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Legal hostilities: Navigating queerness, emotion, and space in asylum law

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journals.sagepub.com/home/cmcSenthorun Raj 

Manchester Metropolitan University, UK

Abstract

Asylum laws, policies, and bureaucracies are structured by spatializing logics of emotion such as compassion, sympathy, fear, anxiety, and hostility. For lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) people who seek asylum, legal recognition as a refugee is contingent on the extent to which receiving states believe they are deserving of compassion and care. This materializes spatially through racialized legal and administrative cartographies of safety and danger that position LGBTIQ people as being at risk of a “well-founded fear” of persecution. Meanwhile, those LGBTIQ people who seek asylum in a “disorderly” manner or present “disrupted” narratives of either their identity or persecution generate administrative anxieties and hostilities as states seek to “guard” the border from disingenuous claims and dangerous bodies. For LGBTIQ people who seek asylum in the United Kingdom (UK), these affective tensions become apparent in the hostile bordering practices of law that seek to narrowly codify sex, gender, sexuality, race, culture, and harm. Drawing on a rich data set of LGBTIQ asylum cases from the UK, this paper adopts hostility as a novel analytic lens to map carefully how: (1) hostility materializes as a substantive object of legal or administrative scrutiny when understanding the nature of LGBTIQ identity and persecution and (2) hostility emerges procedurally through status determination processes as an “emotional grammar” to limit the possibilities of legal recognition. This affective critical work is normatively significant if we (as scholars and lawyers) are to create spaces within law and policy to support LGBTIQ people who seek asylum.

Keywords

Asylum law, critical legal studies, emotion, LGBTIQ, queer

Corresponding author:

Senthorun Raj, Reader in Human Rights Law, Manchester Law School, Manchester Metropolitan University, 6.23 Sandra Burslem Building, Lower Ormond Street, Manchester M15 6BH, UK.

Email: s.raj@mmu.ac.uk

Introduction

"How do I know I am a lesbian? How old was I when I knew? Who did I tell? It is as if the Home Office expect a date and time . . . I had controlled how I felt for a long time and I just couldn't any more. It gets to a point where it overwhelms you and you let it happen . . . We have witnessed what happens to lesbians. We knew what would happen to us . . . In the UK they help LGBTIQ people, they will be compassionate" (Angel*, Quoted in Brewer, 2020).

The legal recognition processes for lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) people who seek asylum in the United Kingdom (UK) are characterized by emotions that span individual, interpersonal, and institutional scales.¹ The starting point for recognizing if someone seeking asylum is in "genuine" need of protection is to parse their "emotional journeys" to determine if and to what extent they satisfy the international legal definition of a refugee. Legally, fear is central to the asylum adjudication process, as a refugee must have a "well-founded fear of persecution" owing to a specific ground such as their political opinion or belonging to a particular social group (Refugee Convention 1(A)(2)). Establishing this nexus is necessary in order for a state to be legally required to grant surrogate protection (refuge in the UK) to the person claiming asylum. As part of this status determination process, people who seek asylum on the basis of their sexual orientation or gender identity and expression or sex characteristics typically express their individual experiences of violence, vilification, and discrimination and articulate different self-identifications of what it means to be queer and trans through emotions such as fear, pain, hostility, anxiety, shame, and frustration. Decision-makers (such as Home Office caseworkers in the UK) encountering such emotionally fraught testimonies respond emotionally too: whether an asylum seeker's emotional recount of their sexual or gender identity and risk of persecution aligns with the expectations of a decision-maker is contingent on that individual decision-maker's contempt, compassion, hostility, and suspicion when reviewing their claim.

Individual expressions of emotion do not materialize in a vacuum nor are they confined to individual cases. As I will discuss in the sections below, they emerge through the interpersonal (interviews) and institutional (conventions, laws, policies) contexts of refugee status determination. These emotions have spatializing effects in relation to what counts as an authentic (sexual/gender) identity and valid forms of persecution in order to recognize people as refugees. I define space in this paper as formations (places, locations, institutions, jurisdictions) that emerge through how bodies are "oriented" and "held up" by social and political norms (Ahmed, 2006: 12; Keenan, 2015: 72). In this way, space is not a fixed or prediscursive site but an affective location that is constituted by the (sexualized, gendered, racialized) experiences of bodies that inhabit it and such spaces acquire an (sexual, gender, racial) identity based on those bodies (Ahmed, 2006: 11; Powell, 2024b: 176). I started this paper with the testimony of Angel, a lesbian woman from Zimbabwe who sought asylum in the UK. In her account, she acknowledged how shame (of her unexpressed sexual identity) and fear (of expressing her sexual identity) crystallized her bureaucratic readability as both a lesbian and a person at risk of persecution if she were returned to Zimbabwe. Yet, Angel's testimony also gestured to the emotional resistance of decision-makers who approached her testimony with suspicion and hostility (asking her to provide specific details of her realization of being a lesbian with a "date and time"). This reflects an institutionalized "culture of disbelief" where refugee decision-making is framed by "techniques to 'identify the

lies' in asylum seekers' narratives" (Jubany, 2011: 82). The emotions that characterized the interpersonal exchange between asylum seeker (Angel) and decision-maker (Home Office caseworker), as part of the status determination processes, emerged from legal institutions that are both hostile and hospitable to LGBTIQ asylum claims. Institutionalized compassion (as indicated by Angel's desire to go to the UK and protections available for LGBTIQ people) emerged alongside institutionalized suspicion (as evidenced by Home Office demands that Angel justify her identity in ordered terms to be credible). Alongside this, a person's individual fear of persecution or shame about their identity (as expressed by Angel's restraint over her sexuality and anticipation of how she will be treated because of it) must alleviate institutionalized fears that their claim may be "bogus" and that recognizing their persecution may risk compromising the integrity of the asylum process. These interpersonal exchanges cultivate a "culture of disbelief" which constrain the terms by which claims are represented, heard, and adjudicated (Jubany, 2011; Millbank, 2009a). Compassion, hostility, fear, and anxiety have racialized, bordering effects on individuals (whether LGBTIQ people are allowed to stay) and institutions (how refugee law should be interpreted). These emotional expressions produce the different ways countries are racialized as homo/bi/transphobic "over there," determine whether a person will be legally recognized in terms of how they express their identity, characterize the extent to which they are experiencing a substantial risk of persecution and, subsequent to this, if they will be granted leave to remain in the UK (Lalor, forthcoming; Raj, 2018).

This paper takes up the spatializing effects of hostilities in the asylum recognition process through an original discursive analysis of how they materialize across individual, interpersonal, and institutional scales. I focus on spatializing hostilities to map the legal, political, and bureaucratic terms by which LGBTIQ people are recognized for refugee protection in the UK. This is not about cataloging the legal "correctness" of all decisions made by asylum decision-makers, tribunals, and courts in the UK. Rather, I mobilize queer affect theory to navigate the terrain of contemporary asylum law in the UK through a close analysis of case law. I seek to draw out how hostility functions performatively to shape credibility and delimit experiences of identity and persecution. Mapping the "emotional grammar" of hostility is significant if scholars and lawyers are to understand how and why "progressive" states like the UK can simultaneously accept LGBTIQ asylum claims (even claim to champion them) while subjecting LGBTIQ people to recognition processes that are degrading and dismissive (Raj, 2020: 94–139). In doing so, this paper is "not a call to escape, avoid or abandon the law, but to understand law's flattened, unidimensional portrayal of the world of desirable queer life as limited to the liberal episteme" (Kapur, 2024: 73).

I begin in Part I by mapping the emotional cartographies of "safety" and "danger" as they relate to LGBTIQ people who experience persecution as a result of criminalization, violence, and discrimination. Drawing on queer affect scholarship, I define "queer" and "hostility" as discursive categories with productive effects. I focus here on how homo/transphobic hostilities emerge in laws and politics (institutional) and acts of violence (interpersonal) which target LGBTIQ people as a "queer" subject that is a corrupting social contagion, predatory to children, and a threat to religious or cultural orders. These hostilities are racially mapped through asylum law and politics to create zones of danger and hostility (countries of homo/transphobic displacement) and safety and hospitality (countries of queer refuge).

In Part II, I counterpose racialized discourses of queer safety and danger by drawing out how "hostility" emerges through the political and legal environment of the UK that treats asylum

claims with suspicion and rejection. In recent years, the UK has shifted away from limited liberal paradigms of its human rights protection obligations to overt repudiation of such obligations by limiting the application of international standards to domestic policy as evidenced in laws such as *Illegal Migration Act 2023* and *Nationality and Borders Act 2022*. Drawing on the *HJ (Iran) and HT (Cameroon) v The Secretary of State for the Home Department* [2010] UKSC 31 case alongside subsequent statutory reforms and policy interventions over the past decade, I explain how the recognition of LGBTIQ people for asylum has been met by enduring refusals to recognize certain acts of harm as persecution (because a person might “choose” to be discreet about their identity to avoid it) and to dismiss some claims on the basis of an applicant being unable to perform their sexuality or gender (because they do not go to particular clubs or have casual sex) in a way that seems authentic or credible.

In Part III, I use hostility as an analytic lens to examine recent case law from the UK. By doing so, I focus on how cases that hinge on authenticating the credibility of the queer person who seeks asylum involves indexing their sexuality or gender identity against their experiences of social stigma and hostility from family members or state agents. This evaluative process to verify sexual orientation or gender identity involves spatializing a queer person’s experiences of hostility as either public or private, as well as genuine or inauthentic.

In Part IV, I build on this discussion to look at the spatializing effects of hostility when it comes to determining the boundaries of persecution and belonging. In this part, I consider how the individual risk of persecution is determined by the presence or absence of interpersonal hostilities that are institutionally (or state) sanctioned. Whether or not a queer person is facing a genuine risk of persecution if returned to their country of origin is determined by bureaucratic grammars of hostility that trivialize experiences of cultural shame, social marginalization, misgendering, and sexual policing in order to render them as not belonging to the category of “refugee.”

I conclude the paper by drawing together my analysis of hostility as both a subject of asylum adjudication and the mode through which such adjudication occurs. By focusing on the “emotional grammar” of hostility, scholars and lawyers can pay closer attention to recognize the spatializing effects of hostility across individual, interpersonal, and institutional scales and critically rethink how this grammar circumscribes recognition for LGBTIQ people who seek asylum.

Part 1: Emotional cartographies of Queer Safety and Danger

Queering/feeling law

Emotion and queerness have conceptual resonances. As Ahmed (2004, 2006) observes, emotion and queer are concepts that evoke movement and space. Queer refers to those bodies and intimacies that “tend toward” deviation, moving away from social directions of heterosexuality, reproduction, and monogamy, and in doing so inhabit “disorienting” spaces that make one feel strange to oneself through shame (Ahmed, 2006: 91, 62). While some people use queer politically as a self-declaration of their sexual identities, conceptual theorizations of queer as a movement of deviation and disorientation offer scholars a language to spatialize non-normative social practices, sexual encounters, and kinship forms that are not reducible to fixed labels (Keenan, 2015: 141; Puar, 2017: 122–123; Raj, 2020: 2–3). Emotions, like queer, also offer us a spatializing language.

Emotions give us a language to refer to embodied states of joy, anger, or disgust and can also be used to describe recursive social processes that make objects and their proximities impress upon us (Ahmed, 2004: 12). Emotions are “contact zones” between bodies, objects, knowledges that create “impressions”—these impressions “move us,” and that movement “holds us in place” by attaching us to certain objects or spaces (Ahmed, 2004: 6, 11). By thinking emotion and queer together, we can see how queer/affective spatialities are not static or predetermined, they are continually (re)constructed by relationships between bodies, knowledges, and objects that are in constant movement (Ahmed, 2006: 12).

Foregrounding the messy, spatializing effects of emotion when reading legal texts is a queer methodological endeavor within a discipline—Law—that privileges analytic dispassion, rationality, clarity, and coherence (Valverde, 2015: 32). Reading emotion allows us, as critical legal scholars, to understand the performative effects of emotion in shaping legal and bureaucratic asylum processes generally and how they function spatially as a grammar to make possible the recognition of identity and persecution specifically. Building on earlier work (Raj, 2023) and Ahmed’s scholarship, I use emotional grammar in this paper to refer to the emotions that both underpin, and are produced by, linguistic referents and mechanisms (spoken words, written texts, concepts) that communicate ideas and make them understandable to others. This grammar is a means of framing, shaping, structuring modes of communication in legal doctrines (such as categorizing identity and persecution under the terms of international refugee law) and methods of bureaucratic or judicial analysis (such as the process by which credibility is assessed and reviewed).

Emotion, for example, is central to the grant of asylum under international law. The *Convention Relating to the Status of Refugees* specifies a refugee is a person outside their country of origin who has a well-founded fear of persecution owing to race, nationality, religion, political opinion or membership of a particular social group (Article 1A(2)). Fear materializes in the text as a substantive legal test: states must assess whether an individual subjectively fears for their safety and if such fears reach the threshold of persecution in relation to one of the enumerated grounds. A “well-founded fear” of persecution refers to substantial risk of experiencing sustained forms of serious discrimination or physical violence that are either directly perpetrated by the state or are condoned by it (LaViolette, 2010: 196–199; Walker, 2000: 177; *Joined Cases C-148/13 to C-150/13*, 2014). For LGBTIQ people, such fear of persecution can materialize through state laws criminalizing homosexuality (which are still relevant in over 60 countries), local practices that punish gender non-conformity, state policing of public and commercial spaces to prevent gatherings of LGBTIQ people, and domestic violence such as “corrective” rape or conversion “therapy” (see Gevisser, 2020). What is important to note about the international refugee law definition of persecution is that it is not contingent on identifying individually conscious forms of hostility or hatred. Rather, protection is available where either individual (sexual shame), interpersonal (physical violence), or institutional (legal criminalization) acts of harm taken together demonstrate a failure of the state to offer protection to particular social groups (LGBTIQ people) and, in doing so, evince an institutionalized hostility toward those particular social groups.

Building on the queer affect scholarship described above, I take hostility to mean the institutional movements of social negation or degradation and inter/intrapersonal encounters of antagonistic objectification (Ahmed, 2006: 57). I define anti-LGBTIQ hostility as the institutional movements that result in sexual degradation, gendered surveillance, and social policing. In other words, hostility materializes in individual, interpersonal, and institutional mo(ve)ments that involve

abstractly scrutinizing bodies that refuse to conform to norms of gender coherence or sexual privacy and repudiating intimacies that threaten the stability of heterosexual reproduction (Mason, 2002: 36–37; Stanley, 2021: 6). The hostilities expressed as/through violence against queer people have spatializing effects that can be mapped through individual, interpersonal, and institutional registers. Laws criminalizing homosexuality or gender non-conformity create stigmas that “other” gay, lesbian, bisexual, trans, intersex, and queer people as socially undesirable, which are subsequently internalized to make them feel ashamed of, and hostile toward, their sexual identity, gender personhood, and/or bodily anatomy (Chelvan, 2020: 101–102; Johnson, 2011: 68; Verman and Rehaag, 2024: 19). Stigma is co-constituted along various scales of hostility: intrapsychic repudiation of homosexuality (sexual hostility toward one’s identity) is institutionally maintained by laws or customs that treat homosexuality as criminal, sinful, or pathological. Stigmatization of homosexuality in homes (sexual hostility between family members) emerges through sexual and domestic violence (Dustin, 2022: 415). This creates environments where LGBTIQ people are forced to closet their identity and/or seek sexual fulfilment in public or commercial spaces free from surveillance from parents or siblings (Ferreira, 2023: 37–44 Gevisser, 2020: 54). Following hostilities across these examples reveals the “structuring antagonism” that sits at the heart of what Stanley (2021: 9) describes as inhibiting “trans/queer flourishing against an otherwise deadly world.” In other words, queer life persists at the interstices of hostility which is expressed across individual, interpersonal, and institutional levels.

Affectively mapping sites of danger/safety

While the international Refugee Convention does not explicitly name LGBTIQ people, international, regional, and domestic laws have evolved to recognize the vulnerabilities of LGBTIQ people to the hostilities described above and to offer them protection from such hostility through the category of “particular social group” (Raj, 2020: 96). This evolving recognition has involved identifying characteristics of sexual and gender minorities in specific countries that make them visible as social groups, and by emphasizing these characteristics are immutable or ought not to have to change as they are fundamental to individuals’ dignity (*HJ & HT*, 2010). Legally recognized forms of persecution that sexual and gender minorities experience can include state-sanctioned forms of physical abuse (criminalization and subsequent detention for being gay) or forms of state inaction that amount to “serious harm” or “systematic discrimination” (denying trans people basic employment opportunities to subsist) (*Chan Yee Kin*, 1989; *Joined Cases C-199/12 to C-201/12*, 2013). The recognition of sexual or gender difference as core to human dignity, alongside the homo/transphobic hostility associated with such differences, provides an important route to asylum for those who flee persecution on this basis.

Yet, these recognition processes have also made clear how the emotions of LGBTIQ people are read, defined, and contested in asylum decision-making processes. Status determination processes rely on making LGBTIQ refugees recount their vulnerability through emotional logics that subscribe to rigid categories of sex, gender, and culture. As Millbank (2002, 2003, 2005, 2009a) has argued, the extent to which a gay or lesbian person is able to make a successful asylum claim relies on whether they present their sexual identity or sexual life in a way that seems credible (talking about sexual shame, going to gay bars, socializing with other gay people, having multiple sexual partners) and can make a decision-maker recognize their experience of violence (sexual

abuse at home, vilification at work, police arrest) as sufficiently serious. Critical legal scholars have built on Millbank's scholarship to examine how non-normative sexualities or gender expressions are shaped by racialized and classed stereotypes about popular culture (whether an applicant likes to read Oscar Wilde or listen to Madonna), public space (whether an applicant desires public sex or participates in Pride events), and genital activity or changes (whether an applicant has multiple same-sex sexual partners and the type of sexual activity they wish to have) (Berg and Millbank, 2013; Boncompagni, 2021; Camminga, 2018; Held and Dustin, 2018; Powell, 2021; Rehaag, 2008, 2009; Vogler, 2016).

Critical legal scholarship on the subject points to how the substance of a person's sexual credibility or experience of persecution is an emotional matter (LaViolette, 2010; Miles, 2010; Morgan, 2006). In previous work, I have detailed how the person seeking asylum not only narrates their shame, pain, fear, anxiety, and hostility in a manner that needs to be recognizable to the decision-maker but those emotional recounts also elicit emotions from decision-makers who might treat a claim with compassion (credible) or hostility/suspicion (incredible) (Raj, 2011, 2017). What is striking about these interpersonal emotional exchanges within asylum bureaucracies is how emotions work to zone places of LGBTIQ refuge/compassion and LGBTIQ danger/hostility through racial orders. Writing in the context of United States foreign policy and terrorism, Puar (2007: 39) describes this affective process as "homonationalism"—an analytic framework that demarcates "arrangements of US sexual exceptionalism . . . because certain domesticated homosexual bodies provide ammunition to reinforce nationalist projects." This process involves producing the homophobic "terrorist" subject (from orientalized places like the Middle East) through emotions like fear, anxiety, disgust (these terrorists are savage, dangerous, and hostile toward LGBTIQ people) while nations like the US embody compassion to incorporate "domesticated homosexual bodies" into their national image and present themselves in foreign policy contexts as saviors of vulnerable gay and lesbian people. Asylum law functions as an arena of homonationalism, where "renderings of Europe as a benevolent safe haven for new (non-European) migrants" are made possible through adjudications which locate hostility for LGBTIQ people in those (non-Western) countries that criminalize homosexuality, while locating comfort for LGBTIQ people through the safety they can access in "progressive" Western nations (Bruce-Jones, 2020: 55; Home Office, 2016). Hostility emerges through asylum adjudication processes as a spatializing emotional grammar that renders LGBTIQ people as objects of state-sanctioned hostility in "savage" nations where they are detained or killed and are hence worthy of recognition by states (such as the UK and US) who can offer them freedom from such hostilities (Lopes Heimer, 2020: 177–180; Kapur, 2024: 69; Saleh, 2020: 51; Shakhari, 2014: 1000–1002).

While emotional cartographies of safety and danger evident in asylum practices result in differentiating the danger of "the East" from the comfort of "the West", they also produce the figure of the "bogus" refugee who risks exploiting the system (Fassin, 2013; Ferreira, 2022; Hathaway and Pobjoy, 2012). Specifically, the compassionate position of a receiving state and the normative integrity of refugee doctrine must be guarded from the threat of a person fabricating a claim of persecution or a decision-maker who is overgenerous in interpreting a state's protection obligations. In both cases, fear and hostility materialize institutionally to make visible purported threats to the integrity of the state policy and asylum law (Raj, 2020: 94–115).

In the next section, I refine this broad sketch of hostility, international asylum law and queer-ness through a focus on how it functions in the UK. I examine how hostility emerges through

screening interviews, strict statutory or jurisprudential criteria on persecution, detention practices, and limited judicial review. This exposes underlying state fears that “opening the floodgates” will compromise the integrity of refugee adjudication.

Part II: Hostile environments in the United Kingdom

Codifying hostile environments

In 2023, the then Home Secretary of the UK, Suella Braverman, claimed:

“People do game the system. They come to the UK. They purport to be homosexual in the effort to game our system—in the effort to get special treatment—and it’s not fair and it’s not right. . . I’m afraid we do see many instances where people purport to be gay when they’re not actually gay” (Quoted in Alwakeel and Bychawski, 2023).

Braverman’s racialized politicizations of LGBTIQ asylum are structured by grammars of fear and contempt. She projected the figure of the compassionate, welcoming British state offering “special treatment” to those in need as under threat from those deviant “others” who “game the system.” Fear of bogus claims is matched by a hostility that materializes in the repudiation of those who are “not actually gay” and take advantage of the system by doing what is “not fair” and “not right.” Braverman’s comments were made during a time where the British government was expanding its policies relating to its “hostile environment” (now called “compliant environment”) to make it more difficult for people to claim asylum in the UK.

In 2012, the UK government embarked on a process of creating a “hostile environment” for people who remained in the country without a regularized migration status. This was made possible through a series of policy, legislative, and regulatory measures that “showed contempt” toward racialized migrants (Balani, 2023: 63; Powell, 2024a: 68; Webber, 2019: 77). As Bulley (2023: 57) argues, these legislative and policy architectures are not only produced by individual politicians’ hostilities toward those racialized “others” who have “breached” the boundaries of the state (who Braverman would describe as those who have successfully “gamed” the system) but also by institutionalized hostilities that “operate physically, discursively, and *emotionally* to ensure the non-belonging, the alienation of immigrants.” In practical terms, this hostile environment makes it impossible for people to work, denies them the ability to rent accommodation, and curtails their access to social security. While much law relating to asylum claims was governed by European Union directives and regulations (prior to Brexit), the “hostile environment” has materialized politically and legally in recent years to deter “illegal migration” by placing additional procedural and substantive hurdles on people who seek asylum. Legal aid funding has eroded making it more difficult for applicants to articulate robust and consistent claims, more people are detained in places where they need to “closet” their sexuality or gender, and ministerial discretions to determine claims have expanded to render claims “inadmissible” which keep people seeking asylum in limbo (Alessi et al., 2024; Powell and Rifath, 2023; *Nationality and Borders Act*, 2022). The most recent statutory reforms through the *Nationality and Borders Act 2022* and *Illegal Migration Act 2023* have entrenched the affective dimensions of legislative hostility. For example, these laws limit the scope of protection available for people who seek asylum,

differentiate protection opportunities between those who seek asylum by “regular” means with a visa as opposed to those who arrive “irregularly” by boat, and force the Home Secretary to certify certain claims as inadmissible (and subject to processing in a “safe third country” like Rwanda).² These laws are built upon a discursive terrain of hostile immigration laws that already disallowed people who seek asylum to work, subjected them to indefinite forms of detention, and limited opportunities for legal aid and judicial review (Dustin, 2018: 108; Powell, 2024a: 68–72).

For those seeking asylum in the UK, the recognition process evinces state hostility through its complexity, confusion, and protraction. People who lodge an asylum application at the border (when arriving in the UK) are required to undergo a screening interview where their initial claim will be scrutinized. If their claim *prima facie* raises international protection obligations, they will be invited to a more in-depth interview with a caseworker from the Home Office who will assess their application in detail (Home Office, 2023b). While their application is being heard and decided, they may be granted leave to live in community housing or they may be subject to detention in a gated facility (or barge as is the case with the Bibby Stockholm). There is no designated time frame for the processing of asylum decisions, which can take years, and this legal limbo has been subjected to much criticism relating to the “asylum backlog” (Amnesty International UK, 2023). Where claims are assessed negatively, individuals have limited opportunity to challenge the legality (procedural fairness, judicial errors, irrationality) of the decision through immigration tribunals and courts (discussed further in Parts III and IV), with some subject to removal orders before effective legal advice or challenge can be sought.

Progressing queer asylum claims

Asylum claims based on sexual orientation have been recognized in the UK since 1999 (Millbank, 2005: 116). However, LGBTIQ people seeking asylum in the UK are faced with an anxious “culture of disbelief” and “hostile rejection” when lodging their claims (UKLGIG, 2018). Rejection rates in the UK for asylum claims on the basis of sexual orientation were estimated between 98% and 99% in the first decade of the 2000s (UKLGIG, 2010: 2). One reason legal recognition was lacking then is that it had been circumscribed by the idea that gay and lesbian people could be expected to “reasonably tolerate” certain levels of hostility and avoid persecution by remaining “discreet” about their sexual identity (Dauvergne and Millbank, 2003a; Millbank, 2005, 2009b; Wessels, 2013). In 2010, a gay man from Iran (HJ) and gay man from Cameroon (HT) challenged the legality of requiring gay and lesbian people to be “discreet” about their sexual identity to avoid persecution. In invalidating this bureaucratic approach, Lord Rodger (*HJ & HT*, 2010: [59]) held:

“To illustrate the point with trivial stereotypical examples from British society: just as male heterosexuals are free to enjoy themselves playing rugby, drinking beer and talking about girls with their mates, so male homosexuals are free to enjoy themselves going to Kylie concerts, drinking exotically coloured cocktails and talking about boys with their straight female mates. . . . In other words, gay men are to be as free as their straight equivalents in the society concerned to live their lives in the way that is natural to them as gay men, without the fear of persecution.”

Lord Rodger's analysis recognized the hostility faced by gay and lesbian people who seek asylum. In rejecting the "discretion test," Rodger LJ repudiated the contempt of decision-makers who sought to force gay and lesbian people to live with the "fear of persecution." Individual and institutional hostilities were materialized in the judgment through spatial terms: the judicial analysis illuminated the hostile closeting that sexual minorities (such as HJ and HT) faced in countries where they were required to limit their sexual intimacies (hand holding, kissing) in public and, in doing so, also exposed the hostility of dismissive asylum decision-makers who embraced the idea that such hostility could be "managed" by individuals remaining discreet about their sexuality (refusing to show affection or sexual interest). In the judicial analysis, the recognition (and refusal) of these hostilities positioned HJ and HT as being demeaned as undesirable or unworthy, either in Cameroon and Iran where they were subjected to interpersonal abuse and refused state protection for being gay or by Home Office decision-makers who refused them state protection in the form of asylum. Rodger LJ's decision effected its own hostility (toward both the homophobic environments of foreign countries and domestic asylum bureaucracy) by eschewing the idea of sexual discretion. Echoing the emotional cartographies described in Part I, Rodger LJ presented the idea that "gay men are to be as free as their straight equivalents in the society concerned," and where this was not possible because the place (Iran or Cameroon) was dangerously homophobic, they ought to be granted protection. This characterization consolidates particularistic conceptions of sexual subjectivity where individuals can exist independently of social pressures as "free subjects" (Shuman and Hesford, 2014: 1021). In doing so, the judicial hostility that castigates homophobic demands for discretion creates greater space to grant asylum to gay and lesbian people if they comport to the neoliberal idea that individuals are repressing an innate sexual identity that they should have freedom to make visible (Powell, 2024b: 175).

In the years since *HJ & HT*, asylum claims on the basis of sexual orientation in the UK have been more successful (Home Office, 2023a). Yet, claimants still face institutionalized hostilities. At the time of writing, the British government was pursuing legislation to make it possible to send people who seek asylum to Rwanda, without judicial exceptions or human rights safeguards (Prabhat, 2023). For LGBTIQ people, the absence of specific legal protections against discrimination makes them vulnerable to further violence (Pulvirenti et al., 2024: 21). Statutory changes to evidentiary thresholds (now requiring those who seek asylum to demonstrate the veracity of their sexual or gender identity and history of persecution on the "balance of probabilities") make it harder for queer people to convince decision-makers of their testimonies (Powell and Rifath, 2023: 760). Aside from statutory changes designed to negate asylum claims, socio-legal scholarship has emphasized how LGBTIQ people in the UK are required to caricature their experiences of realizing their sexuality or gender in ways that appear authentically "emotional," conform to ethnocentric sexual or gender stereotypes, and express narratives of persecution in an orderly way (Briddock, 2016; Dustin, 2018; Millbank, 2005; Powell and Rifath, 2023; Raj, 2020). While discretion is no longer an expectation, Rodger's (*HJ & HT*, 2010: [61]) differentiation of discretion caused by the hostilities of persecution and the "choice" to live discreetly to avoid being "isolated from [their] friends and relatives, be the butt of jokes" (not hostility) remains confusing and unfair (Dustin, 2018).

The evolving nature of recognition for LGBTIQ refugees in the UK point to the structuring effects of hostility across individual, interpersonal, and institutional scales. In response to Suella Braverman's comments at the start of this section, Mary (a lesbian refugee from Uganda), spoke about how "they don't want us here, but at the end of the day we don't have anywhere else to

go” (Quoted in Kelleher, 2023). The asylum recognition process in the UK exemplifies the tensions of a system that both purports substantively to welcome LGBTIQ people who face persecution (and does so for many more than it did before) while also making it procedurally hostile for them to gain recognition as refugees. I take this tension—evident in Lord Rodger’s reasoning in *HJ & HT* as emblematic of “bordering practices that are ambivalent in their practices and effects—they produce hospitality as well as hostile environments” (Bulley, 2023: 160).

In the remainder of this paper, I navigate these tensions through close readings of recent decisions and trace the spatializing grammars of hostilities to demonstrate how “progress” in this area of law remains limited.

Part III: Spatialising hostility through identity and credibility

Decision-making in the Home Office in relation to sexual orientation and gender identity or expression asylum claims focus on the way homo/transphobic hostilities spatialize how people experience/define their identities. The Asylum Policy Instruction on Sexual Orientation (guidance for caseworkers when interviewing asylum applicants) emphasizes the role of hostility and stigma:

“Some LGB people may originate from countries in which they are made to feel ashamed, humiliated and stigmatised due to their sexual orientation . . . Exploring the nature of the stigma the claimant has experienced, may enable the claimant to present a more coherent narrative around any feelings they had of being different or alienated and how such feelings may have impacted upon and determined their behaviour in respect to developing and expressing their sexual orientation” (Home Office, 2016: 12).

The focus on hostility directs Home Office decision-makers to engage with the disparate ways experiences of sexual stigmatization might contribute to some people “feeling queer” (shame, humiliation). Yet, recent appeals of Home Office decisions to the Upper Tribunal evince how bureaucratic evaluation of sexual stigmatization, even where they attempt to be sympathetic, relies on grammars of hostility that make sense of a person’s credibility by navigating whether the individuals making asylum claims are able to express their experiences of sexual hostility in “obvious” ways. In the remainder of the paper, I have analyzed publicly available judicial decisions that range from 2017 to 2020 (that follow the latest version of the API guidance) to track the differing ways emotional grammars of hostility materialize identity, persecution, and belonging for queer people who seek asylum. As my paper aims to qualitatively detail the emotional grammars of hostility, it is not possible to engage with every thematic/legal issue raised in the cases decided within this time frame. Moreover, while all cases analyzed within this period speak to different aspects of identity and persecution, I select case law below to illustrate what hostility reveals about legal renderings of identity and persecution.

In *EK* (2018), a gay man from Malawi challenged his denial of asylum as the Home Office decision-maker found his claim “inconsistent and implausible” because he did not disclose the gender of his partner initially nor adequately explain his access to underground gay clubs. In upholding the appeal, the Upper Tribunal took care to amplify the hostility expressed in *EK*’s testimony. *EK* described how he found it “difficult to socialize with people” in public venues and he was “scared to reveal [his] sexuality” given that his stepfather had threatened to kill him (Rintoul J, *EK*, 2018:

[22], [41]). Given these experiences of institutional and interpersonal hostility, EK found an “underground club” where he could meet other men for sex and sociality (Rintoul J, *EK*, 2018: [47]). EK’s recount of hostility (alongside fear and shame) revealed its productive spatializing effects: hostility limited his sexual visibility at home and public venues while making the expression of his homosexuality possible only in hidden locations. Hostility spatialized and made credible EK’s account of being gay. In the decision, EK noted he did not reveal his sexual orientation initially when arriving in the UK “because [he] was embarrassed” to speak about his current partner and outlined the hostility he experienced directly from his stepfather who threatened to kill him because his stepfather feared “other people might find out about [his] sexuality, and [EK] would bring shame on the family” (Quoted in Rintoul J, *EK*, 2018: [41]). EK went on to explain that “he believed he would always be hiding his sexual orientation and not going public about it” (Rintoul J, *EK*, 2018: [47]). The Upper Tribunal turned to the API guidance to emphasize how homophobic hostility might make a person “reluctant to disclose [being gay]” (Rintoul J, *EK*, 2018: [61]). While the Upper Tribunal raised questions about other aspects of EK’s testimony, it authenticated his sexuality by foregrounding hostility and castigating earlier decisions for failing to appreciate this.

The spatializing effects of individual experiences of hostility structure credibility assessment of a person seeking asylum. In *JS* (2017), a gay man from Albania found himself denied protection on the basis that his failure to engage with gay life in the UK made his account of being gay implausible. If *EK* evinced how hostility in Malawi credibly made a person turn “underground” to express their homosexuality, *JS* emphasized how the absence of hostility in the UK, where gay life is possible, should make a gay person be “public” about their sexuality. *JS*, however, did not conform to this. The Upper Tribunal noted that “notwithstanding evidence of support services being available for the appellant in the United Kingdom no effort has been made by the appellant to engage such services to assist with any specific issues that may arise relating to sexual identity” (Hanson J, *JS*, 2017: [64]). In *JS*, the Upper Tribunal observed how internalized sexual hostilities (in Albania) could be addressed through gay affirming services (in the UK). *JS*’s failure to resolve their internalized homophobic hostilities through British public support impugned his testimony of experiencing sexual hostility in the first place.

In contrast, in *NN* (2017), a lesbian Muslim woman from Pakistan was successful in her claim as she did engage with purportedly greater freedoms available to her in the UK. *NN* described “being brought up [in Pakistan] to think homosexuality was wrong” and her “‘terror’ of being returned to Pakistan” (Bruce J, *NN*, 2017: [11], [18]). Homophobic hostility functioned in her life, much like it did for *EK*, to force her to hide her sexuality, where she and her partner planned on getting married and “continue[d] to see each other secretly” (Bruce J, *NN*, 2017: [25]). On arriving in the UK, following an acrimonious divorce from her husband and the death of her partner (who she believed was murdered in an “honor killing”), *NN* began to address these hostilities by attending support groups (such as Imaan) for queer Muslims. Unlike *JS*, *NN*’s embrace of social groups in the UK bolstered her credibility, as she was able to use corroborating testimony to demonstrate how she was “initially withdrawn and nervous but with the support of friends that she has met through these groups she has grown in confidence as an ‘out’ gay woman” (Bruce J, *NN*, 2017: [36]). If Pakistan was a site of homophobic hostility with closeting effects, then the UK was a site of queer freedom with hostility-alleviating effects. The decision concluded by emphasizing how *NN*’s credibility was sound, as she provided “detailed and compelling evidence about the realization that she was gay, her struggle with that fact as a result of her cultural background, and her reconciliation with her faith” (Bruce J, *NN*, 2017: [47]).

Similarly, in *SK* (2018), a gay man from Pakistan was able to verify his sexuality by speaking about his engagement with public sex. In this case, *SK* had “cruised” in covert spaces in Pakistan, and his desire to engage in casual sexual encounters more openly placed him at risk of public hostility in Pakistan (Chamberlain J, *SK*, 2018: [25]). Again, like with *NN*, *SK* was successful as he was able to demonstrate how a homophobic climate in Pakistan that failed to make room for him being an “open gay man” contributed to a “secret life” of transient sexual encounters in hidden spaces, as he had to engage in sexual encounters in empty woodland areas (Chamberlain J, *SK*, 2018: [25]). On arrival in the UK, *SK*’s sexual freedom was possible due to the lack of hostility in a welcoming British climate, as he recounted “there [was] usually a meet up every weekend where lots of gay man [sic] gather[ed] and we party” (Chamberlain J, *SK*, 2018: [12]). By framing his testimony about life in the UK through the absence of homophobic hostility in his life now, *SK* was able to spatialize his sexual identity in terms of the freedom to have casual sex in public places and disclose one’s sexual identity to others when attending public events. This emotional narrative has racialized performative effects. *SK*’s testimony produces the country of persecution (Pakistan) as inherently sexually violent and repressive while producing the country of protection (UK) as sexually safe and liberal. This reflects a hierarchical racial ordering of sexual freedom in which some forms of homophobic violence “over there” are made hypervisible (such as *SK*’s closeting in Pakistan) while rendering invisible the systemic homophobic violence “here” (such as *SK*’s need to prove his sexuality to decision-makers through narrow sexual stereotypes) (Lalor and Browne, 2018: 211).

Even where claims change grounds, hostility functions to authenticate the credibility of an asylum applicant. In *Mx M* (2020), a non-binary person from El Salvador had based their initial claim on being a gay man. In changing grounds to gender identity, *Mx M* noted “it was in the relative safety of the United Kingdom that their whole identity fundamentally changed” (Bruce J, *Mx M*, 2020: [17]). *Mx M* described in detail the physical and verbal expressions of hostility experienced in El Salvador, which included a bag of urine being thrown at them, being slapped and punched by police for having blonde hair, and homophobic taunts (Bruce J, *Mx M*, 2020: [23]). What is important to note from this case is how the hostility detailed by *Mx M* resulted in the Upper Tribunal accepting that their “identity is visibly ‘other’” (Bruce J, *Mx M*, 2020: [39]). If cases like *EK*, *NN*, and *SK* relied on categorizing homosexual orientation in fixed or objectively “discoverable” terms, here the Upper Tribunal used *Mx M*’s interpersonal and institutional experiences of hostility in El Salvador to accept an identity that slips between sexuality and gender—a queer category—between being perceived as a gay man and a transgender woman.

In drawing out the spatializing effects of hostility, with a focus on how this shapes sexual identity and credibility in asylum claims, I do not wish to trivialize the role of hostility in making people feel “queer.” Cases like *EK*, *NN*, *SK*, and *Mx M*, when read alongside the API on Sexual Orientation, demonstrate how increasing sensitivities to cultural difference have made room to legally recognize how homosexuality or non-binary identity materializes in ways that mean narratives might be inconsistent, disclosed late, or hesitant. Critical legal scholars writing on this topic over the past two decades have emphasized the importance and desirability of this improving recognition (Caminga, 2018: 105; Ferreira, 2023: 50–56; LaViolette, 2010: 194–196; Millbank, 2009b: 22–31; Raj, 2020: 109–111). Moreover, these cases take seriously hostility as a way to make present the ways (homo)sexual and (trans)gender expressions are subject to temporal evolution and spatial reorganization (Ballin, 2023: 145; Berg and Millbank, 2013: 140–145). However, where hostility functions as a grammar of legal recognition—to spatialize the ways sexual/gendered life is inhibited and to authenticate sexual/gendered credibility—it risks erasing those

“queer” asylum identities that deviate from these expected “lines” of hostility (Ahmed, 2006: 70). For people like JS, deviations from hostility-infused narratives mean a claim can be rejected because the applicant is unable to convince a decision-maker that they are “really” gay (where being gay means moving through the racialized cartography described in Part I where hostility/displacement is located in the asylum state and compassion/refuge is located in the receiving state).

In the final part of the paper, I look to parse how grammars of hostility circumscribe the boundaries of persecution. Grammars of hostility spatialize the legal category of refugee in a way that denies belonging (to the category of refugee) to those queer/trans people who are deemed capable of relocating elsewhere in their country of origin to seek state protection.

Part IV: Boundaries of hostility and belonging

While hostility functions to spatialize the authenticity of sexual identity, following *HJ* & *HT*, hostility has been a key anchor for decision-makers to determine if a person might “choose” to be discreet and, if not, if they would face a well-founded fear of persecution if returned to their country of origin. Recent cases that rely on country guidance notes from the Home Office center hostility to demarcate (1) the extent to which homo/transphobia is present throughout a country and (2) the extent to which homo/transphobic persecution (rather than personal preference) is responsible for a person’s decision to remain “discreet” (*HJ* and *HT*, 2010; *Jamar Brown*, 2015). The API on Sexual Orientation notes:

“Discrimination and societal disapproval may not in themselves amount to persecution but, if expressed in an extreme way and without effective protection from the State, then outright hostility, general discriminatory measures and the cumulative effects of harassment, threats and restrictions can constitute persecution” (Home Office, 2016: 16).

The guidance makes explicit that expressions of “outright hostility” must reach a certain level of severity and frequency in order to be categorized as persecution. For trans people, cumulative discriminatory measures “enforced through law or the imposition of social and religious customs” can meet this threshold (Home Office, 2011: 6). This grammar of hostility takes shape through legal recognition by differentiating between acts of “pressure” (socially stigmatized but not belonging to the category of refugee) and acts of persecution (politically repudiated and belonging to the category of refugee). *BF* (2019) and *YD* (2020) illustrates this differentiation. In *BF*, a gay man from Albania was denied protection initially because the “conservative nature of Albanian society” alongside the “incidents of intolerance, discrimination. . . [and] rejection by their family” did not meet the threshold for state-sanctioned persecution (Dawson and Smith JJ, *BF*, 2019: [10]). His experience of family abuse and his sexuality were not in dispute (Dawson and Smith JJ, *BF*, 2019: [252]). However, the extent to which homophobic persecution was pervasive in Albania was in question. By detailing recent reforms to protect LGBT people and the increasing pro-gay public events/organizations, along with the lack of documented cases of homophobic violence in Albania, the Upper Tribunal held that *BF* did not face a well-founded fear of persecution. Central to its analysis was the evaluation of evidence in terms of the presence or absence of hostility. For example, the Upper Tribunal noted that while there were “difficulties” faced by gay people in

Albania, the fact that a gay witness to the case was “able to live openly as a gay man” (including being in a same-sex relationship) suggested the absence of systemic hostility (Dawson and Smith JJ, *BF*, 2019: [237]). Here, the inability to disclose one’s sexual orientation to others was not marked by hostility (as it was in cases like *EK*, *NN*, and *SK*) but discussed as merely a “disheartening” challenge (Dawson and Smith JJ, *BF*, 2019: [246]). This was echoed in *YD* (2020). In this case, a gay man from Algeria was refused protection because his decision to live discreetly was the result of “respect for social norms” and any hostility experienced was localized to “family members” (Jackson J et al., *YD*, 2020: [39]). By recognizing “outright” familial hostility as spatializing violence within the home and counterposing this with “mockery or stigma” that might be experienced in public, the Court in *YD* recognized *YD*’s risk of being subject to discrimination or humiliation while also dismissing the claim for failing to meet the threshold of persecution (Jackson J et al., *YD*, 2020: [38]). The absence of “outright” state hostility meant the applicants in *BF* and *YD* could reasonably relocate to, respectively, Tirana (Albania’s capital) or elsewhere in Algeria to avoid the specific threats from their families and obtain protection by the state if attacked. In this way, the Upper Tribunal acknowledged that state persecution could exist where a state failed to adequately address “private” forms of abuse but, in this case, *YD* could find effective state protection elsewhere in Algeria.

Relatedly, in *KM* (2017), a gay man from Kenya was refused protection because he was not at risk of persecution. In this case, the presence of individual acts of hostility (described as “gays may be harassed and discriminated against in Kenya”) was mitigated by the absence of state hostility as “there are many places where gays can congregate openly” (Grubb J, *KM*, 2017: [30]). Hostility functioned here as a grammar to spatialize acts of discrimination and harassment as merely private expressions of hostility between individuals (occurring in homes or business premises) while the absence of hostility in “gay friendly nightspots” and “coastal resorts” spatializes public space as tolerating, even if not welcoming, of sexual and gender differences (Grubb J, *KM*, 2017: [30]). This point was also made in *SAC* (2017), where a gay man from Bangladesh was refused protection because the “discrimination, intimidation, and harassment” did not meet the definition of persecution (Hall J, *SAC*, 2017: [11]). In both cases, the “actual hostility toward gay men in Kenya” or “isolated incidents of horrific violence” in Bangladesh were spatialized as occurring infrequently or privately, neither systemic nor state sanctioned (Grubb J, *KM*, 2017: [41]; Hall J, *SAC*, 2017: [11]). Judicial demarcation of state hostility—where people experience persecution—meant that *KM* and *SAC* did not belong to the category of refugee, as both could return to Kenya or Bangladesh without facing institutionalized hostility. By doing so, the Court gave effect to a hostility of its own—negating the seriousness of some forms of homo/transphobic violence because they lacked the hostile severity and frequency of “persecution.” This is, under the existing legal framework, a permissible reason to refuse an asylum claim.

Conversely, successful cases like *MSH* (2018) and *YA* (2017) foreground hostility as the reason why a person might be “discreet” about their sexuality, even in progressive states, to avoid homophobic violence. *MSH* was a gay man from Bangladesh who did “not live openly as a gay man in the UK” because “his sister would swear at him, his brother would kill him, his father would disown him” (Hutchinson J, *MSH*, 2018: [12]). Unlike *KM* or *BF*, the applicant in this case was able to draw out this specific “fear of persecution” by connecting the interpersonal hostilities experienced from family members to the “fear of the wider community” where hostility against gay men was institutionalized (Hutchinson J, *MSH*, 2018: [17]). This point was made in *NN* as well,

where “‘honor’ based violence” inflicted by family members is enabled by Pakistani society (Bruce J, *NN*, 2017: [52]). In *YA* (2017), a gay man from South Africa was also able to make a similar point, by evidencing how his age (65) and illness (HIV positive) placed him at risk of violence even in a country with progressive laws like the UK (Lindsley J, *YA*, 2017: [25]). While South Africa had extensive legal protections for LGBTIQ people, the Upper Tribunal in *YA* was able to recognize how homophobic hostilities materialized differently when sexuality was understood through its intersections with race and disability rather than as a homogenous category. Where homophobic hostilities were judicially recognized as persecution—threading individual, interpersonal, and institutional dimensions—accommodation within the category of refugee was possible.

TK (2019) elaborates this point. In this case, a gay man from St Lucia, described as an “active user” of Grindr, had sought asylum because he feared return to St Lucia would place him at grave risk of violence. Hostility functioned here to connect *TK*’s experiences of being “extremely cautious about revealing his sexual orientation” to others in St Lucia and the “conservative, traditional and religious society in which there is widespread disapproval of homosexuality” (Plimmer J, *TK*, 2019: [3], [53]). Like in *MSH* and *YA*, hostility threaded the individual experience of internalized homophobia (and the need to closet one’s identity) with the institutional environment where “homophobic victimization are normative experiences for gay men in St Lucia” (Plimmer J, *TK*, 2019: [53]). This was also the case in *Mx M*, where public hostilities toward sexual and gender non-conformity took shape through, for example, the individual homo/transphobic beliefs of police officers which embodies the “weakness in the criminal justice system” (Bruce J, *Mx M*, 2020, [47]).

In discussing different cases for Parts III and IV, my purpose is not to construct them as being relevant only to the points I make in those parts, even if the cases have different emphases in relation to matters of credibility, identity, or persecution. My argument is that reading these asylum appeal cases together through their emotional grammar reveals how decisions about whether a person is experiencing persecution, and belongs to the category of refugee, depends on the spatializing effects of hostility. Decision-makers recognize that “social pressures” which are not “outright hostility” (such as humiliation, worry and anxiety, as evident in *BF*, *KM*, *SAC*, and *YD*) might make life harder for queer people and inhibit their daily life. Yet, these are deemed insufficient to be categorized as persecutory, as queer people are spatialized as being largely “tolerated” in public spaces, even if individuals might experience isolated incidents of hostility. After all, as all the cases discussed above make clear in relation to their implementation of *HJ & HT*, refugee law was not designed to allow queer people to live as freely in their country of origin (Bangladesh, Kenya, etc) as the country in which they have sought asylum (UK). Meanwhile, where decision-makers recognize “public hostility” as an everyday experience of queer life, as was the case in *MSH*, *YA*, and *TK*, the spatialization of homo/transphobia as pervasive makes legal recognition as a refugee possible. In drawing out these distinctions, I do not mean to suggest that a return to the racialization of countries as inherently homophobic (Kenya, Bangladesh, Algeria, and Albania) and where people experience homo/transphobic persecution is necessary to protect people who seek asylum. Rather, by following grammars of hostility, I invite scholars, decision-makers, and lawyers to problematize the ways decisions demarcate the boundaries of persecution and who is entitled to protection. This scholarly, judicial, and legal attention is important if we are to understand how even “progressive” decisions, where LGBTIQ applicants are granted protection, still rely on hostile

grammars that entrench distinctions between different forms of homo/transphobic violence and deserving/undeserving categories of queer/trans people who seek protection.

Conclusion

Reading queer/emotion in UK refugee law allows us as scholars, decision-makers, and lawyers to problematize the ways state hospitality/hostility materializes through the acceptance or dismissal of LGBTIQ asylum claims. In recent decades, significant efforts have been made by people seeking asylum, their lawyers, and supportive policymakers to improve asylum adjudication in Europe, Australia, the US, and the UK with respect to sexual orientation and gender identity (though to a lesser extent intersex). In the UK, notable appellate judgments (*HJ & HT*) coupled with tailored policy guidance (API on Sexual Orientation), data collection, and training of decision-makers has made certain aspects of the asylum adjudication process more “hospitable” to queer or trans people seeking asylum (Raj, 2020: 107). Yet, I have sought to problematize a racialized narrative of unencumbered, linear progress in this area of law by drawing out the differential ways “hostile scrutiny” of asylum claims limits the scope of recognition for LGBTIQ people who seek asylum.

This paper has paid attention to how hostility emerges as a substantive issue through the credibility assessments of identity (whether a person belongs to a “particular social group”) and categorizations of violence (whether a person faces a “well-founded fear of persecution”). In doing so, I have outlined how hostility spatializes homosexuality or trans personhood as an identity/feeling privately expressed in climates of homo/transphobia (countries of displacement) and publicly embraced in climates of comfort (countries of asylum). Bureaucratic scrutiny of sexual identity functions through grammars of hostility that both objectify and negate sexual identities that do not comport neatly to the bigotry/comfort or displacement/asylum binaries. A close reading of recent asylum appeal decisions in the UK reveals how the spatializations of homo/transphobic hostility, as either pervasive or contained within a specific “other” country, are key to whether an individual will be categorized as belonging to the category of refugee.

Legal legibility as a refugee depends on grammars of hostility that take shape through the interaction of international refugee law, domestic asylum regulations and policies, as well as a state practices. These grammars produce racialized imaginaries in which displacement states (such as Uganda, Jamaica, and Bangladesh) are spatialized as locations of unfreedom/homophobia, while asylum states (such as US, UK, and Australia) are spatialized as havens of freedom/pride. In Part I, I explained how hostility functioned as a movement of objectification and rejection—expressed through social repudiation and critical scrutiny. I used this affective theorization of hostility to understand how anti-queer/trans hostilities recognized by asylum cases produce racialized cartographies of safety/danger that map “the West” as a place for queer sexual expression, while mapping “the East” (and South) as places for queer precarity. Part II explained how these racialized cartographies are strengthened through “hostile” environment immigration policies in the UK. In this section, I looked at recent reforms alongside more well-established principles of LGBTIQ asylum protection to explain how state hospitality (in the grant of asylum) is always already conditioned by state hostility (the conditions that make the grant of asylum possible).

Parts III and IV explored how these grammars of hostility emerge to contour individual asylum claims. Drawing on a range of recent cases (2017–2020) from people seeking asylum from Kenya, Bangladesh, Algeria, Albania, Pakistan, St Lucia, and El Salvador, I sought to map the spatializing

effects of hostility in creating doctrinal borders for substantive categories like sexuality and persecution, while also creating physical borders for those who seek asylum by expelling them from, or accepting them into, the UK. While hostility does not determine the category of the “queer refugee” in fixed terms, as there are divergences between the cases, the emotional grammar shapes the extent to which protection is available for queer people. In particular, threading asylum narratives through individual, interpersonal, and institutional accounts of hostility remains critical to the grant of refugee protection.

At the end of 2023, the Home Office released new guidance on the assessment of asylum claims. The guidance notes the “burden” of establishing the claim lies with the person seeking asylum even though the decision-maker does not need to be “certain” or “convinced” of the applicant’s testimony (Home Office, 2023b: 18, 43). While the cases discussed above predate evidential reforms passed in 2022, they remind us that when it comes to establishing sexuality or persecution, the system continues to demean and dismiss those who fail to render plausibly emotional accounts of their experiences. The evidential changes recently introduced, along with prolonged periods of detention and removal of people to third countries, are likely to make the situation even more difficult for LGBTIQ people who seek asylum in the UK. This is not a unique phenomenon. Numerous countries in Europe are now “externalizing” their asylum obligations and militarizing borders (physically, legally, and socially) to make it even harder for people to seek refuge (Amnesty International, 2023). As scholars, lawyers, and decision-makers invested in supporting (LGBTIQ) people escaping violence, confronting these grammars of hostility as they emerge through asylum law across individual, interpersonal, and institutional levels remains critical.

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ORCID iD

Senthoran Raj  <https://orcid.org/0000-0001-6972-9252>

Notes

1. I use the acronym “LGBTIQ” throughout this paper as this is the terminology typically found in legal, policy, media, and scholarly contexts in Anglophone and European jurisdictions when describing people who are minoritised on the basis of their sexual orientation, gender identity and expression, and sex characteristics. However, it is important to note this label is contested and descriptions of bodily, sexual, and gender differences vary across cultural contexts (see Kapur, 2024; Raj, 2017). While I reference intersex in the acronym given recent asylum advocacy on this topic, I am not aware of any published decisions on intersex asylum claims in the United Kingdom and I invite further research on this specific area.

2. At the time of, newly appointed Home Secretary Yvette Cooper (in a Labor Government) announced her plan to scrap the processing of asylum claims in Rwanda and introduced regulations to not give effect to the “unworkable” retrospective elements of the *Illegal Migration Act 2023*. However, the Labor Government will still pursue strict forms of immigration policing by increasing surveillance of small boats and forced removals through a new Border Security, Asylum and Immigration Bill (see Electronic Immigration Network, 2023).

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Author biography

Dr Senthorun Raj is a Reader in Human Rights Law, Manchester Law School, Manchester Metropolitan University, UK.