this occurs, some proceed with the hearing and begin by asking the claimant questions that typically would be asked by the attorney. When I asked one judge about what I interpreted as unprofessional behavior among many immigration attorneys, he summarized with the following quote embellished from Woody Allen: "Most immigration attorneys are operating under the principle that ninety percent of life is just showing up. I wish more had the courtesy to at least show up."

It's difficult to know why many attorneys did not appear in court for their clients' hearings. Some immigration attorneys I interviewed were appalled by the absenteeism of their colleagues, but did not offer any explanations for their behavior. While I observed numerous accounts of absenteeism and tardiness, I also witnessed many instances of dedicated immigration attorneys whose behavior was exemplary of professional ethics evidenced by their punctuality and pre-trial preparation of clients and their asylum applications.

I gained entrée into immigration court through immigration attorneys. While immigration court hearings are public, I initially observed only those for which I had experienced prior contact with the attorney and claimant. I chose this format in order to ensure the asylum seekers' consent to my presence and as a means of locating gender-based asylum claims. Unfortunately, immigration attorneys never contacted me before appearing in court, although I requested this many times and of numerous attorneys, the first seven asylum merits hearings I attended resulted from fortuitous timing when attorneys mentioned an upcoming court case during our phone conversation or meeting. Eventually, I decided that attending without pre-authorization of attorneys and clients was necessary in order to observe hearings. For cases in which I was not in touch with asylum seekers, their attorneys, or service providers prior to the hearing, I introduced myself in court before the proceedings to obtain verbal consent. When it was impossible to gain consent prior to the hearing, I spoke with the attorney and asylum seeker during a recess or after. All the asylum seekers gave verbal consent for me to observe their hearings. I introduced myself as a student researching asylum and explained that I would not use their real names in the study. Only one asylum seeker requested that I did not use his case in the study, nearly begging me not to include his testimony as he paced in the hallway outside the courtroom wringing his hands and shouting: "You don't understand. If they find me they will kill me. You cannot write about me." I did not include his hearing in the seventeen asylum merits hearings I discuss in this study.

Some judges inquired about my identity and reason for attending. Most, however, never asked, so during a recess or at the end of the trial, I identified myself as a student writing a dissertation on gender-based asylum claims. One judge responded by giving me upcoming dates of "gender-type" claims on his calendar while another made a point to tell me that there was no

way I could write a dissertation on a legal subject without a law degree. After I observed several hearings with one judge who became familiar with my project, he stated "I was looking for you yesterday; I had a rape case in the afternoon." Many judges assumed that I was a law student, and during the recess of an asylum hearing in which an Armenian man was questioned about his stay in Azerbaijan in an effort to determine whether he had permanently resettled, the judge directed the following to me: "Do you understand what the problem is? It's an issue of firm resettlement. It's in the Statute. The Code of Federal Regulations, Sections 207 and 208." The judge proceeded to explain the statute regarding resettlement while the applicant, attorneys, and interpreter turned and watched the "pupil" seated in the observation area of the courtroom. While most judges were readily available to discuss court proceedings informally and extensively in the courtroom and their chambers, they would not agree to a tape-recorded interview; the reason most often given was a fear of being misquoted. As a result, I was able to tape-record interviews with only two judges, one of whom had retired from the bench.

During my second observation of immigration court, I approached an assistant district counsel and asked if she could meet with me or put me in touch with her supervisor. She gave me her supervisor's information and after contacting her supervisor, one of four deputy district counsels for the Los Angeles immigration court, we scheduled an interview. The supervisor informed me that I would not be given permission to interview any assistant district counsels for this project, limiting my interactions with assistant district counsels to responses to their inquiries of my presence in their courtroom and observations of their interactions prior to and during the hearings.



#### **3.3.1.4 INS Asylum Office**

The INS would not allow me entry into the asylum office to observe the workplace bureaucracy, but I was allowed to interview asylum supervisors. On nine different occasions, I drove asylum seekers to their interviews and waited outside the asylum office for them. According to Michael, a supervisor at the INS asylum office, most of the employees at the Service Center are employed by a contractor and are not employees of the U.S. government, unlike the employees of the INS who are federal employees. Although he indicated that the service center was efficient, the *LA Times* reported that two clerical workers were indicted for allegedly shredding thousands of documents in an effort to eliminate mounting paperwork (Morin 2003; McDonnell 2002). While volunteering for one organization, I drove an asylum seeker to her interview in Anaheim only to discover that the INS had lost her application.

Asylum seekers are responsible for arranging transportation to their interviews at the INS asylum office which is located approximately twenty-five miles southeast of Los Angeles in Orange County. Unlike immigration court, which is located in downtown Los Angeles and is accessible by public transportation, the INS Anaheim office is nearly inaccessible without an automobile. Part of my volunteer responsibility with one organization was to drive asylum seekers to and from their interviews. On many occasions, asylum seekers would show me a bus schedule from Los Angeles to Anaheim and question how they could make a 7:00am appointment when the bus didn't arrive in Anaheim until much later in the morning. Asylum seekers are also responsible for providing their own language interpreters. Unlike immigration courts located within the geographical boundary of the U.S. Court of Appeals 9<sup>th</sup> Circuit which provides translators located through the transnational service Berlitz International Inc., the INS asylum office provides no such service. Immigrants often bring family members or friends to translate their testimony.

The Anaheim INS asylum office is the largest asylum office in the U.S., in terms of the volume of applications and the number of employees. The Anaheim office received 18,184 applications in 2001 and 16,213 in 2002 (INS 2003a; INS 2002). At the time of my interviews, there were eighty-two asylum officers, with an additional seventeen in the process of being hired, and sixteen asylum supervisors. Asylum officers are hired at a GS level between 9 and 12 depending on their education and previous work experience.<sup>29</sup> Their salaries range from \$40,000 to \$65,000 depending on their GS level. Upon gaining employment with the INS, asylum officers receive six weeks of training in Glenco, Georgia at an INS training facility. There are no educational or previous work experience requirements for the position of asylum officer. At the time of my interviews, all asylum officers at the Anaheim office had a college education and approximately one-third held a law degree.

### **3.3.2 Interviews**

I conducted a total of 102 tape-recorded interviews. I interviewed 21 asylees, 3 refugees, 2 VAWA claimants, 1 trafficking survivor, 12 immigrant service providers, 10 immigration attorneys, 2 paralegals, 1 immigration judge, 1 former immigration judge, 3 INS processing center employees, 6 INS supervisors/former asylum officers, 1 INS assistant district counsel supervisor, 1 former INS supervisor, 2 former asylum officers, 4 former INS border patrol agents, 10 human rights activists and organization employees. I conducted 12 other interviews with legal scholars, policymakers, United Nation officials, language interpreters, a U.S. attorney, and 15 interviews with immigration reform activists and organization employees (4 of whom are

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<sup>29</sup> GS refers to the General Schedule level for federal employees.

former INS border patrol agents). All former INS border patrol agents are also immigration reform activists.

Ten interviews were conducted over the telephone. I conducted one interview by phone because of a scheduling problem, and nine others with people living outside of the Los Angeles area. Of the ninety-two tape-recorded interviews, twelve were conducted with individuals who I had discussed my project with without a tape-recorder and then we later scheduled a tape-recorded interview. Most of the unrecorded meetings took place in the first few months of the project and were informational meetings that served as an entrée into the field, and that guided my decisions about future contacts for the project. All of the interviews with immigrant service provider employees of organizations I volunteered with were conducted after I had volunteered for numerous months. The remaining interviews were conducted in single visits where I only met with the interviewee once. One exception was an interview with Rivka, who worked with a human rights group while she was detained at the INS processing center in San Pedro. My contact from the human rights group did not know that Rivka was also an asylee and upon discovering this information in our first interview, which was structured around her work with the human rights group and the detention facility, I made arrangements to interview her again to discuss her asylum application. Appendix A includes tables with data for all interviews.

I designed multiple interview guides to glean knowledge from differently situated participants. For example, I did not ask immigration attorneys and human rights activists the same questions, but I did ask similar questions of all attorneys and all activists. Having learned the value of a flexible interview guide from my master's thesis research, I asked different questions across the respondents. This tactic was useful for interviewing members of a vulnerable population (persecuted migrants) who varied in terms of their willingness to discuss

the harm they experienced. For example, during my interview with Miriam, an asylum seeker from Iran, as soon as I turned on the tape recorder she exclaimed: "I come from a very political family. The Shah killed my uncle and all of my cousins!" In this interview, Miriam set the tone and pace of the interview by introducing her family's political activities at the beginning of the interview. Conversely, while interviewing other asylees who did not initiate with stories of detention and torture, I asked about their departure or early experiences in the United States. My goal was to get interviewees talking about what it means to be persecuted because of one's gender. The order and wording of the questions were less important than their articulation of how they understood gender-based harm. Appendix B includes the interview schedules for all tape-recorded interviews.

In addition to the tape-recorded and phone interviews, I also conducted short interviews with thirty-two immigration attorneys, service providers, and Consulate officials over the telephone. These abbreviated interviews were conversations about former and current clients with regard to the types of claims I was interested in locating. In addition to the immigration judges, only one respondent, Nadine, refused to allow me to tape-record our interview. Nadine had gained asylum because her family threatened an honor killing and after arriving in California a relative had attempted to kill her. An organization in Los Angeles raised money for Nadine and her baby to legally change their names and relocate outside of the Los Angeles area.

With the support of funds from the National Science Foundation, I was able to offer ten of the asylees a payment of \$50. Because the funds were not available until August of 2002, I could not offer a payment to asylees who were interviewed before that date. I offered the payment to subjects who were initially reluctant to schedule the interview and to those whom I

believed less economically solvent than others, such as those living in the U.S. without other family members, whom I had interviewed. No payments were made to non-asylees.

I was unable to interview many immigration attorneys, service providers, and their clients for a variety of reasons. The most common response I was given regarding not being able to meet for a tape-recorded interview, mostly by immigration attorneys, was their busy schedule and that they could not make time for me. A total of seven potential respondents would not agree to a tape-recorded interview because of time constraints. Of these seven, I met informally with two and spoke over the phone with the remaining five. The gendered nature of caregiving accounts for why some female respondents were unable to schedule interviews. Five female immigration attorneys were unavailable for interviews because they were on maternity leave, caring for aging and ill-health parents, or caring for a special needs child. I was able to interview two asylees and was referred to other attorneys by three of these five attorneys. One supervisor at the INS refused an interview because of discomfort with how she might be portrayed. During one of my visits to the Anaheim asylum office she stated: "I know how they made people look in that film. I just don't want that." The film she is referring to is the documentary *A Well Founded Fear* (Robertson and Camerini 2001) that chronicles asylum hearing interviews and interviews with asylum officers in the Newark, New Jersey asylum office.<sup>30</sup>

Of all interviews that were scheduled, only one interviewee did not appear and never returned my phone calls. There were seven immigration attorneys who agreed to an interview or meeting for themselves, but were unable to put me in touch with their clients. Of these seven, three could not get in touch with their former clients, two clients declined an interview because they were still traumatized from the harm they had endured, one was unable to meet because it

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<sup>30</sup> The supervisor's fear of how she may be portrayed is not unfounded. The film focuses on examples of how asylum officers are often distrusting of immigrants.

was inconvenient, and one attorney told me that her client was paranoid and that there was no way she would talk to me. I do not know if the attorney contacted the client directly, although I had requested that she do so. The most disappointing refusal was that INS headquarters would not allow me to interview current asylum officers. After one year of persistent phone calls and office visits to the Anaheim asylum office, Michael, a supervisor, yielded to my request to interview him and five other supervisors whose previous employment included serving as asylum officers. When I met Michael for an interview, he explained INS headquarters reluctance to allow me to interview current asylum officers: "I've left many messages trying to get approval. I don't think it's about your project. They just have a lot going on." Personnel at INS headquarters had "a lot going on" indeed during this time; my year-long persistence continued from September 2001 through 2002, a year marked by upheaval within the INS and its responses to the September 11<sup>th</sup> terrorist attacks.

Of the twenty-seven interviews with asylees, refugees, VAWA, and trafficking claimants, I gained access to fourteen interviewees through the organizations which I volunteered, eight through immigration attorneys who handled the case, three through human rights groups, and one through a service organization which I did not volunteer.

Typically, I would discuss my project over the phone or in person and request that attorneys or service providers ask their clients whether they were willing to speak with me. Some would contact clients immediately, whereas others took weeks or months before returning my phone calls with news that clients had agreed or declined to be interviewed. Once a client had agreed, attorneys and service providers gave me their clients' phone numbers and I contacted the client directly to arrange an interview. I allowed all respondents to choose the place of the interview and whether or not they wanted others present. Interviews were conducted in people's

homes, places of employment, and in public venues such as restaurants and coffee shops. Some interviewees requested privacy and did not want anyone else to attend the interview, while others brought along family members and friends.

All of the interviewees spoke English and two interviews were conducted in English and also with the aid of an interpreter because the respondent was uncomfortable with his/her English competency. In both of these cases, the interviewee provided the translator. All interviewees are assigned pseudonyms and before tape-recording the interview, I would explain what a pseudonym is, and allow the respondent to choose any name they desired. Initially, I asked people to choose names that were appropriate to their nationality and age, but during one interview at an organization, a respondent informed me that she was the only Latina in the office and that if she chose a Mexican name, she would remain identifiable. After this encounter, I allowed people to choose any name they wanted, regardless of whether it seemed to match their identity.

Because I gained access to asylees through their attorneys and service providers, I was often given extensive information about their asylum application prior to meeting them. Some attorneys and service providers revealed that their clients had been raped, circumcised, kidnapped, and detained (in their country of origin and in the U.S.). Sometimes asylees would discuss the same information with me in our interview, but, overwhelmingly, interviewees did not discuss instances of rape documented in their applications. For example, Mary, an asylee from the Congo, did not mention a gang rape that her attorney discussed with me in detail, and instead focused during our interview on the two assassinations carried out against her family. Conversely, asylees have also given me information during our interview that they did not discuss with their attorney. Miriam, an asylee from Iran, discussed how she was raped

repeatedly while detained after a protest for women's rights. During our interview she told me that she did not discuss the rapes with her attorney, an Iranian man, because she "knew what men from my country would think about such things."

These examples present a challenge of data recording in ethnographic research. If an attorney or service provider reveals that a client was raped but the asylee does not mention the rape during the interview, should the researcher record "rape" as an example of gender-based persecution in the data? Instead of regarding this seeming conflict as a discrepancy in the data, I include both accounts as data. Because I am interested in knowing ways in which differently situated participants understand and articulate gender-based harm, I consider both the attorney's discussion and the client's silence about her rape data.

When I first began interviewing asylees, I anticipated emotional outbursts, mostly in the form of uncontrollable sobbing. This happened on occasion, but the more common emotional outbursts were what I initially interpreted as anger. During an account of persecution, in particular when interviewees discussed the worst of their torture, asylees' tones transformed from a flat affect to shouts as they sometimes began to reenact the events they were recounting. I noticed this phenomenon in immigration court as well, and after many months of fieldwork, I inquired with a psychologist at one of the organizations which I was volunteering. She explained to me that these were flashbacks, and that they commonly occur in her sessions when clients talk about torture. Emotions were not limited to interviews with asylees, however. During my interview with Margaret, a physician responsible for examining patients and documenting evidence of torture, she began crying as she revealed that her husband told her that she can't bring her work home and discuss it with him. During my interview with Nicole, the therapist who had informed me about flashbacks, she discussed how professionals who work with



persecuted populations suffer what is clinically referred to as secondary PTSD. Immigration judges, attorneys, asylum officers, language interpreters, and service providers are traumatized as a result of having to witness and observe documentation and narratives of torture as part of their everyday work.

After the tape-recorder was turned off, interviewees continued to discuss their lives through stories about their families, politics, and how they were adjusting to life in the United States. During these after-interview conversations I let the interviewee lead the conversation and stayed for as long as seemed appropriate without imposing on the interviewee and their families.

### **3.3.3 Documentation**

I was able to collect documentation on asylum applications, INS asylum officer training lesson plans, a civil rights lawsuit brief filed on behalf of asylum seekers who were asked for bribes by a former asylum officer at the Anaheim office, memos and letters from various government agencies concerning asylees and refugees, unpublished decisions on sexual orientation cases and HIV status as a basis for asylum from the Los Angeles immigration court, human rights INS detention monitoring reports from Amnesty International and Human Rights Watch, and immigrant service organization materials.

#### **3.3.3.1 Asylum Application Materials**

Through the assistance of immigration attorneys, I was able to procure a total of nineteen asylum applications, four of which are from asylees I was able to interview. Ten of the applications are complete and nine include the applicant's declaration and select materials, but not the full application. Immigration attorneys also gave me copies of judges' oral decisions, INS

regulations on gender-based asylum, and news and journal articles on asylum. While I requested that all attorneys secure permission from their clients, and all attorneys verbally acquiesced over the phone or in person, I never met some of the asylees for whom I have case files. All asylum application materials were redacted (personal information such as names, addresses, and phone numbers was marked out), yet some attorneys used markers that highlighted instead of obscured their clients' personal information. When I received highlighted case files, I redacted them myself, marking out personal information such as addresses, phone numbers, alien numbers, and detailed information about spouses and children.

Two attorneys allowed me access to files and agreed that I could hand copy notes, but would not allow me to photocopy the entire file. I have handwritten notes on four asylum cases from these two attorneys. I also have medical affidavits from thirteen clients, four of whom I interviewed, who gained asylum because of female circumcision obtained through the assistance of the medical doctor who issued the reports. I interviewed seven of the nineteen attorneys who gave me various forms of asylum documentation, met with nine in their offices, and spoke with three over the telephone.

The asylum applications include the I-589 INS asylum form, declarations, which are the written testimony of the applicant, copies of identification records, if available, such as birth certificates, marriage certificates, and employment records, clinical and medical evaluations, human rights reports from Amnesty International, Human Rights Watch and country condition reports from the State Department. For six applications, I was also able to procure the handwritten notes of the attorney taken in meetings with their clients. I was able to obtain these notes because I was given permission to photocopy the files myself, in their offices, instead of relying on material prepared by the attorneys and their staff.

### **3.3.3.2 Immigration and Naturalization Service Documents**

With the assistance of an asylum supervisor in the Anaheim office, I was able to obtain asylum officer training materials and lesson plans. These lesson plans are updated regularly and I have selected lesson plans from dates as recent as June, 2003, although most are from October of 2002 and 2001. These documents are what INS officials refer to as FOIAable, meaning that they are public documents because they may be requested through the Freedom of Information Act (FOIA). During my visit to INS headquarters in June of 2003, the supervisor who referred to the asylum lesson plans as FOIAable told me while I could request them on my own, that due to the current state of upheaval within the Justice Department, it was possible that I would never be allowed to see them. She then proceeded to reference a *Now with Bill Moyers'* episode in which Moyers showcased a memo from John Ashcroft stating that he was denying all FOIA requests in the aftermath of September 11<sup>th</sup> as a security measure.

In addition to the lesson plans, the supervisor from the Anaheim office also provided me with copies of memorandum from INS officials, executive orders, federal code of regulations, and the Immigration and Naturalization Act, all regarding gender-based asylum policies. With the assistance of two supervisors at INS headquarters, I was able to obtain copies of the Affirmative Asylum Procedures Manual Office of International Affairs Asylum Division from February 2003, asylum applications by sex for 1998 through 2002, asylum application by nationality from 1997 through 2001, fiscal year quarters by nationality for 1997 through 2002, asylum office workload by fiscal year from 1991 through 2002, top ten nationalities for filed from 1995 through 2001, and the workload by office for March 2003.

### **3.3.3.3 Human Rights Documentation**

In addition to the detention monitoring reports from Amnesty International and Human Rights Watch regarding the INS processing facility in San Pedro, I also examined copies of Amnesty International USA's Detention Report that outlines national guidelines on immigrant detention, action alerts and case work examples of detained immigrants, detention center information, lists of resources and contacts for detained immigrants, country condition reports, and newsletters and reports on women's human rights and refugees. During my fieldwork, the Los Angeles Amnesty office relocated and during one visit the staff generously gave me the above mentioned documents for which there were extra copies in order to lighten the moving load. From Human Rights Watch, I analyzed their detention monitoring report, copies of correspondences with local and national INS officials, newsletters, and reports that were issued during my fieldwork. From other human rights organizations, I received copies of newsletters and State Department figures on trafficking.

### **3.3.3.4 Immigrant Service Organizations**

I have organizational information from twelve immigrant service providers including program brochures, newsletters, immigrant rights information, eligibility information for refugees, asylees, trafficking, and VAWA claimants, in-take forms for organizations that provide direct services, memos and letters from the Office of Refugee Resettlement and the United Nations, correspondences with state bureaucracies over local issues such as driver's licenses for undocumented migrants, organization reports, articles on immigration, T and S visa fact sheets from the Department of Justice for trafficking claimants, and information on programs offered by these organizations.

### **3.3.3.5 Other Documentation**

During one visit to the INS Anaheim office to interview a supervisor, I was informed that the interview was cancelled because the office was having an emergency meeting concerning a news story in a local paper that broke that week about an alleged bribery ring in the asylum office (Hamilton 2002). Another supervisor told me where I could locate the news article and reported that "unfortunately, some of it is true." After reading the article, I contacted the paper and was able to speak with the reporter who put me in touch with those discussed in it. From these contacts, I was able to locate a copy of the civil rights lawsuit brief filled on behalf of two asylum seekers concerning sexual and monetary bribes that were requested in exchange for a favorable decision on their application by an asylum officer. In addition to this brief, I also have documentation from the California Department of Social Services regarding asylee benefits, decisions on HIV status as a basis for asylum issued by a judge from the Los Angeles immigration court, and materials on select gender-based asylum cases.

## **3.4 LEAVING THE FIELD**

One challenge of research is deciding when to stop collecting data. In January of 2003, I decided that I had obtained enough data to answer my research question about the implementation and responses to gender-based asylum claims. I had interviewed asylees with claims of female circumcision, honor killing, domestic violence, rape, repressed social norms, and forced marriage, and had witnessed immigration court hearings of asylum seekers with claims based on rape, domestic violence, female circumcision, and coercive population control. From January through March of 2003, I followed up previous leads, but did not make new contacts except with

activists in the immigration reform movement. In February of 2003, I notified immigrant service organizations with whom I had volunteered, asylum seekers I had assisted through those organizations, and immigration attorneys and human rights activists with whom I remained in contact that I would leave Los Angeles at the end of March.

#### **4.0 NARRATIVES OF PERSECUTION IN ASYLUM CLAIMS**

In this chapter, I rely on sociolegal studies to illuminate the expectations that INS asylum officers and immigration judges have about how narratives of persecution should be told in asylum interviews and hearings. Narratives are the stories that migrants tell to attorneys and service providers who help them prepare their asylum applications, and to asylum officers and immigration judges who determine whether they are eligible for asylum. Narratives have a written component that includes asylum seeker's declaration and other materials such as supporting documents from service providers. Narratives are also spoken when asylum seekers testify during their interviews and hearings. The stories that asylum seekers tell must detail harm that is recognized as severe enough to constitute persecution according to the standards of asylum law. In this chapter, I focus on interviews with INS asylum supervisors, former asylum officers, and asylees whose claims were adjudicated by the INS asylum office. The chapter that follows will focus exclusively on immigration court hearings.

#### **4.1 NARRATIVE FRAMEWORKS**

Patricia Ewick and Susan Silbey (2003) argue that stories are social events. By social event, they mean that telling a story, particularly one in a legal setting, is more than its reenactment – it is itself an event. Narratives are social events in that they are told in a social context that Ewick

and Silbey (1995) term "situationally produced." According to Ewick and Silbey (1995), stories are situationally produced because they are told "within particular historical, institutional, and interactional contexts that shape the stories' telling, their meanings, and their effects" (206). The institutional setting within which the story is told defines what constitutes a "successful narrative" (1995: 207). Institutions regulate narratives through various rules, and consequently, those who tell stories within those institutions create narrative strategies in order to establish agency (2003). Ewick and Silbey (1995) outline four elements that organize storytelling in legal settings: selective appropriation of past events and characters; temporally ordered events; an overarching structure that relates the events and characters to one another; and closure. During the process of narration, storytellers are expected to engage in performative features that include repetition, vivid concrete details, and a coherence of plot. Ultimately, narratives are assumed by those who elicit them to reveal truth about a particular event.

Ewick and Silbey discuss the ways that in law there are hegemonic stories. They argue that narratives must conform to a story that the law recognizes. According to Ewick and Silbey, the content of a particular story tends to be legally recognizable when it reproduces existing power relations and unrecognizable when the content challenges taken-for-granted hegemony. Therefore, the narrative itself emerges as either hegemonic or subversive. Narratives contribute to hegemony through social control and conformity and through their ability to colonize consciousness through believable plots when the events seem to speak for themselves. Conversely, narratives are subversive when they break silences and resist institutional power. Subversive narratives are important because they undermine hegemonic institutional power through resistance. According to Ewick and Silbey (1998), resistance is defined by three features:



First, resistance entails a consciousness of being less powerful in a relationship of power. Resistance thus implies a particular understanding or positioning of self and other, of being up against something or someone. Second, resistance requires a consciousness of opportunity, a situation in which one might intervene and turn to one's advantage. Thus, resistance represents a consciousness of both constraint and autonomy, of power and possibility. Third, resistant acts involve assessments that power has produced unfair constraints and opportunities. It involves a justice claim and an attribution of responsibility for the unfair situation (1998: 183).

Ewick and Silbey's definition of resistance attempts to overcome the difficulty (and contradictory potential) of conferring meaning from acts. Resistance is recognized as such when actions are accompanied by a conscious effort to undermine injustice from the viewpoint of the less powerful:

Resistance acts make claims about justice and fairness . . . through everyday practical engagement individuals identify the cracks of institutionalized power. An act of resistance can be understood as a conscious attempt to shift the power dynamics or openly challenge the givenness of situational power relations (2003: 1337).

Ewick and Silbey's binary of hegemonic/subversive storytelling is a useful starting place for thinking about how power is central in narrative production during asylum hearings. However, Ewick and Silbey limit their examples to those that they argue "fit" neatly into one category or the other without offering explanations of how stories may be in both categories at the same time, how stories may be in neither category, and how stories may be hegemonic in some situations and counter hegemonic in others. Ewick and Silbey's understanding of power and resistance appears to assume that these two choices – hegemonic or subversive – of narrative production are mutually exclusive.

In his work on totalitarian and authoritarian regimes, Juan Linz (1975) demonstrates the nuances of the spectrum between two extreme categories of total support and total opposition of a political order. His examples show how allegiance and dissent are not dichotomous binaries, but instead represent multiple spaces along a continuum of political complexity. His analysis is

useful for understanding how categories such as hegemony and subversion (or counter hegemony) are not rigid binaries, but instead are two extremes on a complicated and shifting continuum of power. Another example that moves beyond binary explanations of narratives, or accounts, is Charles Tilly's (2006) explanation of why people give the reasons that they do for any particular event. Tilly offers a typology that includes stories, technical accounts, codes, and conventions. He argues that there is often a variety of explanations of the same event because those who account for why something has happened are located in different social spaces. For example, Tilly shows the varied explanations that politicians, air traffic controllers, and anyone watching the September 11<sup>th</sup> terrorist attack gave that explained why the U.S. was attacked. Moreover, he argues that the same person may give different explanations to different people regarding the same event. According to Tilly, this occurs because people are situated in different hierarchies of power and therefore have different relationships with people who accept or challenge certain explanations. Juan Linz and Charles Tilly's models are useful for understanding the complexity of how stories are crafted and the variation that exists between the categories of hegemonic and subversive narratives.

In this chapter, I show the complexity of how narratives contribute toward hegemonic and counter hegemonic power. I complicate Ewick and Silbey's binary logic of hegemonic/subversive and show how the way that a story is told, in addition to its content, makes its categorization more complex than simply hegemonic or subversive. In asylum hearings, there are rules about what stories should be told *and* about how those stories should be told. In order to gain asylum, asylum officers and immigration judges expect asylum seekers to tell stories with hegemonic content and tell those stories in such a way that too contributes toward what they believe is the required way of telling the story. Immigration attorneys and

service providers practice resistance (and sometimes accommodation) by using the rules of asylum to their advantage by teaching asylum seekers to tell hegemonic stories. In this chapter, I show how expectations about hegemonic story-telling affect credibility determination in asylum interviews and hearings.

## **4.2 NEGOTIATING ASYLUM**

Immigration law treats asylum seekers as a special category of migrants. It enacts a boundary reserving refuge for those who articulate persecution as the motivating decision to cross a national border. Consequently, a narrative of persecution is necessary in order to gain asylum. It is this narrative that distinguishes those who are eligible for asylum from those who are not. In this study, nineteen of the twenty-one asylees conveyed during our interview that they left their country because they feared persecution. Yet it is impossible to discern to what extent persecution was their actual motivation for migrating. Because I interviewed only migrants who had been granted asylum, by the time of our interview, they had considerable experience constructing legally accepted narratives of persecution.

While nearly all of the interviewees articulated a fear of persecution as a motivating factor for migrating to the United States, few were aware prior to emigrating that they were eligible for asylum. Of the twenty-one asylees, only three left their countries with the expressed intent of coming to the United States to apply for asylum. The remaining eighteen asylees learned that they were eligible to apply for asylum after arriving in the U.S., from family members, friends, other immigrants, or through immigrant service organizations. Therefore, most asylees were initially unaware of the legal narrative that they would be required to

articulate in order to gain asylum when they arrived in the U.S. Asylum seekers learn how to articulate the required narrative of persecution from their attorneys and service providers. Below, I show how attorneys and service providers often facilitate such hegemonic narratives and discuss the complexity of how asylum narratives are created.

#### **4.2.1 Immigration Attorneys**

All but one of the twenty-one asylees interviewed for this project had legal representation during their asylum interview or hearing. The only exception, Samy, an asylum seeker from Egypt, discovered he could apply for asylum through an immigrant service organization. The organization assisted him with his application, which he completed without the aid of a legal representative. Overwhelmingly, it is through contact with members of their own immigrant communities that asylum seekers discover they need the assistance of an immigration attorney. For example, Amina escaped Ethiopia and fled to Saudi Arabia after the military murdered her father and threatened to kill other family members. During our interview, she described the slave-like conditions of her domestic employment with a Saudi family and how she escaped at her earliest opportunity:

When we got to the airport [LAX], I told them [her employers] that I had to go the bathroom. But instead, I ran away. I didn't even take my bag. I just left. I had no money. I had nothing. I saw a man who looked like he was from Africa and asked him to help me call my sister in Australia. He took me to stay with an Ethiopian family and I stayed there until my brother-in-law came from Australia to help me.

The Ethiopian man whom Amina identified in the airport was familiar with a local immigrant service organization that serves asylum seekers and torture survivors. It was this organization that helped Amina locate legal assistance for her asylum interview and court hearing. Similar to

other asylum seekers I interviewed, Amina found legal assistance through the help of members of immigrant communities and immigrant service organizations.

Amina was fortunate in that the organization and attorney she used were what many asylum officers, immigration judges, and immigration attorneys refer to as “legitimate.” By legitimate, they mean that the organization and attorney did not purposefully deceive Amina by promising her asylum while preparing false statements on her application. In Los Angeles, as in many cities with large immigrant populations, there are preparers with little or no legal background who assist asylum seekers with their applications for the sole purpose of financial profit. Preparers from Mexico and Central and South American countries refer to themselves as *notorios*. In Spanish, *notorio* means “notary public” and notary publics in nation-states south of the U.S. border perform legal tasks similar to those attorneys perform in the U.S.. Many *notorios* capitalize on the Spanish understanding of the term by presenting themselves to immigrants as legitimate legal representatives. In the U.S., *notorios* perform comparable work to that of a notary public. They do not have law degrees, and unfortunately, often engage in deceitful actions regarding asylum applications.<sup>31</sup> During my interview with Marcos, an immigration attorney, he described the role of *notorios* as unscrupulous in Los Angeles:

I think the creation of *notorios* emerged after the regulation of the work force that took place after IRCA.<sup>32</sup> I would say that you still find some of those old fashioned *notorios*, some old guy who has a notary license and for years has filled out papers for people, done their taxes and immigration consultation, and is genuinely respected in the community. But after IRCA, I don’t think you can say there are any good *notorios* in Los Angeles. Because people needed work permits, that set up the situation. You need something bad enough and someone will sell it to you whether it’s legal or not.

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<sup>31</sup> Unethical behavior is not exclusive to non-U.S. nationals and preparers. U.S. nationals and attorneys with law degrees also engage in deceitful behavior.

<sup>32</sup> IRCA refers to the Immigration and Control Act of 1986. This Act punished employers who hired undocumented immigrants through various sanctions. The conventional wisdom among immigrant advocates is that one unintended consequence of this law was that by requiring immigrants to prove that they were legal, illegal document factories were born that allowed undocumented immigrants to purchase various forms of false identity papers.

The greatest disservice that *notorios* do to asylum seekers is to prepare “boiler plate” applications. A boiler plate application is one that details legitimate examples of persecution such as violence, torture, and various tactics of state repression and which is then used for many different applicants. In addition to being problematic because they provide illegal and unethical services, *notorios* are problematic because they do not facilitate the story of persecution in a hegemonic way. Asylum officers and immigration judges are expecting a personalized account of persecution – not a general report of country conditions.

While false applications prepared by *notorios* are specific to Latino migrants, the problem of unethical practices and boiler plate applications among immigrant community members exists across other nationalities. For example, during my interview with Chen, who was granted asylum for his pro-democracy activism in China, he detailed the problem with Chinese immigrants who seek asylum even though they were not persecuted in order to remain in the U.S.:

They [Chinese immigrants] find ads in newspapers with attorneys who conduct learning class. They purchase Falun Gong books and tapes and learn the exercises. Sometimes they go to church to learn Bible and get baptized too. They have to remember the church address and pastor name. When the officer asks, they also know how many disciples Jesus had. They make up stories about being part of an underground church in China.

Chen’s account shows how a narrative of persecution based on Falun Gong or association with Christianity emerged in boiler plate applications for Chinese immigrants. However, because these tales are not specific to the individual who is telling them, they are often viewed as fraudulent by asylum officers. For example, during my interview with Deborah, an asylum supervisor, she estimated that half of the Chinese asylum claims were fabricated because of the lack of detail outlined in their application and testimony:

I’d say about 50% have a case based on self expression. The Chinese are very well prepared, extremely well prepared [during their interview]. I mean they take classes, they

take classes on asylum. Only these classes never address anything in particular, it's all too general and then you have someone who can't answer questions about dates and where they were when something happened. If they can't remember, well, these are just not real cases.

Preparers often create asylum applications by using standard, hegemonic tales of persecution. However, because preparers do not specify how the story should be told, asylum seekers are often denied asylum because they did not tell the story in a way, such as with precise dates, that would satisfy the asylum officer.

Asylum seekers are dependent upon their attorneys to negotiate the legal system and facilitate the process of applying for asylum. When meeting with clients, attorneys look for certain facts that lend themselves to a narrative of persecution. During my interviews with immigration attorneys, I asked them how they decided whether to represent an asylum seeker. Mai, an attorney employed by an NGO that represents asylum seekers in detention, articulated two crucial factors she considers when deciding whether to represent clients: "their story has to be compelling and they need to be able to qualify for asylum." Her answer was echoed by many attorneys who pride themselves on their ability to identify clients with genuine claims of persecution. Sarah, an immigration attorney with an NGO, included availability of resources and the extent to which someone would be harmed as additional criteria:

The first requirement is that there's some merit to the case. We have to believe that we can prevail – or maybe we can't prevail but we should be able to if the law were properly applied. The second thing is the great intangible because probably nine out of ten people who need our help are sent away because we don't have enough resources. To some extent it's assessing the extent of the harm. I'm going to take someone who I think is going to be killed over someone who may or may not be discriminated against in the workplace.

Attorneys use legal criteria when considering whether to take on a client. They consider whether a case fits the rules of asylum law based on one of the five legally accepted grounds. Deciding to take a case based on its legal merits is what John Conley and William O'Barr (1990)

referred to as having a rules orientation rather than a relationship orientation toward the law. In their study of the use of language in legal settings, John Conley and William O'Barr (1990) show how people analyze their legal problems through either a "rules" or a "relationship" paradigm. Those who are rule oriented "evaluate their problems in terms of neutral principles whose application transcends differences in personal and social status." (1990: ix). Those with a relational orientation toward the law "come to the legal system seeking redress for a wide range of personal and social wrongs. In talking about their problems, they predicate rights and responsibilities on a broad notion of social interdependence rather than on the application of rules" (1990: ix). Conley and O'Barr argue that plaintiffs with a rules approach to articulating their grievance are more likely to receive a favorable decision in court than those who articulate a relationship approach.

Their mutually exclusive categories of "rules" and "relationships" is problematic because it neglects the social interaction between clients, who tell their stories, and attorneys, who are responsible for molding those stories into legally presentable narratives. Asylum seekers may construct their stories according to a relationship orientation toward the law, such as telling stories of harm that do not specify whether the harm was because of one of the five legally accepted grounds. However, in order to prevail in court, immigration attorneys must turn asylum seekers' narratives into rule-based narratives of harm. To do so requires multiple visits with the client. Attorneys may require that asylum seekers meet with them three or more times before they submit their applications. During these meetings, attorneys ask general questions about what happened and why they left their country. After eliciting an initial narrative, the attorney follows up with questions that mold the narrative into a rules-oriented approach that conforms to the rules of asylum law.



#### 4.2.2 Service Providers

Immigrant service providers assist asylum seekers by providing the documentation necessary for successful applications. Of the twenty-one asylees interviewed for this study, fourteen were in contact with immigrant service providers during the preparation of their asylum application. Many immigration attorneys refer their clients to immigrant service providers to provide psychological counseling. The service provider meets with the asylum seeker and then writes a report which is included in the asylum application. Service providers often testify in immigration court as expert witnesses regarding the asylum seeker's mental health status.

In this section, I show how two service providers, Nicole and Margaret, assist asylum seekers by preparing legally expected stories of persecution. Nicole and Margaret are similar in that they both consider themselves advocates who work toward the goal of helping immigrants gain asylum. What is interesting about these stories is that they show how different motivations for engaging in tactics that encourage asylum seekers to tell expected stories can contribute to hegemonic narratives.

Nicole, a psychologist who is employed by an organization that works with torture survivors, provides counseling for asylum seekers, writes reports that are included in her clients' applications, and often testifies on their behalf in immigration court. The organization she works for is funded by a federal grant through the Torture Victims Relief Act of 1998.<sup>33</sup> Federal funds cover approximately 75% of the organization's operating costs, with private donations making up the remaining costs. During our interview, Nicole discussed how she diagnoses Post-Traumatic Stress Disorder (PTSD) and its relevance in asylum applications:

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<sup>33</sup> Funding for this Act was not available until 2000.

Clients come to us with many psychosocial problems that typically include major depression and panic attacks. PTSD is just one of the possible diagnoses that someone might have. But it's a diagnosis that the adjudicators, the INS, and the judges seem to be looking for.

In her authoritative position on psychosocial disorders, Nicole conveyed that she emphasizes PTSD in her reports because she knows that it is the diagnosis with which INS officers and immigration judges are familiar. She was clear that she does not fabricate reports or embellish testimony, but that she merely emphasizes PTSD in clients who have multiple psychosocial diagnoses in order to facilitate their ability to gain asylum. Nicole's behavior contributes toward reproducing a hegemonic narrative about PTSD as the primary clinical diagnosis for asylum seekers. Her justification is rooted in her social position as an advocate for asylum seekers, not because PTSD is the only or primary diagnoses that explains her clients' behaviors. Nicole's motivation may not be to reproduce a hegemonic narrative, yet that is the outcome based on the reports she submits in asylum applications.

Margaret encourages hegemonic narratives too in an effort to facilitate asylum seeker's ability to gain asylum. A physician who documents torture and writes affidavits that are included in asylum seeker's applications, Margaret, works with an immigrant organization that serves many female clients who have been circumcised. During our interview, she discussed how she documents these cases and her own response to this practice:

Most of my cases are with women who have been raped after they were circumcised. They have so much scar tissue and it's just horrifying and sorrowful to see that. When the labia is removed, you see nothing, it's just smooth between the vaginal opening and the rectum. And when I see that I feel like crying. I walk out of the room to collect myself. I've actually looked at my own anatomy more to appreciate it and just say: Oh my God, they have destroyed the rose, they have depetaled the rose.

Margaret explained how she often gives her patients a copy of Alice Walker's (1993) *Warrior Marks*, a book that chronicles Walker's documentary film on female circumcision and makes

clear that the practice is torture. She continued with her position on female circumcision by articulating the mother's responsibility in this practice, and her own anxiety about treating the "torturer":

It's usually the mother or another female relative who performs it [circumcision]. Sometimes it's not the mother, but she is implicated by virtue of her facilitating the taking of the child [to the circumciser]. I've had a few families where I knew the mother and I heard the story [from the daughter] and it really angered me. I thought how am I going to deal with this mother? What if they bring her to me as a patient?

Margaret insists that women tell stories of female circumcision in ways that portray them as victims of a barbaric practice. Although Margaret did not indicate that she refuses to treat women who have circumcised their daughters, her grave disapproval of the practice and of the mother's compliance makes her reluctant to work with certain immigrants. Like Mohanty's critique of some Western feminists who perpetuate notions of "other" women as victims, Margaret too insists that women who have been circumcised articulate a victim status in order to be worthy of gaining asylum. In chapter 6, I address the claims of women who gained asylum because of female circumcision.

Nicole's and Margaret's description of how they assist torture survivors provides insight into how asylum seeker's narratives, in their reporting of persecution, are remolded to fit a hegemonic narrative, in these cases by suggesting PTSD symptomology as a psychosocial disorder and female circumcision as torture compared with the experience of an "anatomically normal" uncircumcised woman. Nicole and Margaret share a spirit of client advocacy and desire to see their clients gain asylum. They act on the asylum seeker's behalf by emphasizing legally recognizable forms of harm that those who wield institutional power, such as asylum officers and judges, "are looking for" in asylum applications. Yet in doing so, they contribute toward hegemonic power by reproducing legally accepted narratives of harm. While their motivation

for contributing toward a hegemonic narrative may differ in that Nicole's appears intentionally strategic and Margaret's seems naively orientalist, their behavior is one of accommodation, not resistance of hegemonic power.

### **4.2.3 INS Asylum Officers**

The shaping of persecution narratives can involve not only asylees, their attorneys, and advocates, but even those who are supposed to be impartial, like asylum officers and immigration judges, some of whom were previously activists for asylum. One argument among scholars of transnational human rights movements is that human rights activism emerges from *outside* of the state. Sociologists Margaret Keck and Kathryn Sikkink (1998) trace the rise of non-state actors through international, non-governmental, and human rights organizations that make demands on nation-states through their advocacy role as pressure groups. In their discussion of human rights as a transnational social movement, Keck and Sikkink (1998) articulate a basic tenet of what has appeared as a widely accepted dichotomy between universal human rights and state sovereignty. The tension between human rights and state sovereignty, as articulated by scholars such as Yasemin Soysal (1994), Saskia Sassen (1998a; 1998b), and Keck and Sikkink (1998), is that international law and policy provide universal standards of personhood and notions of humanness that transcend how any particular nation-state might conceptualize these terms. Consequently, state sovereignty is eroded because power and control emerge from outside the nation-state.

The problem with this argument is that it ignores the diversity within the state or within human rights organizations and consequently treats each as monolithic. Unlike other departments within the INS, the asylum corps has a large number of employees who identify as

human rights advocates. The introduction of the INS asylum corps in 1991 restructured the hiring process for asylum officers to include the transfer of bureaucrats previously employed by INS as well as the new hire of human rights advocates, most of whom were trained in human rights law.

During my interviews with INS asylum supervisors and former asylum officers, they described how the human rights advocates clashed with INS bureaucrats, whom they referred to as the "old guard," over the politics of immigration. Many of the INS asylum supervisors and former asylum officers I interviewed considered themselves activist bureaucrats in that they actively worked toward granting asylum cases.

During my interview with Walter, a former asylum officer at the New York INS office, he described the division between the old guard bureaucrats and the human rights advocates:

In the beginning, in New York, all of the supervisors were former airport inspectors from Kennedy [JFK airport]. These were old guard INS and they didn't trust people. All of my supervisors were jaded people from inspections from JFK. They didn't think that most [asylum seekers] were credible. A person whose background was INS inspections was cynical. They assumed most of the people coming in were lying. These people were much more reluctant to sign off on a grant [of asylum]. In the beginning, it was the lawyers versus the airport people. In my office there was a culture. It was us against them.

Walter's understanding of the division within the asylum office, the "us against them" culture between asylum officers who understand asylum within a human rights framework and those who view adjudicating claims as a gatekeeping function, demonstrates the multiplicity of ways that asylum officers view their position. This example supports Linz's (1975) model that shows the numerous possibilities between total support and total rejection of a political order. The variation among how asylum officers view their role within the state apparatus, in part, determines how one judges asylum applicants during interviews. Asylum officers can facilitate or impede asylum seekers ability to gain asylum.

### **4.3 CREDIBLE NARRATIVES**

How stories of persecution are told can determine whether the story itself seems credible. In order to gain asylum, an applicant must be viewed as credible by an asylum officer. Legal scholars argue that credibility, which includes “demeanor, specificity, detail, and consistency,” is the most important determinant of success in gaining asylum (Anker 1999:160-167). Three themes emerge from my interview data about how credibility is determined in asylum interviews and hearings. The first theme, memory, reveals the expectations about recall. The second theme, knowledge, refers to asylum seeker’s understanding of events or practices. The third theme, narrative performance, describes the expectations INS asylum officers have about how asylum seekers tell stories of persecution. In this next section, I show how the content and ways of telling persecution shape perceptions of the asylum seekers.

#### **4.3.1 Memory**

Asylum officers determine whether an applicant is credible based on the applicant’s ability to recall and describe certain events. In the absence of proof, asylum seekers rely on memory when telling their stories of persecution. Testimony often is the sole available source of evidence for those who flee, leaving behind identity documents and proof of harm. Thus, assumptions about memory are embedded in credibility determination.

My interviews with Ann and Alice, asylum supervisors at the Anaheim office, best describe expectations about recall. According to Ann, she conducts interviews by asking asylum seekers to recount events in chronological order:

I like to ask questions that keep them focused. When were you born? Let’s talk about 1970, and then move to 1980, and then now. If they are consistent, if they have enough

details that they lead me to believe that they actually experienced what they're talking about then I'm obligated to find them credible.

The expected narrative requires asylum applicants to recall events in the order in which they occurred. Asylum seeker's testimony may be deemed non-credible if they do not explain past events in a linear fashion, even if they can account for all events. The hegemonic story telling is one that recalls the past in chronological order. These officers, however, do not expect themselves to remember as, for example, Jeffrey, an asylum supervisor at the Anaheim office, who told me that he "can't remember dates. I always need a cheat sheet." Jeffrey's statement reveals the contradictory expectations of those located in different positions of power than asylum seekers. This example supports Tilly's (2006) thesis that differential access to power shapes which accounts are acceptable by certain people and which ones are not.

The section on cross-cultural communication in the asylum officer training manual states that "time is measured differently and holds different importance in various cultures. Time in some cultures may be measured in terms of planting seasons rather than months, weeks, and days as it is in other cultures" (INS 1998a: 12). Yet, asylum officers often rely on their own understanding of time when eliciting testimony. For example, Alice articulated that she looks for detailed accounts when asylum seekers discuss traumatic events:

They have to be able to remember the details. When something horrible happens to someone, they know where they were right before that. They'll know extraneous details; what day of the week it was, what time of the day it was, where exactly they were, even what they were wearing, you'll remember things like that.

Alice's criteria for what constitutes credibility, like so many other examples I offer, demonstrates the preposterous character of such reasoning that some asylum officers and immigration judges rely upon when adjudicating asylum claims.

Asylum seekers often conveyed to me problems they had with recalling events during their asylum interviews. During my interview with Billy, an asylum seeker from Guatemala who was raped repeatedly during his childhood by a government official, he recalled the difficulty in meeting the expectations of the INS asylum officer about memory and dates, such as those articulated by Ann and Alice. He described his fear of denial at the INS asylum interview because of his inability to remember when he was raped:

The INS is really strict and sometimes your memory is just not perfect. The human mind tends to change things, alter little things, like a date and you must be exact. INS wants you to say, “okay this is what happened and on such and such a date.” And you have to get it right. When they [his INS asylum officer] asked me about when I was being abused, I couldn’t remember. I couldn’t even remember how old I was the first time it happened.

In this case, however, Billy’s inability to recall the dates he was raped did not result in a denial, and he was granted asylum by the asylum officer. The hegemonic story telling is one that locates events with dates.

#### **4.3.2 Knowledge**

Specific forms of knowledge are also important during asylum interviews. Asylum seekers are often asked to identify political and religious figures to determine whether they are knowledgeable about a particular place or practice. During my interview with Amina, an Ethiopian asylum seeker, she discussed how she was questioned during her INS asylum interview about the current government in Ethiopia. During her asylum interview, which was conducted with the aid of an interpreter, she relayed the following story of how her interpreter translated her answer incorrectly which shows how her own knowledge of English enabled her to act on her own behalf during her interview.



He [the asylum officer] asked me about the new government but after I went to Saudi there was another government. I gave him the one I knew before I went to Saudi. During that time, there was a new president every three or four months. Even right now I don't know who the president is. And the translator told me he's not the president now [during the interview]. When he [the asylum officer] was asking me, I told her [the translator] the answer. But she [the translator] told a different answer. I was getting angry and said no to the interview guy, "that's not what I said. I understand English."

Language ability can determine the outcome of a case. Interviews are often conducted with the aid of an interpreter. According to the INS lesson plan, the role of the interpreter is to "interpret verbatim as much as possible, using the asylum officer's and applicant's choice of words, rather than using the interpreter's choice of words" (INS 1998b: 7). This statement (along with other criteria) is read to the interpreter at the beginning of the interview. It is nearly impossible for asylum officers to know whether the interpreter is translating correctly. Unlike immigration court hearings which are recorded and in which a transcription of the proceedings is made available to the judge, no such recordings are made available during INS asylum interviews for the applicant's attorney and the attorney representing the INS. Therefore, asylum seekers with limited or no English skills cannot intervene on their own behalf regarding correct translation.

Amina's familiarity with English gave her the opportunity to intervene on her own behalf by correcting the translator's answer about the President of Ethiopia. In this example, Amina was able to tell the expected narrative because of her fluency in English, and therefore could correct the interpreter during her interview. She had a consciousness of opportunity which she turned to her own advantage. While Amina's claim was denied at the asylum office, in part, because of her incorrect answer about who occupied the Ethiopian presidency, her claim was granted in immigration court.

While I was conducting interviews with asylum supervisors, I inquired whether they intervene during interviews when they think there may be problems with language translation.

While all of them cited the INS policy regarding adequate translation during interviews, they indicated that intervention may be problematic in practice. During our interview, Walter described how uncooperative responses by asylum supervisors discouraged intervention by asylum officers:

There were times when I thought that the translator was not competent, and I told them [the asylum seeker] that this isn't to your advantage; you need to come back and bring somebody with you who can translate properly. When I did this, supervisors frowned on it, especially when I had a big backlog and the pressure was to move cases. Others of us [asylum officers] did this as well, but those who routinely did it were talked to.

Walter's willingness to intervene on behalf of asylum seekers is an example of how he engaged in resistance against institutional authority. His identification of translation incompetence shows how he attempted to shift the power dynamic in favor of asylum seekers. Ewick and Silbey (2003) argue that "through everyday practical engagements, individuals identify the cracks and vulnerabilities of institutionalized power" (1330). Walter is an example of how asylum officers work within the INS to resist hegemonic power, not reproduce it.

### **4.3.3 Narrative Performance**

Asylum seekers are deemed credible according to how emotive they are when recounting stories of sexual violence. Rape provides a vivid example of gendered persecution that involves contradictory expectations about performing narratives in asylum interviews.

Throughout the 1980s, asylum officers often did not consider rape to be persecution. For many who did grant asylum based on rape, they only did so when narratives of sexual violence were told with a tearful account of the rape. During my interview with Linda, an attorney with the Center for Gender and Refugee Studies, she described how asylum claims by women from Central American countries such as El Salvador, Nicaragua, and Guatemala who experienced

sexual violence were denied on the grounds that rape was not persecution. Her description was reflective of other immigrant advocates I interviewed who emphasized the struggles they had before INS officials and immigration judges who did not think that rape was persecution.

Moreover, many rape claimants were deemed non-credible witnesses if their stories of sexual violence were related with little or no emotion. Linda was among the first immigration attorneys to introduce psychological assessments in the applications she prepared on behalf of asylum seekers. In response to the denial of asylum claims on the basis of rape, she argued that rape survivors experienced PTSD from the trauma of sexual violence. Linda's response is what Ewick and Silbey (1995) term a narrative strategy. A PTSD diagnosis is used to lend credibility to an asylum seeker's non-emotive account of rape, and thereby resists the hegemonic narrative that one must be tearful while recounting these stories.

The inclusion of rape as a form of persecution was a hard won battle for immigrant advocates. Too, the idea that a claimant may not be emotive while telling a story of sexual violence as a result of PTSD was also a significant milestone that benefited asylum seekers. However, while asylum laws and policies do not necessitate a specific way of telling stories of rape in order to be credible, asylum officers and judges still have expectations about how stories of sexual violence should be told. Crying during rape testimony continues to guide decisions about whether a story is real. Because different asylum officers articulate different interpretations of rape, the act of crying during an account of rape can not be categorized as simply hegemonic or counter hegemonic.

Alice, an asylum supervisor at the Anaheim office, articulated how she views emotions as credible during a female asylum seeker's account of rape:

When they start talking about rape, they start off very normal, like you and me talking here today. All of sudden, when they start talking about the rape, they start crying,

sobbing, it's like a waterfall. To cry with real tears is credible. Unless the person is a good actor, it's very hard to cry on cue. And not crocodile tears, but real tears. When they are wailing, you know it's credible.

Alice's description of a tearful account of rape shows how she expects this reaction during testimony about rape. By stating that "when they are wailing, you know it's credible" implies that those who do not cry when recalling stories of rape are not credible.

Some asylum officers and judges relayed stories of their own emotions during rape testimony. Jeffrey, an asylum supervisor at the Anaheim office, discussed how one account was so horrific that it brought him to tears, making clear that the applicant must be credible or else he would be not crying:

At one point, I did refugee overseas processing. I was in Belgrade, Yugoslavia and was interviewing a mixed ethnic couple. One was Serbian and the other was Muslim. The wife had been raped and I knew from the file that it was going to be a horribly emotional interview. Before long, everybody was crying. Everybody was in tears. The applicants were in tears. The interpreter was in tears. I was in tears. Interviews like that, you know those are real stories.

Jeffrey's assumption that "real stories" are the ones where not only the applicant cries, but ones that bring the asylum officer to tears shows how crying during rape testimony makes the applicant appear credible. Jeffrey's and Alice's expectations about rape testimony are examples of how crying during rape testimony contributes to a narrative that reinforces the notion that crying is expected during rape testimony, regardless of the hard won work of immigrant advocates.

A counter example to Jeffrey and Alice, who expect that credible rape stories be told while crying is Deborah, another asylum supervisor at the Anaheim office. Deborah's understanding is that credible rape victims never cry during their testimony. While her position could be interpreted as resistance in that she does not expect the hegemonic way of telling rape

stories by crying, her suspicion of asylum seekers as non-credible if they do cry reveals a different hegemonic expectation of rape narratives:

Ninety percent of the stories I hear are embellished. I think more of what we see are people embellishing and thinking that they have to say they were raped, but they have never been raped. When they talk about the alleged rapes, there are always tears involved. To me, that isn't genuine. I have dealt with too many rape victims and the thing is that they don't burst into tears. At this point, six months or even years later, there is usually never a breakdown.

For Deborah, a non-emotive account is expected during rape testimony. These examples reveal the complexity of understanding the way that stories must be told. Rape is an example of a narrative that requires a specific performance of the content. Asylum seekers who tell stories of rape are being judged not by the content of their story as much as by the emotions they show (or fail to show) while telling it.

Immigration attorneys work with clients to shape their narratives of persecution. When I questioned immigration attorneys about rape cases, they voiced frustration with their clients who would not reveal stories of rape during their asylum preparation meetings, yet told these stories during their interview in front of an asylum officer or immigration judge. The attorneys were frustrated because failing to include rape in the asylum application made the asylum seekers appear non-credible during their interviews. Moreover, this meant the attorneys could not prepare their clients for questioning about the rape. In her study of how rape survivors prepare to testify in U.S. courtrooms, Amanda Konradi (1996) underscores the importance of what she terms emotion work, relying on Arlie Hochschild's (1983) argument about expectations about emotional labor, which Konradi defines as the "efforts that survivors made to produce feelings and emotional displays that they deemed appropriate to the courtroom before they entered it" (1996: 415).

Many attorneys relayed stories of how they assisted asylum seekers with telling stories of rape during their hearings and interviews. During my interview with Michael, he discussed a client he represented at the San Francisco INS asylum office when he worked for a local NGO as an example of why women do not convey stories of sexual harm during their meetings with their attorneys :

I was representing an Eritrean woman and my practice was to always spend a lot of time with the client trying to understand the story so that I could put together a very detailed declaration in the application. We met three times prior to her interview and I read it back to her and she confirmed it. At no time had there been any mention of sexual harm. In the interview, she starts talking about her rapes while in custody. Now I hadn't heard this before and was concerned that it would be held against her on credibility, that she is adding things that aren't a part of her claim. Fortunately, the officer involved understood that it didn't undermine her story and did grant her. We [the asylum officer and Michael] sat and discussed the issue and realized that in the meetings in my office her relative was always there translating. In this interview, they hired a professional to come in and translate.

Michael's depiction of female asylum seekers' reluctance to discuss sexual violence in front of friends and family members resonated across many of my interviews with asylees who omitted their rape as part of their persecution narrative. Ewick and Silbey (1995) argue that narratives are situationally produced in that they are told within a particular context. For female asylum seekers who tell stories of sexual violence, the presence of male relatives often determines whether they are willing to divulge information about their rape. Consequently, female asylum seekers who were raped are often non-credible applicants when appear to change their story. The narrative during the oral interview is one that replicates the content of that found in the written application. When asylum seekers include additional testimony in their oral narrative they are suspect as non-credible.

#### 4.4 HEGEMONIC AND NON-HEGEMONIC STORY-TELLING

How stories of persecution are told is as important as the story itself. In this chapter, I demonstrated the complexity in story telling that contributes to a legally accepted narrative of persecution. My data on asylum contributes to sociolegal scholarship by arguing that story telling is as important as the story itself. I have expanded Ewick and Silbey's focus on narrative content by arguing that stories, and how they are told, are not simply hegemonic or counter hegemonic. Moreover, unlike Ewick and Silbey's work that emphasizes agency and resistance among the claimants who bring forth grievances, I have included how differently situated participants, such as asylum officers, immigration attorneys, and immigrant service providers, engage acts of resistance and confront institutional power structures on behalf of those who are unfamiliar with the INS asylum bureaucracy.

In this chapter, I identified the extra-legal criteria that constitute a convincing story of persecution in asylum interviews and hearings. Asylum seekers may be deemed non-credible if they cannot recall the date they were persecuted, if they are unfamiliar with the current governmental administration in their country, and if they do not display emotions during rape testimonies. These criteria contribute to hegemonic story telling in asylum adjudication. They are hegemonic through their social control and conformity regarding how stories of persecution must be told.

Yet not all asylum officers expect a hegemonic narrative of harm. Nor do they all expect a narrative be told in way that is hegemonic. In this chapter, I offer examples of how asylum officers, attorneys, and service providers engage in acts of resistance in order to undermine hegemonic power. In his role as asylum officer, Walter alerted asylum seekers to problems with

language translation. As an immigration attorney, Michael engaged with an INS asylum officer about why his client introduced her rape during her asylum interview and not during her preparation. Nicole, a psychologist with an immigrant service organization, diagnosed PTSD as the primary disorder in order to facilitate a grant of asylum. These examples show how asylum officers, attorneys, and service providers work against institutional power on behalf of asylum seekers, even when doing so means encouraging hegemonic stories. Consequently, a pro-immigrant position does not preclude one from encouraging hegemonic narratives of harm. Some of these participants do so, in part, because they identify as human rights activists working within, not outside of, the state. And in doing so, they work toward reproducing, not undermining institutional power.



## 5.0 RULING RELATIONS IN IMMIGRATION COURT ASYLUM HEARINGS

Defining persecution in asylum law is like Supreme Court Justice Potter Stewart's directive about obscenity: "I shall not attempt further to define the kinds of material I understand to be embraced within that short-hand description [hard-core pornography]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that" (*Jacobellis v. Ohio* 1964). I use the full quotation because the often abbreviated circulation of "I know it when I see it" implies that once an example of pornography materializes, it is clear that it is obscene. Justice Stewart's conclusion, however, is the opposite: seeing the film provided ample evidence that it was *not* pornography. Like Justice Stewart's observation that understanding pornography depends on a specific example, interpreting persecution is contingent upon an asylum claim that is made before an immigration judge. Moreover, immigration judges' justification for denying asylum claims often mirror Justice Stewart's conclusion when empirical evidence of harm presented in court is deemed insufficient to constitute persecution.

In this chapter, I examine how persecution is determined in U.S. immigration court asylum hearings. I focus particularly on the hidden criteria that affect the determination of persecution, drawing on Dorothy Smith's (1987) theory of the importance of ruling relations, the "complex of organized practices, including government, law, business and financial management, professional organization, and educational institutions as well as the discourses in

texts" that exert power in social life (3). Smith (1990b) also urges sociologists to "develop sociological inquiry from the site of the experiencing and embodied subject as a sociology from the standpoint of women" (1). I expand these two ideas to explore a legal institution structured by ruling relations that diminish agency for immigrants.

Immigration court is a good venue for the examination of ruling relations because it allows us to examine how migrants' subjectivity can be circumscribed by the practices and interactions that comprise its ruling relations. Moreover, consistent with Smith's (1987) argument that gender is pervasive as an invisible "subtext" in ruling relations, a study of immigration court makes it possible to explore how race, class, and nation are inserted in the ruling relations in determinations of persecution (4).

Dorothy Smith (1987) examines unequal ruling relations with regard to gender through the analytical concept of invisibility. She argues (1987) that society's ruling relations are androcentric, as evidenced by the biases and discrimination "in law, in business, in jobs, and so on" that render women's experiences invisible (4). Her solution is to make gender visible. I build on Smith's idea of invisible subtext by showing how non-legal criteria emerge in the ruling relations of immigration court asylum hearings. Specifically, I rely on the metaphors of visibility and invisibility to show how the ruling relations in immigration court are based on legal (visible) criteria and non-legal (invisible) criteria. The non-legal criteria are hidden if asylum is understood exclusively in terms of laws and policies. I argue that understanding the social relations and interactions in immigration court are crucial for making visible the concealed non-legal criteria that contribute to the implementation of asylum law.

In this chapter, I focus on the immigration court asylum hearings, especially six asylum adjudications before five judges. I selected these hearings because they show how concealed

criteria guide the implementation of asylum law. This chapter is divided into two sections that reveal different aspects of the ruling relations of immigration court. In the first section, I discuss spatial arrangement, interpretation of cultural acts, and the scheduling of hearings as ways in which the ruling relations of immigration court are constituted, over and above the visible exercise of legal authority. In the second section, I excerpt six hearings that reveal the ways in which non-legal criteria, in addition to legal criteria, contribute to immigration judges' determinations of persecution in asylum hearings. I conclude with a discussion of the ruling relations in immigration court. While I use Smith's concepts of "standpoint," "institutional ethnography," and "objective knowledge" to demonstrate how immigration court asylum hearings are structured, I rely primarily on her notion of invisible subtexts to show how the ruling relations operate in asylum proceedings. I argue that asylum decisions are bound by a set of ruling relations that comprise both the visible, legal authority and invisible relations of ruling based on other criteria.

## **5.1 AUTHORITY IN IMMIGRATION COURT ASYLUM HEARINGS**

Max Weber (1978) talks of legitimate domination to describe how power can be concentrated in bureaucracies such as legal institutions. Institutional ethnography is particularly good for locating such relations of power (DeVault 1999; Diamond 1992; Smith 1990a; 1990b; Townsend 1998). Immigration judges have the ability to grant or deny asylum, adjust migrants' status so that they may later apply for citizenship, or order their deportation. Immigration laws confer upon judges what Weber describes as legitimate authority. However, judges have other sources of authority, bound in their bureaucratic positions.

### 5.1.1 Spatial Arrangement

One example of such authority is the spatial arrangement of immigration court. The Los Angeles immigration court is located in the downtown area and shares space with commercial businesses housed in the same building. As early as seven-thirty in the morning a line snakes down the entrance stairs onto the sidewalk. Migrants, their attorneys, expert witnesses, language interpreters, and visitors enter through the front of the building making them often late if they do not arrive well in advance of their scheduled time. Once inside the building, people are directed into four elevators. INS assistant district counsels, clerks and other court personnel, and employees of the commercial businesses have privileged access to the elevators: others wait for a security guard's cue that they may enter an elevator.

Higher level officials can avoid the long lines altogether. In the basement, there is a parking garage for judges and select court employees who avoid the main entrance lines by entering the elevator on a lower floor. During one proceeding when an Armenian asylum seeker was late for his eight-thirty A.M. hearing, he told the judge that he had arrived at eight A.M. but due to the long line did not arrive in court until nine A.M. The judge replied: "I was here at eight-thirty and did not have a problem. If I did not have a problem with being on time, why do you have a problem with being on time? Everyone takes the same elevators." The judge was correct that everyone takes the same elevators; however, he was able to enter the elevator in an uncrowded floor due to his parking privileges and thus arrived on time. One dimension of the ruling relations in immigration court is that, like other institutions, employees tend to have limited knowledge of other components of the workplace bureaucracy, or, as this case shows, of the client's experiences. As W.E.B. DuBois (1989) demonstrates in *The Souls of Black Folk*, limited knowledge is on the part of those at the top of the hierarchy, not at the bottom.

Immigration judges may issue an “in absentia” order for deportation if an asylum seeker does not appear in court (Silverman 1998). The law is clear regarding the treatment of immigrants who fail to appear in court. However, there are no laws or policies regulating punctuality in the courtroom. Initially, the judge was reluctant to proceed with the hearing and threatened to dismiss the case (hence placing the asylum seeker in deportation proceedings). After much pleading from the asylum seeker, the judge adjudicated the case that morning. Ultimately, the judge denied him asylum. It is difficult to know whether the asylum seeker’s tardiness impacted the judge’s decision not to grant him asylum. In this example, a judge’s preconceptions about punctuality and access to the courtroom is a non-legal criterion that the judge attempted to use to dismiss a case. This example of how a judge invoked authority is particularly troubling because it shows how little immigration judges know about the everyday life, or even the courtroom experiences, of those they make decisions about.

Michel Foucault's (1978) affirmation that "power is everywhere; not because it embraces everything but because it comes from everywhere" provides a post-structural account of institutional power (93). Foucault's argument about the circulation of power as ubiquitous is germane to identifying its sources in immigration court. Power in immigration court is dispersed in that it circulates through multiple sites. The multiplicity of the possibilities of points of conferral of power, however, does not necessitate its equal dispersion. While power is everywhere, its distribution and depth is disproportionate among its multiple sites. Power in immigration court is concentrated among those who implement the laws, immigration court judges. However, in addition to judges, who exert the greatest power over claimants, language interpreters, and immigration attorneys are also present in the courtroom during asylum hearings and engage tactics that reveal a contestation over authority. Similar to the examples of

hegemonic stories and storytelling in INS asylum interviews offered in the previous chapter, I draw from excerpts from field notes of immigration court hearings to show how power operates in asylum adjudication.

Immigration judges and assistant district counsels, along with court clerks, have offices in the immigration court building and all of their duties are performed in the courtroom or in their nearby office space. There is no office space for interpreters or attorneys who represent immigrants. Immigration attorneys, expert witnesses, and immigrant plaintiffs meet in public spaces such as the downstairs coffee shop next to the front entrance and in waiting rooms located on all court floors. While observing court proceedings, I noticed that interactions among judges, attorneys, and interpreters reflected their shared workplace experiences. They regularly discuss cases interjected with personal exchanges among each other while applicants are excluded from these workplace-based discussions. Prior to morning hearings, it is common to find interpreters gathering in the lobby of the clerk's office on the fifteenth floor. Their transformation of a public space into make-shift offices for filling out paperwork and socializing with other interpreters is an example of how they have established the lobby as their workplace.

Immigration courts are located on the fourteenth, sixteenth, and seventeenth floors. The fifteenth floor houses the clerk's office and serves as the general administrative floor. The back wall is covered with printouts of the day's hearings in columns headed by the name of the judge and location of the courtroom. Information from the printouts include the start and end time of the hearings, the hearing location, the immigrant's name and A-number (alien number), the type of hearing, the immigrant's representative's name, and abbreviated terms for the language and nationality of the immigrant. Copies of these printouts are also posted outside individual courtrooms. There is also an Immigration Court Information System kiosk for locating

immigrant information. The initial screen on the kiosk reads “The Immigration Court Information System is provided as a means to access hearing date clock, decision, case appeal, and filing information. All information is obtained by providing an A-number.” Upon entering an A-number, which is available from the posted printouts, a screen appears allowing the user to access information such as the full name of the immigrant and the status and decision of adjudicated cases. On one occasion, I approached a clerk working behind a glass partition and asked if there were full citations available for the language, nationality, and other abbreviated terms on the hearing printouts. When she asked me who I was and why I wanted the information, my reply that I was a student writing a dissertation on immigration did not persuade her to provide me with the requested form. She replied: "that is more information than you need to know."

The kiosk and printouts are a vehicle whereby immigration court controls the flow of information. No identification is required for entering the building, and although security guards are staffed at metal detectors on the fourteenth, sixteenth, and seventeenth floors, anyone may enter the fifteenth floor administrative lobby. Consequently, the kiosk and computer printouts are more than sources of information for attorneys and interpreters locating the day's case. The information available on the kiosk and printouts contribute to the unequal ruling relations in the courtroom, and subsequently in society, based on the vulnerability of migrants whose personal information is readily available for viewing. The availability of information poses a potential threat to immigrants whose case information and whereabouts is displayed on the back wall of kiosk. In particular, asylum seekers, such as those fleeing an honor killing, are in a potentially vulnerable position because anyone who enters the courthouse may locate their case information. While I was able to access private information such as asylum seekers' names, alien numbers,

and their attorney's names, I had to take educated guesses about the nationality and language of applicants. The clerk's unwillingness to provide me the information was an example of her control of texts to assert authority in immigration court.

The spatial layout of an immigration courtroom is like most other courtrooms, but significantly smaller. All parties except the judge enter through a door at the back of the courtroom. There are three benches on either side of the aisle and a small wooden lattice gate separating the six benches from the front of the courtroom. There are two tables in front of the judge, one table is for the immigrant, his/her representative, and an interpreter, if required, and the other is designated for the assistant district counsel. Like some other court proceedings, witnesses are sequestered during the trial; however, asylum hearings are unique in that there tend to be few or no witnesses. Expert witnesses who testify in asylum hearings tend to be those with professional knowledge of a pertinent component regarding the asylum application. These witnesses include physicians who testify about documentation of torture, psychologists who account for their clients' flat affect when discussing violence with diagnoses such as Post-Traumatic Stress Disorder (PTSD), and anthropologists who advise about cultural practices and the hypothetical legitimacy of the social circumstances described in the application.<sup>34</sup>

### **5.1.2 Pre-Hearing Interactions**

During my first visit to immigration court, I was waiting in the courtroom with an attorney and her client, a young man seeking asylum from Honduras, when the assistant district counsel questioned my identity and my reason for being in the courtroom. Not knowing who she was,

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<sup>34</sup> Expert witnesses who testify on country conditions tend to be scholars living in the United States. When I inquired about this with immigration attorneys, they cited cost and ability to locate experts as the reasons why scholars in the U.S. were preferred. When expert witnesses are not available to testify in court, attorneys may include their affidavits in the asylum application.



and being my first day in court, I assumed she was a clerk and that her inquiry was standard procedure. When I told her I was a graduate student studying immigration, she told me that I would have to leave once the hearing began because visitors were not allowed in the courtroom. She then turned to the applicant and told him to go home because his file was lost, and she could not do anything without the file. She informed his attorney that she should go to the INS administrative office to locate the file. Soon after the hearing commenced the judge ordered a continuance based on the INS assistant district counsel's lack of access to the applicant's file and advised the assistant district attorney to locate the file in time for the next hearing.

This scenario demonstrates how an assistant district counsel engaged power tactics in her query about my identity, and her dictating of my removal by attempting to regulate information and attendance of courtroom visitors. Immigration court hearings are public proceedings, contrary to the statement of the assistant district counsel. There are no laws or policies that govern the presence of visitors in asylum hearings except for witnesses who are sequestered until they are called to testify. During my observations of immigration hearings, assistant district counsels often questioned my attendance in court. For the entirety of my observations in immigration court, judges, the paramount source of authority in the courtroom, never asked me to leave the courtroom. Moreover, asylum seekers and their attorneys, those who arguably have the greatest stake in discerning the identity of courtroom observers, did not request that I identify or excuse myself during the proceedings. In another asylum hearing, the assistant district counsel requested that the judge inquire about my identity and reason for attending. The judge's response was that "it is the place of the (immigrant's) attorney to ask this." When the assistant district counsel retorted with fears that I was a reporter, the judge stated: "immigration court is open and it doesn't matter who she is." And in another courtroom I had frequented and met

several times with a supportive judge to discuss my project, an assistant district counsel during one asylum hearing requested that the judge order me to leave to which the judge responded: "she is here at my request."

Assistant district counsels, immigrant representatives, and interpreters often talk with one another while waiting for the judge to enter the courtroom. These conversations may be specific to the case, may concern other cases, or may be friendly banter about their personal lives. These pre-hearing interactions provide a lens for viewing how assistant district counsels engage tactics that can facilitate rather than impede asylum seeker's claims. For example, during one hearing, a Liberian woman was seeking asylum based on rape by government officials who claimed their attack was retribution for her father's political activities. Prior to the official hearing proceedings, the assistant district attorney informed the respondent's attorney that the court referral was due to insufficient evidence of her entry to the United States. Because the asylum seeker was smuggled across the U.S. southern border and was not processed by a Border Patrol official, there were no records of her entry date. In the pre-hearing discussion, the assistant district counsel informed the applicant's attorney that the government was not planning to appeal the case based on the substance of the claim. Instead, the assistant district counsel needed to question the applicant only on matters of identify and date of entry.

In his celebrated account of social interaction, *The Presentation of Self in Everyday Life*, Erving Goffman (1959) outlines how individuals' performances influence observers. In the pre-trial asylum hearing interactions, assistant district counsels, attorneys, and language interpreters engage what Goffman referred to as "back stage" performances while waiting for the judge whose entrance into the courtroom ushers in their "front stage" performance. It is during these

back stage performances that government and applicant's attorneys assert their authority over the trial as they negotiate how they will proceed during the asylum hearing.

The following example shows how a psychologist engaged tactics of control in her access to back stage authority while the judge exerted his front stage authority over the psychologist as an expert witness. While an assistant district attorney and asylum seeker's attorney strategized about a case while waiting for the judge, a psychologist scheduled to testify as an expert witness was sitting in the courtroom between the asylum seeker and me. I had spoken with the applicant about attending her hearing and notified her attorney and psychologist that she had agreed. While we were waiting for the judge, the psychologist asked her client repeatedly whether she was sure that she wanted me to be present during the hearing. The applicant followed the questioning with a repetitive "Yes, it's okay" that continued until the judge entered. When the judge inquired about the presence of courtroom visitors, the attorney identified the psychologist as an expert witness and the judge ordered her sequestered. As the psychologist continued asking her client if it was acceptable for me to be in the courtroom, the judge stated with irritation: "all witnesses must be sequestered. I don't care who else stays." Later in the hearing when the applicant was excused to collect herself after a grueling examination by the judge over the details of her rape, I was the only one allowed to accompany her because the judge ordered her attorney to remain seated. The psychologist later thanked me for staying with her client and expressed gratitude that I was available to provide her with moral support. I interpreted the psychologist's repeated questioning of her client about my presence as patronizing to the asylum seeker. A few weeks later, the psychologist asked me to omit her client's name in my dissertation. While I had informed the psychologist numerous times that I was assigning all

participants in this research project a pseudonym prior to the court hearing excerpted above, I again reiterated that I would not reveal her client's identity.

One dimension of the ruling relations of the immigration courtroom is the differential ability to command authority over access to asylum seekers and their hearings. In this example, the psychologist asserted her professional authority in her relentless questioning about my presence with the intended goal of assuring her client's best interests. The psychologist was familiar with graduate student dissertations and knew that I would be taking notes on the hearing that might appear in documents such as academic publications. Having volunteered with the organization that employed the psychologist and having worked with her many times, I am fairly certain that her concern for her client was genuine and that her behavior was exemplary of professional ethics. If she had convinced her client to request that I excuse myself during the hearing, I would have acquiesced to the psychologist's back stage authority regulating courtroom visitors. In the ruling relations of the courtroom, however, the judge's directive for expert witnesses, not observers, to leave the courtroom demonstrates how interactions shift from back stage to front stage once the source of authority is converted from the immigrant service provider to the judge.

Once the judge enters the courtroom, these discussions are suspended and the court is officially in order. On occasion, a court clerk will enter and utter the "all rise" request to cue courtroom attendees to stand. More often, however, judges enter unannounced and are greeted by differential conformity among those present in the courtroom regarding the respectful standing position.

### 5.1.3 Asylum Hearings

The initial hearing for an asylum seeker is a master calendar hearing. Like arraignment hearings, plaintiffs enter a plea and have an opportunity to notify the judge of problems such as access to legal representation or ability to produce required documentation. Immigrant representatives may request additional master calendar hearings until all problems are resolved and the plaintiff is prepared for a merits hearing.

Master calendar hearings, like merits hearings, have numerous cases scheduled simultaneously. For master calendar hearings, plaintiffs are typically called in the order they appear on the computer printout sheet posted outside the courtroom and on the fifteenth floor clerk's lobby wall. Master calendar hearings tend to be crowded and there is no privacy for the plaintiff during these proceedings. The exchanges among judges, assistant district counsels, attorneys, interpreters, and migrants in master calendar hearings are audible to everyone in the courtroom.

All documentation must be entered into evidence during the master calendar hearing. Rarely do judges admit additional evidence during a merits hearing. Documentation in the asylum applications include the I-589 asylum application form; a declaration, that is a statement outlining applicant's narrative of persecution; identity documents, if available, such as birth and marriage certificates; expert witnesses' affidavits; and the U.S. State Department and human rights organization reports on country conditions. In *The Conceptual Practices of Power*, Dorothy Smith (1990a) criticizes claims to knowledge that sociologists make based on "data generated by the state in the course of its practices of governing" (85). The application materials are a kind of data that judges, assistant district counsels, and asylum seekers' attorneys use to make arguments about the legitimacy of the claim. The documentation frames the discourse in

the courtroom and restricts migrant's ability to discuss their case outside of the boundaries circumscribed by the documentation. For example, part of the documentation is the migrant's own declaration which is assumed to contain an accurate account of the persecution the migrant experienced. As discussed in chapter 4, asylum seekers are often reluctant to discuss sexual violence with their attorneys. If an asylum seeker did not disclose that she was raped to her attorney (and therefore this information would not be in the declaration), but during her hearing reveals that she was raped, the client may be deemed non-credible because her declaration is assumed to contain an accurate account of why she left her country.

The merits hearing is the part of the asylum trial when the assistant district counsel and immigrant representative have opportunities to make their case before the judge. Once the hearing begins, all parties are sworn in and asylum seekers usually testify from their seat. Sometimes judges insist that testimony is given from the witness stand and then the asylum seeker and the interpreter, if present, will sit together at the witness stand. Sometimes expert witnesses testify during merits hearings. Expert witnesses always testify from the witness stand. At the beginning of the hearing, judges ask if there are any witnesses in the courtroom and order them to be sequestered in one of the nearby waiting rooms.

Like other venues in the American judicial system, immigration court hearings are structured by a series of questions and answers. The applicant's attorney asks questions and the applicant answers; the assistant district counsel asks questions and the applicant answers; the applicant's attorney may ask further questions on re-direct and the judge may interject at any time during the proceedings. In asylum hearings, immigrants tell their stories through a controlled exchange of questions and answers, moderated by the judge and attorneys.

#### 5.1.4 Interpretation of Cultural Practices

Because most plaintiffs in immigration court do not have English as a first language and many do not speak English, language translators provide interpretation during the hearings. The immigration court in Los Angeles has an exclusive contract with the interpretation service Berlitz International Inc. Interpreters are Berlitz consultants and are not employees of the U.S. government. In 1991, a lawsuit brought forth by several legal service organizations made the Los Angeles court responsible for providing language interpreters during all hearings (*El Rescate Legal Services v Executive Office of Immigration Review*). This contrasts with interviews conducted by the INS asylum office where applicants are responsible for providing their own translators and often bring a family member or friend. Interpreters are contacted by Berlitz and report to the administrative clerk's office prior the hearing.

During an interview with Ben, an interpreter, I asked how he responded to situations when he suspected that asylum seekers did not understand what was asked of them by judges and attorneys during hearings. He replied, "There is not much an interpreter can do. We do not exist. We are only the tongue. Sometimes the question is not clear or does not make sense. It may be a poor question, but we still have to interpret, we have no choice." Yet another interpreter, Luxmi, described a different reaction to communication misunderstandings. She articulated a cultural practice in Sri Lanka of head nodding such that a side-to-side nod indicated a positive response and a forward nod indicated a negative response. She described her frustrated response during a hearing for a Tamil asylum seeker: "the judge told the asylum seeker, 'you are saying yes to the interpreter but you are shaking your head no.' There was no way I would not let the judge give him asylum because of the nod. I told the judge what was happening." These examples illustrate how differential understandings of one's role as interpreter induce varying reactions, from

complicity (remaining silent in one's powerless status as "tongue") to intervention (asserting one's authority as an interpreter of cultural acts). In this case, the judge accepted the interpreter's explanation of the nod and granted asylum to the Sri Lankan applicant.

Asylum seekers have a legal right to language translators, if needed (Germain 2000). While the INS has policies that govern language translation (I discussed these policies in chapter 4), there are no immigration court policies that dictate whether translators are limited to interpreting an asylum seeker's testimony. The repercussion for non-English speaking asylum seekers is that their ability to articulate the required narration of persecution often depends on their translators' willingness to engage authority on their behalf. In this example, a language translator used a non-legal criterion (intervention beyond official guidelines) to facilitate the judge's understanding of the Sri Lankan asylum seeker's behavior while testifying during court.

In this section, I have offered my data as a contribution to the scholarship on institutional ethnography by identifying how non-legal criteria and non-legal sources of authority contribute to the ruling relations in immigration court. In the next section, I excerpt six asylum hearings that show how immigration judges, assistant district counsels, and immigration attorneys engage visible, legal authority and invisible relations of ruling that are based on other criteria of persecution. The first three hearings represent how the subtexts of gender, race, and class invoke assumptions about migration motivation and discrimination. The last four hearings show how a specific line of interrogation invokes assumptions about document acquisition, perceptions of harm, temporal recall, and sensory perception.



## **5.2 RULING RELATIONS IN IMMIGRATION COURT ASYLUM HEARINGS**

Sociolegal scholarship has explored the implication of how stories, or narratives, are told in legal settings (Coutin 2001; Delgado 1989; Delgado and Stefancic 2004; Ewick and Silbey 2003; 1998; 1995). Richard Delgado (1989) argues that the legal framework for storytelling is characterized by neutrality but actually serves the status quo. A narrow examination of asylum grants and approvals is limited in that it only indicates the outcome of a case, not the social interactions that organize the ruling relations of the hearings. In this section, I expand on sociolegal scholarship by using Smith's argument about ruling relations to explore how non-legal criteria, in addition to legal criteria emerge during the implementation of asylum law. I focus on five narrative forms by which such criteria are introduced: migration motivation, discrimination, document acquisition, perception of harm, and temporal recall.

### **5.2.1 Migration Motivation**

In order to gain asylum, an applicant must be viewed as credible, as discussed in chapter 4. During my observations of immigration court hearings I found that any assumption of incredibility invokes suspicion that the applicant's motivation to migrate was based on economic or other reasons, not fear for his or her life, a crucial component for claiming persecution. Once an applicant is deemed non-credible, the language of work enters into the line of questioning by judges and attorneys concerning how the applicant is surviving in the United States. If the applicant is surviving by working, he/she is seen as having migrated for economic reasons. Yet in order to survive, most people are working. It is only the economically privileged who enjoy the luxury of not working until their claim is adjudicated.

Asylum seekers are often privileged in their class status *vis-à-vis* persecuted populations, demonstrated in their ability to migrate based on human rights abuses. Persecution *per se* does not result in the ability to gain asylum; instead one must marshal resources to cross nation-state boundaries and claim relief from harm. Because asylum seekers tend to be economically solvent, immigration judges and assistant district counsels often assume that asylum seekers who are working at the time of their hearing migrated for economic reasons, not because they had a well-founded fear of persecution, as I show in this section.

Like other venues in the American judicial system, immigration court hearings are structured by a series of questions and answers. The applicant's attorney asks questions and the applicant answers; the assistant district counsel asks questions and the applicant answers; the applicant's attorney may ask further questions on re-direct and the judge may interject at any time during the proceedings. Assistant district counsels prosecute all immigration cases. Like assistant district attorneys who represent the people by prosecuting criminal cases, assistant district counsels are charged with the responsibility of litigating on behalf of the government. In asylum hearings, immigrants tell their stories through a controlled exchange of questions and answers, moderated by the judge and attorneys. The following hearing demonstrates how migration motivation via discourses of work and family are intrinsic in the asylum process. In May of 2002, an Afghan asylum seeker testified in immigration court that he left Afghanistan "because the Taliban killed my parents and someone told me that the Taliban was after me because of my association with the anti-Taliban *Watan* party." The following is the exchange among the assistant district counsel (ADC), the immigration judge, and the respondent:

ADC: Are you aware of the change in government in Afghanistan?

Respondent: I don't know that.

ADC (sounding hostile, which continues throughout hearing): Is it your testimony that you don't know anything about Afghanistan in the last two years?

Respondent: Yes.  
ADC: What about your wife and children?  
Respondent: I am worried about them.  
ADC: Are you in contact with your wife and children?  
Respondent: No.  
ADC: Where are your wife and children?  
Respondent: They were going to Pakistan.  
ADC: Your statement says that you are afraid to go back because of the interim government. How do you know about it if you don't know anything about Afghanistan in the last two years?  
Respondent: I've had no contact with Afghanistan in two years and no English.  
Judge interjects: Mr. \_\_\_\_\_, no one has told you that the Taliban is no longer in power?  
Respondent: But they are still fighting.  
Judge (now shouting and emphasizing every word): Answer my question with a yes or no; No one has told you that the Taliban is no longer in power?  
Respondent: No.

In the example offered, the applicant obviously knows more about Afghanistan than the judge. Yet the judge's perception of the asylum seeker's lack of knowledge of world political events makes him suspect as a non-credible witness of basic knowledge that eight months after the U.S.-led invasion of Afghanistan, he was oblivious to the regime change. Moreover, he insinuated that official regime change does not constitute peace in his response that "they are still fighting." The questioning between the assistant district counsel and respondent resumed and after a few questions pertaining to his ethnic identity the subject turns to work:

ADC: Who is \_\_\_\_\_?  
Respondent: He repairs carpets.  
ADC: Is he related to you?  
Respondent: No, he's just a friend.  
ADC: What was your occupation in Afghanistan?  
Respondent: Weave rugs.  
ADC: How long have you been in the profession of weaving carpets?  
Respondent: Nine years.  
ADC: Is that why you are here in the United States today, to have a rug business?  
Respondent: No, no business. I weave for others.  
ADC: Are you weaving in the United States?  
Respondent: No. I stayed with \_\_\_\_\_ for 16 months. I'm not working.

In this case, even though he testified that he has a well-founded fear of persecution, the applicant became suspect as an economic migrant because he appeared to lack political knowledge. Ultimately, he was denied asylum. His responses about the whereabouts of his wife and children, however, went unquestioned.

Consider a Chinese woman seeking asylum because of her arrest and beatings for practicing Falun Gong. She testified that she was diagnosed with a neurological disease and her symptoms dissipated after six months of daily practice in a public park. After the Chinese government banned Falun Gong in 1999, she, along with others, continued to practice it in private homes. One day the police arrested her and, during her interrogation, she was hit, slapped, and forced to sign a confession letter admitting she was a reactionary element and agreeing to cease the practice and report weekly to the police. She stated that she was harassed by the neighborhood committee and that she feared she would be “thrown in jail with more beatings” if she returned to China. The following are excerpts from her hearing:

ADC: How old are your children?

Respondent: 15, 18, 19

ADC: You left your family and came all the way to the United States?

Respondent: Yes

ADC: You left your children?

Respondent: Yes

ADC: And all this over Falun Gong?

Respondent: Yes

After questioning her about how she was able to leave China, the assistant district counsel turned to the subject of work.

ADC: Did you come to the United States to work?

Respondent: Yes, I work.

ADC: Isn't it true that you came to the United States to work?

Respondent: No.

ADC: Are you in contact with your mother, husband, or children?

Respondent: Yes.

ADC: What does your mother have to say?

Respondent: She asked me if she can see me again before her death.

Judge interjects: If I understand what you're saying, you left your husband, daughter, and sons to come to the United States because you didn't want to report to the police one time per week? We're done.

Unlike the earlier example of the male asylum seeker whose familial abandonment goes uncritiqued, this female asylum seeker is vilified for leaving her husband and children. Moreover, it is the very act of her abandonment that makes her suspect as non-credible: real mothers would never leave their families. Yet this gendered logic does not lead to questions of whether she is indeed a mother or a wife. Instead, the questions turn to her motivation for coming to the United States. The judge's decision to end the hearing and, subsequently, to deny her asylum demonstrates the complexity of defining persecution. For the judge, her case was frivolous because reporting weekly to a police station seemed an unreasonable explanation for departure even though she testified that contact with the authorities resulted in physical harm.

These examples show how migration motivation emerges as a non-legal criterion through discourses of family and work in the controlled exchange moderated by judges and attorneys. People migrate for complicated and seemingly contradictory reasons that may include fleeing human rights abuses and desire for better (or at least different) working conditions. Yet the class and gender subtext of the asylum hearings subordinate narratives of harm to stories of work and lead to questions of credibility. The ruling relations of immigration court accept narratives of persecution only from economically solvent asylum seekers, evidenced in the use of the non-legal criterion of migration motivation instead of asylum law based on a well-founded fear of persecution.

### 5.2.2 Discrimination

A second example of how non-legal criteria emerge in asylum hearings is when persecution is believed to be discrimination. To establish asylum, migration must be based on persecution, not discrimination. Asylum law is clear that harassment or discrimination alone does not rise to the level of persecution (Germain 2000:32). Examples of behavior that are considered discrimination but not persecution include rock throwing, damage to property, and burglary of homes (Germain 2000:32). In the following example of a Sri Lankan couple, extreme discrimination by Sinhalese against Tamils and interracial couples led not only to a persecutory act (rape) but to the refusal of the police to respond. An interracial Sri Lankan couple (male applicant is Eurasian, female applicant is Tamil) received phone calls by unidentified Sinhalese men threatening to kidnap their son, rape the wife, and kill the husband. One of these threats was carried out as the wife experienced multiple rapes in her home by a Sinhalese man who told her she should not have married a white man. The following is the testimony of the male applicant:

Respondent's Attorney: Do people know you are Eurasian?

Respondent: Yes.

Respondent's Attorney: How?

Respondent: Complexion. English.

Respondent's Attorney: Did you have problems?

Respondent: Yes. I was abused and called names.

Judge interjects: Discrimination as a child is not a basis for asylum.

Respondent's Attorney: What race is your wife?

Respondent: Tamil.

Respondent's Attorney: After you were married, how did Sri Lankan society treat you?

Respondent: They did not accept us. They treated us like foreigners.

Respondent's Attorney: Instances?

Respondent: My wife was sexually harassed and violated when I wasn't there.

Respondent's Attorney: Who did this?

Respondent: A Sinhalese person.

Respondent's Attorney: Why did he do this?

Respondent: Said I couldn't be married to her because I was Eurasian. This guy was raping her in my house.

Respondent's Attorney: Did you report this to the police?

Respondent: Yes.

Respondent's Attorney: Did they do anything?

Respondent: No. The police are all Sinhalese.

The judge denied the case and in his oral decision repeated that discrimination is not a basis for asylum and that "criminal activities are common in Sri Lanka." The questioning of the rape was in the context of general discrimination instead of rape as persecution on account of race, an alternative approach. The Sinhalese police's refusal to respond to the rapes was a legally acceptable reason to grant asylum. Asylum includes harm committed by the government or those the government cannot or will not protect one from. In this example, the government (Sinhalese police) did not protect the Tamil woman from the intruder's rapes. Moreover, the male applicant testified that the police's non-responsiveness was because of the ethnic majority status of the police ("the police are all Sinhalese"). Like Richard Delgado's (1989) critique of how hegemonic narratives reinforce the racial status quo, this case demonstrates how discrimination conceals persecution demonstrated in the judge's reasoning of racial persecution as criminal normalcy. This example demonstrates how the law is subordinated to a non-legal criterion of discrimination through the judge's refusal to interpret the events as persecution.

### **5.2.3 Document Acquisition**

The third theme is document acquisition. Asylum seekers are viewed as non-credible when they enter with fraudulent documents. During the asylum interview asylum officers and immigration judges interrogate migrants about their identity and identity documentation. Unlike Americans who bring forth a grievance or request within the U.S. legal system, asylum seekers

overwhelmingly lack proof or evidence regarding their claim. In addition to not being able to prove that they were persecuted, they often cannot offer proof of their own identity. Asylum seekers often travel or are smuggled across national borders with no identity documents or false documents. Migrants often gain exit from and/or entry into a country by any means necessary in order to flee persecution. Yet entering with false documentation can prove problematic for immigrants who must be deemed credible during their interview or hearing.

When asylum seekers acquire fraudulent documents in order to flee, their credibility is often undermined. The following is excerpt is from an immigration court hearing I witnessed in Los Angeles. A government-employed Armenian physician reported bribes and corruption by the Armenian government. As a consequence, he was arrested and tortured, his son kidnapped, and his daughter killed. Upon his release, he applied for, and was granted, a visitor's visa from the United States Consulate. The following excerpt is from his hearing and is an example of how fraudulent acquisition of documentation was the basis for an immigration judge's denial of asylum.

Judge (hostile tone): I want to understand what happened at the United States Consulate. What kind of visa did you ask for?

Respondent: They did ask that question, why are you going. I said I just want to see that country.

Judge: Is that true?

Respondent: No. Not the real reason. But if I did they would not let me go.

Judge: So you made a false application to enter the country?

Respondent: So I could flee.

Judge: Why didn't you ask to come as a refugee, as a persecuted person? You lied.

Respondent: I came because this is a free country.

Judge: There are a lot of free countries. Why come so far, there are many much closer, why pick one so far away?

Respondent: Because none of those countries are America.

Judge (sarcastic tone and emphasizing each word): So you came here because it's a freedom-loving country and you thought you could just disappear?

Respondent: Yes, I've always loved this country.



During his decision, the judge questions the applicant's credibility based on the fraudulent acquisition of identity documentation:

Entry is a concern of the court. If an alien comes by means to circumvent the asylum process the court should look at this. He gave false information to obtain visa and obtained visa by fraud. The court agrees with the government [INS] that this is incredible that anyone who claims fear would be given a tourist visa. The court believes this is an attempt to deceive the court. The court finds this grounds for denial. But he has established persecution and a probability of future persecution. To grant would encourage others to enter fraudulently. I am denying your claim for asylum and granting withholding of removal.<sup>35</sup>

Credibility is central to the outcome of the case. The applicant's fraudulent means of acquiring documentation makes him appear non-credible as someone fleeing persecution.

Immigration judges are legally bound to grant some form of relief that prevents asylum seeker's from being deported if the applicant has proven a well-founded fear of persecution. Asylum is one form of relief.<sup>36</sup> If the judge did not think that the applicant had shown a well-founded fear of persecution, he could have denied him asylum. Instead, he granted a form of relief with fewer benefits than asylum. The judge introduces an interesting logic when he shifts the blame to the applicant by assuming that the U.S. Consulate would never have issued a travel visa to someone fleeing persecution. It is certainly true that had he articulated fear he would probably not have been issued a tourist visa because fleeing persecution assumes a more permanent migration than tourism. According to the applicant's testimony, however, the Consulate did not know he feared persecution; thus, issuing a travel visa was in order.

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<sup>35</sup> The immigration judge in this case granted withholding, not asylum, to the Armenian asylum seeker. A withholding grant allows immigrants to remain in the country without being deported. Unlike a grant of asylum that allows immigrants the opportunity to apply for permanent residence one year after their approval and eventually for citizenship, withholding offers no status advancement. Nor does withholding allow immigrants the option of petitioning for relatives. As discussed in chapter 2, the applicant may appeal the judge's decision to the BIA.

<sup>36</sup> In chapter 2, I discussed the principle of *nonrefoulement* that protects all asylum seekers from deportation to a country where they fear they would experience persecution. Other forms of relief, in addition to asylum, include withholding of removal and provisions found in the Convention against Torture, the Nicaraguan Adjustment and Central American Relief Act (NACARA), the ABC Settlement, and the Haitian Refugee Immigration Fairness Act (HRIFA).

Susan Coutin's (2001) work on accounts of political violence by Salvadoran and Guatemalan immigrants finds that those that do not conform to a specific legal discourse of persecution result in denial of asylum. One expected narrative in asylum hearings is that asylum seekers whose documentation was obtained under deception are non-credible. Unfortunately, for the asylum seeker, the judge's suspicions of the asylum seeker's motivation for coming to the U.S. for reasons in addition to fleeing persecution, persuaded the judge not to grant him asylum. The problem with the judge's decision is that there was no legal basis for granting him withholding of removal instead of asylum. Instead, the judge's decision appears to be rooted in a non-legal criterion based on an asylum seeker's acquisition of fraudulent document that allowed him to flee persecution.

#### **5.2.4 Perception of Harm**

Perception of harm is the fourth non-legal criterion that is often used in addition to legal criteria during asylum hearings. Legally, acts constituting persecution are considered as such regardless of the applicant's perception of the act. For example, if a woman has been circumcised she has experienced persecution based on female circumcision according to asylum law. Yet in the courtroom, perception of the act can be as important as the act itself. Patricia Ewick and Susan Silbey (1995) argue that specific stories emerge as hegemonic in legal narratives. For example, in asylum hearings, female circumcision is hegemonic vis-à-vis other types of harm, such as political activism. In cases of female applicants who claim multiple types of persecution, political activism is made invisible, and subordinate to, narratives of harm based on female circumcision. The following are excerpts from Helima's hearing, a Nigerian woman seeking asylum based on two separate types of persecution: female circumcision and torture as a result of

her political activities in Nigeria. Of the asylum seekers excerpted in this chapter, she is the only one whom I interviewed personally. During our interview, she told me that she left Nigeria because she feared further retribution after being detained and tortured and only learned of female circumcision as a means for gaining asylum after arriving in the United States. Her family lived in the United States during her early childhood, and when she was seven, they returned to Nigeria.

Respondent's Attorney: What happened when you returned to Nigeria?  
Respondent: Family decided I should have FGM [Female Genital Mutilation] for honor.  
Respondent's Attorney: Did they inform you of this decision?  
Respondent: Henna and jewelry, but they did not tell me.  
Respondent's Attorney: Did you want to be circumcised?  
Respondent: No.  
Respondent's Attorney: Any anesthesia used?  
Respondent: No.  
Respondent's Attorney: Physical discomfort?  
Respondent: Yes, first my elder sister came in and when I heard her screaming [I] ran away.  
Respondent's Attorney: At present do you have any symptoms as a result of circumcision?  
Respondent: Yes.  
Respondent's Attorney: What are they?  
Respondent: Fear of adults can do anything to you for any reason.

The attorney's questioning demonstrates that it is insufficient to have experienced circumcision; an interrogation of its meaning is also necessary. If the act itself was sufficient, the attorney could submit a medical affidavit or have a medical expert testify that the applicant was circumcised (this is common as means of proof in these cases). Instead, the asylum seeker's perception of the harm is questioned in terms of her consent, physical (medical) complications, and symptoms. I was surprised that she used fear of adults as a symptom of her circumcision since the attorney's line of questioning infers medical complications, not social repercussions.

Susan Coutin's (2001) account of Salvadoran and Guatemalan migrants shows how defecting from the expected hegemonic narrative oftentimes leads to a denial of asylum. Fortunately for this asylum seeker, her deviation from the medicalized narrative of female circumcision was not used to deny her asylum. The hearing then turned to her political activities in Nigeria.

Respondent's Attorney: What else happened in Nigeria?

Respondent: At the end of high school we decided, my friends and I, to wear what we want and came wearing trousers. A van came to school and out came five men, and they arrested us and forced us to enter the van. They took us somewhere unknown, and we went to a room and they locked us in the room. They beat us and tortured us and taught us how we should be dressed.

Respondent's Attorney: When you say you were beaten, what do you mean?

Respondent: I was taken to a bench and people would come by and hit.

Respondent's Attorney: Were you actually hit?

Respondent: Yes.

Respondent's Attorney: For how long?

Respondent: 2 hours.

Respondent's Attorney: And then what happened?

Respondent: Took us to a room and we could hear people screaming. They told us would take us away and we would be disappeared.

In the judge's oral decision, he stated that female genital mutilation was clearly covered under *Matter of Kassinga* (1996), the precedent case establishing female circumcision as a basis for asylum, and that he was granting asylum based on that harm, not the account of being detained and beaten. The Nigerian asylum seeker's narrative of beatings and threats of disappearance is subordinated to the narrative of female circumcision making her political activism and its retribution invisible in the hypervisibility of persecution based on female circumcision.<sup>37</sup> This example demonstrates how female immigrants' own experiences and

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<sup>37</sup> Refusal to wear clothing deemed appropriate for women may not seem obvious as form of political activism. The act of wearing of pants was not political because Helima and her friends decided to "wear what they wanted," but because refusal to dress in ways deemed appropriate by the Nigerian government resulted in her being arrested and tortured.

understandings of political activism are rendered invisible when their claim also includes persecution based on circumcision. In this example, the non-legal criterion of perception of harm is crucial for determining persecution even though the act of female circumcision is legally considered persecution regardless of the applicant's view of her circumcision.

### **5.2.5 Temporal Recall**

A fifth means by which immigrants' experiences are made invisible is temporal recall. Asylum seekers are often asked "what was happening while . . ." during their account of being beaten, tortured, or raped. The common line of questioning, "What was happening while,?" is meant to demonstrate the connection between events and the act of persecution. Even after a detailed account of physical violence, they are almost always asked what was happening while they were being beaten, tortured, or raped. This line of questioning is problematic for at least two reasons. First, it assumes that something separate from the act of persecution was happening, often nothing else is happening. Second, it assumes that the asylum seeker is capable of an awareness of this event even though he/she is being persecuted while it is happening. More importantly, there is no legal foundation for this line of questioning. Instead, it is a non-legal criterion for determining persecution.

The following court hearing demonstrates how temporal perception of events serve as evidence of persecution. An Armenian woman sought asylum because her husband had converted to the Jehovah's Witness faith and had begun beating her because she would not agree to convert too:

Respondent's Attorney: Why did you leave Armenia?

Respondent: Not on good terms with husband, wanted a certain period of time in

peace with cousins.

Respondent's Attorney: Why not on good terms with husband?

Respondent: He had changed his religion and wanted me to change to his.

Respondent's Attorney: Did husband do anything?

Respondent: He beat me and gave me a hard time. Beating, kicking, using his punches on my arms, on my legs.

Respondent's Attorney: Were you injured as a result?

Respondent: Yes, on foot and leg when he hit on my face, my eye was swollen and nose, he pushed me and I fell onto the ground and when I got concussion I was hospitalized.

Respondent's Attorney: Other injuries?

Respondent: Once I fell and he fell onto me and I heard a sound and a part of my abdomen got torn.

Respondent's Attorney: Describe what was happening while your husband was hitting you.

Respondent (looks confusingly at her attorney): He was hitting me.

Based on the hearings I observed in court, the woman's response is typical given that she has already described the act of persecution and the injuries she suffered as a result of his beatings. A contemporaneous account of events is an invisible criterion of persecution in asylum hearings. While a narration of physical violence is necessary, it is not sufficient in that questioning such as "what was happening while" assumes additional germane information to the act of persecution. This line of questioning assumes a dual consciousness of persecution: the harm or act of persecution which asylum seekers are required to describe, and some assumed extra-persecutory event(s) salient to the persecution. Her narrative of harm ("he was hitting me") is eclipsed by the attorney's questioning about additional accounts while she was being hit. In this example, temporal recall emerges as a non-legal criterion, in addition to the legal criterion of physical violence, that is used for determining persecution.

### 5.3 UNEQUAL RULING RELATIONS

A legal-based narrative of persecution alone is insufficient for gaining asylum when the ruling relations of the courtroom include non-legal criteria such as migration motivation, discrimination, document acquisition, perceptions of harm, and temporal recall, in addition to legal criteria.

Like Justice Stewart's directive of "knowing it when I see it, and this isn't it," immigration judges often deem the testimony of immigrants as insufficient to constitute persecution. Accounts of persecution are insufficient if immigrants are suspected of coming to the United States so as to work; if a woman migrates without her husband and children; if a member of an ethnic minority is raped and physically threatened in a country assumed prey to discriminatory violence; if one acquires fraudulent documentation in order to flee his country, if the practice of female circumcision is not perceived as harm; and if simultaneous events beyond an attack are not recounted during a domestic violence dispute. In only two of the six asylum hearings excerpted above was the applicant granted asylum. The Nigerian applicant was granted asylum because of female circumcision, even though this was not the reason for her departure, and the Armenian applicant was granted asylum because of religious persecution based on her refusal to convert to her husband's religion. Three cases were denied and one was granted withholding of removal.

Asylum seekers are legally responsible for articulating a narrative of harm that is satisfactory to a court in which visible legal authority, as well as hidden criteria operate. These criteria, such as migration motivation, discrimination, document acquisition, perceptions of harm, and temporal recall influence the implementation of asylum law. Together with the visible sites of authority these constitute the ruling relations of immigration court. These ethnographic

data reveal some of the inner workings of immigration court and the multifarious forms of authority that constitute its ruling relations, unmasking concealed subtexts that produce unequal ruling relations. In the everyday world of asylum hearings, restrictions on the immigrants' narratives result in an institutional structure that is unfair and unjust.

This chapter seeks to contribute to institutional ethnography by offering immigration court as a site of organized practices and power relations. I also seek to advance Dorothy Smith's (1987) theory of the everyday world as problematic by including the standpoint of immigrants. I offer three examples of visible sites of authority that include spatial arrangement, interpretation of cultural acts, and scheduling of hearings that immigration judges, language interpreters, and immigration attorneys exercise over and above the legitimate authority of asylum law. Together, the sites of authority and the criteria for persecution constitute the hidden ruling relations of immigration court asylum hearings that circumscribe migrants' subjectivity. Smith (1987) argues that sociological inquiry should create knowledge for women in order to understand the social world from our location. I also argue that social relations should be viewed from the standpoint of the less powerful, but add that in order to understand how migrants' subjectivity is circumscribed in immigration court asylum hearings invisible, non-legal criteria must be illuminated.



## **6.0 THE GENDER REGIME OF ASYLUM**

In this chapter, I draw from sociological, postcolonial, and subaltern feminist theories to provide a conceptual framework for understanding how protectionism and victimization are rooted in assumptions about gendered harm. I argue that the implementation of gender-based persecution laws and policies reveals the continued contestation over what I term “a gender regime” in asylum practices.

### **6.1 THE GENDER REGIME OF ASYLUM**

Relying on feminist sociologist R. W. Connell’s (1987) understanding of a gender regime as “the state of play in gender relations in a given institution,” I argue that a gender regime structures asylum practices (120). Connell’s formulation is useful for thinking about asylum practices because it focuses on gender as a dynamic process in institutions, rather than on gender roles or status. Institutions are important because they are sites of power. I substitute “state of play” with “practices” to call attention to the behaviors and discourses of specific individuals. Those who contribute to the gender regime of asylum practices are situated in various institutional positions: asylum officers and immigration judges adjudicate asylum claims, immigration attorneys and service providers prepare asylum applications, language interpreters translate testimony, and asylum seekers articulate narratives of persecution that resist and reproduce legally and culturally

accepted explanations of harm. I use the term practices in an effort to reveal the social dynamic among differently located individuals and their access to power and authority.

I begin with Connell because his definition of regime situates institutions as the structural basis for understanding gender relations. The limitation to Connell, however, as Chandra Talpade Mohanty (2003) observes, is that his discussion of institutional regimes in general, and state regimes in particular, is silent on “racial formation” (65). Connell’s formulation is limited because its two-dimensional analysis of gender and sexuality does not address the racial and national composition of gender regimes. The gender regime of asylum consists of nationally ordered constellations of protectors and victims.

Postcolonial feminist Gayatri Spivak’s (1985) discussion of subaltern subjectivity and global imperialism in her often-quoted statement that “white men are saving brown women from brown men” (121) provides a point of departure for deciphering some of asylum’s shifting images of protector and victim. First, there is a national gender regime in which judges, attorneys, and others in power (American men and women) are seen as protecting female asylum seekers (noncitizen women) from the cultural practices of noncitizen men. These cultural practices may include forms of gender-based persecution such as domestic violence and rape. Second, there is a national gender regime organized by American men and women protecting female asylum seekers (noncitizen women) from the cultural practices of noncitizen women. These cultural practices may include female circumcision and honor killing. Third, there is a national gender regime in which American men are seen as protecting noncitizen women from American women. In this third gendering order, female asylum officers are often the authority on what constitutes gender harm. For example, ethnocentric assumptions about contraceptive use on the part of female asylum officers can inform how they adjudicate claims based on coercive

population control. Spivak argues that race and gender are linked in ways that yield racialized and gendered protectors and victims. Gender-based persecution cases, however, often exhibit slightly different orderings of protectors and victims since they are also structured by citizenship differences. Not all immigration judges and asylum officers are white, but they are all U.S. citizens. Thus, the racialized dimension of asylum is often rendered mute in its subordination to national difference.

The gender regime of asylum is also structured by an insecurity of ethnocentric harm and a fear of exotic harm. A key assumption in asylum practices is the bifurcation of ethnocentric and exotic harm. The demarcation between ethnocentric and exotic reflects the cultural assumptions embedded in the practices of judges, asylum officers, attorneys, and service providers—not objective differences of gendered harm. I make use of the binary exotic/ethnocentric to show how gendered harm is often articulated as one or the other by immigration judges, asylum officers, immigration attorneys, and immigrant service providers – not because all forms of gendered harm “fit” into one category or the other. For example, forced sterilization is overwhelmingly discussed in terms of harm that happens to non-American women even though many American women have been subjected to this practice. Angela Davis (1983) traces the history of racism and reproductive rights for African American women who experienced forced sterilization and resisted racism through “self-imposed abortions” (205). Unlike domestic violence, forced sterilization was not articulated as national gendered harm during my interviews with immigration judges and asylum officers. Instead, it was depicted as a practice that happens exclusively to non-American women.

In her critique of Western feminist knowledge, Chandra Talpade Mohanty (2003) accounts for the production of ethnocentric universalism in “feminist discourse on women in the

Third World” (21). One problem with some Western feminist scholarship, according to Mohanty, is that it assumes nonWestern experiences as monolithic. Mohanty offers examples of how some Western feminists assume a singular third-world experience in the Zed Press series she criticizes. In this section, I offer asylum practices as an example of differential—not monolithic—treatment of female asylum seekers.<sup>38</sup>

For example, those who measure domestic violence by U.S. standards are ethnocentric in that the American experience of domestic violence serves as the yardstick for adjudicating asylum claims. Unlike other forms of gender-based harm, domestic violence invokes a floodgates discourse from immigration judges and asylum officers. “What are we supposed to do, let everyone in?,” one judge responded when I asked about domestic violence asylum claims. The ethnocentric assumption in the judge’s response is that like the United States, all nations of the world are plagued by domestic violence. Yet the floodgates discourse as applied to domestic violence contradicts numerical evidence of these claims. Immigration courts are hardly filled with domestic violence claimants, and when I inquired with the same judge about the number of domestic violence cases she had adjudicated, her response was “none.” Were it the case that the judge had adjudicated numerous domestic violence claims, her questioning, “What are we supposed to do, let everyone in?” assumes a widespread occurrence of the practice. The discrepancy between the judge’s response of “none” and fear of domestic violence claims opening a floodgate may be due to her anticipation that laws recognizing valid bases for asylum claims will increase the volume of those claims. This phenomenon may be demonstrated in other asylum claims when new laws or policies are introduced. However, the notion that “everyone” is

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<sup>38</sup> Asylum seekers in the United States are from both Western and nonWestern nation-states. Binaries of West/nonWest and first/third world are inaccurate representations of the asylum-seeking population.

eligible for asylum from domestic violence assumes a global prevalence of harm. The state of insecurity over domestic violence creates anxiety in the regime of asylum by calling into question the protectionism of American women demonstrated in the following reprise of asylum officers and immigration judges about American women who experience domestic violence: “Where will they go to for asylum?”<sup>39</sup>

The gender regime of asylum practices is also structured by a fear of exotic harm. Female circumcision claims, unlike other gender-based claims, are met with the resounding assurance that they constitute persecution prior to an asylum seeker’s account of harm. For example, during an immigration hearing on female circumcision, the applicant’s attorney requested that a medical doctor offer expert testimony. The judge retorted: “The form that the government accepted says that she had FGM [female genital mutilation]. Why do we need a medical doctor to testify? This is superfluous. We don’t need a psychiatrist to tell us about FGM; it’s common knowledge that it’s a horrific practice.” In an e-mail exchange with a medical doctor who documents evidence of torture for asylum applicants, she stated, “I think female genital mutilation is one of the great travesties of our time, and we need to get the word out.” One difference between domestic violence and female circumcision claims is that the latter are almost automatically assumed to constitute persecution. This is demonstrated in the service provider’s affirmation of the practice of female circumcision as a “great travesty.”

Postcolonial feminists Uma Narayan (2000) and Lata Mani (1998) provide examples of how sati, or the South Asian practice of widow burning, constitutes exotic harm in various contexts. Narayan focuses on Western constructions of third-world societies as “totalizing cultures” in which cultural practices are seen as essentially tied to place. She cites the ahistorical

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<sup>39</sup> Based on my field notes, 5 judges and 4 asylum supervisors made this statement to me.

and apolitical appropriation of sati by Western feminists who see this practice as central to women's subordination in India. In her historiography of sati, Lata Mani (1998) argues that Indian women were the "ground for a complex and competing set of struggles over Indian society and definitions of Hindu tradition" (2). Narayan's focus on Western feminists and Mani's account of colonial officials provide a parallel framework for understanding how immigrant advocates and asylum adjudicators regard female circumcision as exotic harm.<sup>40</sup> Female circumcision, unlike domestic violence, signifies cultural backwardness—a cultural practice exclusive to migrant women. Similar to Indian women who were burned, circumcised female migrants provide the "ground" for assumptions about women's oppression.

## **6.2 GENDERED ASYLUM PRACTICES**

Four themes recur in interviews and documents reflecting how protectionism and victimization structure a gender regime in asylum practices. The first theme, gender synonymy, is the assumption that women, but not men, experience gender-related persecution. The second theme, cultural essentialism, is the idea that harm is associated with essentialist assumptions of cultural practices. The third theme, women's agency and private harm, is the notion that private harm is fundamentally different from public harm. The fourth theme, gender authority, is the gendered character of authority and knowledge.

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<sup>40</sup> Criticism of practices such as sati is not exclusive to Western feminists. While this topic is beyond the arguments I make in this dissertation, it is important to note that many South Asian feminists, in addition to Western feminists, construct essentialist frameworks as a platform for criticizing the practice.

### 6.2.1 Gender Synonymy

The first theme is demonstrated in the Immigration and Naturalization Service (INS) memorandum informing asylum officers that women may have “asylum claims based wholly or in part on their gender,” thereby equating gender with women (Coven 1995). As a synonym for women, gender, a relational concept, is reduced to descriptive status.<sup>41</sup> This has practical implications for how gender is understood among those working with asylees. Not a single person I interviewed could provide me with an example of gender-based persecution faced by heterosexual men. In many inquiries to the INS, judges, and attorneys about whether there were examples of men who experienced gender-related persecution, I was met with the following refrain: “What do you mean, like the gay cases?” I was amazed at this response since heterosexual men experience coercive family planning through forced sterilization practices and are raped as political prisoners.<sup>42</sup> Certainly, it is no coincidence that heterosexual men’s persecution, although in fact gendered, does not resonate with immigration authorities as gender-specific, since they assume that only women experience gender-related harm.

Asylum claims by gay men are far more easily understood in terms of issues of gender by INS employees, judges, and attorneys than gendered claims of heterosexual men since gay men are assumed to have the potential for gender-specific persecution claims. In 1994, Attorney General Janet Reno affirmed, and ordered published, the Board of Immigration Appeals (BIA) decision that granted asylum to Fidel Armando Toboso-Alfonso, a gay man from Cuba. This case set a legal precedent that “homosexual status” established membership in a social group, a

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<sup>41</sup> The omission of men as a group who may have “asylum claims based wholly or in part on their gender” in the INS memorandum demonstrates how women, but not men, or assumed to have the potential to experience gendered harm, therefore equating women with gender.

<sup>42</sup> These examples are not gender-based forms of harm to the exclusion of sexually-based or politically motivated forms of harm. I include them here because in practice, men are overwhelmingly considered to not experience gender-based harm.

victory for gay rights fueled by U.S. anti-Communist foreign policy reflecting how insecurity and fear of communism continues to circumscribe U.S. asylum law (*Matter of Toboso-Alfonso*, 20 I. and N. Dec. 819 BIA 1990).<sup>43</sup> Immigration attorneys and service providers elicit a specific account of persecution based on legal precedent to enhance the chances of winning. For gay men, the legally accepted narrative of persecution is homosexual identity. Yet a narrative of gender nonconformity is often how applicants describe persecution.

One afternoon, during a meeting with an immigration attorney, we were interrupted by a client who wanted to talk about his anxiety over the possibility of being denied asylum. He had an appointment with the INS asylum office the following day to receive the results of his interview. “I can’t believe I did it, I wasn’t thinking. There won’t be time for it to grow back; now they will kill me for sure!,” he breathlessly exclaimed as he paced across the room. “What do you mean? What are you talking about?” the attorney replied. After a few more outbursts, the client sat down and tearfully described how he had plucked the hair between his eyebrows and was worried that if he were to be deported that there would not be time for his hair to grow back. He continued by introducing himself to me as being from a Middle Eastern country where, according to him, “men do nothing to care for themselves.” Therefore, his newly manicured brow would identify him unequivocally as homosexual. The asylum seeker’s account of persecution was not one of homosexual identity per se. Instead, like other gay men seeking asylum I interviewed, he articulated a narrative of gender nonconformity. In his understanding, plucking one’s eyebrow represents a deviation from accepted forms of masculinity.

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<sup>43</sup> During my interviews with several immigration attorneys (Sarah, Paul, Marcos, and John) they stated that the only reason that *Matter of Toboso-Alfonso* was ordered published was because the asylum seeker was Cuban, therefore creating legal precedent for communist-based homophobia.



R. W. Connell (1995) uses Antonio Gramsci's notion of hegemony to demonstrate that within any gender regime there are institutional practices that construct and govern the relationships among masculinity, femininity, and sexuality such that some gendered and sexual practices are dominant and others subordinated. According to Connell, femininity is subordinated to masculinity and male homosexuality is subordinated to male heterosexuality. In the gender regime of asylum practices, gender transgression is subordinated to homosexual identity. Asylum claims of homosexuals are typically granted because of legal precedent, a positive outcome for asylum seekers and their advocates. However, the subordination of gender transgression erases the applicant's agency and reinscribes victimization in the "forced" account of homosexual persecution. Asylum seekers are not limited to claiming one ground of persecution. In this case, the asylum seeker could have claimed a fear of persecution based on gender transgression and sexual identity.<sup>44</sup> Instead, his attorney submitted an application based on sexual orientation. Neither gender nor sexuality need be subsumed under the other. However, in practice, immigration attorneys tend to argue that men who transgress expected norms of masculinity be considered for asylum because of their homosexual identity, not as a form of gender-based persecution.

The INS memorandum specifying that women experience gender-specific persecution was meant to provide guidance for dealing with female applicants. Immigration policymakers assumed that men would never require gender protection. Yet, as the example of the asylum seeker's gender transgression of Middle Eastern cultural expectations of masculinity demonstrates, men too may need the protection of gender-based persecution policies.

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<sup>44</sup> I use the categories of gender and sexual identity as two distinct categories of persecution because that is how they exist in the law.

## 6.2.2 Cultural Essentialism

The second theme that emerges in the gender regime of asylum practices is that essentialist assumptions of cultural practices dominate understandings of harm. Ethnocentric forms of harm are often subordinate to exotic forms of harm in gender-based persecution claims. For example, in all of the interviews with asylees who had been granted asylum because of female circumcision, I found that although their own account of persecution did not center on the act of genital circumcision, this emerged as the primary basis on which their claim was granted.

Like most of the women I interviewed who had been granted asylum because of female circumcision, Sahara did not leave Ethiopia because of this. In fact, Sahara did not consider her circumcision harm at all as it was performed in infancy and she has no memory of it. Instead, Sahara left Ethiopia after she was jailed and tortured for being an Eritrean national while she lived within the territorial boundaries of the Ethiopian nation-state. Sahara spoke extensively to me about the detention and torture she endured as an Eritrean minority. She discussed her rapes while being imprisoned in the context of being Eritrean, not in the context of being female. Having lived most of her life in Ethiopia, unaware of how nationality served as a marker of difference, she tearfully concluded her narration of imprisonment with the realization “that is the day I knew I was Eritrean.” When the conversation turned to female circumcision, she told me that she didn’t understand why “they” (her attorney and service providers) were talking about “that” (female circumcision) when it had nothing to do with why she left Ethiopia. She explained that they told her it would help her with the asylum case and that she only talked about it to gain asylum. She stated, “In my tradition, it’s normal, it’s private; we don’t talk about it. When they told me I had to talk about it, I said okay, if it helps me. I was shy about it. It was embarrassing. It was hard for me. But I had done so much to get here [the United States] so I did it.”

Nuha, a married woman with three children, came from Sudan. Nuha's husband was politically active in a pro-democracy group, and although never harmed, was threatened repeatedly, which prompted their departure. Nuha and her family knew nothing of the possibility of asylum prior to arriving in the United States. It was only after meeting other Sudanese in Los Angeles that her husband filed an asylum application based on his political activities. While waiting to hear the outcome of her husband's case (he had filed an application and was interviewed by an INS asylum officer), the attorney suggested the entire family enter therapy with a local group that worked with persecuted populations. A therapist questioned Nuha about whether she had been circumcised, and upon discovering that she had, encouraged Nuha to notify the attorney and file a new claim for asylum with her as the primary applicant. The asylum officer denied her husband's claim, and he was referred to immigration court. However, a different INS asylum officer approved Nuha's claim based on female circumcision. According to my interview with Nuha and transcripts from her health care provider, she spoke openly with her health care provider about how she "felt about the experience." "It was awful. I have so many problems now with my periods. It took two months for my husband to open me—and much pain after we were married. We have lots of problems with this in my country."

A transcript from the dialogue between Margaret, the health care provider, and Nuha shows that:

I asked her if she would want this tradition continued on her daughters. She replied, "Never." Asked if she were sent back to Sudan, "Could anyone do this to them?" She responded, "Yes. They would take them when I wasn't home." "Who would?" I inquired. "My grandmother," she replied.

Similarly, Margaret's notes indicated that:

It is clear from her statements that Nuha had a traumatic experience during her genital mutilation. It had profound impact on the eventual sexual relations with her husband. As female genital mutilation of young girls is a customary

practice in her country of origin, Nuha is understandably fearful for her children. Should she be forced to return to the Sudan with her family, she believes her two young daughters would be similarly subjected to the practice, despite her sincere objections and efforts to prevent its occurrence.

As discussed in the previous chapter, Helima, an asylum seeker from Nigeria, was detained and tortured for wearing pants with a group of women at her high school graduation. After much difficulty obtaining a travel visa, she was able to leave the country after her release from prison. Helima knew about asylum and left the country with the intent of applying for asylum upon arriving in the United States. Some of her family members were already in the United States, and a family friend assisted with her initial asylum application. At her asylum interview, she was asked about female circumcision but would not discuss it because her family sent a male interpreter. Her case was denied by the INS asylum officer and referred to immigration court. Helima's family blamed the attorney for her asylum denial and sought new legal assistance. Her second attorney was familiar with female circumcision cases and questioned Helima with the aid of a female interpreter. Although reluctant, Helima admitted that she had been circumcised at the age of eight along with her sister by her mother, two aunts, and her grandmother. During our interview, Helima spoke little of her circumcision and was very concerned about women's rights in Nigeria and how the Islamic government was "oppressing" women in ways that did not conform to the "true" teachings of Islam. Margaret recorded the following notes from Helima's visit:

She experienced a sustained laceration to the left heel when she was 22 and was roughly shoved into a van by police who were opposed to her attire of slacks. Having spent her early years in the USA with her family, she recalls returning to Nigeria where the clothes she wore in America were frowned upon. But more remarkably, she experienced the ritual of female genital mutilation with her sister at age 8. Her sister was mutilated before her and when she heard her sister's scream she tried to escape but was caught and held down.

Margaret referred to her case as “not much,” and before the trial, her attorney, Sarah stated, “nothing really happened, I doubt she’ll win.” [referring to the incident of being arrested and tortured]. Conversely, the health care provider told me that Nuha “had a very strong case and was pleased to hear that she didn’t want to mutilate her daughters.”

As mentioned earlier, none of the women I interviewed claimed to me that they left their country because they were fleeing a forced circumcision or because they considered their own circumcision a form of persecution. Instead, they left because they were detained, tortured, and/or lived with the threats of detention or torture of a spouse. Upon their arrival in the United States, however, immigration attorneys and service providers instructed them that past persecution based on female circumcision would facilitate their ability to gain asylum.

These examples demonstrate how asylum seekers from cultures that practice female circumcision are encouraged by immigration attorneys and service providers to claim their own circumcision as persecution regardless of the actual motivation for fleeing their country. This cultured discourse of fear creates a hypervisibility to exotic practices such as female circumcision and decreases visibility of less exotic practices such as political activism, torture, and detention in the asylum application. Immigration attorneys and health care providers claim they are acting in the applicant’s best interest by working toward the goal of gaining asylum. Their strategy is often effective since they have limited options in the current anti-immigrant climate. However, such practices intensify a gendered regime in which immigration attorneys and service providers become protectors of women faced with exotic harm and create a new gendered victim based on a cultural act the asylum seeker may not consider to be persecution.

Immigration attorneys and service providers who assist asylum seekers with their applications encourage the subordination of ethnocentric accounts of rape, imprisonment, and

political activism to exotic stories of female circumcision. The differential treatment of female circumcision cases counters the claim of a monolithic reaction to gendered harm. Female asylum seekers who have been circumcised provide the “ground” for cultural assumptions about women’s oppression. Unlike other types of gender-based harm, female circumcision is always persecution. Conversely, other types of gender abuses are only considered persecution if the claimant articulates the act as harm. During my interview with Nuha, she described conditions of her arranged marriage that would legally qualify her for asylum based on forced marriage. Yet her attorney and service providers did not inquire about her marriage. Moreover, unlike the adverse reaction from Nuha’s physician about her circumcision, there was no such reaction about her marriage. The gender regime of protectionism re-victimizes circumcised women and erases alternative stories of female asylum seekers’ political agency. These examples demonstrate how, unlike the examples of how men seeking asylum are assumed to never experience gendered harm, women, conversely, are worthy of asylum usually in terms of narratives of exotic practices.

### **6.2.3 Women’s Agency and Private Harm**

The third theme of the gender regime of asylum is women’s agency and private harm. The types of persecution that female asylum seekers may flee, which include domestic violence, forced marriage, female circumcision, and honor killings, overwhelmingly take place in “private” institutions such as the family. As many feminists contend, the types of harm women face often are erased, deemed unproblematic, and assumed natural when they occur in a sphere of privacy that renders such acts invisible. Susan Moller Okin (2000) argues that the fundamental problem with incorporating women’s human rights into an existing human rights framework is that

theories, laws, and ideas of what constitutes human rights follow an androcentric model. Men's experiences provide the framework for human rights, and the types of persecution women face are rendered invisible as legitimate cases of harm. Several immigration attorneys provided examples of the "early days" when judges and asylum officers were suspicious of rape as a form of persecution. During our interview, Paul, an immigration attorney, stated that:

My recollection of the rape cases [is that we] were losing them because it was a crime; it was a terrible thing that happened to you, but clearly a soldier raped you it's just like being raped by an off-duty LAPD [Los Angeles Police Department] cop. We would present evidence about women who were raped by Haitian soldiers and how the military is used in Haiti. But the gut reaction of the immigration court or the BIA [Board of Immigration Appeals] or the circuit court was that it's personal, it's a terrible thing, but it's a personal problem, you're a victim of crime.

Immigrant advocates emphasize the struggles they encountered in convincing immigration judges and asylum officers that violence against women is persecution.

A key transition in the legal scholarship on gender-based asylum and in interviews with immigrant advocates is the assumption that people in positions of power are becoming more sympathetic to gender-based persecution claims as laws and policies have made these claims acceptable forms of persecution. Although changes in laws and policies have been beneficial for immigrant women in many ways, assumptions of "public" harm continue to circumscribe the relationship between the persecuted and persecutor. In gender-based asylum claims, the relationship between the persecuted and persecutor is fundamentally different because a relative is often the persecutor. Mothers and grandmothers perform circumcisions, husbands abuse their wives, and fathers and brothers commit honor killings. An additional battle for immigrant advocates has been to convince judges and asylum officers that a family member can be the persecutor.

What is absent in this documented struggle is the continuity of familial relationships. Embedded in assumptions about “public” harm is the supposition that the persecuted would never continue a relationship with the persecutor. All of the women I interviewed who were granted asylum because of domestic violence, honor killing, and female circumcision were in contact with their persecutors because they were in contact with their family members. In the example of Helima, her mother, who was present at her circumcision, was living with Helima and other family members at the time of Helima’s asylum hearing. This relationship counters assumptions of discontinuity that inform relationships based on public harm.

Sophia, a Jordanian asylum seeker, described to her attorney how she was kidnapped, forced to marry her husband at the age of fifteen and suffered extensive abuse. Sophia’s case was based on forced marriage, domestic violence, and threats of honor killing. The following is a statement from her asylum declaration:

My life of slavery, filled with continuous beatings, rape, torture, and psychological and mental abuse had started. From the beginning he abused me; for my religious beliefs, for being a woman who dared to defy his authority and control, for any actions that made him look like he did not have complete power over me. He has almost beaten me to death in the past. Now that I have dared to escape from slavery and from his control I have served him with divorce papers. I am sure he will carry out his threats to kill me and the authorities will do nothing to protect me.

Yet during our interview she told me that she had spoken with him over the telephone to arrange travel for their daughter to come to Los Angeles. Now, this man—described in her declaration narrative as the persecutor—has her new address and phone number. Gender-based persecution laws and policies are intended to protect women from private harm. However, protecting women from private harm can alter familial relationships and narrow women’s agency.

Restrictions on agency are the cornerstone of the gender regime of asylum practices. The following is an example of how asylum practices of immigration attorneys subordinate women’s



agency to a narrative of victimization. Most of the asylum-related documents I was able to collect were from the final asylum application. These include the I-589 INS application form, photocopies of identifying documents, such as birth certificates and marriage certificates, a declaration that outlines the applicant's reasons for applying for asylum, medical and psychological reports, and human rights reports of country conditions. I came upon an unexpected goldmine when I befriended a paralegal who, with the approval of two attorneys, allowed me access to the preliminary notes on three cases. With these, I was able to see how an attorney puts together an application and the changes that are made from the initial to the final drafts of the packet. In the attorney's file on Sophia, there was an application where the answers were filled in with Sophia's handwriting. I interviewed the attorney and Sophia, and they both affirmed that the attorney prefers clients to fill out the application first and then bring it back so that they can work on it together. Her application detailed beatings and sexual violence, leaving her with permanent hearing loss in one ear, complete with photographs of her abuse and one of the AK-47s her husband placed between them at night.

Question six on the application asks, "What do you think would happen to you if you returned to the country from which you claim you would be subjected to persecution?" In the initial handwritten application, the answer to this question is: "I will kill my husband." This answer stands in stark contrast to the typed one in the final and submitted application: "My husband will kill me." In the physician's assessment of Sophia, he wrote, "Wants to kill her husband, needs Valium."

Sophia exercised agency (and perhaps honesty) by writing that she wanted to kill her husband. Sophia's attorney changed her answer to avoid the likely possibility of the denial of her asylum application. Additionally, her physician pathologized Sophia's response to her husband's

abuse in his recommendation for medication. The gender regime of asylum provides few opportunities for women to voice outrage and desire for retribution toward their persecutors. Asylum seekers must therefore articulate an account of victimization in order to make the claim that they have been persecuted. Intrinsic in the claim to persecution is a claim of victimization; it is a fundamental dimension of the regime of asylum practices. Chandra Talpade Mohanty (2003) argues that “defining women as archetypal victims freezes them into ‘objects who defend themselves,’ men into ‘subjects who perpetuate violence,’ and every society into powerless (read: women) and powerful (read: men) groups of people” (24). This example suggests that women are expected not to defend themselves, but even worse, that they should be victims until someone else helps them. In the gender regime of asylum practices, migrant women are victims in need of protection from their abusive families. The outcome of Sophia’s case was positive; the granting of asylum afforded her legal status in the United States. However, like so many other examples of asylum grants I have offered, it comes with the expectation of a narrative of victim status.

#### **6.2.4 Gender Authority**

The fourth theme of gender authority discussed in this article demonstrates how female asylum officers and immigration judges appropriate authority based on assumptions of ethnocentric harm. Dorothy Smith’s (1987) primary contention in *The Everyday World as Problematic* is that society is organized by androcentric ruling relations that render women’s experiences and forms of knowledge “invisible” (4). One problem with Smith’s argument is that she assumes that men are exclusively responsible for androcentrism without exploring the ways in which women perpetuate androcentric ruling relations. In gender-based claims such as rape, forced

sterilization, and forced abortions, women emerge as agents of authority in the gender regime of asylum practices. While female asylum officers and judges most likely have not experienced forced sterilizations or abortions, their experiences with consensual abortions and birth control can provide an ethnocentric venue for exerting power in asylum adjudications. During asylum interviews and hearings of female circumcision claims, the veracity of the applicant is not interrogated based on the act of exotic harm. Because female circumcision is almost automatically considered persecution, evidence of its occurrence is sufficient as demonstrated in the example offered earlier of the judge who responded to female circumcision as a “horrific practice.” Conversely, acts of ethnocentric harm are not automatically considered persecution and female asylum officers and judges assume a gendered authority in differentiating “real” victims.

During an interview, Jeffrey, an asylum officer, discussed how female asylum officers were suspicious of Chinese asylum seekers who claimed persecution based on forced sterilization because of unexpected pregnancies caused by their faulty intrauterine devices (IUDs). He stated:

At one point we heard people testify that the IUD that had been implanted by the medical people didn't fit right. It would fall out. How was that possible? Women officers would tell you that it was impossible. Then we found somewhere, an independent source, that IUDs used by the Chinese government were notorious for not fitting and causing problems, causing complications, falling out, causing unwanted pregnancies.

According to Jeffrey, female asylum officers denied these cases because the asylum seekers did not appear credible. In order to gain asylum, an applicant must be viewed as credible. Arguably, credibility is the most important feature of asylum. Credibility includes demeanor, specificity,

detail, and consistency. In short, credibility is a kind of believability, and asylum officers are legally bound to question whether the asylum seeker's testimony is believable. In the example of the faulty IUDs, American female asylum officers appropriate gendered authority in determining what constitutes a believable story of persecution. This example demonstrates a national gender regime in which American men are seen as protecting noncitizen women from American women.

A second example shows how a female judge appropriated authority in the following oral decision of a Chinese woman seeking asylum because of forced abortions:

The applicant testified that she had four abortions. The first in April of 1988 and the last in January of 1995 but did not file an application for asylum until September of 2000. If the last abortion was in January of 1995, why wait until September of 2000? The Court finds it incredible that the applicant had four abortions. The Court does not believe that any woman would suffer through four abortions. The Court believes that this woman would say anything to remain in this country.

Similar to other Chinese asylum seekers fleeing forced sterilization practices, this applicant was deemed noncredible because her account of persecution did not support the assumptions of the adjudicator. The judge's assumptions may not necessarily be rooted in an ethnocentric framework, although nonetheless asinine. The judge engaged assumptions about the reasonable number of abortions a woman would "suffer" and invoked her gatekeeping role as protector of the American citizenry by refusing admittance to dishonest migrants.

A third example of how gendered authority structures the decisions of asylum officers and supervisors is the following exchange between a former asylum officer, Walter, and his female supervisor. According to Walter, he had approved an application where a female applicant had disclosed that she was raped. His female supervisor would not approve his decision, arguing that the applicant was lying. Walter's account of the interaction was that:

Most of my supervisors were women and they seemed to be harder on women than the male supervisors. I had one supervisor who told me she'd been raped.

She said, “I don’t think that is the way that a woman who has been raped acts.”  
What am I going to say about that? I’m a guy. I have no clue about that at all.  
She never saw the woman; she was looking at the file.

A female supervisor’s personal experience of rape and her comparison of it to what is believable testimony of an asylum seeker’s rape claim reflects women’s gendered authority. Walter’s deference may be explained, in part, because of his subordinate position in the workplace bureaucratic hierarchy. However, Walter articulates his acquiescence to his supervisor in gendered terms, as a “guy” who is unable to provide an acceptable rebuttal to the female gendered experience of sexual violence.

These examples demonstrate how female asylum officers and immigration judges can perpetuate androcentric assumptions about gendered harm that impedes female asylum seekers ability to gain asylum. The harm of forced sterilization, forced abortions, and rape is appropriated by women in an effort to establish gendered authority that can be based on ethnocentric assumptions. Male asylum officers often respond to women’s essentialist notions of experience by intervening on behalf of female asylum seekers. Protectionism takes on a gendered character demonstrated in men’s protectionism of female asylum seekers and women’s protectionism of their own position of power and authority.

### **6.3 PROTECTIONISM AND VICTIMIZATION**

The passage of gender-based persecution laws and policies laid the groundwork for gender equity in asylum adjudication. The implementation of these laws and policies, however, reveals how assumptions about ethnocentric and exotic harm inform asylum practices. A narrow

examination of asylum grants and approvals is limited in that it only indicates the outcome of a case, not the social interactions that organize asylum practices.

Based on ethnographic data, I have argued that the institution of asylum is structured by a gender regime of protectionism and victimization based on insecurity of ethnocentric harm and fear of exotic harm. Assumptions about masculinity and femininity, sexuality, cultural essentialism, women's agency, and authority create a gender regime based on principles of protectionism and victimization found in the practices of asylum officers, immigration judges, immigration attorneys, and asylees. These data show that asylum is regulated by a gender regime based on four themes of asylum practices: women, not men, experience gendered harm; the narratives of women that include political activism, detainment, and torture, subordinates them to the practice of female circumcision; women are usually worthy of asylum if they articulate traditional narratives of sexual victimization; American women police gendered harm through acts of ethnocentric authority.

Asylum seekers are legally responsible for articulating a narrative of harm that is satisfactory to asylum officers and immigration judges. Those who do not conform to an acceptable legal discourse of persecution may jeopardize their chances of gaining asylum. Therefore, it is always in the best interest of an individual asylum seeker to conform to the hegemonic narrative of persecution. The reward for asylum seekers is considerable — protection against deportation and the frightening possibility of violence and death. However, this conformity has serious consequences for reproducing a structural dynamic of inequality through the subordination of subversive stories to hegemonic narratives of gender and persecution that may undermine gender justice.

## 7.0 CONCLUSION

Gender is important for understanding transnational migration, human rights discourses, and citizenship policies. The implementation of gender-based asylum policies and laws reveals the ways in which gender structures the social processes and practices that shape immigration, citizenship, and human rights in the United States. Through the lens of gender-based persecution claims, I have identified how immigration practices are mediated through certain assumptions about race, ethnicity, nationality, sexuality, and class that certain groups, including asylum seekers, immigration attorneys, service providers, immigration judges, and asylum officers, engage in when making, preparing, and adjudicating these claims.

This study situates the U.S. in global and local space by illuminating how its immigration policies and practices are a visible and contested site of power in transnational processes. Gender-based asylum claims show how, based on Inderpal Grewal and Caren Kaplan's critique, the global can hardly be considered "somewhere else"; to the contrary, the global is here.

A key theme in the globalization literature is that human rights discourse and movement of people pose a threat to national sovereignty. Proponents of this position argue that international law and policy provide universal standards of personhood and notions of humanness that ostensibly transcend how any particular nation-state might conceptualize and make policy decisions. Consequently, a nation-state's sovereignty is eroded because power and

control comes from somewhere other than the nation-state. This study contributes to this debate by offering gender-based asylum claims as an example of how nation-states are still the primary force shaping citizenship. My data show how migration, one of the two global forces that Arjun Appadurai (1998) argues will bring about the demise of the nation-state, strengthens, not weakens, the nation-state.<sup>45</sup> Therefore, my research contradicts predictions of the demise of the nation-state (Appadurai 1998). The United States is not weaker because of transnational human rights movements and discourses operating outside of the nation-state. To the contrary, its strength lies in its ability to determine who may gain entry and under what circumstances.

Another contribution this project makes is that it is the first empirical study of how gender affects asylum in the United States. Instead of focusing on the passage of gender-based asylum policies and laws as a final outcome, as found in much of the legal scholarship on this topic, I took gender-based laws and policies as a point of departure to inquire about their implementation. The data gleaned from research design of this project allowed me to show how these laws and policies are implemented rather than focus exclusively on their passage.

I have argued that the role of narrative is central to understanding asylum proceedings. This project makes explicit that the way in which a story of persecution is told is often more important than the story itself. This ethnographic project captured data regarding asylum seeker's narratives. A narrow examination of grants and rejections is limited in that it only indicates the outcome of a case, not the social interactions that organize asylum practices.

Asylum seekers must be deemed credible in their asylum interviews and hearings. I have focused on what constitutes credibility for those with gendered harm as a significant component to their claim. Credibility is often based on extra-legal criteria that include acquisition of identity

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<sup>45</sup> The second global force is the media.



documentation, recall of dates and events, emotional testimony about sexual violence, employment status, and actions regarding familial abandonment. These criteria contribute to a hegemonic narrative in asylum adjudication that is hegemonic through both its social control and its conformity regarding *how* stories of persecution must be told; that is, the telling of the narrative is hegemonic as well its content.

This dissertation contributes to the literature on sociolegal studies, institutional ethnography, and postcolonial feminist theory. I contribute to the sociolegal literature by expanding Ewick and Silbey's framework of hegemonic stories in arguing that even though the content of a particular story may be hegemonic, the story may be narrated in such a way that its telling is either hegemonic or subversive. Additionally, my work emphasizes agency among differently situated participants, in addition to the claimants who bring forth grievances, such as asylum officers, immigration attorneys, and immigrant service providers, who engage in acts of resistance and confront hegemonic power structures on behalf of those who are unfamiliar with the INS asylum bureaucracy.

My data contributes to institutional ethnography by offering immigration court as a site of organized practices and power relations. I advance Dorothy Smith's (1987) theory of the everyday world as problematic by including the standpoint of immigrants. I refine her idea of androcentrism by arguing that women, in addition to men, contribute to a gender regime of asylum practices that circumscribe female asylum seeker's ability to articulate their own narratives of persecution.

Finally, these ethnographic data contribute to postcolonial feminist theory. In her critique of Western feminists' depiction of third world women as monolithic, Chandra Talpade Mohanty (1991) teases out the nuances of how Western feminist discourse serves as a hegemonic

framework for understanding women's lives outside of the West. Instead of treating gender-based cases as a unified whole, I have shown how different types of gendered harm are adjudicated in the United States. Throughout the dissertation, I have argued that a central component to understanding how gender-based persecution claims are adjudicated is that gender alone is an insufficient category of analysis for examining and critiquing asylum practices. Instead, race, class, nation and sexuality inform the practices of asylees, immigration attorneys, immigrant service providers, asylum officers, and immigration judges when applying for, preparing, and adjudicating gender-based asylum claims.

The analytical potential of gender-based asylum claims as a means of understanding migration, citizenship, and human rights discourse and activism is far reaching. The study of these claims does much more than illuminate androcentric immigration policies. These claims provide proof that the nation-state is racialized, that human rights discourses and activism do not erode national sovereignty, and that asylum is an endeavor in nation building regarding who gains entry and which migrants become potential citizens. Gender is the analytical lens through which all of these transnational processes become visible in the local space of the United States.

Immigrant advocates view the passage of gender-based asylum laws and policies as a feminist victory. In many ways, they are correct. The introduction of these laws and policies was monumental. Gender-based persecution laws and policies allow immigrant women to claim asylum based on forms of harm that historically were not considered persecution. The INS, the institution that determines who gains entry into the United States, recognized sex equality as central to its mission. These laws and policies are certainly a victory for those who interpret their passage as institutionalizing feminist social policy. Yet these gains are bitter sweet. Their application shows a limited understanding of gender on the part of those who implement these

laws and policies. When asylum officers and immigration judges assume that only women experience gender-based persecution, take for granted that women are persecuted solely on the basis of their gender, and engage ethnocentric understandings of harm in their decisions, the feminist victory that immigrant advocates champion looks more like a gendered defeat. However, the anti-immigrant policies and practices introduced after September 11<sup>th</sup> temper criticisms of the gender-based policies and give pause to the more frightening possibility of the abolition of asylum in the United States.

### **7.1 GENDERED ASYLUM POLICIES AFTER SEPTEMBER 11<sup>TH</sup> 2001**

The Bush Administration responded to the September 11<sup>th</sup> terrorist attacks through institutional changes that affected immigrants. The first programmatic change was the suspension of the United States Refugee Resettlement program. The postponement of refugee processing left approximately 22,000 refugees with approved applications to enter the U.S. stranded in refugee camps across the globe until the program was reinstated on November 22<sup>nd</sup> 2001 (IRC 2002). Once refugee processing was restored, 70,000 refugees were authorized to enter the U.S. in 2002. Yet only 27,000 refugees gained admission to the United States, reflecting a discrepancy between institutional policy and the practice of receiving immigrants (IRC 2003). Unlike the refugee program that was closed in an effort to prevent terrorists from entering the U.S., the INS asylum offices and immigration courts continued to process asylum applications after September 11<sup>th</sup> 2001. During my interviews with INS supervisors at the Anaheim asylum office and with the supervisor for the assistant district attorneys who represent the federal government in immigration court hearings, I inquired about how the attack affected immigration policy and

practices. Unfortunately, none would discuss policy changes that were implemented in the aftermath of the terrorist attacks and accounted for their silence as necessary in the interests of national security.

On August 12<sup>th</sup> 2002, the INS announced that men from select Middle Eastern and African countries who were already in the U.S. on non-immigrant visas were required to register with the INS by January 10<sup>th</sup> 2003 for any of the following reasons: if they were born on or before December 2<sup>nd</sup> 1986, were a citizen of one of a select list of countries, entered the United States on or before certain dates in 2002, or planned to stay in the United States through the date on their original visa application. Men were exempt from registration if they were diplomats, legal permanent residents, asylees, refugees, or an asylum applicant who filed before November 22<sup>nd</sup> 2002.<sup>46</sup>

In Los Angeles, like many other U.S. cities, many men who obeyed the order were arrested at the INS office (McDonnell 2003b). The INS initially estimated that 500 men were detained nationwide as a result of the registration process, with 200 of those from the southern California region. Conversely, immigrant advocate groups estimated the number to be as high as 1,500 (Watanabe 2003). A few days after the initial INS projected figures of detained immigrant men were made public, the Department of Justice estimated that as many as 24,000 men nationwide were required to register and that 10% of those faced deportation (McDonnell 2003a). Arrests at the Los Angeles INS office galvanized support for immigrants among human rights groups. A number of groups worked together to monitor the treatment of Middle Eastern

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<sup>46</sup> The list of countries includes Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. See the United States Citizen and Immigration Website ([www.uscis.gov](http://www.uscis.gov)) for announcements about the registration process.

and African men who appeared for the required questioning, fingerprinting, and photographing (McDonnell and Mena 2003; Watanabe 2003).

Interpal Grewal (2005) argues that in the aftermath of the September 11<sup>th</sup> terrorist attacks and subsequent immigration policy changes, citizenship has taken on new meanings in response to the gendering and racialization of immigrant deportation. Her examples show how male immigrants draped themselves and their property in the American flag in an effort to signify solidarity among other Americans and deter scrutiny from the INS that would identify them as potential terrorists. She argues that this practice was racialized because of its pervasiveness among non-white, non-Christian, immigrants, including those who were U.S. citizens.

The implementation of asylum law since September 11<sup>th</sup> reflects the Bush administration's anxiety over the masculine character of asylum in the United States. The vetting effort to segregate terrorist migrants has resulted in a policy of registration for men but not women, from select nation-states, thus invoking an interplay among gender, nation, and religion for acceptable migrants. The Bush administration's anti-terrorism policies based on third world male suspects and American imperial protectionism reorganizes the continued fear of immigrants taking root in a new gender regime of asylum practices.

**APPENDIX A**

**INTERVIEW TABLES**

**Table 11: Interviews: Asylees**

<b>Name</b>	<b>Sex</b>	<b>Nation Seeking Asylum from</b>	<b>Ground of Persecution<sup>47</sup></b>	<b>Substance of the Claim<sup>48</sup></b>
Nuha	Female	Sudan	Social Group	Female Circumcision
Kadi	Female	Sierra Leone	Social Group	Female Circumcision Arranged Marriage
Sahara	Female	Ethiopia	Social Group Nationality	Female Circumcision Eritrean Minority Rape
Helima	Female	Nigeria	Social Group Political Opinion	Female Circumcision Women's Rights Activism
Aisha	Female	Ethiopia	Social Group Political Opinion	Female Circumcision Imputed Political Opinion Rape
Zeinab	Female	Somalia	Social Group	Domestic Violence
Carmen	Female	Peru	Social Group	Domestic Violence
Sophia	Female	Jordan	Social Group	Domestic Violence Honor Killing Arranged Marriage
Sharifa	Female	Egypt	Social Group	Arranged Marriage Honor Killing
Nadine	Female	Not Included <sup>49</sup>	Social Group	Honor Killing
Mary	Female	Uganda	Political Opinion	Political Activism Rape
Elizabeth	Female	Cameroon	Political Opinion	Political Activism Rape
Miriam	Female	Iran	Political Opinion	Women's Rights Activism
Robert	Male	Slovenia	Social Group	Sexual Orientation
Billy	Male	Guatemala	Social Group	Sexual Orientation
Dana	Female	Romania	Social Group	Sexual Orientation
Rivka	Female	South Africa	Political Opinion Race	Anti-Racist Activism
Chen	Male	China	Political Opinion	Human Rights Activism
Lucine	Female	Armenia	Political Opinion	Political Activism
Samy	Male	Egypt	Religion	Religious Activism
Shing	Male	China	Political Opinion	Falun Gong

<sup>47</sup> The Ground of Persecution refers to the five legal grounds on which the claim was adjudicated (e.g. race, religion, nationality, political opinion, membership in a social group).

<sup>48</sup> The substance of the claim refers to the specific form of harm, type of activism, or reason for applying for asylum.

<sup>49</sup> I do not include the country Nadine sought asylum from because she remained in danger after arriving in the U.S. As mentioned in chapter 3, her family contacted a relative in California who attempted another honor killing after her arrival.

**Table 12: Interviews: Refugees, Trafficking, VAWA**

<b>Name</b>	<b>Sex</b>	<b>Nation Seeking Relief from</b>	<b>Form of Relief</b>
Taline	Female	Iran (Armenian Nationality)	Refugee
Carina	Female	Iran (Armenian Nationality)	Refugee
Sadija	Female	Bosnia	Refugee
Tim	Female	Thailand	Trafficking
Chioma	Female	Nigeria	VAWA
Maggie	Female	Cameroon	VAWA



**Table 13: Interviews: Immigrant Service Providers<sup>50</sup>**

<b>Name</b>	<b>Sex</b>	<b>Position</b>	<b>Population Served</b>
Nicole	Female	Psychologist	Asylees Torture Survivors
Maria	Female	Therapist	Asylees Torture Survivors
Margaret	Female	Physician	Asylees Torture Survivors
Leah	Female	Case Worker	Asylees Torture Survivors
Snezana	Female	Case Worker	Asylees Refugees
Julie	Female	Case Worker (paralegal)	Asylees Torture Survivors VAWA Claimants
Stephen	Male	NGO Administrator	Asylees Torture Survivors
Alaya	Female	NGO Administrator	Thai Immigrants
Tracy	Female	NGO Administrator	Trafficking Survivors
Masha	Female	Refugee Resettlement Administrator	Refugees
Joseph	Male	Priest	Central and South Americans
Brian	Male	Priest	Detained Immigrants

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<sup>50</sup> All immigrant service organizations provide direct services to migrants.

**Table 14: Interviews: Immigration Attorneys**

<b>Name</b>	<b>Sex</b>	<b>Type of Practice</b>
Karen	Female	Private Practice
Richard	Male	Private Practice
Susie	Female	Private Practice
Judith	Female	Private Practice
Sarah	Female	NGO
John	Male	NGO
Marcos	Male	NGO
Gloria	Female	NGO (paralegal)
Mai	Female	NGO Detention Only
Martha	Female	NGO Detention Only
Paul	Male	University Clinic

**Table 15: Interviews: Executive Office for Immigration Review (EOIR) and the Immigration and Naturalization Service (INS)**

<b>Name</b>	<b>Sex</b>	<b>Organization/Position</b>
Daniel	Male	EOIR Immigration Judge
Jacob	Male	EOIR Former Immigration Judge
Jose	Male	INS Service Processing Center (Detention Facility) Supervisor
David	Male	INS Service Processing Center (Detention Facility) Deportation Officer
Bob	Male	INS Service Processing Center (Detention Facility) Deportation Officer
Michael	Male	INS Asylum Office Supervisor, Former Asylum Officer
Cindy	Female	INS Asylum Office Supervisor, Former Asylum Officer
Jeffrey	Male	INS Asylum Office Supervisor, Former Asylum Officer
Ann	Female	INS Asylum Office Supervisor, Former Asylum Officer
Deborah	Female	INS Asylum Office Supervisor, Former Asylum Officer
Alice	Female	INS Asylum Office Supervisor, Former Asylum Officer
Kathleen	Female	INS Assistant District Counsel Supervisor
Marilyn	Female	INS Former Asylum Supervisor
Walter	Male	INS Former Asylum Officer

**Table 15 Continued**

<b>Name</b>	<b>Sex</b>	<b>Position</b>
Jack	Male	INS Former Asylum Officer
Fred	Male	INS Former Border Patrol Agent
James	Male	INS Former Border Patrol Agent
Doug	Male	INS Former Border Patrol Agent
Mark	Male	INS Former Border Patrol Agent

**Table 16: Interviews: Human Rights Activists and Organization Employees**

<b>Name</b>	<b>Sex</b>	<b>Organization/Position</b>
Phyllis	Female	Amnesty International Activist Women's Rights
Thomas	Male	Amnesty International Activist Immigration Detention Monitoring
Barbara	Female	Human Rights Watch Activist Immigration Detention Monitoring
Jane	Female	Captive Daughters Activist Child Trafficking
Starr	Female	Sanctuary Movement Activist
Anthony	Male	Amnesty International Former Employee Refugee Program
Katie	Female	Human Rights Watch Employee Women's Rights Division
Amanda	Female	Human Rights Watch Employee Refugee Program
Rafael	Male	International Gay and Lesbian Human Rights Commission Employee Asylum Program
Libby	Female	International Rescue Committee Employee Women's Commission

**Table 17: Interviews: UN and U.S. Federal Government Employees, Policy Analysts, Legal Scholars,  
Language Interpreters**

<b>Name</b>	<b>Sex</b>	<b>Organization and Position</b>
Adam	Male	United Nations High Commissioner for Refugees Protection Officer
Susan	Female	United Nations Consultant on Violence Against Women
Charles	Male	Office of Refugee Resettlement Refugee and Asylee Benefits Officer
Becky	Female	Office of Refugee Resettlement California Services Refugee and Asylee Benefits Officer
Akiko	Female	Department of Justice Trafficking Victims Unit Former Employee
Carol	Female	Georgetown University Institute for the Study of International Migration Policy Analyst
Linda	Female	Center for Gender and Refugee Studies Attorney
Nicholas	Male	Center for Gender and Refugee Studies Attorney
Frank	Male	U.S. Attorney Former Trafficking Investigator
Ben	Male	Interpreter Immigration Court
Luxmi	Female	Interpreter Private Practice Attorney
Ted	Male	Los Angeles Times Reporter

**Table 18: Interviews: Immigration Reform Activists and Organization Employees<sup>51</sup>**

<b>Name</b>	<b>Sex</b>	<b>Involvement</b>
Cynthia	Female	California Coalition for Immigration Reform Activist
Samuel	Male	California Coalition for Immigration Reform Activist
Xiomora	Female	California Coalition for Immigration Reform Activist
Erin	Female	California Coalition for Immigration Reform Activist
Charlie	Male	California Coalition for Immigration Reform Activist
Lucy	Female	Ranch Rescue California Chapter Activist
Linda	Female	Limits to Growth Activist
Howard	Male	No Organizational Affiliation Property Owner
Kevin	Male	No Organizational Affiliation
Marlene	Female	Californians for Population Stabilization Employee
Wayne	Male	American Border Patrol Employee
James	Male	INS Former Border Patrol
Doug	Male	INS Former Border Patrol
Mark	Male	INS Former Border Patrol
Fred	Male	INS Former Border Patrol

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<sup>51</sup> Former INS Border Patrol Agents appear twice because they are also immigration reform activists.

**APPENDIX B**

**INTERVIEW SCHEDULES**



## **B.1 ASYLEES**

How did you decide to come to the United States to apply for asylum?

How did you know the United States accepted persons applying for asylum?

Did you know the U.S. accepted persons fleeing gender-based persecution?

What do you know about gender-based persecution in the U.S.?

What was your experience leaving \_\_\_\_\_ and coming to the U.S.?

What happened when you arrived in the U.S.?

Do/did you have an attorney?

If yes, how did you find him/her?

If no, how are you/did you getting through the legal system in the U.S.?

Have you been in detention since being in the U.S.? If so, what were your experiences there?

Are you/did you seeking asylum through INS? If so, what were your experiences with INS?

How is/did the INS interpret your claim of gender-based persecution?

Are you/did you seeking asylum through an immigration judge? If so, what were your experiences with the immigration judge?

How is/did the immigration judge interpret your claim of gender-based persecution?

Do you think you have a claim based on gender-based persecution? Why/why not?

What makes your claim gender-based?

What makes your claim persecution?

How did you understand persecution when you first arrived in the U.S.?

Has it changed since living here? If so, how?

What have been your experiences with talking about persecution since living in the U.S.?

Are these experiences different with different people/organizations (e.g. lawyers, judges, service organizations, etc.)? If so, how?

Are you connected to other asylees or persons applying for asylum?

If so, do you discuss your claims of gender-based persecution with each other?

Do the ways other asylees understand gender-based persecution similar or different from the way you understand gender-based persecution? How is it similar or different?

How do you understand persecution?

How do you understand gender-based persecution?

Is there anything I haven't asked that is pertinent to how you understand persecution?

## **B.2 ADMINISTRATORS, STAFF, AND VOLUNTEERS WITH NGO'S**

When did you begin employment with \_\_\_\_\_?

What type of work did you do before working here?

What is your educational background/professional training?

What positions have you held since working here?

What are your responsibilities?

What type of training did you receive for working with asylees and asylum seekers?

What type of training did you receive with regard to understanding the notion of persecution?

What type of training did you receive with regard to understanding gender-based persecution?

How do you use this training when working with clients?

Are there times when the training is insufficient? If yes, what do you do in those cases?

What procedure do you follow if you need assistance/clarification from a supervisor?

What types of services does your organization provide?

What types of services for women does your organization provide?

What types of services does your organization provide for persons making gender-based claims of asylum?

How do clients locate your organization?

How do you decide if/when clients need referral to other organizations?

If this is because of the type of persecution they have experienced or fear, how do you decide where to refer them?

How does this organization understand persecution, what is the organization's philosophy toward understanding persecution?

How does this organization understand gender-based persecution, what is the organization's philosophy toward understanding persecution?

How do you determine that the client was persecuted or has a fear of future persecution?

How do you determine that the client experienced gender-based persecuted or has a fear of future gender-based persecution?

What sources of information do you rely when you need clarification for determining if a client is eligible for your services?

Are there differences between how you understand persecution for cases of past and future persecution? If yes, what are those differences?

Are there differences between cases of past persecution and those where the fear of persecution is futuristic in terms of the services clients need? If yes, what are those differences?

How do clients talk about persecution?

How do clients talk about gender-based persecution?

Are there differences between how the clients talk about persecution with regards to past or future persecution?

How do clients talk about navigating the legal system in the United States with regard to the asylum application process?

Do you provide legal services?

Do you refer clients to legal services?

How do you understand persecution?

How do you understand gender-based persecution?

Is there anything I haven't asked that is pertinent to how you determine gender-based persecution?

### **B.3 IMMIGRATION ATTORNEYS**

What is your educational background/professional training?

How did you come to practice immigration law?

What type of cases do you represent?

How do clients locate you?

How do you decide whether to take a client's case of asylum?

Are there differences between cases of past persecution and those where the fear of persecution is futuristic? If so, what are those differences?

Does legal representation influence the likelihood of gaining asylum? If so, why might this be the case?

What is the process of representing clients in detention?

Is this different for persons making gender-based claims? If so, how?

What is the process of representing clients not held in detention?

Is this different for persons making gender-based claims? If so, how?

How do you conduct interviews with clients to determine the persecutory nature of the case?

Is this different for persons making gender-based claims? If so, how?

What factors go into your understanding of persecution when deciding to accept a case?

What sources of information do you rely on when building a case of persecution?

Is this different for persons making gender-based claims? If so, how?

How do you determine that the claimant was persecuted or has a fear of future persecution?

How do you establish credibility?

Is this different for persons making gender-based claims? If so, how?

Are there differences between cases of past persecution and those where the fear of persecution is futuristic in terms of how they are adjudicated? If yes, what are those differences?

Are there differences between how you understand persecution for cases of past and future persecution? If yes, what are those differences?

Are there differences between how the claimants talk about persecution with regards to past or future persecution?

Is this different for persons making gender-based claims? If so, how?

Does the presence of an attorney in immigration court influence the applicant's claim? If yes, how so?

Is this different for persons making gender-based claims? If so, how?

Does the presence of an attorney in INS proceedings influence the applicant's claim? If yes, how so?

Is this different for persons making gender-based claims? If so, how?

How do you understand persecution?

How do you understand gender-based persecution?

Is there anything I haven't asked that is pertinent to how you determine persecution in an asylum application?

## **B.4 IMMIGRATION AND NATURALIZATION SERVICE (INS) EMPLOYEES**

### **B.4.1 Asylum Supervisors/Former Asylum Officers**

When did you begin employment with INS?

What type of work did you do before working at INS?

What is your educational background/professional training?

What positions have you held since working here?

What are your responsibilities?

What type of training did you receive from INS?

How do you use this training when making decisions?

Are there times when the training insufficient? If yes, what do you do in those cases?

What type of training did you receive with regards to gender-based persecution?

How do you use this training when making decisions?

Are there times when the training insufficient? If yes, what do you do in those cases?

What is the procedure for making adjudications on cases when you are unclear about the persecutory nature of the case?

What procedure do you follow if you need assistance/clarification from a supervisor?

When/how do you decide to ask for that assistance?

What procedure do you follow when the category of persecution is not clear?

Are there times when it is unclear if the type of persecution is gender-related? If so when?

What factors go into your understanding of persecution when adjudicating a case?

What sources of information do you rely to make your decision?



What sources of information do you rely for gender-related persecution?

Do you compare cases with each other when making your decision?

How are gender-related cases similar or different across cases?

How do you establish credibility?

How do you establish credibility for gender-based claims?

How do you determine that the claimant was persecuted or has a fear of future persecution?

Are there differences between cases of past persecution and those where the fear of persecution is futuristic in terms of how they are adjudicated? If yes, what are those differences?

Are there differences between how you understand persecution for cases of past and future persecution? If yes, what are those differences?

Are there differences between how the claimants talk about persecution with regards to past or future persecution?

Are there differences between how claimants talk about gender and non-gendered forms of persecution? If so, what are those differences?

Does the presence of an attorney influence the applicant's claim? If yes, how so?

Does the presence of an attorney influence anything about your decisions? If yes, how so?

Do you follow the cases that you deny if appeal(s) are is/are made? If yes, how does that influence future decisions you make for similar cases?

How do you understand persecution?

How do you understand gender-based persecution?

Is there anything I haven't asked that is pertinent to how you determine gender-based persecution in an asylum application?

#### **B.4.2 INS Processing Center (San Pedro) Employees**

When did you begin employment with INS?

What type of work did you do before working at INS?

What is your educational background/professional training?

What positions have you held since working here?

What are your responsibilities?

What type of training did you receive from INS?

What type of training did you receive with regards to understanding the notion of persecution?

What type of training did you receive with regards to understanding gender-based persecution?

What is a typical day for detainees at this facility?

Is this different for inmates who are not applying for asylum? If yes, how?

How familiar are you with the claims of asylum detainees make?

What types of services are available for detainees?

Is this different for inmates who are not applying for asylum? If yes, how?

Are there specific services for female detainees?

Are there specific services for persons making gender-based claims of persecution?

How do you understand persecution?

How do you understand gender-based persecution?

Is there anything I haven't asked that is pertinent to how you determine persecution in an asylum application?

## **B.5 IMMIGRATION JUDGES**

What is your educational background/professional training?

What type of positions have you held prior to being an immigration judge?

What type of training did you receive with regards to understanding the notion of persecution?

What type of training did you receive with regards to understanding gender-based persecution?

How do you use this training when making decisions?

Are there times when the training insufficient? If yes, what do you do in those cases?

What is the procedure for making adjudications on cases when you are unclear about the persecutory nature of the case?

What is the procedure for making adjudications on cases when you are unclear about the gender-based persecutory nature of the case?

What factors go into your understanding of persecution when adjudicating a case?

What factors go into your understanding of gender-based persecution when adjudicating a case?

What sources of information do you rely to make your decision?

Do you compare cases against each other?

How do you establish credibility?

Is this different for gender-based claims? If so, how?

How do you determine that the claimant was persecuted or has a fear of future persecution?

How do you determine that the claimant experienced gender-based persecution or has a fear of future gender-based persecution?

Are there differences between cases of past persecution and those where the fear of persecution is futuristic in terms of how they are adjudicated? If yes, what are those differences?

Are there differences between how you understand persecution for cases of past and future persecution? If yes, what are those differences?

Are there differences between how the claimants talk about persecution with regards to past or future persecution?

Is this different for gender-based claims? If so, how?

Does the presence of an attorney influence the applicant's claim? If yes, how so?

Do you follow the cases that you deny if appeal(s) are is/are made? If yes, how does that influence decisions in similar cases?

Do you consider international human rights and refugee law when adjudicating cases? Why/why not and how does this influence your decisions?

How do you understand persecution?

How do you understand gender-based persecution?

Is there anything I haven't asked that is pertinent to how you determine persecution in an asylum procedure?

## **B.6 HUMAN RIGHTS ORGANIZATION EMPLOYEES AND ACTIVISTS**

What type of activism are you involved with?

What type of activism have you been involved with in the past?

How/Why did you get involved with Human Right's Activism?

How/Why did you get involved with asylee and refugee issues?

What are your experiences with working with asylee and refugee populations?

What are your experiences with working with persons making gender-based claims of persecution?

How does your organization understand persecution?

How does your organization understand gender-based persecution?

How do you understand persecution?

How do you understand gender-based persecution?

What are your networks with other human right's groups in Los Angeles?

Does your group differ with those groups with respect to understanding persecution? If so, how?

Does your group differ with those groups with respect to understanding gender-based persecution? If so, how?

What are your networks with other human rights' groups in the United States?

Does your group differ with those groups with respect to understanding persecution? If so, how?

Does your group differ with those groups with respect to understanding gender-based persecution? If so, how?

What are your networks with international human rights' organizing?

Does your group differ with those groups with respect to understanding persecution? If so, how?

Does your group differ with those groups with respect to understanding gender-based persecution? If so, how?

Which cases do you decide to follow and how do you locate these cases?

What are your affiliations with non-activist organizations, groups, or persons working with asylee populations?

Does your group differ with those groups with respect to understanding persecution? If so, how?

Does your group differ with those groups with respect to understanding gender-based persecution? If so, how?

How do you understand persecution?

How do you understand gender-based persecution?

Is there anything I haven't asked that is pertinent to how you understand persecution?

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