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Introduction: Gender in Refugee Law: From the Margins to the Centre

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Gender in Refugee Law

Questions of gender have strongly influenced the development of international refugee law over the last few decades. This volume assesses the progress towards appropriate recognition of gender-related persecution in refugee law. It documents the advances made following intense advocacy around the world in the 1990s, and evaluates the extent to which gender has been successfully integrated into refugee law.

Evaluating the research and advocacy agendas for gender in refugee law ten years beyond the 2002 UNHCR Gender Guidelines, the book investigates the current status of gender in refugee law. It examines gender-related persecution claims of both women and men, including those based on sexual orientation and gender identity, and explores how the development of an anti-refugee agenda in many Western states exponentially increases vulnerability for refugees making gendered claims. The volume includes contributions from scholars and members of the advocacy community that allow the book to examine conceptual and doctrinal themes arising at the intersection of gender and refugee law, and specific case studies across major Western refugee-receiving nations. The book will be of great interest and value to researchers and students of asylum and immigration law, international politics, and gender studies.

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Gender in Refugee Law

From the margins to the centre

Edited by Efrat Arbel,
Catherine Dauvergne, and
Jenni Millbank

Introduction

Gender in refugee law – from the margins to the centre

Efrat Arbel, Catherine Dauvergne, and Jenni Millbank

This collection aims to survey a terrain and set, or re-set, an agenda. The importance of an analysis focused on gender to the development of refugee law, and to the lives of refugees, is now well established. A significant number of advocates and scholars have engaged in trenchant and pressing critique, highlighting the harms of neglecting a gendered analysis and the unjust results for women and men that come from failing to bring a gendered perspective into refugee decision-making. In many ways, the story of gender and refugee law is one of successful feminist engagement with the law, leading to legal and social transformation. Policy-makers and decision-makers in Western refugee receiving countries routinely put gender on the tick-box list of topics for consideration. Despite this trajectory, however, in the most recent years it has become clear that gender is no longer at the forefront of the reform agenda for refugee law. As part of the shift can be explained, ironically, by the tremendous successes of gender-related advocacy, we seek to evaluate what has been accomplished, and, more importantly, what remains to be done. This collection is a key part of this work.

This book is part of a broader project investigating the current status of gender in refugee law, examining gender-related persecution claims of both women and men, including those based on sexual orientation (lesbian, gay, and bisexual) and gender identity (transgender and transsexual). Rejecting the notion that gender is ever essential, innate, or clearly bounded, we strive to examine the conflicting and, at times, paradoxical nature of gender and gender identity in refugee law. We thus look beyond the category of ‘women’ – as it is frequently asserted in the case law – to examine gender more broadly, including male and female experiences of gender-related persecution, and including those based on sexual orientation and gender identity.

At the opening stage of a three-year research project funded by the Australian Research Council, we sought out the support and guidance of researchers and advocacy workers around the world who were engaged in myriad ways with questions of gender in refugee law. Part of this process was a collaborative conversation undertaken at the United States Law and

Society Association annual conference in June 2012.¹ We began by circulating a discussion paper that set out some of our research questions and our hypotheses. For the purposes of this book, the most important of those hypotheses were, first, that gender had been pushed from the centre of the refugee reform agenda, and, second, that lower level decision-making in relation to gender- and sexuality-based refugee claims may not be nearly as progressive as leading jurisprudence would suggest. We asked participants to respond to the discussion paper, and to bring their ideas into a broad conversation about the research and advocacy agendas for gender in refugee law. That conversation took place both formally and informally and has been continuing in various ways since that time. This volume is part of the conversation. As a group, we agreed to leave that conference and to contribute to a volume assessing that current state of research and advocacy for gender and refugee law. We asked participants to write about what has been accomplished and what the pressing priorities are at this point in time. The papers were crafted in response to, rather than in advance of, the conference conversation. As such they are ‘inputs’ rather than ‘outputs’ in our ongoing research project. We read this work as informing what needs to be done from here – the midpoint of our project – rather than as part of a presentation of the research findings.

In introducing this volume, we want to outline the current agenda for research and advocacy in gender and refugee law, as reflected in the collaborative interaction of which this volume forms a part. Before outlining how the chapters that follow inform that agenda, it is important to understand the trajectory of gender-related engagement with refugee law.

Twenty-five years on: feminist engagement with refugee law

The story of feminist engagement with refugee law started in a familiar place for legal feminists. A key piece of the internationally agreed upon definition of a refugee is a list of grounds of discrimination: race, religion, nationality, political opinion, or membership in a particular social group.²

1 The participants in this discussion included Sharryn Aiken, Deborah Anker, Efrat Arbel, Catherine Dauvergne, Janet Dench, Maria Hennessy, Audrey Macklin, Jenni Millbank, Jane Herlihy, Debora Singer, Karen Musalo, Connie Oxford, and our PhD students Janna Wessels and Anthea Vogl. We are also grateful to attendees at the conference who joined the open sessions and contributed to the conversation, and to colleagues who commented on our discussion paper but were unable to attend the conference.

2 Art. 1A(2) of the United Nations Convention Relating to the Status of Refugees, 28 July 1951, 198 UNTS 137 (‘Refugee Convention’) defines a ‘refugee’ as a person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

Neither sex nor gender is on the list, let alone sexuality, gender identity, or family status. 'Being left off the list' is the easiest thing to point out as a starting point for feminist critique of refugee law. But even a superficial look at refugee jurisprudence as it stood in the early 1980s demonstrates quickly that the framework for refugee protection drafted in the early 1950s was a much better fit for men than for women. The refugee definition is heavily weighted towards the experience of public actors: those who participate in big 'P' political activities and who join group activities. As originally envisioned, refugees were those who fled repressive regimes that sought to harm them because of their opposition to those regimes. It is easy to see, in the aftermath of the Second World War and just as Cold War fault lines were solidifying, where this paradigm drew its inspiration. The classic refugee was the Soviet dissident, the Jewish person in Germany. The classic oppressor was the state.

The basic insights of second wave feminism go a good part of the way in developing a feminist analysis of refugee law. The 'personal is political' mantra and the insights of the public/private divide point up much of what made refugee law such a poor fit for the experiences of many women at risk of persecution around the world. Much of the original social-political focus of refugee law pulled decision-making away from a focus on how women's actions are politicized at a personal level, and attention to the state as persecutor meant that persecution in private settings was originally characterized as beyond refugee law's purview.

By the 1980s, feminist calls for shifts in refugee law to recognize women's experiences of persecution had been articulated in many Western refugee receiving states. Most activists and scholars argued that the most effective way to ensure that refugee law would extend equal protection for women and men would be to add sex (or gender) to the list of protected grounds. Already by the 1980s, however, the advocacy community could see the perils of opening the Refugee Convention for amendment and thus the argument was often rather for alterations to domestic legislation implementing the Convention in the various countries applying it.³

Interestingly, at the Office of the United Nations High Commissioner for Refugees (UNHCR) the calls for a more inclusive and proactive approach to refugee women were received sympathetically. This openness undoubtedly owes much to the views of UNHCR staff, and to the organization's long experience with refugees in camp situations and with the dilemmas of refugee resettlement. At the time of the mid-1980s, women and children often outnumbered men in refugee camps and resettlement countries were often most interested in taking in refugees who were

3 A range of views published in the decade surrounding the first UNHCR guidelines includes: Foote 1994; Razack 1995; Kandt 1995; Macklin 1995; Wallace 1996; Fuldauer 1996; Adjin-Tettey 1997; Boyd 1999; Foster 1999; Daley and Kelley 2000; Binder 2001.

independent economic actors: men (Labman 2007). UNHCR's publication of Guidelines on the Protection of Refugee Women in 1991 was a logical step (UNHCR 1991), followed by its work specifically on refugee status determination with the Gender Guidelines (UNHCR 2002) and more recently on sexual orientation (UNHCR 2012).⁴ National guidelines, at different levels of decision-making and with varying degrees of binding influence, were introduced in Canada, the United States, Australia, Sweden, the United Kingdom, and elsewhere.⁵

At face value, these guidelines do both more and less than would have been accomplished by adding sex or gender as a protected ground within the text of the international refugee definition. Less because while their legal status varies from state to state, and is certainly 'nil' at the level of international law, the guidelines are undeniably less law-like than the text of the Convention. More because the guidelines attempt to spell out, with national variations and with varying degrees of success, what it means to take the concerns of women facing gender-related persecution seriously. The guidelines address questions of evidence and procedure, of credibility assessment and culture, and in doing so go well beyond what a simple addition of a word or two in the Convention's text would have done.

Most interesting at this point in time, however, is what has happened *since* the guidelines. These days, many of the most important doctrinal developments in refugee law are occurring in cases where the claim being examined is one linked to gender or sexuality. Gender cases have been at the forefront of jurisprudential developments that have set the standards for the world's understanding of 'particular social group', 'persecution', and 'state protection' as well as the relationship between these terms (see Millbank 2013). Michelle Foster's opening chapter in this volume canvasses the global development of this jurisprudence and considers its consequences for gender- and sexuality-based claims.

Importantly, the guidelines and the leading cases are not directly linked, in that the reasoning in these cases makes little explicit use of either domestic or UNHCR guidelines. Indeed, the country where the domestic guidelines have the greatest jurisprudential presence at the lower court levels, Canada, has not issued a leading decision on gender or sexuality persecution at any time. In fact, the Supreme Court of Canada has decided only two refugee cases in the twenty-first century (*Nemeth v Canada* 2010 and *Ezokola v Canada* 2013). The relationship between guidelines and

4 In addition to the sexual orientation and gender identity guidelines, see also the collection of resources promoted by UNHCR in the 'Special Feature' on Sexual Orientation and Gender Identity on Refworld (UNHCR 2013).

5 The following jurisdictions now have some form of gender guideline for refugee decision-makers: Australia, Canada, Costa Rica, European Union, Germany, Ireland, the Netherlands, Norway, South Africa, Spain, Sweden, Switzerland, United Kingdom, and the United States.

leading cases is complicated and diffuse, and something that we are trying to tease out over the whole length of this research project. Labman and Dauvergne's closing chapter demonstrates one approach to this analysis. We think it most plausible to say that the Canadian guidelines affirmed the importance and legitimacy of considering gender- and sexuality-related persecution within refugee law. The specifics set out in the guidelines were, at least at the outset, less important than the general principle that women could be refugees on the basis of 'private' harms at the hands of 'private' actors.

It is also possible that the mainstream acceptance of gender-related claims opened the way for sexuality-related claims. There is a strong affinity in refugee law scholarship and advocacy between concerns about women and gender-related persecution, and concerns about sexuality-based claims, and sexual and gender identity. This affinity has often been productive in advocacy terms. Indeed, a number of key jurisprudential victories that mark the movement of gender to the centre of refugee law have been the basis of significant advances for claims linked to sexuality-based persecution, and vice versa. UNHCR explicitly and emphatically argued that persecution based on gender, gender identity, and sexual orientation all stem from a common core: non-conformity to rigidly defined gender roles and gender norms (2002, 2012). Yet there is often a distance, or even a dissonance, between advocacy and analysis about refugee women and that concerning sexual minorities. These gaps are vital to grapple with in understanding the current agenda. In scholarship, policy, and decision-making, gender and sexuality appear to be rarely understood as intimately related or mutually constitutive. While a number of gender guidelines now reference sexuality, there is rarely an unpacking of the category of homosexual (or more recently the omnibus aggregation of lesbian, gay, bisexual, transgender, and intersex, 'LGBTI') to see women and men's vastly different experiences of sexuality and oppression related to it. Scholarship on sexuality in refugee law is attracting enormous attention currently. We see this in recent special journal issues (*Forced Migration Review; Sexualities*) and special volumes (Spijkerboer 2013) and conferences (Fleeing Homophobia 2011, Double Jeopardy 2012) as well as in the topics that are drawing the attention of new graduate students. This work is pressing and important, to be sure, but we are concerned that it may be insufficiently *gendered*. Thinking through how to articulate gender within sexuality, and vice versa, rather than merely placing these categories side by side is vital to a research agenda moving forward, even as these two categories stand together in the broad arch of feminist influence on refugee law.

Advocacy from the centre

Despite the important victories, some serious things are still very wrong about how people making gendered claims encounter asylum

decision-making processes and outcomes. As we gather evidence of practices at the first instance level from around the world, it is evident that even in the jurisdictions with the richest promise and the longest experience of ‘gender sensitivity’, a considerable number of decisions, administrative practices, and decision-makers still would not withstand scrutiny if measured against the standards set by guidelines in the early 1990s. Debora Singer and Maria Hennessy each demonstrate in this volume that there are serious deficiencies in practices and outcomes in the United Kingdom and the European Union.

The question of how to mobilize advocacy at this juncture therefore presents a dilemma that is not the typical one for feminist advocates and legal scholars. The concerns of gender are now formally acknowledged in refugee law, so the argument can no longer be for jurisprudential inclusion. It must be for more meaningful, more complicated, more substantive analysis. And it must be an advocacy that recognizes that refugee law needs better outcomes *overall*. It is no longer useful or important to argue for ‘equality’; most particularly in the race to the bottom characterized by border closing measures such as fast-tracking, detention, and attenuated review avenues. This is a vital insight for advocacy moving forward: improving refugee determination processes for women ought to improve refugee decision-making processes for everyone. Refugee determinations rely on complex categorical reasoning, and it is important that advocacy not engage in invidious comparisons between categories. In addition, efforts to improve conditions for refugee women and sexual minorities must move outside jurisprudential concerns.

Drawing on this point, three things become clear. First, that the problems we discover about gender-related claims will frequently be indicative of overall problems (see both Singer and Querton, this volume). Second, women who are at risk of being persecuted, but whose risk is not seen as gender-related are increasingly disappearing from view in refugee law (see both Oxford and Arbel, this volume). Third, refugee law presents an opportunity for feminists to develop paradigms for advocacy that promote inclusion in new ways (see Anker, Musalo, and Hennessy, this volume).

These dilemmas became particularly clear as our conversation at the Law and Society conference developed. While no one disputed our account of feminist engagement with refugee law, our call for information about the present agenda brought some disappointing, if not entirely surprising, results. Moving gender concerns towards the jurisprudential core of refugee law appears to have been decidedly less transformative than one might have hoped, and simultaneously it appears to have sapped some of the energy of feminist legal advocacy. This point is made in various ways throughout this volume, and is confronted directly in Labman and Dauvergne’s concluding chapter. It is no longer possible – if indeed it ever was – to simply point at ‘the law’ and say ‘that is the problem’. So what, then, is the problem? And how can we build an agenda to address it?

The unknowable and the impossibility of a global picture

In the course of our roundtable discussions we spoke of what we most wanted to do next, and about what we most wanted to find out. As a result, the conversation around the table returned again and again to the theme of ‘things we do not know’. Thus, in gathering up contributions for this volume, we asked for work on the current state of research or advocacy, and what comes next, asking contributors to reflect on ‘where the agenda is at’ in their country, jurisdiction, discipline, or organization. Of necessity, this collection is about things that we do know rather than the array of what remains unknown and underexplored.

But it is crucial to reflect on ‘unknowability’ in order that we can continue to reach for a better state of knowledge, or, at worst, to be realistic about the limits of the knowledge that we can obtain. In the roundtable discussions participants noted that even taking refugee claims as a starting point of inquiry is likely to miss the forced migration experiences of most women. Women’s existence precedes the edifice of a refugee status definition. It was suggested that for many women their claim to refugee status may never be made, or heard, or recorded, in light of factors such as being unable to leave the country of origin, remaining undocumented in the country of arrival, applying for another form of legal status that is more readily accessible than a refugee claim, or having a refugee claim subsumed under that of a male partner. Thus refugee claims themselves may be dwarfed by the realm of ‘not-claims’ in gender-related persecution. Even within the field of refugee claims that *are* made, the multiple layers through which that experience is mediated as it is translated (both literally and figuratively) may erase gendered dimensions. This is well illustrated by one of the case studies discussed by Connie Oxford (this volume) in which an Iranian woman faced 74 lashes for swimming in short pants which breached gendered dress codes, yet made a refugee claim based on being part of a religious and ethnic minority: ‘People don’t say because of pants I left my country because that’s not a good reason to come as a refugee’. In one of our recent interviews with a refugee lawyer in a non-government agency, the lawyer stated that they ‘never see pure gender-related claims’ and explained that it was because these claims are always really about something else. While there are clear jurisdictional differences – in Canada we see a trend in which women’s claims are frequently addressed as if they are *only* about gender, while in Australia and elsewhere they are almost *never* seen as ‘gender claims’ – either way this arguably reflects a process in which gender is constructed as having a particular singularity and isolation from all other dimensions of the applicant’s experience and social context, rather than infusing or undergirding them.

Working with the decisions in refugee status determinations (RSD) as the source material from which data can be gathered means accepting that it is a small and possibly unrepresentative sub-set of experiences, but

even taking this narrowly circumscribed route reveals more yawning gulfs of the unknown (and see Arbel, this volume). In many jurisdictions, and in UNHCR refugee status determination processes throughout the world, the first instance decision is at most a brief letter to the applicant rather than a fully reasoned and publicly accessible document. Positive decisions at first instance are usually not reasoned at all. Bearing in mind that most negative determinations either cannot or will not be appealed, the result is that the overwhelming majority of RSD case practice will never become what we know as ‘case law’. Of the tiny proportion of cases that do proceed to review, often to lower level administrative tribunals or immigration courts, written reasons continue to be summary in nature in many jurisdictions, and public release policies mean that most will continue to remain publicly inaccessible. In Australia the tribunal has released between 20 and 40 per cent of decisions over the past decade, while in the United States the Board of Immigration Appeals releases only 1.2 per cent of decisions (Millbank 2013, 124), a figure likely to be even lower for the United Kingdom tribunal. An even smaller proportion of cases will proceed to appellate courts where statements of law are made which are an accessible part of the public record. These appellate cases, although guiding authority on important points of principle are in many respects a pinnacle of exceptionalism, an infinitesimally small tip of a gargantuan pool that may neither reflect the mass of cases before it nor be effective in transforming the practice that occurs thereafter.

Access to the detailed picture of written reasons in individual decisions is, therefore, extremely limited. Also inaccessible is the broader statistical data that would provide the ability to put the small number of available decisions into some sort of context and to identify national, transnational, or historical trends (Arbel 2013). Many jurisdictions release annual data on the total number of claims made, or granted, and may break these down into more detailed information on country of claimant. Fewer provide any form of gender disaggregation of such figures, such that it is difficult or impossible to find out even such basic information as how many claimants are women or what their success rates are relative to men. Furthermore, only a handful of jurisdictions keep data on the Convention grounds of claim and even fewer break this down into the kind of claim such that it is coded for gender-related persecution (such as forced marriage, domestic violence, and so on). Thus the number of sexual orientation or gender identity claims is often unknown, as is the proportion of claims by women that are overtly characterized as gender-related persecution.

What we must do instead is to look at what is available and track backwards. Government departments responsible for the initial non-public level of decision-making may not be prepared to open those processes to observation or study, but many do record the rate at which their own decisions were overturned on review. In recent years both the relevant United

Kingdom and Australian departments have responded to requests to release these figures disaggregated by gender: revealing that women claimants have higher overturn rates on review than men do in both jurisdictions (United Kingdom Home Office 2013; Department of Immigration and Citizenship 2013). Such figures, taken alone, raise more questions than answers: does this reflect a ‘success’ in that tribunal level decision-makers are gender-aware? Or does it betray a failure in that initial level decision-makers continue to be gender-blind, have poor implementation of gender guidelines, and even lack awareness of gender-based persecution as the basis of a valid claim? If it is the latter then ‘better’ success rates on appeal reflect being worse off in actuality. Qualitative research of initial decisions in the United Kingdom by Asylum Aid unfortunately suggests the latter explanation (Singer, this volume; Muggeridge and Maman 2011). Further qualitative research is required to excavate the meaning of the few figures we are able to access. Observations of case practice, interviews with decision-makers, lawyers, and advocates can generate a context in which to make sense of trends. The value and importance of this work is well illustrated by the thoughtful engagements of Herlihy, Bennett, and Oxford in this volume. But even nuanced qualitative work like this will be only a partial picture, and one which reflects the particular cultural and legal context in which it takes place. Despite an international definition and ‘harmonization’ measures such as the Qualification Directive in Europe (Council Directive 2004/83/EC; recast in 2011, Council Directive 2011/95/EU) and the ability to seek ruling from a common court, it is clear that refugee decision-making, both in terms of process and substance, is very different in each national context. There will be some common ground, as projects like GENSEN and Fleeing Homophobia have demonstrated in Europe (Cheikh Ali, Querton, and Soulard 2012; Jansen and Spijkerboer 2011), but there will also be contrast, anomalies, and more threads of the simply unexplained.

Where does that leave an international comparative project on gender-related persecution and RSD? We suggest that it is important to acknowledge that the starting point has to be one of particularity rather than generality. We will work with small slivers and fragments of information from disparate sources, only some of which will refract a light illuminating broader patterns. At the end of the day we will not have mapped global practice but instead unearthed something that is more akin to sections of a mosaic.

Losing ground

Another of our hypotheses that resonated at our roundtable discussions was that somehow despite the success of feminist engagement with refugee law, or maybe even because of it, research and advocacy about gender in refugee law has fallen out of vogue. This is not a precision measurement.

It is rather a sense among scholars and activists in the area, reflected and reinforced by the same types of indicators that demonstrate the current wave of focus on sexuality-based refugee claims. To wit, there is a declining rate of publications, conferences, and organizing efforts. It is worthwhile attempting to understand why this has happened, in order to work to reverse it.

An important explanatory factor is the gains that have been made. There is a sense in many quarters that gender in refugee law ‘has been done’, and that the problem is now resolved. The sense of fatigue is backed up in this regard by our underlying assumptions of what constitutes ‘research’ and what constitutes ‘advocacy’. Scholarly output is measured in part by the criterion of originality; as is publishing and research grant funding. Because of this criterion scholars must move on to new terrain, an argument that the insights of the 1980s and 1990s have not been carried through in practice risks always being perceived as un-original. Junior scholars often cannot afford this, and senior scholars are often the very people whose earlier critiques have yet to be meaningfully addressed.

On the advocacy side, the problem shapes up in a different but related way. Since the early 1990s Western states have increasingly taken action to limit the number of asylum seekers crossing their borders. This trend gained momentum with the securitization of borders following the 11 September 2001 attacks in the United States. The concomitant anti-refugee agenda has been pursued with varying degrees of vigour in all Western refugee receiving states. Efrat Arbel’s analysis of the Canada–United States Safe Third Country Agreement in this volume is an important example of this agenda. Susan Kneebone’s engagement with the tension between the human trafficking movement and refugee law explores another key marker of this agenda. The pace has changed with changes of governments, but the overall trajectory towards securitization has been remarkably consistent. Only with the dialogue surrounding migration reform in the United States, culminating in movement towards comprehensive immigration reform in 2013, did some variation become audible. This agenda has formed the workplan for many refugee advocates over the past decade. There have been so many changes to refugee reception regimes that advocates have had their hands full. New legislation needs to be challenged and debated, new rules need to be digested and explained to clients, new legal challenges emerge to confront the new rules, whole new groups of people have been created who need solutions that refugee law cannot deliver. The pace of change itself has contributed to gender concerns sliding off centre stage on the advocacy agenda. Everyone knows these concerns have not gone away, but they are being pushed aside by a wave of urgency covering the same policy terrain. In the face of ‘austerity’ imperatives towards faster, cheaper decision-making, simple measures such as gender-sensitive interpreters are too easily viewed as luxuries rather than necessities.

These factors combine with a sense that questions of gender in refugee law have been well aired and that significant jurisprudential changes have been made to push gender away from the centre of concern for refugee scholarship. The concern with gender, which moved so forcefully from the margins to the centre in decades past, is increasingly being relegated to the margins.

The current agenda

Against this backdrop, our aim is to re-set the agenda for research and advocacy about gender and refugee law. This volume is dedicated to this undertaking. Key elements of the current agenda arise from our starting points: it is important to embark on a sophisticated and sustained conversation between gender scholarship and sexuality scholarship; it is vital to grapple honestly and methodologically with the questions of un-knowability; it is essential to bring questions of gender to the evolving agenda of securitization.

We asked contributors to this volume to join in this agenda re-setting exercise by mapping out the current state of affairs from their own perspectives. The responses, presented in the 12 chapters that follow are revealing: both in what they say and in what they cannot, or do not, say. These contributions reveal that refugee law is relentlessly local. There is significant variation across jurisdictions, even in areas of considerable doctrinal agreement at the highest level. There is also enormous concern about what happens in the hearing room, even as the contours of that room vary the concerns about disclosure (Herlihy, this volume), stereotypes, gendered identities (Bennett, this volume), and credibility (Singer, this volume) are remarkably consistent. Finally, these chapters demonstrate conclusively that the project of refugee law reform to meet the concerns of gender is at best half-done, and that legal change itself can only be part of the story.

One of our objectives from the outset has been to bridge between research and advocacy. In this respect, we have been pleasantly surprised. Researchers and advocates show in their contributions that they share many of the same priorities and truly do speak the same language. The barrier between these groups may be largely illusory, possibly because so many refugee scholars are also advocates, and because so many advocates view research as an essential tool of their work. This is especially evident in the contributions to this volume by Deborah Anker and Karen Musalo whose analyses draw strongly on their experiences of research *as* advocacy.

But other barriers, ones we were not expecting, are also revealed in this collection. It is clear that knowledge is fragmented across domestic silos. It is equally clear that we tend to frame questions and answers within national or regional frameworks, and, in the case of Europe, where the framework is broader, it is the law that has generated this cohesion in addition to the

commitments of scholars and advocates (Hennessy, this volume). In this sense, we can read instructions about a research and advocacy agenda both from what our contributors say, and from what they do not say.

In Chapter 1, Michelle Foster tackles persistent challenges and definitional hurdles associated with assessing gendered claims through the lens of the particular social group. Surveying approaches adopted in the jurisprudence of a wide range of jurisdictions, both common and civil law, Foster demonstrates that despite persuasive high level cases consistently determining that women/sex/gender can satisfy the ‘social group’ requirements for the purpose of the Refugee Convention, lower level decision-makers nonetheless struggle with this task. Decisions on gender tend towards recognizing highly particularized or, in Foster’s words, ‘overly convoluted and artificially contrived’ formulations (see also Labman and Dauvergne, this volume), or rely on criteria long proved unreliable for assessing gender claims, such as importing additional requirements of social visibility. Offering detailed criticism of the particular social group jurisprudence, Foster highlights both the promise and the perils of this ‘nebulous’ category.

Chapters 2 and 3 reflect on the development of gender asylum law in the United States. Deborah E. Anker tells the story of how gender claims gained recognition in US law despite the lack of high level jurisprudence clearly accepting gender as a particular social group. Her chapter describes how direct representation of women asylum seekers by advocacy groups like the Harvard Immigration and Refugee Clinic helped to transform United States asylum law by bringing the lived realities of women asylum seekers before decision-makers (Chapter 2). Karen Musalo examines two such transformative moments in detail by telling the story of two women: Fauziya Kassindja, who sought asylum in the United States to escape the prospect of genital cutting, and Rody Alvarado, who sought asylum in the United States to escape the prospect of domestic violence (Chapter 3). These women’s stories illuminate how United States law has moved towards recognizing exoticized harms like genital cutting as an established basis for asylum protection, but is still inconsistent – or in Musalo’s words, schizophrenic – in its treatment of quotidian harms like domestic violence (see also Labman and Dauvergne concerning Canada). These two chapters shed light on how United States law responds – or fails to respond – at the level of doctrine and practice. Musalo’s chapter also reveals the research and advocacy challenges of alliances with a broad ‘feminist’ community – a concern that subtly touches a number of aspects of an agenda-shaping project.

Chapters 4 to 8 analyse barriers women face in advancing gender-related asylum claims in the refugee status determination processes in Europe, the United States, and the United Kingdom. Focusing on the issue of credibility in women’s claims, Debora Singer points to persistent challenges faced by women seeking asylum in Europe – high standards of proof, unavailability of corroborative evidence, and the impact of shame and trauma on disclosure and demeanour – and arrives at the conclusion

that women are simply less likely to be believed (Chapter 4). Jane Herlihy examines the effects of shame and trauma, exploring some of the psychological barriers to refugee status determinations rooted in understandings and expressions of gender (Chapter 5). Herlihy advocates for a better understanding of how extreme distress triggers extreme emotional responses, and a more nuanced, flexible understanding of emotion in the asylum setting. Claire Bennett adds to this discussion by exploring these dynamics drawing upon her interviews with lesbian asylum applicants in the United Kingdom (Chapter 6). Her analysis charts how claimants reflect upon the asylum process, and how this process of being evaluated and judged impacts upon their social and sexual identity. Contextualizing women's narratives within current debates surrounding sexuality and asylum, Bennett argues that the experience of 'not being believed' risks re-traumatizing claimants, re-inscribing experiences of injury and loss, and further complicating their prospects of recovery and social inclusion.

Connie Oxford surveys results from ethnographic fieldwork conducted with women refugee claimants, and identifies persistent underlying norms and assumptions that limit the scope of protection available to women claimants in the United States (Chapter 7). As with Herlihy and Bennett, Oxford starts with the experience of claimants and explores how law fails to 'hear' their narratives of gender-related harms, but also how claimants themselves censor, edit, or recraft their narratives to fit within legal categories and expectations of RSD norms and values. Maria Hennessy points to similar barriers in Europe, and advocates for the use of strategic litigation and training to improve decision-making and integrate gendered perspectives in asylum systems across the European Union (Chapter 8).

Chapters 9, 10, and 11 analyse refugee protection alongside – and in connection with – trafficking, armed conflict, and border crossing. Susan Kneebone compares gendered discourses deployed in trafficking policy with those operative in refugee law, to analyse how gender is understood in each setting, in particular examining the role of the victim/agent dichotomy (Chapter 9). Drawing upon recent cases from the United Kingdom and Australia in which trafficked women were the applicants for protection under refugee law, Kneebone identifies possibilities for cross-fertilization between refugee and trafficking frameworks when trafficked women seek legal protection. Christel Querton's chapter traces how decision-makers in the United Kingdom have interpreted the Refugee Convention in cases involving asylum claims from women fleeing armed conflict (Chapter 10). Querton's analysis points to a protection gap, and the persistent failure of decision-makers to understand and explore the impact of armed conflict through a gendered lens. Efrat Arbel's work points to a different kind of gap – an informational gap. Examining the Safe Third Country Agreement between the United States and Canada, Arbel points to barriers that make it harder to identify precisely how the Agreement impacts upon women (Chapter 11). Arbel cautions that given this lack of knowledge, the new

fault lines of Canadian refugee law and policy may be charted in ways that overlook the specific protection needs of women.

In Chapter 12, Shauna Labman and Catherine Dauvergne echo some of the questions identified by Foster at the start of this volume: how to fit women's asylum claims within the categories established by refugee law, how to bend these categories to fit women, and how to struggle against the purported stability of these categories. Reflecting on Audrey Macklin's seminal piece, 'Refugee Women and the Imperative of Categories', Labman and Dauvergne evaluate the current situation for women claiming refugee protection in Canada, considering the inter-relation between public discourse, high level doctrinal developments, and scholarly critique. Their analysis advocates bringing gender back to the centre of the scholarly and advocacy agenda.

The agenda that emerges from this volume is at one level straightforward. The work of integrating considerations of gender into the centre of refugee law is incomplete. This collection gives us a clearer sense of why this has happened, but also demonstrates convincingly that an explanation is not a justification. Indeed, it is clear that while much has been accomplished, in the most recent years ground has also been lost. One reason for this loss is the anti-refugee agenda which has emerged in most Western states. This agenda has served to draw advocacy attention and resources away from gender concerns, to other important areas. The lessons of our work here are, thus, twofold. First, because an anti-refugee agenda increases vulnerability for all refugees through devices like shortened timelines and reduced support resources, we must anticipate that it increases vulnerability for refugees making gendered claims exponentially. Second, because outcomes for women seeking protection have led the development of refugee law for 20 years, failing to attend to these outcomes risks failing refugee law. Our argument is to return gender to the centre of research and advocacy in refugee law.

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In this book, [] are used to indicate citations to numbered paragraphs.

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