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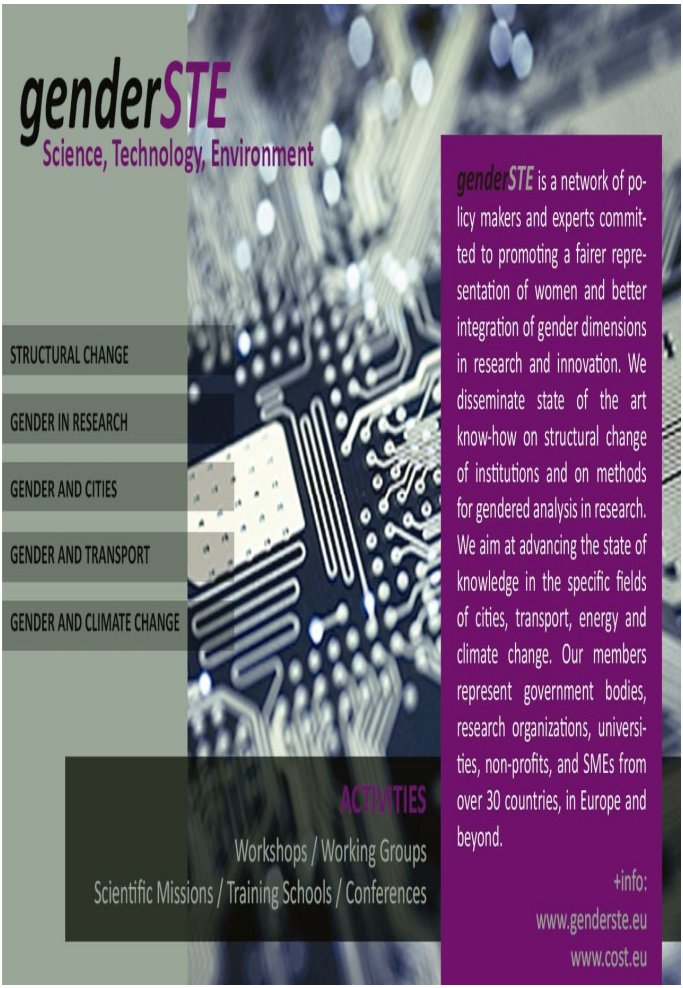
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Brazilian and Portuguese Writers: Writing, Ideology, Gender

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Interinstitutional Research Project
Federal University of Ceará / New University of Lisbon

Abstract:

This research aims to investigate certain literary projects as resulting from tensions and conflicts portrayed in the works of Brazilian and Portuguese female writers, in light of pressures and choices dictated by the literary and artistic tradition, whose tracks lead us to the grand themes of the human condition.

Within an environment of coexistence between literature and writing, a few female writers began the production of their body of fiction work, among them the Portuguese Agustina Bessa-Luís (1922 -) and Maria Judite de Carvalho (1921-1998), as well as the Brazilian Clarice Lispector (1920-1977) and Rachel de Queiroz (1910-2003), by means of intense discussions with their "fellow travelers", books, other poets, creators of fiction, essayists, philosophers and critics, in the words of Goethe.

Through the different types of text they cultivate, these writers present curious and challenging discussions that run through a poetics of the female condition and a reflection of complex nature (Edgar Morin), towards a dialogue of ideas and postures regarding fundamental values of life in the twentieth century, and which are still considered in the current century.

For such a study of comparative nature – involving readings, experiences and relations of alterity and gender highlighted by the aforementioned writers -, we shall rely on the essential contributions provided by categories that will guide the research, such as *crisis* (Gilberto de Mello Kujawski), *literary system* (António Cândido), *comparatism* (Tânia Carvalhal, Sandra Nitrini), *context* (Dominique Maingueneau), *literary field* (Pierre Boudieu), *reading* (Paulo Freire), *unreading* (Harold Bloom), *existence* (Ortega y Gasset), *writing* (Roland Barthes), and *contemporaneity and liquidity* (Zygmunt Bauman).

In effect, this research rests upon a double purpose: first, to listen to the poetics of the corpus writers, through speeches and situations dramatized by their fictional characters or by virtue of

other forms of expression, such as those found in writing spacesgenerated from interviews, letters, confessions, etc., therefore imbued with an hermeneutical imprint.

Tied to the first one, the second purpose, didactic in its nature, is to stimulate a learning-educational discussion around some of the possible meanings of rediscovering life and ways of being in the world through literary reading, taking as principle ideas and projects belonging to the personal library spaces of writers, such as in-between places (Homi Bhabha, Silviano Santiago), places of intervallic dimension (João Alexandre Barbosa), symbolic places (readings) wherein the human condition is inscribed and recreated, as well as representations of social, political and ideological pressures concerning achievements and defeats of women in western world societies, from the nineteenth to the twenty-first century.

The writers quoted in this project have been studied according to the aforesaid purposes, both through classes, essays and articles and through lectures and conferences, and also within the activities developed by the Study Group.

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References: Morin, Edgar. (org) A religação dos saberes. O desafio do século XXI. Transl. Flávia Nascimento. Rio de Janeiro: Bertrand Brasil Ed. 2001 / Kujawski. Gilberto de Mello. A crise do século XX. São Paulo: Ed. Ática, 1994 / Cândido, António. Formação da Literatura Brasileira. Momentos decisivos. Belo Horizonte/Rio de Janeiro: Ed. Itatiaia, 1993. 2v /Bourdieu, Pierre. As regras da Arte. Gênese e Estrutura do Campo Literário. Transl. Maria Lúcia Machado. São Paulo: Cia. Das Letras, 1996 / Barthes, Roland. Novos Ensaios críticos. O grau zero da escritura. Transl. Heloyse de Lima Dantas. São Paulo: Cultrix, 1972 / Hall, Stuart. A Identidade Cultural na Pós-Modernidade. Transl. Tomaz Tadeu da Silva e Guacira Lopes Louro. RJ: DP&A, 2002.

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The Spanish Society for Women's History (Asociación Española de Investigación de Historia de las Mujeres-AEIHM) was founded in June 1991 as a development of the National Commission of the IFRWH (International Federation for Research in Women's History), federation of which it is now a member. For over twenty years, it has developed many activities in order to promote research, teaching and dissemination of women's and gender history, as well as the theoretical and methodological renewal of the historical discipline, through conferences and seminars, workshops, publications, awards, dissemination of its own and others' activities through website and mailing list and participation in collective actions. It has currently 300 members.

Its aims are to promote and spread women's and gender history through research, teaching at different academic levels, and outreaching to society at large. On an annual basis, and continuously since 1993, AEIHM has been held international conferences and seminars for discussion between national and foreign specialists in women's and gender history.

The last ones held are: Salamanca (2012): *XVI International Symposium AEIHM*. "Eating the Forbidden Fruit: Women, Science and Creation through History;" Madrid (2011): *IV International Seminar AEIHM*. "Foucault's Influences in Historiography. Powers, Bodies and Desires;" and Bilbao (2010): *XV International Symposium AEIHM*. "Women and History. Dialogues between Spain and Latin America."

To these regular meetings it should be added the co-organization of: Gender and Postcolonial Studies in Question (s). III European Meeting (Barcelona, June 2012), in collaboration with: Fédération de Recherche sur le Genre (RING), Institut Interuniversitati d'Estudis de Dones i Gènere; Grup de Recerca Consolidat Multiculturalisme i Gènere (Universitat de Barcelona).

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SEXUAL VIOLENCE JOURNALISM IN FOUR LEADING ENGLISH LANGUAGE INDIAN PUBLICATIONS BEFORE AND AFTER THE DELHI RAPE

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ABSTRACT. The Delhi Rape is the most extensively covered rape case in recent Indian history. This report chronicles a media monitoring exercise of rape reporting before the Delhi incident between January 1, 2012 and August 31, 2012. The report also examines the three-month period after the Delhi Rape in an empirical analysis of four leading Indian English language publications with a combined circulation of 2,946,340: *The Hindu*, *India Today*, the *Indian Express* and *Tehelka*. Rape reporting increased by roughly 30% after the Delhi Rape, with the Delhi Rape taking between 10–20% of the share of rape stories across varying storylines. Sex crime reporting is best understood by identifying storylines. Monitoring the Delhi Rape, 5 storylines emerged: personal, public outcry, women's safety, police handling and legislative. These storylines enabled us to probe the reporting of rape and sexual violence more deeply with respect to the context under which gender justice was addressed.

Keywords: New Delhi bus rape; media monitoring; gender justice; global cultural flows; social media; mass media; investigative journalism; crime coverage reporting

1. Crime Reporting in the English Language Press in India

On December 16, 2012, a 23-year-old physiotherapy student was brutally gang raped and beaten on a moving bus in south Delhi by 6 men. She had been returning home from a movie theatre with a male friend after 9 pm

when the incident occurred. After the attack, the two were disposed of on the side of the road, finally receiving assistance from a passerby. While she initially survived the rape, the young woman succumbed to her injuries in a Singapore hospital on December 29, 2012. Now referred to in the press as the "Delhi Gang Rape," "Delhi Bus Rape," or simply, the "Delhi Rape," this incident of sexual violence has since been met with global outrage, becoming a fixture in the media. Given the enormous attention granted by leading newspapers such as the *New York Times, The Guardian, Le Monde* and others, the way in which the English language Indian print media has chosen to cover this story and the ensuing events is of great interest.

Examining the three month period after the Delhi Rape, as well as rape reporting between January 1, 2012 and August 31, 2012, this report is an empirical analysis of four leading Indian English language publications with a combined circulation of 2,946,340: *The Hindu, India Today*, the *Indian Express* and *Tehelka*. Divided into 5 sections, this report is not about the importance of investigative journalism, nor honoring exceptional journalistic abilities, but instead is focused on the Indian daily diet of news reporting and the incident driven culture of modern journalism.

Crime reporting is often a response to a trigger event, however this type of reporting largely concerns only the surface facts of the incident, lacking the necessary depth and sophistication to understand the crime. Indeed, as David Krajicek, an American journalist, notes, "the bulk of crime coverage amounts to drive-by journalism – a ton of anecdote and graphic detail about individual cases … but not an ounce of leavening context to help frame and explain the crime" (Khan 89). The same holds true for India's leading English language print media, where incident driven reporting reigns and thoughtful examinations of incidents are reserved for exceptional circumstances, concerning particularly brutal stories, such as the Delhi Rape.

Perhaps more significant than the severity of the incident, however, is the public attention a case attracts. Indeed, in the case of crime reporting, the news agenda is highly impacted by the amount of public attention, both locally and globally, an incident receives. The globalization of news gave legitimacy to the public reaction to the Delhi bus rape and created public space for local debate and activism. Further still, the attention granted by other sources such as newswire, independent journalists, social media, and civil society organizations also brings fresh perspective to bear on gender justice. When an incident receives widespread attention, it often spurs government action (Sen 11). Indeed, after the Delhi Rape, the government introduced significant legislation regarding rape and women's safety three months after the incident. To this end, this report works to understand both how the press covers stories of rape and also asks whether the press provides a corridor to discuss gender justice.

2. Media Monitoring of Mass Circulation Dailies and Weeklies and Investigative Reporting of Gender Violence

While the mass media is often deemed society's watchdog, it has been demonstrated that quite frequently the press does not fulfill this function. The investigative dimension of the press has acquired the status of a myth, as crusading journalists such as Bob Woodward of the Watergate Scandal are few and far between. And though there are still journalists who do excellent reporting today, most work is incident driven and largely concerned with the surface facts. Today, thoughtful reporting involving broader examinations of incidents is more likely seen during exceptional circumstances.

Media monitoring's principal virtue allows us to track and monitor trends in reporting over defined periods of time, allowing us to capture the intensity of coverage as well as the kind of coverage. Utilizing such a method has enabled us to examine gender violence both in quantitative and qualitative dimensions. Our media monitoring study outlines "typical" versus "exceptional interest" rape reporting, where we examined rape reporting in four Indian English language publications from January 1, 2012 until August 31, 2012, before observing reporting after the Delhi Rape (December 16, 2012) until March 25, 2013. This time period and the four publications chosen constitute a portrait of information, and while there is a large non-English speaking press in India, analyzing Hindi, Urdu or other prominent Indian languages lies outside of our resources. Taking both a comparative and longitudinal approach, this study is a dynamic analysis of a rapidly changing story.

3. The Study of Rape and Sexual Violence: Some Preliminary Considerations

Our study began as an inquiry into the ways in which Indian print media reports crimes of gender violence. Sexual violence can be broken down into four dominant categories: rape/honor killings/domestic violence/human trafficking. Given the number of news stories to be coded, it became evident that the York University/Jamia Millia Islamia shared project did not have the resources to examine all dimensions of sexual violence. As a result, it was decided to focus on rape, however, it is important to point out the phenomenon of sexual violence in India today is much larger and more complex than is covered in our report.

Figure 1

The Reach of Indian Print Media

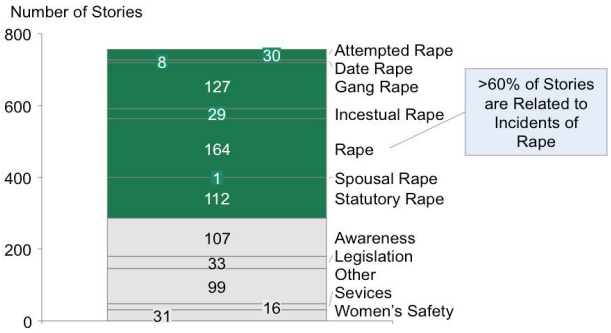
Publication	Circulation
The Hindu	1,396,597
India Today	1,100,000
Indian Express	278,243
Tehelka	171,500
Hindustan Times	1,087,840
The Times of India	3,223,393

Source: Factiva

The media monitoring project evaluated *Tehelka*, *India Today*, *The Hindu*, the *Indian Express*, which are among the most influential journals affecting the formation public opinion in news hungry India. *Tehelka* is an English language weekly known for their investigative journalism with a strong focus on public interest stories. *India Today*, a fixture of Indian print & TV media, was established in 1975. The weekly news magazine discusses news, politics, current affairs, cricket and other sports and is also published in Hindi, Tamil, Telugu and Malayalam. The *Indian Express* is a pan-North Indian daily newspaper highlighting local and national coverage relating to Indian society and business. Of the most highly read and regarded newspapers in India, *The Hindu*, is an independent general newspaper that started out as a weekly in 1878 and became a daily in 1889. Figure 1 details the circulation of the four publications as well as *The Times of India* and The *Hindustan Times*, two other prominent English language dailies.

Figure 2

Incident Driven Rape Reporting

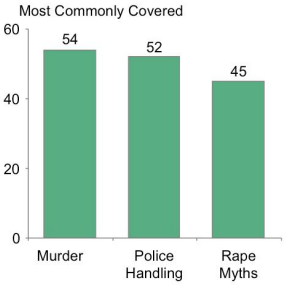


Source: Drache and Velagic

Observing the four selected publications, the number of articles concerning rape has been relatively consistent across the eight-month period. Of the 1246 results for "rape," 757 of those stories were coded and have been represented by one of twelve categories (see Figure 2). Some articles were not coded because the primary story was not about rape. Of the categories considered, stories relating to incidents of rape make up the largest form of reporting, with stories of rape, gang rape and statutory rape being of the most reported. The result of such incident driven reporting is an information gap. Engaging in a reactive form of reporting, the press leaves the reader with information concerning a single incident and little about the issue of gender violence as a whole. Further, awareness, where awareness activities here refer to awareness based actions such as protests, gatherings, lectures and conferences, were also widely reported. However, the efforts of those engaged in awareness activities often receive insufficient attention as only the most dramatic events get coverage, while other, less sensational efforts remain largely underreported.

Figure 3

More to the Story: Additional Factors of Rape Reporting

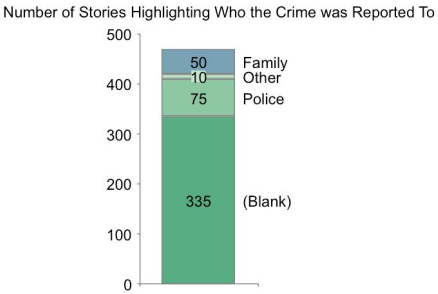


Source: Drache and Velagic

Beyond the first level of categorization, stories were coded by additional factors. The most prevalent were stories where the victim was murdered, where police handling was discussed, and those that included rape myths, such as victim blaming (see Figure 3). These results suggest that the news agenda is dictated by rape stories that have a more sensational undertone.

Figure 4

Sexual Crimes: Who Does the Victim Turn To?



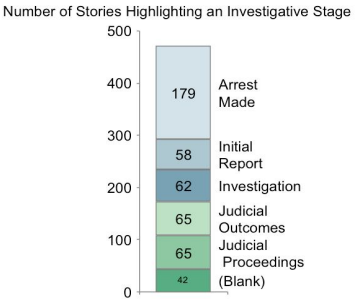
Source: Drache and Velagic

Because of the stigma surrounding rape, we thought it useful to identify who victims first turn to when reporting sexual crimes. As our results show in Figure 4, while the majority of stories are relate to incidents of rape themselves, they generally do not make mention of who the rape was reported.

Of those stories that did mention who the crime was reported to, family was most often cited, after police.

Figure 5

Stages of Investigation



Source: Drache and Velagic

Also observed were the number of stories that represent a stage in the investigative process (see Figure 5). Of all the stories coded as incidents of rape, all but 42 were about a process in the investigative cycle. Because the press reports individual cases of rape, it is no wonder that 471 news articles refer to some stage of the investigative process. It can be said, then, that the investigative process drives reportage.

4. Typical Rape Reporting: The Single Incident Mindset, Caste, Class & Rape Myths

The English language Indian press' coverage of violent crime typically highlights the individual story of one survivor, one event or one episode of violence. If the story is followed up on at all, it is often the result of civil society groups driving the issue (Khan 89, 95). The problem with such reactive reporting is that it often fails to provide necessary context and analysis and sees incidents disappear as quickly as they were given top coverage. Indeed, there are many examples where the press has followed a single incident, reporting few facts beyond age, date, details of the crime itself and its position in the crime cycle. Such examples include, "Man Arrested for Rape of 7-yr-old Daughter," *Indian Express*, August 12, 2012, a 144 word story highlighting basic facts about the father including his age (35), his inconsistent employment history and drug and alcohol abuse. Other details concerning the date and address of the crime were given, as well as a few words discussing how the girl relayed the incident to her grandmother, who lodged the complaint. And while this article depicts typical coverage,

there are others, especially those carried in weeklies, which follow individual cases with more detail. For instance, a few *India Today* articles including, "Rape & Murder in Betul," April 13, 2012; "A Mother Listens to Her Conscience," July 2, 2012; and "Bigots Boycott Rape Victim," August 27, 2012, go into great detail when reporting cases involving victims under the age of 18. Each article traces the individual stories of victims from the incident until the arrest and also calls attention to the unwillingness of police to take the safety and protection of the victims seriously. For example, in "Bigots Boycott Rape Victim," the 13-year-old victim and her father had to approach three police stations before one finally agreed to lodge a complaint. While these examples provide a more complete description of victims' experiences, they still focused on individual cases, and further, only highlight crimes against minors, leaving those crimes involving women over 18 underrepresented. Such omissions signal a failure of the press to represent a variety of voices, and further, exemplifies the fact that the press' freedom is not being utilized (Sen 9).

News stories can also take on moralizing tones as stories concerning violent crimes involving women often revolve common rape myths and stereotypical images of women (Khan 102). Longstanding rape myths include the notion that rape is sex, that the assailant was motivated by lust, that men have a natural predisposition to get sex through force and that women provoke rape through their looks and behavior (i.e. dressing provocatively, being intoxicated, accompanying the perpetrator etc.). Also propagated is the notion that rape is deserved, only promiscuous women are victimized, women cry rape for revenge, are lying and have ulterior motives. Further myths include the belief that sexual attacks sully the victim (Benedict 14–19; Burt 217, 233; Franiuk et al. 288–289; Khan 102).

Of the rape myths found in Indian print media, false reports or false crimes appear frequently. While the press does not comment on the truth of the victims' statements, mistrust is played out by news organizations when they run stories relating to false crimes. False crimes are those "cases where the woman was found lying about rape, molestation, assault, wife beating or used such accusations to blackmail men or when she misused the law that was meant to protect her" (Khan 104). Indeed, false report stories abound, especially those which revolve justification for premarital sex. Here, a woman is made out to have changed her story (i.e. she wanted it at the time) or has "cried" rape. Some such stories include: "Maid Booked for Registering False Rape Case against Employer," *The Hindu*, January 9, 2012 and "Gross Misuse and Abuse of Rape Laws," *The Hindu*, January 10, 2012. While the media focuses heavily on false crimes, the rate of false reports filed on sexual assault in India is only 2 to 3 percent (Khan 104).

Because of the prevalence of rape myths, news agencies have also come to give them undue prominence. For instance, "The Aptness of a Woman's Garb," *Tehelka*, January 2, 2012, discussed the tendency of police and political leaders to blame victims for their misfortune and point to attire as an invitation for rape. And while a women's clothing should not be observed as an invitation, Mamta Sharma, the chairperson for the National Commission for Women has stated that what women wear cannot be discounted ("Women Should Take their Indian Culture Along When They Go Out," *Tehelka*, March 31, 2012). "A Rape Victim I Knew was Shattered by the Media's Character Assassination," *Tehelka*, March 31, 2012 discusses the backlash victims often face in terms of unwarranted character assassinations by the media and police and further, highlights their use to increase the sensationalism of a story and even help the accused.

Finally, sexual crime reporting often considers class and caste when determining what stories become a part of the news agenda. Because the elite media is attracted to "people like us" stories, the Indian press reports crimes concerning middle or upper class urbanites in greater number and detail than stories centered around tribal or lower-caste characters (Khan 87). Through our own study, it became apparent that caste was only mentioned if the victim was a Dalit; otherwise, no mention of caste was made. Such an omission reinforces Khan's observation that stories of low class and caste are underrepresented in the Indian press. Amidst these trends in rape reporting, the common denominator remains – these stories are disconnected from a broader framing context or larger meaning. They exist as isolated islands without connecting to larger, more extensive developed storylines.

5. Saturation Reporting and the Delhi Rape

The most widely covered rape case in recent history, the Delhi Rape has been described as a watershed moment, where national outrage has effectively directed the news agenda for over three months. Indeed, the press' coverage of the story has been voluminous, taking on multiple storylines such as: personal, public outcry, women's safety, legislative and police handling.

The following graphs chronicle the media attention the Delhi Rape received between the December 16, 2012 and March 25, 2013. So as to keep a broad enough search, and also to keep consistency across searches concerning the English language Indian publications considered in our initial study as well as the *New York Times* and *The Guardian*, we considered the search terms "India," "Bus" and "Rape." Figure 6 highlights the coverage in English language Indian publications, while Figure 7 emphasizes some of the global attention the case received, examining the amount of coverage

provided by *The New York Times* and *The Guardian.* Appendix 1 provides a more detailed chronology of the incident.

Figure 6

Local Audiences

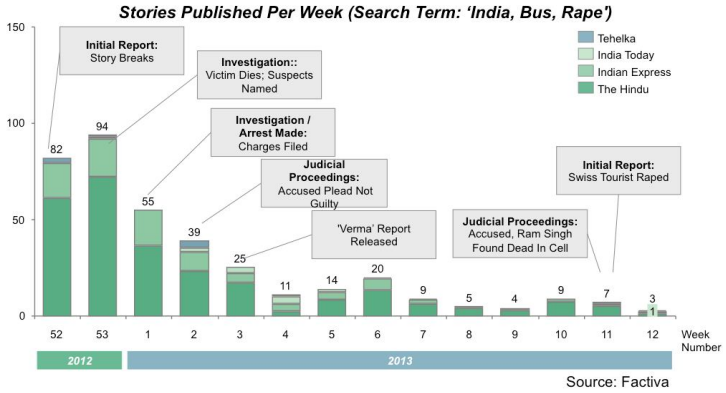
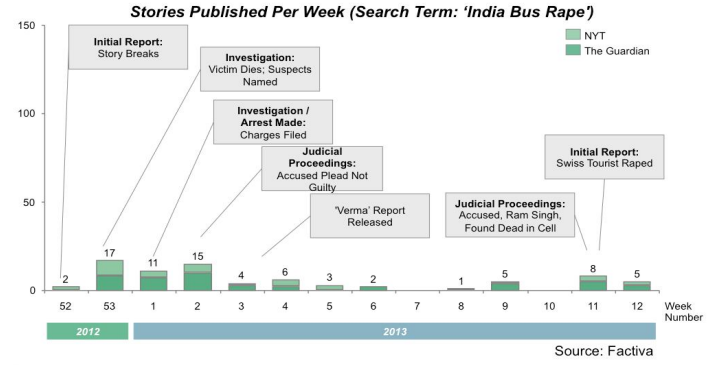


Figure 7

Global Audiences



a) Personal Storyline

Most readers first encounter a news story via the personal storyline. A powerful journalistic method to foster engagement with the public sphere, particularly in India, the personal storyline is a reminder of the importance

of framing and selling a story to news hungry readers. Galvanizing the country and shocking the world, the press provided exhaustive coverage of the Delhi Rape via the personal storyline. Developing a backstory through interviews with family and friends, the press was able to extend the life of the story beyond the incident itself by highlighting the personal lives of the victims and the accused. A tactic used to humanize the victim, the press rushed to establish her educational background and her achievements. In the press' eagerness to make the victim more identifiable, the facts regarding her educational pursuits were printed without proper verification – an act which first saw her as a medical student, a paramedical student and finally, a physiotherapy student. Moreover, the press took pains to highlight her promise as a student. For instance, in "Month after Death, Rape Victim Clears Physiotherapy Exam with 73% Marks," *Indian Express*, January 24, 2012, the reader is provided a surprising amount of detail about her academic standing:

> she secured 124 (out of 200) in physiotherapy in orthopaedics; 147 (out of 200) in physiotherapy in neurology; 151 (out of 200) in physiotherapy in cardiothoracic conditions; 144 (out of 200) in physiotherapy in general medicine; 160 (out of 200) in physiotherapy in clinical dissertation; and, 74 (out of 100) in research methodology.

The reporter even went as far as having the director speculate on her standing: "I have not seen the results of all my students but I guess she must be among the top three in this course at the institute."

Beyond news reports discussing her educational pursuits, her aspirations and sacrifices made by the family were stressed, both in dedicated articles and haphazardly interjected into news pieces. For instance, *The New York Times* interviewed the victim's father at length in, "For India Rape Victim's Family, Many Layers of Loss," January 11, 2013. In the piece, he discusses his daughter's childhood dream of becoming a doctor, however, due to the exorbitant cost of medical school, she pursued physiotherapy. While she did choose a less costly option, her father still had to sell his land and work up to 16 hours a day to pay for her education. Continuing to identify her family's sacrifice, an article concerning one of her surgeries sees her father explaining, "we have to often live on just salt and roti" ("I Want to Live, Rape Victim Tells Mother, Brother," *Indian Express*, December 20, 2012). These inclusions work to create a feeling of connectedness as readers empathize with such stories of sacrifice in their own families.

In addition to developing the background of the victim, the press also highlighted the personal lives of the accused. On December 23, 2012, the *Indian Express* ran a story detailing the personal background of each of the accused in a piece entitled, "Who are These Men?" – the first article ad-

dressing the character of the accused. Taking a "people like us" tone, the article identifies the accused by their unremarkable occupations: "a priest, a wayward driver and his brother, a juice vendor – men with routine lives and routine travails. But on a Sunday night, these men from a south Delhi slum turned savage" (*ibid.*). Developing the backstory of the accused further, *India Today* dedicated over 700 words to a piece about the accused entitled, "The Unforgiven" on January 7, 2013. Calling the accused monsters, the article highlighted their unabashed brutality:

> The high point of his life was when he thrust his tightly clenched right fist into the womb of the bruised and battered 23-year-old on the night of December 16. Nothing beat the excitement he felt when he heard her muzzled screams, saw her writhe in extreme pain and watched the blood spurting from her young body.

Focusing solely on the juvenile, the *Indian Express* carried the story, "I Thought he was Dead, Says Mother of Juvenile Accused" on January 6, 2013. Securing interviews with his mother, the story articulated his impoverished family situation. Deemed the poorest family in the village, the interview discusses how she lost contact with her son when he went to Delhi to work eleven years ago. The story goes on to highlight the trials of the family, such as their father suffering from mental illness, his siblings' struggles, and the fear that his eldest sister will remain unwed.

The prevalence of such personal storylines reveals a tension between the backstory and the front story, where the drama and sensationalism of the backstory often wins out – and understandably so. The victim of the Delhi Rape represents the aspirations of Indian society – a family making sacrifices so their children can go to college – and the accused represent the degradation of society – confirming that men are violent aggressors, taking what they want, whenever they want it. Such storylines work to highlight the common experiences of individuals, while indulging disgust – a combination that helps to keep such stories in the news and sell newspapers.

b) Public Outcry

The public outcry that followed the Delhi Rape was well documented in the media, including print and television, as well as via social media outlets. The widespread coverage helped to assure ongoing media attention. Initially taking the form of protests and vigils, young women and men in Delhi took to the streets in many demonstrations to publicize the incident, the shortcomings of the justice system, and the appropriate punishment for the accused, before taking on the issue of women's safety. As public outcry mounted, the press acted as both a watchdog of public interest and helped to organize public disgust and shame exemplified by the types of stories published. In

this way, the Indian public prioritized sexual violence, which ultimately forced the government make it a priority (Sen 11).

The first protest was reported in "JNU Students Take to Streets against Capital's Shame," *The Hindu*, December 19, 2012. This protest, organized by the Jawaharlal Nehru University Students' Union (JNUSU), saw students protesting outside the Vasant Vihar police station. Angry students, organizing themselves through mass texting, social media, and word of mouth, protested for hours. The article also included an interview with the president of JNUSU, V. Lenin Kumar, who discussed the apathy of the Delhi police, the urgency in arresting the culprits, and the next scheduled demonstration – a candlelight vigil at India Gate. The press documented the following protests fairly consistently, often including slogans and quotes by representatives from student associations, civil society groups, and politicians, highlighting their shame and anger.

In "Angry Protests Across Delhi Over Gang-Rape," *The Hindu*, December 20, 2012, students from Delhi University, Jawaharlal Nehru University (JNU), Jamia Millia Islamia and members of the All-India Students' Association (AISA) demanded unconditional "freedom without fear;" for such freedom to be protected by police, government and judiciary; and a comprehensive law on sexual assault. Protestors from JNUSU also "demanded increased patrolling and deployment of police including police women in public places, fast-track courts to deal with rape cases, increased sensitization [of police in dealing with rape crimes] and effective investigation [and accountability of the police] dealing with heinous crimes against women." Finally, a "large number of workers of the Delhi BJP Pradesh Mahila Morcha and Yuva Morcha staged demonstration at Jantar Mantar [Delhi's designated protest area, located near Connaught Place] demanding death punishment to the persons who committed gang-rape" (*ibid.*).

Coverage of public outcry continued to highlight the demands of protestors. Leading this coverage was *The Hindu*, which on January 1, 2013 alone, covered:

• "JNUSU Holds Silent March," a "Take Back the Night" march.

• "Tamil Nadu: Students Condemn Gang-Rape Incident" saw students concentrating on crimes against women, focusing heavily on the role of authorities in protecting women's right to go about their daily activities "without having to constantly look over their shoulders."

• "Protests Against Gang-Rape Continue" highlighted a peaceful demonstration which included many of the leftist organizations such as the Progressive Organization of Women, the Progressive Democratic Students Union (PDSU), the All India Democratic Women's Association (AIDWA), the Students' Federation of India (SFI), the All India Students Federation (AISF), and the Dhakad Youth Foundation India (DYF), among others. The

demonstrators demanded "that the government impose capital punishment on the accused and strengthen the laws relating to offences against women."

Further, the individual voices of members of civil society groups were highlighted at length. Moving beyond the slogans of protestors, Kavita Krishnan, the Secretary of the All India Progressive Women's Association (AIPWA) addressed protestors outside (CM) Minster Sheila Dikshit's house in a twelve-minute speech that was captured by an onlooker and posted to YouTube on December 19, 2012. The Hindi speech, which has garnered more than 50,000 views, focused on political responsibility, women's rights and safety, and the impact of those patriarchal attitudes ingrained in Indian culture. The speech, translated and transcribed by *Tehelka*, appears in "Freedom Without Fear Is What We Need to Protect, to Guard and Respect," December 21, 2012. In the speech, Krishnan discusses the daily life of Indian women living in a vastly patriarchal society and, in one of the most interesting sections, refers to the topic of women's safety:

> I am saying this because I feel that the word 'safety' with regard to women has been used far too much – all us women know what this 'safety' refers to, we have heard our parents use it, we have heard our communities, our principals, our wardens use it. Women know what 'safety' refers to. It means – You behave yourself. You get back into the house. You don't dress in a particular way. Do not live by your freedom, and this means that you are safe. A whole range of patriarchal laws and institutions tell us what to do in the guise of keeping us 'safe.' We reject this entire notion. We don't want it. It's clear that in this country, if you leave out the women's movement – everything else, the government, the police, the political parties, the judiciary; when they speak of women's 'safety' they are speaking from within a specific patriarchal understanding of the term.

Beyond highlighting the demonstrations themselves, the publications also included individual reactions to the Delhi Rape, often focusing on the shortcomings of the justice system, police handling and discussions of appropriate punishment. One such story by *India Today* entitled, "The Guilty Must Pay," December 31, 2012, outlined responses from a variety of Indian elites:

• Former Attorney General Soli Sorabjee's response, "Action should be swift in rape cases. There should be special fast-track courts and proper judges appointed. The message must go out that the perpetrator will not get away with it."

• Senior Advocate, KTS Tulsi said, "the entire criminal justice system must be shored up. Scientific investigations, quick trial and maximum sentence must be awarded to the guilty. Certain punishment is the best deterrent."

• The Additional Solicitor General, Indira Jaising, said: "Quality of prosecution must be improved to increase the conviction rate in rape cases. Prosecutors must work in better coordination with the police, which too should be sensitized."

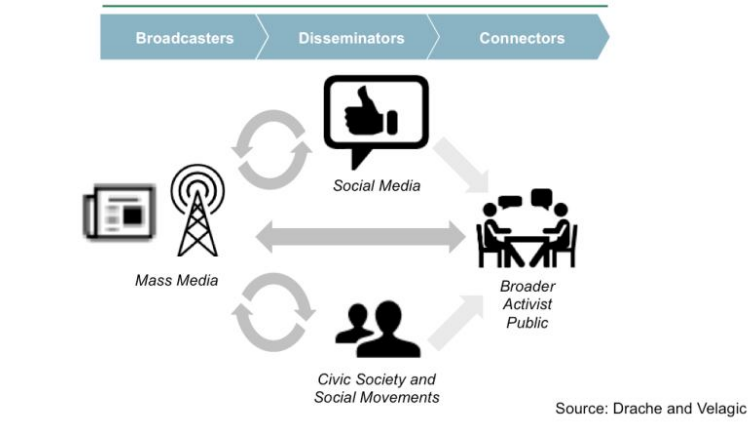
On December 19, 2012, *The Hindu* ran a similar story entitled, "Celebrities Express their Horror at the Brutal Gang Rape," where a selection of public officials' and celebrities' tweets and Facebook posts were printed, cementing the fact that, in an information age, even horrendous crimes require rely on celebrities to bolster public outcry:
• Infosys founder Narayana Murthy tweeted: "Ashamed to be an Indian,"
• Former super-cop Kiran Bedi said: "We all pray she survives to see how anguished society is; demand an answer from the powers that Advocating for Shariat laws,"
• Film-maker Farah Khan tweeted: "Sometimes I think the Shariat law would work well, we are becoming a country of barbarians."
• Fashion designer Jatin Kochhar said: "New Delhi gang-rape…shameful and shameless." Is not the Q to ask is why a Fashion designer or Filmmaker becomes a talking-head in the first place?

While there is an apparent tendency to fall back on stories driven by sensational quotes, the press also showed a desire to develop their coverage to include the expanding women's rights movement and gender justice. Stories like, "Rape, Shame and the Curse of Patriarchy," *The Hindu*, January 19, 2013, an opinion piece written by Ragini Nayak, an Assistant Professor in the Department of English, Lakshmi Bai College at Delhi University, highlights the shame that women in India are met with when they report rape. It looks beyond the punishment of the accused and instead focuses on the victim and her life after rape as it exists in a current culture of self-shame and the perception worthlessness:

> Women are tag-marked as shameless transgressors for marrying without the consent of family, seeking divorce, asking for a share in ancestral property or refusing to cover their hair, face or body. Violence against women surges whenever the patriarchal status quo or the traditional mode is challenged.

Figure 8

Broadcast Model of Rape Reporting



Source: Drache and Velagic

The enormous public outcry that followed the Delhi Rape is proof that there is an active public. As shown in Figure 8, broadcasters and disseminators responded to the public concern about sexual violence and the need for a strong response from authorities. Taking an active interest in the crime as it had been broadcast, the public followed reporting as it appeared in the press and also through the efforts of disseminators such as civil society groups on the ground and information spread via social media. The role of TV report-age in framing newspaper reportage (like its role in mediating public outcry itself) needs to be looked at carefully. As the broader public became engaged and mobilized, social movements became a part of the news agenda and influenced coverage of the Delhi bus rape. Mobilization of public opinion had an impact on mass circulation dailies. The mass media we examined developed a public outcry storyline that stretched between the simple and sensational and the more developed and informed. It should be stressed that the quantity and quality of press coverage appears to be positively correlated to the mass mobilization by the new social media.

c) Women's Safety

As we will see, the English language Indian press also went on to highlight women's physical safety in public space. Articles such as, "Bus Rape Spooks Working Women," *The Hindu,* January 4, 2013 and "Pepper Spray Out of

Stock," *The Hindu*, January 14, 2013, expressed women's fears, while others could be seen to instill fear. For instance, *The Hindu* ran the article, "Capital's Hall of Shame" on December 18, 2012, which detailed gruesome rapes dating back to 2001. By calling upon other brutal rapes, readers are reminded that the Delhi Rape is not necessarily an isolated incident, a tactic that effectively instills fear.

Beyond detailing the dangers women face, other stories put forth considerations of how to make the city safer for women. "Forget CCTVs, Give Us Well-Lit Facilities," *The Hindu*, January 9, 2013, discussed the importance of lighting in public spaces as a deterrent for violent crime. Other articles highlighted measures middle class women could take in order to protect themselves, such as self-defense workshops with training in kickboxing, krav maga (an Israeli self-defense system), and kung fu ("Women Take up Martial Arts for Self-Defence," *The Hindu*, March 6, 2013).

Under the broader umbrella of women's safety, news stories also began to address the root causes of rape. Because of the complex nature of rape, the best examinations of the issue appeared in the weeklies. For instance, *Tehelka*, a weekly that specializes in investigative reporting, ran the story, "The Anatomy of Rape" on December 18, 2012, which examined how rape and sexual violence is discussed in society. This article highlights the importance of language in framing our understanding of rape. In "Education: The Only Way to Cure India's Rape Epidemic," *Tehelka*, January 24, 2013, rape in India and the importance of educating citizens about sexual violence is discussed. As Justice Verma, of the Justice Verma Committee, pointed out:

> the sexual harassment endemic in India – the cat-calling, groping and stalking of women – is only the 'first step' in a scale that slides up towards violent sexual assault. Such harassment, and its widespread acceptance, is a symptom of a much deadlier cancer, deeply ingrained in the culture: one which will only be cured with a massive, well-funded, government-led education campaign to transform people's attitudes towards women and girls. (*ibid*.)

As the Delhi Rape brought the issue of women's safety to the forefront, exactly how to achieve increased safety in Delhi and elsewhere has prompted the review of the role of police and legislation.

Figure 9

Sexual Violence as of 2011

Country	Reported Rape	Population
India	24,000	1.2 billion
United States	83,000	310 million
Canada	22,000 *sexual assaults (levels 1-3)	34 million

Source: NCRB; US. Dept. of Justice; Statistics Canada

d) Police Handling

The National Crime Record Bureau (NCRB) recorded 24,206 cases of rape in 2011 – a figure which represents an 873% increase in the number of rapes reported since the NCRB began recording such information in 1971 (see Figure 9) ("Crime" 12, 83). These figures, however, are relatively low for a country with 1.2 billion, a reality that "has enabled politicians to treat such attacks as personal tragedies for the victims rather a pressing social problem" (Kazmin). Keeping these statistics in mind, it comes as no surprise that securing justice in cases of sexual violence is an increasingly urgent matter. In a highly publicized investigation carried out by *Tehelka* ("Investigation: The Rapes will Go On," April 14, 2012 and December 31, 2012), members of the Delhi Police force were filmed discussing their apathy toward rape victims. In the videos, the policemen are shown supporting rape myths such "asking for it," crying rape as a source of income, and other forms of victim blaming, among others. When such victim blaming occurs, women are deterred from filing a First Information Report (FIR).

Addressing these concerns, many news articles since the Delhi Rape have begun to discuss how inadequately police handle rape and what programs should be implemented to amend their shortcomings. For instance, in "New Action Plan to Combat Crime against Women," *The Hindu*, February 6, 2013, the Centre identifies the registration of a FIR at all police stations, police reforms such as a three-digit emergency response number, and publicizing the identity of those convicted of crimes against women as potential strategies to increase rape reporting. Another *Hindu* article berates the Delhi

Police and the Delhi Transport Department for a lack of coordination, ultimately hindering public safety and security. In an attempt to improve coordination of procedures relating to rape, Justice Usha Mehra's Commission on the Delhi Rape made important recommendations with respect to overhauling and modernizing police procedures. Her 2013 report has recommended the establishment of one-stop centers at hospitals in Delhi with a nurse, a gynecologist, a police inspector, a forensic expert, and a counselor to help expedite the examination and reporting process. So far, no action has been taken, however, establishing these centers would be a monumental step in the police handling of gender justice issues ("Justice Mehra Wants One-Stop Centres for Rape Victims," *The Hindu*, February 25, 2013).

While the implementation of programs related to rape reporting are being considered, deep-seated rape myths affecting the handling of rape still persist. A lengthier report that appeared in *Tehelka* highlights rape in Betul, a city near Bhopal, Madhya Pradesh, which sees nine women raped every 24 hours ("Violation is the Norm Here," December 23, 2012). Addressing this seemingly high number, Vimla Chaudhary, Section Officer from the Tribal Welfare Police Station of Betul claims that, "women allege rape to get compensation." She argues that because the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities, 1989) Act provides tribal woman compensation (Rs 50,000 if rape is proven), women register rape cases, adding, "you should write in Betul rape is big business." Such attitudes in support of rape myths coming from the police are unacceptable and exemplify the inability for women to come forward and report rape. Moreover, such deep-seated misogyny on the part of the police force greatly inhibits the possibility for change. Because police are part of the solution, their attitudes about violence and gender justice must change and conform to the laws of Indian society.

e) Legislative Storyline

As the Delhi Rape reached a global audience through global news broadcasting via organizations including BBC World, CNN, Al Jazeera, *The New York Times*, *The Guardian*, *Le Monde* and also through social media outlets, it became increasingly evident that India was facing a judicial and legislative crisis. The anger of public and civil society groups changed the mood in India so drastically that the government had little choice but to introduce legislation that would protect women from heinous crimes. Prior to the Delhi Rape, India's legislation failed to properly protect women and ensure gender justice (Verma, Seth and Subramanium 57). Of those laws meant to safeguard women, one of the earliest concerned rape. First appearing in the Indian Penal Code in 1860, rape in India was narrowly defined as

"penile penetration into the vagina" (Gangoli 103). In order for a charge of rape to be levied, section 375 was called upon to determine the circumstances needed for a crime to constitute rape.[1] Further, explanation provided in this section states that penetration is sufficient to constitute the offence of rape, leaving out all other forms of sexual assault. The exception in this section leaves out marital rape altogether if the wife is over fifteen years of age. Those charged with rape could be sentenced between seven and ten years, while the punishment for gang rape saw rapists imprisoned for no less than ten years (Gangoli 103–4). In addition to the narrow understanding of rape and sexual violence, the low conviction rates and disparity in sentencing highlighted the jurisprudential shortcomings of India's justice system.

Such inadequacies were the principal mandate of the Verma Committee, a three member committee comprised of J S Verma, a retired chief justice of India who passed away in April, 2013; Leela Seth, a retired chief justice of the Haryana High Court; and Gopal Subramaniam, former solicitor general of India. Completed on January 23, 2013, 29 days after the committee's formation, the Verma Committee Report was released.[2] The report, a staggering 657 pages, was summarized in "Revolutionary Roadmap to Gender Justice," *Tehelka*, January 24, 2013. The summary of the Justice Verma Committee Report stresses the misogyny inherent in Indian law, specifically highlighting "outraging of modesty" and "honour" of a rape victim. It goes on to acknowledge that legislation concerning sexual crimes "must include those against the transgenders, homosexuals and lesbians." Perhaps most significant is the redefinition of rape which includes,

> any form of non-consensual penetration. And possibly for the first time, marital rape is discussed at length as an essential part of the crime. The relationship of the victim with the perpetrator should be of no consequence, says the report. (*ibid.*)

There is also an entire chapter devoted to police handling. For instance, jail time is suggested for those officers who fail to file an FIR. This is a powerful incentive for the police to take action and fulfill the letter and spirit of the law. Further, when it comes to proving that a rape has taken place, the report asserts that the weight given to medical certificates in the Indian context should be lessened, as they have been found to be less than reliable. Finally, while calling for harsher punishment for sexual offenders and rapists, the Verma Committee did not recommend the death penalty (*ibid.*).

Taking the Verma Committee Report into consideration, the government issued an Ordinance, which was promulgated by President Pranab Muherjee on February 3, 2013. The Ordinance was subsequently replaced by the Criminal Law (Amendment) Bill, 2013 in March, and received presidential assent on April 2, 2013. The bill amends the Indian Penal Code, the Indian Evidence Act and the Code of Criminal Procedure concerning laws related

to sexual offences. The most significant change to the rape law is the definition of rape itself and the penalties for rape which have been extended to include multiple forms of sexual assault.[3] Further, the punishment for rape has been toughened, with maximum prison terms being increased to twenty years, as well as the inclusion of the death penalty for those if, during

> the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death. (Section 376A) (9, "India")

The punishment for gang rape has been increased to a minimum of twenty years and also requires those convicted to pay damages to the victim for medical expenses and rehabilitation (Section 376D) (9, *ibid.*).[4]

Responding to the Delhi Rape, the new legislation modernized and toughened the existing criminal code, increasing punishment and making provisions for victims of rape. And while the legislative changes were welcomed, there was significant skepticism concerning the commitment of police and the judicial system. Combating such skepticism and highlighting the country's commitment to providing justice to victims of sexual violence, the four accused in the Delhi Rape were prosecuted to the fullest extent of the law on September 13, 2013. Sentenced to death, Judge Yogesh Khanna justified his decision by saying, "in these times, when crime against women is on the rise, the courts cannot turn a blind eye toward such gruesome crime" (Four men in fatal New Delhi gang rape case sentenced to death, *The Globe and Mail*, September 13, 2013). And while the sentence is meant to serve as a reminder that India will no longer tolerate sexual violence, women still feel unsafe.

For example, *The New York Times* interviewed 5 Indian women living in New Delhi about the insecurity that accompanies daily travel. As the interviews articulate, women feel that they are putting themselves at risk when travelling by bus, subway, auto rickshaw, taxi and even private car. The women interviewed include a 24-year-old taxi driver, a 26-year-old graduate student, a 26-year-old senior consultant for Earnest and Young, a 27-year-old editor and a 40-year-old business owner. While their life experiences differ, they all feel a sense of insecurity when travelling. In order to find comfort, these women have had to make adjustments to their lives which effectively infringe on their freedom. Barred from working past 7:30pm, made to feel anxious and uncomfortable travelling after 8pm and hiring cars after dark, women's daily lives have not changed since the introduction of new

legislation nor the use of the death penalty ("A Sense of Insecurity," *The New York Times*, September 13, 2013).

6. Conclusion: Sexual Violence, Crime Reporting and the Responsibilities of the English Language Indian Press

Violence against women is a permanent fixture in the English language Indian press, with the most brutal cases garnering the greatest attention. Those cases, also known as trigger events, provide an entry point for deep reflection, allowing for the health of gender justice to be evaluated. As Amartya Sen explains, a free press is a necessary component for a country's development (11). Exemplified by the new legislation, press freedom has undoubtedly aided the development of gender justice in India. However, it is our opinion that the development of gender justice in India is the result of more than the press' efforts. Indeed, it can be viewed as a joint effort by the press, the broader activist public and civic society groups, engaging in traditional and non-traditional forms of information dissemination.

The Delhi Rape provoked an unprecedented examination of gender justice in India. However, our study, based on an empirical analysis of hundreds of articles published in two mass dailies and two weeklies, found that the press failed to strike a balance between a fully developed story and incident based reporting. Over time, our study showed the press developed a larger perspective of sexual crime. Indeed, *The New York Times* and *The Guardian* focused a great deal on context and factors that led to the crime. As our eighth-month media monitoring study showed, reactive, incident based reporting was the norm for the coverage of sexual crimes. The Delhi Rape is too important for the press to return to business as usual. It became a watershed moment in Indian journalism because it challenged many of the assumptions about sex crime reporting and required the press to rise to the occasion.

Our study revealed that the Delhi Rape had arguably the most extensive coverage of any rape case in India, which is significant. The globalization of the news cycle played a major role in public debate and demand for a significant response from the government to take immediate action to protect women from sex crimes. But there are many lessons to be learned from this remarkable coverage. It is the case that the sensational aspects of the Delhi Rape occupied centre stage. One rationalization for this is that the primary purpose of any newspaper is to increase circulation. As a general rule, when there are new stories of national importance, newspapers often sell more copies, but we did not have access to circulation numbers during the period that immediately followed the Delhi Rape. For instance, the attention given to celebrities' views of the Delhi Rape and the personal story of the victim's

pain and promise struck a cord with readers and, in turn, fulfilled this economic imperative. However, the Delhi Rape is more than just a horrific crime that ignited anger; it needs to be understood as a matter of gender justice.

Gender justice situates crimes against women within the larger structure of patriarchal power. The structure of power has worked against the interests of women in the way sexual crimes are reported in India and other societies. Over the course of this study, we have worked to better understand the progress the press has made with respect to gender justice against the propensity for sensationalism – a paradox that requires a great deal of thought. On the one hand, when the press follows a story across diverse storylines, moving beyond the incident and crime cycle, it opens the possibility for gender justice sensitive reporting. On the other hand, when the story focuses simply on the sensational aspects of the crime, the powerful gender justice perspective is not well served. And while the press is trapped between these two poles, the transition is incomplete with a long road for it yet to travel.

Before closing, there is a final point that needs underlining. It is important to encourage others to do further studies of media monitoring to continue to track and map the effect of social media on India's values and perceptions as well as the pivotal role of the mass media in shaping the national narrative in the short and long run. The mass media is a major force and conduit of information but today has a rival and competitor in social media for getting the word out and mobilizing people. Our media monitoring of the Delhi Rape demonstrated that much of the news coverage continues to rely on conventional news reporting. There is insufficient recognition that gender violence, and many other national stories, require conceptual, analytical and practical changes in the culture of the Indian newsroom. The responsibility for a different kind of news culture relies on both the editorial direction of the newspapers we examined, and also the reporters, who are the frontline professionals. It would be important for journalists, as well as those in charge of editorial direction, to organize a major conference to probe and understand India's rape culture and the gender violence in the mass media.

Appendix: Chronology of the Delhi Rape

December 16, 2012	Gang Rape. 23-year-old physiotherapy student is gang raped on a moving bus in South Delhi.
December 17, 2012	First 4 Accused Arrested.
December 18, 2012	Protest outside Vasant Vihar police station.
December 19, 2012	Male Victim Testifies in Court.
December 19, 2012	Protest at India Gate and North Block.
December 20, 2012	2 Confess to Crime.
December 20, 2012	Students protest outside Delhi Chief Minister Shiela Dikshit's residence.
December 21, 2012	6th Accused Arrested.
December 21, 2012	Protest at Rashtrapati Bhawan.
December 22, 2012	Protest at India Gate and Raisina Hill.
December 23, 2012	Protests continue at India Gate – Constable Subhash Tomar of Delhi Police seriously injured.
December 23, 2012	Ride for Law & Order at India Gate.
December 25, 2012	Constable Subhash Tomar succumbs to injuries.
December 26, 2012	Protest at Jantar Mantar.
December 29, 2012	Victim Dies, Accused are charged with Murder.
December 30, 2012	Protest at Jantar Mantar
January 3, 2013	Delhi Police filed Charge sheet in Magisterial Court.
January 5, 2013	Magisterial Court Takes Cognizance Charge Sheet.
January 9, 2013	Gag Order prohibiting media from reporting on court proceedings.
January 17, 2013	Case Committed to fast track court.
January 23, 2013	Verma Committee Report Released.
January 24, 2013	Arguments begin.
February 2, 2013	Accused Plead Not Guilty.
February 3, 2013	Ordinance promulgated by President Pranab Muherjee
February 5, 2013	Trial Begins.
March 5, 2013	Police Testify in Court
March 11, 2013	Ram Singh Found Dead in Jail Cell.
March 15, 2013	Accused charged with robbery.
March 25, 2013	Media's Gag removed – allowed in court proceedings, though some international journalists barred.
April 2, 2013	Ordinance, which was replaced by the Criminal Law (Amendment) Bill, 2013 in March, receives presidential assent.
April 21, 2013	Protests over 5-year-old who was raped.
May 6, 2013	Vinay Sharma taken to Hospital, suspect he was poisoned in jail.
September 10, 2013	Four men found guilty
September 13, 2013	Four men sentenced to death.

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NOTES

1. Against the victims will,
Without the victims consent,
With her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt.
With her consent, when the man knows that he is not her husband,
With her consent, when at the time of giving such consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequences of that to which she gives consent
With or without her consent when she is under sixteen years of age.

2. The Verma Committee Report is available at http://www.thehindu.com/news/resources/full-text-of-justice-vermas-report-pdf/article4339457.ece

3. Under the amendments of the Criminal Law Bill, the actions which define rape in Section 375 were broadened beyond penile penetration of the vagina to include scenarios where he:
penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

4. Among other amendments, new legislation was introduced which has made voyeurism, Section 354C (7, *ibid.*); stalking, Section 354D (7, *ibid.*); and acid attacks, Section 326A (5, *ibid.*), punishable under criminal law, however, rape law in India still does not include provisions for marital rape. Also considered is how reports are taken. For instance, female officers are to record statements from victims of rape or attempted rape (Section 154) (13, *ibid.*).

REFERENCES

A Sense of Insecurity (2013), Dir. Poh Si Teng and Larissa Bills. *The New York Times.* N.p., 13 Sept. 16 Sept. 2013 access at http://www.nytimes.com/video/2013/09/13/world/asia/100000002443342/a-sense-of-insecurity.html.

Ali, Mohammad (2012), "Angry Protests Across Delhi over Gang-Rape," *The Hindu* [Chennai] 20 Dec.: n. pag. *Factiva*. Web. 22 May 2013.

Aji, Sowmya (2012), "A Mother Listens to Her Conscience," *India Today* [New Delhi] 2 July: n. pag. *Factiva*. Web. 22 May 2013.

--- (2012), "Bigots Boycott Rape Victim," *India Today* [New Delhi] 27 Aug.: n. pag. *Factiva*. Web. 22 May 2013.

--- (2013), "Assembly Panel for Special Force to Check Crime Against Women," *The Hindu* [New Delhi] 13 Feb.: n. pag. *Factiva*. Web. 22 May 2013.

Bagga, Bhuvan (2013), "The Unforgiven," *India Today* [New Delhi] 7 Jan.: n. pag. *Factiva.* Web. 22 May 2013.

Bahuguna, Vikas (2012), "Violation Is the Norm Here," *Tehelka* [New Delhi] 23 Dec.: n. pag. *Factiva*. Web. 22 May 2013.

Benedict, Helen (1992), *Virgin or Vamp: How the Press Covers Sex Crimes*. New York: Oxford University Press.

Bhalla, Abhishek, and G. Vishnu (2013), "[Investigation] The Rapes Will Go On," *Tehelka* [New Delhi] 4 Apr.: n. pag. *Factiva*. Web. 22 May 2013.

Burt, Martha R. (1980), "Cultural Myths and Supports for Rape," *Journal of Personality and Social Psychology* 38(2): 217–30.

--- (2012), "Celebrities Express Their Horror at the Brutal Gang Rape," *The Hindu* [Chennai] 19 Dec.: n. pag. *Factiva*. Web. 22 May 2013.

Chatterjee, Pritha (2012), "I Want to Live, Rape Victim Tells Mother, Brother," *Indian Express* [Mumbai] 20 Dec.: n. pag. *Factiva*. Web. 22 May 2013.

--- (2012), *Crime in India 2011*. Rep. National Crime Records Bureau, 03 July. Web. 14 Dec. 2012.

Datta, Damayanti, and Shuriah Niazi (2012), "Rape & Murder in Betul," *The Hindu* [Chennai] 13 Apr.: n. pag. *Factiva.* Web. 22 May 2013.

Dixit, Radhika (2013), "Pepper Sprays Out of Stock," *The Hindu* [Chennai] 14 Jan.: n. pag. *Factiva*. Web. 22 May 2013.

Drache, Daniel, and Jennifer Velagic (2013), Media Monitoring; January–August 2012. Raw data. York University, Toronto.

Express News Service (2012), "Man Arrested for Rape of 7-yr-old Daughter," *Indian Express* [Mumbai] 12 Aug.: n. pag. *Factiva.* Web. 22 May 2013.

--- (2011), *Forcible Rape: Uniform Crime Report: Crime in United States 2011*. Rep. FBI, n.d. Web. 26 May 2013. <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/violent-crime/forcible-rape>.
Franiuk, R., J. L. Seefelt, S. L. Cepress, and J. A. Vandello (2008), "Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case," *Violence Against Women* 14(3): 287–309. *Scholars Portal*. Web. 13 Dec. 2012.
Gangoli, Geetanjali (2011), "Controlling Women's Sexuality: Rape Law in India," in Nicole Westmarland and Geetanjali Gangoli (eds.), *International Approaches to Rape*. University of Bristol, Policy Press, 101–20.
--- (2012), "Gross Misuse and Abuse of Rape Laws," *The Hindu* [Chennai] 10 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
--- (2012), "The Guilty Must Pay," *India Today* [New Delhi], 31 Dec.: n. pag. *Factiva*. Web. 22 May 2013.
--- (2013), India. Legislative Department. Ministry of Law and Justice. *The Criminal Law (Amendment) Act, 2013 (No. 17: No. 13 of 2013)*. *The Gazette of India Extraordinary*, 2 Apr. Web. 27 May 2013. <http://egazette.nic.in/WriteReadData/2013/E_17_2013_212.pdf>.
--- (2013), "JNUSU Holds Silent March," *The Hindu* [Chennai] 1 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
Joshi, Sandeep (2013), "Justice Mehra Wants One-Stop Centres for Rape Victims," *The Hindu* [Chennai] 25 Feb.: n. pag. *Factiva*. Web. 22 May 2013.
---. (2013), "New Action Plan to Combat Crime Against Women," *The Hindu* [Chennai] 6 Feb.: n. pag. *Factiva*. Web. 22 May 2013.
Kale, Vidyut (2012), "The Aptness of a Woman's Garb," *Tehelka* [New Delhi] 12 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
Kazmin, Amy (2013), "India: A Flicker of Hope," *Financial Times*. N.p., 4 Jan. Web. 22 May 2013.
Khan, Sameera (2010), "When Survivors Become Victims," in Kalpana Sharma (ed.), *Missing, Half the Story: Journalism as if Gender Matters*. New Delhi: Zubaan, 2010. 83–118.
Kumar, Ashok (2013), "Bus Rape Spooks Working Women," *The Hindu* [Chennai] 4 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
Lama, Prawesh (2013), "Thought He Was Dead, Says Mother of Juvenile Accused," *Indian Express* [Mumbai] 6 Jan: n. pag. *Factiva*. Web. 22 May 2013.
--- (2012), "Who Are These Men?" *Indian Express* [Mumbai] 23 Dec.: n. pag. *Factiva*. Web. 22 May 2013.
Laul, Revati (2012), "A Rape Victim I Knew Was Shattered by the Media's Character Assassination," *Tehelka* [New Delhi] 31 Mar.: n. pag. *Factiva*. Web. 22 May 2013.
--- (2013), "Revolutionary Roadmap to Gender Justice," *Tehelka* [New Delhi] 24 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
--- (2012), "Women Should Take Their Indian Culture along When They Go Out," *Tehelka* [New Delhi] 31 Mar.: n. pag. *Factiva*. Web. 22 May 2013.
--- (2012), "Maid Booked for Registering False Rape Case against Employer," *The Hindu* [Chennai] 9 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
Narayanan, Vivek (2013), "Forget CCTVs, Give Us Well-Lit Facilities," *The Hindu* [Chennai] 9 Jan.: n. pag. *Factiva*. Web. 22 May 2013.

Nayak, Ragini (2013), “Rape, Shame and the Curse of Patriarchy,” *The Hindu* [Chennai] 20 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
Pandey, Devesh K. (2012), “Capital’s Hall of Shame,” *The Hindu* [Chennai] 18 Dec.: n. pag. *Factiva*. Web. 22 May 2013.
Patel, Ricken (2013), “Education: The Only Way to Cure India’s Rape Epidemic,” *Tehelka* [New Delhi] 24 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
--- (2013), “Protests Against Gang-Rape Continue,” *The Hindu* [Chennai] 1 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
Rawat, Shivani, and Katy Daigle (2013), “Four Men in Fatal New Delhi Gang Rape Case Sentenced to Death,” *The Globe and Mail*. 13 Sept. Web. 16 Sept. 2013.
Sen, Amartya (2013), “Press Freedom: What Is It Good For?” *Index on Censorship* Not Heard? Ignored, Abused, and Suppressed: Why Millions of Us Have Lost Our Power. 42(3): 6–14.
Singh, Sanjay (2013), “Month After Death, Rape Victim Clears Physiotherapy Exam with 73% Marks,” *Indian Express* [Mumbai] 24 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
S.N, Vijetha (2012), “JNU Students Take to Streets Against Capital’s Shame,” *The Hindu* [Chennai] 19 Dec.: n. pag. *Factiva*. Web. 22 May 2013.
--- (2013), “Students Condemn Gang-rape Incident,” *The Hindu* [Chennai] 1 Jan.: n. pag. *Factiva*. Web. 22 May 2013.
Surendranath, Nidhi (2013), “Women Take up Martial Arts for Self-Defence,” *The Hindu* [Chennai] 6 Mar.: n. pag. *Factiva*. Web. 22 May 2013.
--- (2012), *Table 4: Police-reported Crime for Selected Offences, Canada, 2010 and 2011*. Rep. Statistics Canada, 24 July. Web. 27 May 2013. <http://www.statcan.gc.ca/pub/85-002- x/2012001/article/11692/tbl/tbl04-eng.htm>.
Tehelka Bureau (2012), “Freedom Without Fear Is What We Need to Protect, to Guard and Respect,” *Tehelka* [New Delhi] 21 Dec.: n. pag. *Factiva*. Web. 22 May 2013.
Timmons, Heather, and Hari Kumar (2013), “For India Rape Victim’s Family, Many Layers of Loss,” *The New York Times*. N.p., 11 Jan. Web. 28 May 2013.
--- (2012), “Two Arrested for Katwa Rape,” *The Hindu* [Chennai] 4 Mar.: n. pag. *Factiva*. Web. 22 May 2013.
Verma, J.S., Leila Seth, and Gopal Subramanium (2013), *Justice Verma Committee Report*. Rep. The Hindu, 24 Jan. Web. 22 May 2013.
Vij-Aurora, Bhavna, and Jayant Sriram (2013), “Why Justice May Be Delayed,” *India Today* [New Delhi] 14 Jan.: n. pag. *Factiva*. Web. 22 May 2013.

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TRANSFORMING CULTURAL NORMS OF SEXUAL VIOLENCE AGAINST WOMEN

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ABSTRACT. A version of these remarks was delivered at the Stoneman/Katz Human Rights, Gender and the Law Conference: The State of Equality in Comparative Perspective, held at Albany Law School in April of 2013. The conference transcript was assembled into a monograph to memorialize the conference itself, as well as the Spring 2013 Kate Stoneman[1] Series of Events. These remarks were part of a larger panel examining the issue of law and "culture." In my remarks, I addressed culture in modern society which, though an ambiguous concept, greatly informs our world and our actions. I examined how individuals have become complacent at times, adopting a culture that normalizes violence towards women. I posited that even while explicit gender bias is often deemed unacceptable, modern society is embedded with implicit biases against women. These implicit biases contribute to a culture that is imbued with gendered norms relating to domination, over-sexualization, violation, and power and control over women and girls. I argued that the way to remedy these problems is to change the underlying culture in such a way that redefines gendered norms and gender equality. This can be achieved at least partially by educating our children before these gendered norms become embedded in their minds.

Keywords: gender; bias; violence against women; rape; culture; norms; modern society

In loving memory of Katheryn D. Katz.[2]

Gender intersects with law and culture in numerous ways. Cultural norms and constructs are created, which affect how women and girls in our society are treated and perceived, and, naturally, how they perceive themselves. If a society strives to alter the way that women and girls are treated and recognized in that society, it must first alter its overarching culture. While a

momentous task, the first step in this process is to educate the society's children at an early age about respecting all people within that society. With regard to gender, this involves unlinking in children's minds the various gendered norms that become embedded in young brains regarding women's roles in society.

The concept of culture itself is broad, varied, and multi-layered. Popular uses of the term "culture" include religious and ethnic culture, institutional culture, corporate culture, subcultures, mainstream culture, and pop culture – to name just a few.[3] Many of these ideas of culture intersect with and are subsumed within each other.[4]

Culture is pervasive and omnipresent, yet quite amorphous and never clearly defined. And yet culture so informs our world and our daily behavior.[5] Because of the ubiquity of culture itself, it is important to understand culture's dynamic and extensive influence upon our beliefs and actions.[6] Professor Naomi Mezey has appropriately remarked that "[t]he notion of culture is everywhere invoked and virtually nowhere explained."[7] One way to define culture is to see it as a set of informal norms and rules of behavior in a particular setting.[8] The United Nations Educational, Scientific and Cultural Organization ("UNESCO") describes how culture impacts society by declaring that it "shapes all our thinking, imagining and behavior . . . . [It is] a dynamic source for change, creativity, freedom, and the awakening of innovative opportunities. For groups and societies, culture is energy, inspiration and empowerment . . . ."[9]

This essay discusses culture in broad strokes and addresses how modern culture is not always particularly positive for women as a whole. In fact, modern culture today is steeped and embedded in various gendered norms and stereotypes, which then subsequently affect women's lives.[10] What is shown on TV, in the movies, in the media, and through society's ever-growing obsession with technology and the internet, has created a subconscious, implicit bias that underlies modern culture.

Gendered norms are the ingrained ideas of what it means to be a woman or a man in our society – the so-called "typical" societal roles we play. These norms then trickle down to our workplace, our family, our school, and into all other aspects of our lives.[11] When these beliefs become embedded into our daily lives, an overarching modern culture is created. This overarching modern culture can create individuals who are complacent – almost numb at times – to issues of gender inequality and sexual violence against women and girls.

In a 2012 speech about gender inequality and specifically gender bias in the courtrooms, Gloria Steinem quoted Olaf Palme, the Chief of the State of Sweden, who said, "[G]ender roles [are] the deepest cause of violence on earth because they normalized dominance and submission."[12] Steinem also

spoke about the "cult of gender"[13] being the most difficult to challenge, because it is just "exaggerated versions of the earliest ways we may have been taught to see people as groups rather than unique individuals."[14] Steinem then asserted that "[g]ender domination tends to be the first way we learn it's okay for one group to eat even though they don't cook or clean; [for one group] to be paid for working outside the home even though the other group does the important work of raising children that is mysteriously called 'not working'. . . [and to] ignore or consider *inevitable* the fact that females are the objects of most violence around the globe."[15]

The deeply embedded gendered norms prevalent in modern society and the continued oppression of women contribute, albeit implicitly, to the notion that domination or control of women is inevitable.[16] Even though we may shun the idea of discrimination and violence against women theoretically, or explicitly, modern society is embedded with implicit biases that normalize controlling or violent behavior against women.[17] At times, our modern day society impedes the achievement of true gender equality by perpetuating static, monolithic, gendered stereotypes and norms.[18] Because our gender biases serve as constant reinforcement for a variety of gendered norms,[19] perhaps the best way to eradicate these issues is to reshape how we raise our children in society, starting with teaching them that women are not "lesser" than men.

Gendered norms are related to but can be distinct from the concept of bias. As discussed above, the concept of gendered norms relates to what it means to be male or female in society, and how this affects people's perceptions about gender. These norms, if embedded consistently and deeply, can become actual stereotypes and biases.

It is important to recognize that there are different kinds of bias. Explicit bias is openly expressed, and is the type of bias most people think of when they consider the issue of prejudice.[20] Explicit gender bias has often been rejected and disavowed by much of contemporary society, although it is still too often present.[21] Examples of explicit bias might be name-calling or openly stereotyping a particular group or gender.

Unlike explicit biases, implicit biases do not take the shape of outward animosity or hatred toward a particular group.[22] An example of an implicit bias might be the belief that women are better caretakers or intrinsically superior at parenting as compared to men.[23] All people harbor implicit biases, though these biases are oftentimes not even conscious, intentional, or maliciously-based.[24] Because of this, implicit biases are harder to identify and eradicate than are explicit biases.[25] Research has shown that, unlike explicit biases, implicit biases can begin to form in children as young as three years old, and then deepen over the years of development, becoming part of a child's concrete set of beliefs as an adult.[26] Such biases, though not

openly expressed, nonetheless shade how we intrinsically and ultimately view the world.[27]

One way in which explicit and implicit biases are reflected in lawmaking is when a country or law-making body espouses a particular law or policy explicitly in theory or on paper, yet the law is not implemented or enforced in reality. This disconnect between policy and practice was the thrust of a lecture by Professor Hilary Charlesworth, the 2013 Kate Stoneman Visiting Professor at Albany Law School.[28] A salient example of this dichotomy is the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").[29] Using CEDAW as an example, Professor Charlesworth explained that on paper, there is agreement that cultural patterns which harm women must be modified.[30] Yet often this universal acceptance of gender equality has been more of a theory than a reality.[31] Countries can enact beneficial laws about gender equality, yet if those countries are not implementing or enforcing the laws, the laws may not have any actual effect.[32]

Perhaps the same is true in terms of implicit or explicit bias. A culture can explicitly renounce gender inequality, but if that culture still implicitly accepts it as a society, the principle of "gender equality" loses meaning. For example, while a society might concur *explicitly* that women are equal and that violence against women is fundamentally wrong, we may demonstrate *implicitly* by our attitudes towards women that such behavior is acceptable. Ultimately, negativity towards women becomes entrenched into the fabric and culture of any given society because of the biases.

A Culture of Domination and Rape?

Gendered norms and implicit biases play a very specific role in cultures that condone violence against women. In fact, gendered norms are part of the nexus between a patriarchal society and its underlying themes of power and control over women and girls, a society in which women are considered "lesser."[33] This nexus also underlies the myriad types of violence against women and children – physical, emotional, mental, sexual, and financial.

Despite being recognized as a highly developed country, America is one example of a modern society in which violence against women is still implicitly accepted. American culture and society are imbued with gendered norms relating to domination, over-sexualization, violation, and power and control over women and girls. In fact, violence against women is so pervasive that some scholars have argued that America has a culture of rape, domination, and victimization of women.[34]

The term "rape culture" is used to describe "the casual debasement [of women] . . . that has become such a part of our lives that it is often invisible."[35] Professor Diane Herman explains that rape culture is one in which

we presume that sexual violence against women is not only a fact of life, but is as inevitable as death or taxes.[36] The following statistics are just one demonstration of the idea of a "rape culture" permeating America:[37]

- American girls and young women between the ages of 16 and 24 experience the highest rate of intimate partner violence, at a rate almost triple the national average.[38]
- Women in the U.S. military face a higher risk of being raped *multiple times*, as compared with women in civilian society according to research recently released by the Pentagon.[39]
- Studies have found that on American campuses with a student population of 10,000 or more, as many as 350 rapes are likely to occur every year.[40]
- The United States Justice Department estimates that one in five women will experience rape or attempted rape during her college years, and that less than five percent of these rapes will be reported.[41]

One in five is an astounding number, and perhaps does not truly reflect the high levels of under-reporting.[42] Furthermore, we see evidence of society's negative views against women and girls demonstrated everywhere across the globe. We need only watch the news to hear about the shooting of a young girl in Pakistan for merely talking about girls pursuing education,[43] the vilifying of an American college rape victim on a school campus because she had the courage to report the violence,[44] or the gang rape of an unconscious child by high school football players in Steubenville, Ohio.[45]

Of course, no one would ever assert that men and boys are not vulnerable or subject to rape and sexual abuse. Professor Catharine MacKinnon asks: "[b]ecause domestic violence and rape can happen to both sexes, does that make it any less of a gender issue?"[46]

Professor MacKinnon brilliantly frames and answers this question in the following example. She captures the uneasiness of being a woman, even in today's modern society, when she explains that we cannot ignore the ever-present fear of being raped that many women must confront and process *every single day*.[47] MacKinnon cites a study from 1991, where women responded in three ways. One third of U.S. women said they worry at least once a month about being raped and many worry daily.[48] A second third of women said they did not expressly worry about rape, but take precautions to try to avoid it.[49] The last third of the women interviewed said the fear of rape was "*always there*."[50] MacKinnon then asks whether fear of rape helps keep women second-class in society. Does the mere apprehension of the possibility of sexual victimization affect and damage women as a class, beyond those who have actually been subjected to sexual violation themselves?[51] When discussing women as a class in our society, the answer to Professor MacKin-

non's question is yes. The prevalence of women who fear being raped is merely one example of how gendered norms affect women, and how an entire category of people are made to feel second-class by these gendered norms.[52] Women have the constant awareness or fear of being vulnerable as females, and this undoubtedly permeates both the public and private spheres of our society.[53]

Professor Andrew Taslitz argued that "all forms of popular and high culture, promote a female fear of sexualized violence, with rape at the apex. It is this female fear, more than the actual prevalence of rape that matters."[54] He wrote:

> One of the best recent studies . . . sought to determine the causes of differential incidences of rape among the fifty U.S. states. The factor of American cultural violence was held fairly constant. The study found that . . . there are higher levels of violence in states where women have lower status. This suggests a finding consistent with much cross-cultural research, that women are devalued in more violent societies. More importantly, the study concluded that the level of social disorganization and gender inequality are significant contributors to rape.[55]

Episodes of violence against women also reveal societal reactions to these atrocities. As in the Steubenville case, the sympathy for the perpetrators was widespread, while simultaneously the child victim was defiled and vilified.

Yet another example of how American culture has become so ingrained with violence against women and girls was seen when National Public Radio reported about the culture of the United States military and the rampant and repeated sexual abuse of female service members.[56] Major General Gary Patton, the head of the Pentagon's Sexual Assault Prevention and Response Office, responded to the epidemic in this way:

> It's a complex problem because it involves a culture change. We have to see a culture change where those victims of this crime are taken seriously at their unit level by every member of their unit, so you don't see the divisiveness and the lack of support and the feeling of isolation that these victims feel.[57]

In the above comments, the notion of a culture change is invoked. If gendered violence is so embedded in our culture, is it even possible for us to transform it? Is culture malleable, or is it impervious to change? Studies of culture show cultural malleability when there is a recognition of the culture and a desire by members of a group to change.[58] One might ask if these attitudes and values become more pervasive and embedded into our social mores when we perpetuate these views via the interconnectivity and anonymity of modern technology and social media. As a result, are our younger

generations becoming increasingly exposed to, or numbed to, this misogynous-based culture?

If we address the larger issue of changing our culture, arguably it would trickle down to a reduction in violence against women. As one concrete example of this idea, Taslitz contends that when we hear a particular victim's story in the courtroom, it may be replaced with what the culture accepts as mainstream – "she asked for it, she deserved it, she could have left."[59]

Instead, we need to dispel those assumptions being made by asking questions less about what the victim did or did not do, and more about what the perpetrator of the violence did. We need to deconstruct the cognitive process by which we view incidents of violence against women and girls, and we must ask ourselves what steps we can take to challenge gendered norms that have become embedded in our culture. The question remains whether such a culture is capable of reversing the effects of a historically patriarchal society. Yet, arguably, by reaching our young children's minds and affecting their attitudes and behaviors, we can reverse the trend of viewing women and girls as "lesser," so as to diminish sexual violence against them in the future. The most promise of changing our cultural attitudes depends upon teaching our children and younger generations the correct way to view gender, before negative and destructive attitudes form.

The White House Advisor on Violence Against Women, Lynn Rosenthal, recently invoked the word "culture" in a positive way:

> Every April, we recognize Sexual Assault Awareness Month. This year, with rape in the headlines nearly every day, we speak out with even greater urgency to honor survivors and prevent sexual violence. We know the devastating statistics: 1 in 5 women and 1 in 71 men have been raped in their lifetimes. That's 18 million women in this country who have been raped, and more than 1 million rapes that occur every year. The vast majority of these assaults occur when the victims are under the age of 25, and those under 18 are at the greatest risk. These numbers are real, but they don't tell the whole story. They don't tell of the broken trust when the attacker is a friend, a trusted colleague, or a family member. They don't tell of the suicidal feelings, the depression, or of the PTSD. And, they don't tell of the courage survivors demonstrate when they struggle every day to put their lives back together. . . . On March 7, 2013, President Obama signed the reauthorization of the Violence Against Women Act ["VAWA"] into law. . . . Together, we are working to change the culture so that one day, we will end sexual violence.[60]

Again, the notion of the need for a culture change is invoked – but the important question is *how*? The way to truly unhook these issues is to work on reforming our culture in our children – our society's youngest brains – so

that early central connections are not deeply entwined in definitions of what gender means and what it should mean. We need to think deeply about what gender equality really looks like. When we stop excusing harmful behavior and its acceptance in the name of "culture," and instead truly challenge and reform our culture, then, and only then, can we hope for real change in the laws and their effectiveness.

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NOTES AND REFERENCES

1. Kate Stoneman was the first female graduate of Albany Law School (1898), and the first female admitted to practice law in New York State. Though she passed the New York State Bar Exam, her application was initially denied because of her gender. She launched a campaign to amend the Code of Civil Procedure to permit the admission of qualified applicants without regard to sex or race. Each year, the school honors her memory by holding a series of events dedicated to her path-breaking activism. For more on Kate Stoneman and the yearly events dedicated to her, visit http://www.albanylaw.edu/katestoneman/Pages/default.aspx.

2. These remarks were dedicated to the late Professor Katheryn D. Katz, Kate Stoneman Distinguished Professor of Law, Albany Law School. She was an inspiration in so many ways and her feminist activism continues to have a strong influence at Albany Law School and beyond. To read about Professor Katz's legacy and its intersection with Kate Stoneman's legacy, see Professor Melissa Breger and Professor Mary Lynch's article, entitled "From Kate Stoneman to Kate Stoneman Chair, Katheryn D. Katz: Feminist Waves and the First Domestic Violence Course at a United States Law School," 77 *Albany Law Review* 443 (2014).

3. *See* Melissa L. Breger, "Making Waves or Keeping the Calm?: Analyzing the Institutional Culture of Family Courts Through the Lens of Social Psychology Groupthink Theory," 34 *Law & Psychol. Rev.* 55, 63–64 (2010) [hereinafter "Groupthink and Family Courts"] (discussing and defining different types of cultures).

4. *Dictionary of Sociology* 83 (Henry Pratt Fairchild ed., 1944).

5. *See* "Groupthink and Family Courts," *supra* note 1, at 63 n. 54; Naomi Mezey, "Law as Culture," in *Cultural Analysis, Cultural Studies, and the Law: Moving Beyond Legal Realism* 37, 37 (Austin Sarat & Jonathan Simon, eds., 2003) ("Culture can mean so many things: collective identity, nation, race, corporate policy, civilization, arts and letters, lifestyle, mass-produced popular artifacts, ritual.").

6. *See* Melissa L. Breger, "The (In)visibility of Motherhood in Family Court Proceedings," 36 *N.Y.U. Rev. L. & Soc. Change* 555, 561 (2012) [hereinafter "(In)visibility of Motherhood"].

7. Mezey, *supra* note 3, at 37.

8. Breger, *supra* note 1, at 63; *see also* Mezey, *supra* note 3, at 37.

9. UNESCO, *Cultural Diversity: Report of the World Commission on Culture and Development* 11 (July 1996, Summary Version).

10. *See, e.g.*, Zanita E. Fenton, "Silence Compounded – the Conjunction of Race and Gender Violence," 11 *Am. U. J. Gender Soc. Pol'y & L.* 271, 272–76 (2003); Michelle E. Deming, Eleanor Krassen Covan, Suzanne C. Swan, & Deborah L. Billings, "Exploring Rape Myths, Gendered Norms, Group Processing, and the Social Context of Rape Among College Women: A Qualitative Analysis," ePub *Violence Against Women*, at 2 (2013).

11. *See* Nicole Buonocore Porter, "Synergistic Solutions: An Integrated Approach to Solving the Caregiver Conundrum for 'Real' Workers," 39 *Stetson L. Rev*. 777 (2010); Deborah Dinner, "The Costs of Reproduction: History and the Legal Construction of Sex Equality," 46 *Harv. C.R.–C.L. L. Rev.* 415, 417 (2011); Mary Joe Frug, "Securing Job Equality for Women: Labor Market Hostility to Working Mothers," 59 *B.U. L. Rev.* 55 (1979); Nicole Buonocore Porter, "Embracing Caregiving and Respecting Choice: An Essay on the Debate over Changing Gendered Norms," 41 *Sw. L. Rev.* 1 (2011); Michael Selmi, "Family Leave and the Gender Wage Gap," 78 *N.C. L. Rev*. 707 (2000); Belinda M. Smith, "Time Norms in the Workplace: Their Exclusionary Effect and Potential for Change," 11 *Colum. J. Gender & L.* 271 (2002); Joan Williams, "Market Work and Family Work in the 21st Century," 44 *Vill. L. Rev*. 305 (1999).

12. Gloria Steinem, "Comments on Taking Stock: A Symposium Celebrating the New York State Judicial Committee on Women in the Courts," 36 *N.Y.U. Rev. L. & Soc. Change* 525, 526 (2012).

13. The idea of a "cult of gender" or a "cult of domesticity" derives from ideas of exaggerated versions of gendered roles, such as the stereotype of women belonging "barefoot, pregnant, and in the kitchen." Steinem also talks about sexual violence against women being due to "a cult of masculinity." *Id.* at 527; *see also* Gloria Steinem & Lauren Wolfe, "Sexual Violence Against Women Is the Result of the Cult of Masculinity," *The Guardian* (Feb. 24, 2012), http://www.theguardian.com/commentisfree/2012/feb/24/sexual-violence-women-cult-masculinity (discussing the cult of masculinity).

14. Steinem, *supra* note 10, at 526.

15. *Id.* (emphasis added).

16. *See id.*; Deming et al., *supra* note 8, at 2.

17. "(In)visibility of Motherhood," *supra* note 4, at 560–62. *See also* Deming et al., *supra* note 8, at 2.

18. *See, e.g.*, Benedetta Faedi, "The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti," 44 *Stan. J. Int'l L.* 147, 178 (2008). *See also* Julia Wood, "Gendered Media: The Influence of Media on Views of Gender," from *Gendered Lives: Communication, Gender and Culture* (1994); Rangita de Silva de Alwis, "The Gendered Face of Families: Article: Examining Gender Stereotypes in New Work/ Family Reconciliation Policies: The Creation of a New Paradigm for Egalitarian Legislation," 18 *Duke J. Gender L. & Pol'y* 305 (2011).

19. "(In)visibility of Motherhood," *supra* note 4, at 560–62; Joan C. Williams, "Litigating the Glass Ceiling and the Maternal Wall: Using Stereotyping and Cognitive Bias Evidence to Prove Gender Discrimination," 7 *Emp. Rts. & Emp. Pol'y J.* 287, 293–94 (2003).

20. "(In)visibility of Motherhood," *supra* note 4, at 560.

21. *Id.*

22. Justin D. Levinson, "Forgotten Racial Equality: Implicit Bias, Decision-making, and Misremembering," 57 *Duke L.J.* 345, 345 (2007); Deborah L. Rhode, "The Subtle Side of Sexism," 16 *Colum. J. Gender & L.* 613, 617–18 (2007).

23. "(In)visibility of Motherhood," *supra* note 4, at 561.

24. Mark W. Bennett, "Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions," 4 *Harv. L. & Pol'y Rev.* 149, 152 (2010); "(In)visibility of Motherhood," *supra* note 4, at 560.

25. Bennett, *supra* note 22, at 152; "(In)visibility of Motherhood," *supra* note 4, at 560.

26. Gary Blasi, "Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology," 49 *UCLA L. Rev.* 1241, 1255-56 (2002); Levinson, *supra* note 20, at 345; "(In)visibility of Motherhood," *supra* note 4, at 561.

27. "(In)visibility of Motherhood," *supra* note 4, at 560. *See also Implicit Racial Bias Across the Law* (Justin D. Levinson & Robert J. Smith eds., 2012).

28. The lecture was entitled "Rights, Regulation and Ritualism: Assessing the U.N. Human Rights Council."

29. CEDAW is the acronym for The Convention on the Elimination of All Forms of Discrimination Against Women. It is "a landmark international agreement that affirms principles of fundamental human rights and equality for women around the world. CEDAW is a practical blueprint for each country to achieve progress for women and girls." "Fast Facts About CEDAW," *Womenstreaty.org*, http://www.womenstreaty.org/index.php/press-room/fast-facts-about-cedaw (last visited Nov. 12, 2014).

30. *See* Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. For example, Article 5 of CEDAW proclaims that State Parties shall take all appropriate measures: (a) "To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." *See also* "(In)visibility of Motherhood," *supra* note 4, at 560.

31. CEDAW, *supra* note 28, at art. 5.

32. In fact, the United States government has signed CEDAW but has not ratified it; other countries that have not ratified CEDAW are Iran, Somalia, South

Sudan, and two small Pacific island nations (Palau and Tonga). *See Status of Ratifications of the Principal International Human Rights Treaties, Office of U.N. High Commissioner for Human Rights* 11 (2004), *available at* http://www.un.org/womenwatch/daw/cedaw/states.htm. In fact, there are other widely popular international treaties the U.S. has not ratified, such as the United Nations Convention on the Rights of the Child. For a more complete discussion of this issue, see Melissa L. Breger, "Against the Dilution of A Child's Voice in Court," 20 *Ind. Int'l & Comp. L. Rev.* 175 (2010). There also remains a question as to whether the reservations to CEDAW made by a large number of its signatories swallow up the intent of CEDAW. Hilary Charlesworth, Christine Chinkin, & Shelley Wright, "Feminist Approaches to International Law," 85 *Am. J. Int'l L.* 613, 633 (1991).

33. Catharine MacKinnon, *Sex Equality* 761–62 (2d ed., 2007).

34. A. Ayres Boswell & Joan Z. Spade, "Fraternities and Collegiate Rape Culture: Why Are Some Fraternities More Dangerous Places for Women?," in *Gender, Culture, and Ethnicity: Current Research About Women and Men* 269 (Letitia Anne Peplau et al., eds., 1999); *Transforming a Rape Culture* (Emilie Buchwald et al., eds., 1993).

35. Terry O'Neill, "Sexist, Racist Attitudes Entrenched in Society Erode Women's Dignity, Humanity and Safety," *Nat'l Org. for Women* (Mar. 14, 2013), http://now.org/issues/media/031413sexistracistculture.html; *see also* Joyce Williams, "Rape Culture," in *Blackwell Encyclopedia of Sociology* 3791 (George Ritzer ed., 2007). Margaret Lazarus, in her film entitled *Rape Culture* (1975), takes credit for first defining the concept. *See* Margaret Lazarus, "Our Bodies Ourselves," http://www.ourbodiesourselves.org/about/contributors/margaret-lazarus/ (last visited Nov. 12, 2014).

36. Dianne Herman, "The Rape Culture," in *Changing Our Power: An Introduction to Women Studies* 260 (Jo Whitehorse Cochran et al., eds., 1988).

37. These statistics were gathered in April 2013, when the remarks upon which this piece is based were given. Arguably, similar statistics could be gathered on any such day.

38. Shannan Catalano, "Bureau of Justice Statistics Special Report: Intimate Partner Violence, 1993–2010," *U.S. Department of Justice Bureau of Justice Statistics*, Document NCJ 239203 (November 2012), available at http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4536.

39. Department of Defense Annual Report on Sexual Assault in the Military: Fiscal Year 2012 (April 2013) available at www.sapr.mil/media/pdf/reports/FY12_DoD_SAPRO_Annual_Report_on_Sexual_Assault-VOLUME_ONE.pdf. (emphasis added). "One in three military women has been sexually assaulted, compared to one in six civilian women, according to Defense. According to calculations by *The Huffington Post*, a servicewoman was nearly 180 times more likely to have become a victim of military sexual assault (MSA) in the past year than to have died while deployed during the last 11 years of combat in Iraq and Afghanistan." Molly O'Toole, "Military Sexual Assault Epidemic Continues to Claim Victims as Defense Department Fails Females," *Huffington Post* (Oct. 6, 2012), http://www.huffingtonpost.com/2012/10/06/military-sexual-assault-defense-department_n_1834196.html.

40. Bonnie S. Fisher, Francis T. Cullen, & Michael G. Turner, "U.S. Department of Justice Research Report: The Sexual Victimization of College Women" 11

(2000); "Campus Safety," *Rainn*, https://www.rainn.org/public-policy/campus-safety (last visited Nov. 12, 2014). According to a December 2000 report by the National Institute of Justice, a college with 10,000 students could experience as many as 350 rapes per year. Nat'l Inst. of Just., U.S. Dep't of Just., "The Sexual Victimization of College Women" (2000), available at https://www.ncjrs.gov/pdffiles1/nij/182369.pdf. Research also shows that much more can be done to effectively reduce the risks of sexual victimization on college campuses. *See* "Campus Safety," *supra*.

41. Fisher, Cullen, & Turner, *supra* note 38, at 22. *See also* Deming et al., *supra* note 8 (exploring the frequency of rapes on college campuses and examining how victims interpret these experiences).

42. Many rape victims do not report, but also many rape victims do not self-identify as rape victims, particularly in cases of date rape or marital rape. *See, e.g.*, Kimberly A. Lonsway & Joanne Archambault, "The 'Justice Gap' for Sexual Assault Cases: Future Directions for Research and Reform," 18 *Violence Against Women* 145; "Statistics," *Rainn*, https://www.rainn.org/statistics (last visited Nov. 12, 2014). *See also* Steinem & Wolfe, *supra* note 11.

43. Declan Walsh, "Taliban Gun Down a Girl Who Spoke Up for Rights," *N.Y. Times*, Oct. 10, 2012, at A1.

44. Richard Pérez-Peña, "Students Initiate Inquiry into Harassment Reports," *N.Y. Times*, Mar. 8, 2013, at A15.

45. Richard A. Oppel, Jr., "Ohio Teenagers Guilty in Rape That Social Media Brought to Light," *N.Y. Times*, Mar. 18, 2013, at A10.

46. MacKinnon, *supra* note 31, at 761–62.

47. *Id.* at 744 (citing Margaret T. Gordon & Stephanie Riger, *The Female Fear: The Social Cost of Rape* (1989)).

48. *Id.*

49. *Id.*

50. *Id.* (emphasis added).

51. *Id.*

52. As Steinem explained, the cult of gender and the cult of masculinity create fear and affect and impact women, who, as a result, feel second-class. *See* Steinem & Wolfe, *supra* note 11. Additionally, some argue that domestic violence and rape are more about power and control over the victim than about the need for relationships or sex. "This confusion of context with motivation was clarified mainly by the work of Nicholas Groth, who published a typology of rapists in the1970s. Groth labeled each type based on the principle motivation manifested by the rapists in that group. The two primary and numerically largest types identified by Groth were the "power" rapist and the "anger" rapist. The power rapist was motivated by his need to control and dominate his victim, and inversely, to avoid being controlled by her. The anger rapist was motivated by resentment and a general hostility towards women, and was more prone to inflicting gratuitous violence in the course of a rape. Not surprisingly, these types were rarely found in pure form. Most rapists were actually blends of power and anger motivations; however, a predominance of one or the other was often discernible." David Lisak, "Understanding the Predatory Nature of Sexual Violence," *Ash Ctr. for Democratic Governance & Innovation* (Jan. 1, 2008), http://www.middlebury.edu/media/view/240951/original/.

53. MacKinnon, *supra* note 31, at 744; Andrew E. Taslitz, "Patriarchal Stories I: Cultural Rape Narratives in the Courtroom," 5 *S. Cal. Rev. L. & Women's Stud.* 387, 396 (1996).

54. Taslitz, *supra* note 51, at 396.

55. *Id.* at 398.

56. Quil Lawrence & Marisa Peñaloza, "Off the Battlefield, Military Women Face Risks from Male Troops," *NPR* (Mar. 20, 2013), http://www.npr.org/2013/03/20/174756788/off-the-battlefield-military-women-face-risks-from-male-troops.

57. *Id.*

58. "Groupthink and Family Courts," *supra* note 1, at 89 n.168 (citing Malcolm Gladwell, *Outliers: The Story of Success* (2008)).

59. Fisher, Cullen, & Turner, *supra* note 38, at 478. *See also* Deming et al., *supra* note 8, at 3 (discussing various rape myths and how these inform the way rape victims perceive and label their experiences).

60. Lynn Rosenthal, "Recognizing Sexual Assault Awareness Month," White-House.gov (Apr. 8, 2013), http://www.whitehouse.gov/blog/2013/04/08/recognizing-sexual-assault-awareness-month. The following poem, shared with the permission of a former client ("AMC"), is just one of many examples of how rape affects a person from childhood through adulthood.

"*What I Wish You Would Have Known*"

As I cry
Yet again.
Decades and decades later.
You have moved on with your beautiful wife and kids.
I lay here broken – unable to move forward.
Decades and decades later.
Did you know I would cry whenever I had sex for years later?
Did you know I would be riddled with emotional pain inside of me?
Did you know I would cringe at the mention of your name? at the song 'Cruel Summer'? at the sight and feel of Vaseline?
Did you know I could not erase the violence and the force from my mind? And it creeps back even when I try to push it out?
But it comes back in. Always. Forcing through my brain like you forced your way into me.
And I cry,
Yet again.
You stole something from me that night – never to return.
I wish you would have known this all on the night it happened.
Part of me thinks maybe you wouldn't have done it. For your daughter's sake.

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HIGHER EDUCATION PEDAGOGIES: GENDERED FORMATIONS, MIS/RECOGNITION AND EMOTION

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ABSTRACT. Struggles over the right to higher education have become increasingly entangled with a moral panic over a "crisis of masculinity" and assumptions that higher education has become "feminized." Such assumptions have contributed to the reproduction of dualistic thinking about gender and a "battle of the sexes," re-asserting problematic constructions of masculinity/femininity and reason/emotion. This has had profound implications for higher educational cultures and practices, shaping discourses of teaching and learning. Despite this, there has been limited research attention to the relationship between gendered formations and HE pedagogies and the work/ing and mark/ing of the emotional on different gendered subjects in pedagogical space (Ahmed, 2004). This article examines the complex formations of gender at play in students' and academics' accounts of pedagogical relations and practices, paying particular attention to the emotional, embodied, subjective and lived experiences of teaching and leaning in HE. Drawing on qualitative data of students' and lecturers' pedagogical experiences from the UK Higher Education Academy funded project 'Formations of Gender and Higher Education Pedagogies' (Burke, Crozier *et al*., 2013), it examines the mis/recognition of emotion and the impact of this on gendered embodied subjectivities.

Keywords: pedagogies; gendered formations; misrecognition; difference; emotion

Introduction: Gender, Emotion and Higher Education Pedagogies

Higher education is in a state of flux and uncertainty, with profound changes taking place, driven largely by the forces of global neoliberalism. These changes include a shift in the very understanding of the purpose of higher education, from a commitment to the public good to a "relentless promotion of employability" affecting student expectations of teaching and learning (Williams, 2013: 89). The emergence of individualism, connected to "the neoliberal assault" (Rhoads and Szelenyi, 2011: 28), further reinforces assumptions that the beneficiaries of higher education are mainly self-interested individuals, who are consumers of a market and are thus free from the social constraints of gender, class and race. Higher education pedagogy has become linked to private interests rather than the contribution to students' "ability to negotiate the political, economic and social dimensions of human experience" (*ibid.*: 20). The forces of neoliberal globalization have placed pressure on institutions to strive towards becoming "global universities" and to position themselves as "world-class," competing for the "best students" in a stratified market driven by discourses of "excellence" and league table rankings. Against this highly competitive and increasingly commercialized landscape, contradictory policy concerns to widen participation (WP) have become a well-established trope, including the need for institutions to illustrate their value through their diverse student body.

Market imperatives driven by neoliberalism and the "excellence" discourse have turned the attention of senior university leaders to enhanced student experience, services and institutional facilities (Stevenson, Burke and Whelan, 2014). This has involved universities in a raft of activities, plans and investments that are connected both to league table measures of quality teaching and widening participation, including "enhanced student support to build self-esteem, and neo-liberal requirements to re-make the educated/educable subject evident in the latest personal skills and employability agendas" (Leathwood and Hey, 2009: 430). Yet, such moves "are constructed as a dangerous and regressive example of the growing 'therapy culture' in universities" (Furedi, 2003 in *ibid.*), fuelling anxieties about widening participation, lowering of standards (Leathwood and Hey, 2009: 430) and the "feminization of higher education" (Leathwood and Read, 2009). Despite growing attention to the "student lifecycle" in policy (e.g. HEFCE, 2014), questions related to teaching excellence have been posed in instrumental and reductive terms.

Recent research examining "pedagogic stratification" in UK higher education has revealed that discourses of "excellence" have become hegemonic and are couched largely in a performative framework (Stevenson, Burke and Whelan, 2014), which considers education as "amenable to performance

measured" (Skelton, 2007: 18). The research evidences the ways in which "performative modes of assessing teaching excellence potentially preclude deeper consideration of pedagogical issues, while the absence of meaningful engagement with issues of pedagogy in institutional documentation sidelines core issues of teaching, and detaches pedagogy from issues of equity and inclusion" (Stevenson, Burke and Whelan 2014: 5). There has been a lack of attention then to the challenges of pedagogical *participation*, and the ways that universities might support the participation of diverse groups through developing inclusive cultures and frameworks, or how current practices might be exclusive through standardizing and homogenizing practices. The forms of support provided in universities tend to be remedial in nature, designed to re/form those students identified as "non-standard" into legitimate, normalized subjects (Burke, 2012). This requires the "non-standard student" to participate in processes of self-transformation and self-regulation, to become a "proper" university student, fitting in to the dominant culture and framework.

This article explores the ways that academic and student subjectivities are gendered and how this is enmeshed in the gendering of teaching and learning practices. We argue that masculinities and femininities play out in complex ways to shape pedagogical experiences, relations and practices, both influenced by and challenging to hegemonic and heterosexist discourses of gender. Such processes are deeply entangled with the emotional layers of pedagogic identity and experience. Pedagogies are conceptualized as constitutive of gendered and embodied formations of difference through the discursive practices and regimes of truth at play in particular institutional and disciplinary spaces. Detailed attention to formations of gender within pedagogical relations reveals the important ways that intersections of gender with other, pathologized identities, inflame problematic anxieties about "lowering of standards" and the neoliberal imperative for higher education to produce disciplined subjects, or in Foucault's terms "docile bodies" (Foucault, 1977). Indeed, gender is always embodied, and although hegemonic masculinities can be taken up by different kinds of bodies and selves, only certain bodies can be positioned as legitimate and authoritative in relation to hegemonic patriarchal discourses of masculinity (which play out differently across different pedagogical contexts). This poses a challenge for the inclusion of men from 'Other' kinds of social backgrounds, in terms of the often derisive constructions of working-class and Black masculinities, which reinforce inequalities and symbolic violence in pedagogical spaces and problematic subjective positions of both students and lecturers (Burke, Crozier *et al.*, 2013). Despite the growing numbers of female undergraduates in higher education, it also has implications for the recognition of women (and we would also add Black and Minority Ethnic and working class) as

legitimate students, raising questions about "parity of participation" (Fraser, 2009).

Meritocracy is another significant underlying strand of WP discourses, often expressed through the principle that higher education should be available to all who have the potential to benefit from university study, regardless of social background. Although the concept of "potential" carries multiple and contested meanings, there has been little attention given to the problematic way that "potential" often serves the interests of already privileged groups in society. The discourse of potential often reinforces gendered values and dispositions, privileging rationality and objectivity over emotion and subjectivity (Leathwood and Hey, 2009). Research by Burke and McManus (2009) has shown that the recognition of "potential" and "ability" – or conversely being misrecognised as "weak," "needy" or "lacking confidence" – is deeply tied in with the subjective judgments made by those with the institutional authority to name, classify and assess. This links with Leathwood's (2008) discussion of the discourse of "ability" or "cleverness." She argues that this discourse marks out differences between types of students (gendered, raced and classed), different subjects of study (in particular those designated as vocational and academic) and differentiated, hierarchized universities. Within this discourse there is a legitimization of difference and inequality. With the increase in student fees and inter-university competition, the connotation of university status will increasingly impact on students' perceptions of self-worth.

The stratification of education and higher education in particular has successfully served in the mystification of knowledge. In Crozier *et al.*'s (2008) study of working class students' experience of higher education, they showed how this impacted on the sense of vulnerability some students felt and the psychic costs of adapting to the learning as well as the social, cultural aspects of their universities. Gaining access to higher education often depends on demonstrating particular attributes and dispositions. These are embedded in an esoteric framework, requiring that the student decode legitimated forms of academic practice. Students from socially privileged backgrounds often have access to a range of resources that enable them to decode how to demonstrate "academic potential" (Burke, 2012). For example, to achieve in higher education, the "successful" student must first understand how to write, speak and read in ways that is recognized as legitimate forms of practice within higher education. These academic practices of writing, speaking and reading are highly contextual, and profoundly constrain ways of developing a student identity. Students from under-represented backgrounds often experience feelings of unworthiness or shame, which are related to processes of misrecognition. Academic practices are usually presented as

neutral, decontextualized sets of technical skills and literacy that students from socially disadvantaged backgrounds are seen to lack (Lillis, 2001).

Critical research and theory has helped us to understand that social justice must not only attend to objective forms of institutional discrimination but also to the symbolic violence of being misrecognised (e.g. Freire, 1972; Fraser, 1997; Skeggs, 2004; McNay, 2008). The injuries of misrecognition are embodied, through the internalization of shame and feeling unworthy, and tied to the emotional level of experience. The intersection of meritocracy with neoliberalism subjects those associated with disadvantage to processes of self-correction, so that the focal point of a project of transformation is turned on to the *individual*, rather than on the *social* structures, discourses and practices, entangled in the politics of misrecognition. Yet, the problem of WP has been recently recast at the *social* rather than *individual* level in relation to concerns about *men's* access to and participation in higher education. Such concerns are often expressed through patriarchal and misogynist discourses, with women's recent success in accessing higher education presented as damaging to men as a social group and to pedagogical spaces which are negatively perceived as becoming feminized, and are also connected to concerns to remasculinize the workforce (Haywood and Mac an Ghaill, 2001:26). The discourse of "men's disadvantage" (HEPI, 2009) is fuelled by narratives of a crisis of masculinity and misogynist assumptions about the "feminization of HE," despite feminist critiques that reveal the complexities of questions of gender, sexuality, equity and higher education (Quinn, 2003; Leathwood and Read, 2009; Morley, 2011). Such complexities include attention to the affects of masculine cultural and discursive practices within different pedagogical and disciplinary contexts and attention to complex intersections of difference in which masculinity and femininity are formed and reformed in different and fluid ways through emotion and across space and time. Heterosexuality is profoundly entwined in the reshaping of hegemonic masculinities and femininities through pedagogical spaces and practices. For example, Phipps and Young found increasing levels of "laddishness" in their recent research, which they argue creates a "means of reclaiming territory in the context of recession and increased competition between the sexes" (Phipps and Young, 2013: 9). The fears and anxieties that underpin such discursive manoeuvres are concealed and so are the emotional dimensions of the lived and embodied experiences of bullying and symbolic and actual violence (including sexual violence).

Feminist researchers point to the need to pay closer attention to the place of fear in education (Jackson, 2006; Jackson, 2013) and Leathwood and Hey suggest that it is not just fear *as* emotion but also fear *of* emotion in higher education that we need to analyze (Leathwood and Hey, 2009: 435). Such fear they argue is connected to a "lost world of higher education (in

which women and others had no place)" that "infuse a moral panic about declining standards" (*ibid.*):

> The discourse of dumbing down the academy resonates against Ahmed's (2003, 394) insight that 'the fear of degeneration as a mechanism for preserving social forms becomes associated more with some bodies than others' (*ibid*).

Feminist approaches reveal the multiple layers of injustices that operate around processes of gendered subjective construction, in relation to embodied intersections of difference and the ways that emotion works on and marks difference on and through the body. Such frameworks also point to the subtle forms of inequality that work through the politics of misrecognition in which the Other is excluded, marginalized and often subjected to ridicule, derision, shame or symbolic violence. The affective dimensions of experiences of misrecognition have also largely been ignored or under-theorized in relation to processes of becoming a student in higher education within historically exclusive pedagogical spaces. Higher education pedagogies thus require reformation to address such complex issues and concerns but in ways that reject the problematic claim that masculinity is in crisis due to the feminization of higher education (Leathwood and Read, 2009).

Research Methods

To further explore and illuminate these theoretical points we draw on data from research funded by the UK Higher Education Academy: "Formations of Gender and Higher Education Pedagogies (GaP)" (Burke, Crozier *et al.*, 2013). This two-year qualitative study was designed to engage HE students and teachers in critical and reflexive considerations about the relationships between gendered identities, and other intersecting social differences, and pedagogical practices and experiences. A multi-method, case study approach was taken, first to collect in-depth data; including individual and group interviews and observations. Taking a participatory methodological approach, further methods aiming to create spaces of reflexivity and dialogue with the research participants included student seminars and forums, meetings with program teams, workshops and student film clips. Sixty-four students across 6 subject areas were individually interviewed with a smaller group of 18 "Executive Student Consultants" participating more intensively in the project across a range of methods and project activities. Twenty-three HE teachers from the same six subject areas participated in 12 focus group discussions. Twenty observations were undertaken of classroom practice, with reflective meetings as a follow-up. Seventeen students and 22 staff from 16 additional UK higher education institutions participated in intensive workshops and

discussions. The workshops sought to develop further the project's participatory methodological approach by creating reflective spaces for staff and students to engage with emergent findings and data from the main study. The workshops were also designed to enable wider groups of staff and students (from a range of other HEIs and disciplinary backgrounds) to add their voices and experiences to the project and to help contextualize (and contest or substantiate) the main project findings.

The participatory methodology which brought teachers and students together to re-examine data as it emerged led to some disquiet amongst academic staff in terms of student experiences of their pedagogic practices. There was a sense of disjuncture between the aims of their pedagogic practices in use, the tacit knowledge and assumptions, which underpinned these practices, and students' (reported) experiences of these. Some academic staff appeared anxious about sharing their concerns and uncertainties, constrained by hegemonic expectations of what an academic should be and know. The teachers' pedagogic practices were significantly shaped and constrained by university systems, strategies and procedures, including the performative and increasingly managerial culture of higher education. Despite the growing hegemony of "student centered" approaches, the student participants often expressed discomfort with pedagogical practices that expected them to be "active" learners or aimed to provide spaces for "identity work." Indeed, many of the students seemed fearful of exposing themselves through classroom discussion and welcomed instead clearly structured and teacher controlled learning spaces, which ensured they were clear about what was expected of them and what they should "know."

Confidence, Emotion and Othering

Students associated with non-traditional or widening participation (WP) backgrounds have become characterized by dividing practices that operate to re/classify those students in ways that re/position them as the "Other," marking out difference (Burke, 2012). Critical theorist Edward Said (1979) developed a detailed and seminal analysis of "orientalism" to illuminate the ways some groups are constructed as "Other" through a range of manipulative, marginalizing and imperialist discourses, texts and images. Processes of "Othering" in higher education are tied to "polarising discourses" that construct the (imagined) "worthy" student in opposition to the (imagined) "unworthy" student (Williams, 1997). Feminist scholarship has illuminated the subtle processes of misrecognition that construct the gendered Other through invoking historically feminized traits, such as "weakness," "dependence" and "passivity" and through dividing the public domain (of men and higher education) from the private/domesticated domain (of women

and the family). Work on "Othering" developed by Black feminist scholars critique and build on this, to theorize the ways that embodied intersections of gender, class and race re-position some bodies as dependent, subjective, emotional and potentially dangerous and contaminating, whilst others are constructed as autonomous, objective, rational and "proper" citizens (e.g. Mirza, 1997; Hill-Collins, 2008).

Students from "Other" backgrounds are often characterized then through a range of deficit disorders, including lack of confidence and are positioned by gendered, classed and raced constructions. In this view, confidence is a signifier of a legitimate position as a university student and is framed as a neutral, decontextualized and disembodied trait that "non-traditional" students lack. The wider patriarchal structures, cultures and politics of recognition that might work on the WP subject to recast them as lacking in confidence are hidden while the individual becomes the focus of the need for remedial forms of support. Such remedial forms of support are attached to anxieties about lowering of standards and the assumed feminization of higher education (Leathwood and Read, 2009).

In this framework, there is no attention to the connection between constructions of confidence and the gendered pedagogical relations that value particular dispositions, selves, experiences and knowledge in pedagogical contexts (Burke and Jackson, 2007). The complex processes of decoding the expectations surrounding acceptable forms of pedagogical participation are made invisible. Rather the student constructed as non-traditional often reproduces the narrative of lack of self-confidence and is repositioned as the weak, needy, passive and feminized student at the centre of derogatory discourses of widening participation.

Shaming is deeply connected to such politics of misrecognition – both the fear of being shamed and the internalization of shame. Bourdieu's (1984) concept of "symbolic violence" helps uncover the more subtle forms of exclusion at play in educational institutions. Symbolic violence involves the ways that feelings of being an outsider or "thick" in pedagogical spaces are made to appear natural through the legitimization of particular forms of cultural capital and embodied habitus. Lynn Raphael Reed and her colleagues (2007) argue that "shame" is a social emotion that is internalized as a feeling of lack of self-worth or sense of failure.

> [Shame] exists with reference to how we anticipate others may see and reject us – but it is experienced as internalized disappointment with self, i.e. it exists with reference to how we judge our own shortcomings, feelings of failure or inadequacy (Raphael Reed et al., 2007: 19).

Foucault's (1977) concept of "dividing practices" helps to develop such themes of shame and shaming in the constitution of a student-subject posi-

tioning. Dividing practices "objectify individuals *and* provide them with the means to construct a sense of self" (Atencio and Wright, 2009: 33) and construct boundaries which mark out difference. Sara Ahmed (2004) argues that emotions "produce the very surfaces and boundaries that allow the individual and the social to be delineated as if they are objects."

Discussions can make me feel anxious. I am scared of being stupid like and then no one says something and I am thinking it and the lecturer points it out. Then I think I should have said it to show how clever I was but I didn't and no one else did. But I am just too scared to put my hand up or just say it. Sometimes I even feel nauseous – like I want to be sick just to say a sentence. And I'm not a shy person but I'm just very nervous (Female, middle class, 'traditional', student with dyslexia).

The above student's account could be read as another piece of data to add to evidence that non-traditional students, and women students in particular, suffer from lack of confidence. However, a deeper engagement with the working of emotion on the body illuminates the lived experience of symbolic violence, internalized memories of misrecognition, marginalization and inequality that surfaces in physical and bodily symptoms; in this case intense nervousness leading to a sense of nausea. Anxiety about self-worth, worthiness of being a university student and having the ability to demonstrate that are the result of social disadvantage, and being made to feel inferior and disrespected (Charlesworth *et al*. 2006). Crozier *et al.* (2008) demonstrate from their study the contrast between the losers and winners in the symbolic struggle for recognition (Bourdieu 2000). The lack of confidence resulting in such loss is not individual inadequacy but rather is based on a complex set of hegemonic structural practices.

However, such experiences are reformed in neoliberal terms as about lack of confidence, compelling universities to adopt remedial support such as study skills to address policy agendas connected to widening participation and retention. This decontextualizes the embodied experiences of symbolic violence and marginalization (e.g. nausea and intense nervousness) thus detaching the histories of gendered, classed and racialized pedagogies from expressions of lack of confidence. Such discursive manoeuvres work to manipulate anxieties about higher education becoming "too soft." In the GaP data such anxieties were repeatedly articulated in terms of "spoonfeeding," which might be seen as evidence of the "dumbing down" and the "feminization" of teaching and learning. The teachers below make reference to hegemonic and heterosexist discourses of appropriate (and inappropriate) spaces for carrying out maternal roles, and articulate their anxiety about the blurring of teaching with caring.

Part of me thinks it's not my job to look after them. I have a husband and 2 children at home that I have to look after, I have to get these students through, I'm not their mother, I have no intention of being their mother … and sometimes I get really cross that there is an expectation from the university, from my PC and from society, that I am going to mind these students. (Female lecturer)

I feel because of retention rates and all these systems which are in place when you first … I am expected to be caring, more caring than I actually want to be. (Male lecturer)

I understand we have, to some extent, [to] spoon-feed them for the first year … but I feel that if I have to continue with that in the second and third year, I feel I am not doing my job as a lecturer. (Male lecturer)

We argue that the suggestion that there is some kind of deficit that teachers have to remedy through performing a maternal, nurturing role that is inappropriate in the context of higher education legitimizes certain forms of academic practice associated with elite universities. Bernstein's work (2000) on visible and invisible pedagogies is useful here. In his thesis he was concerned about pedagogies that were structured and unstructured. He argued that whilst what he referred to as "weak framing" was often associated with expressive and creative learning, this approach was imbued with white middle class dominant values for which white, middle class students were well prepared. Therefore, working class and Black and Minority Ethnic students less likely having been exposed to such expectations were disadvantaged. Hence the desire, as we mentioned earlier, of the students who wanted a clearer structure and set of expectations.

Students from under-represented backgrounds are constructed as immature, illegitimate (university) subjects, and their attitudes are compared with school pupils.

It's one of these bugbears I have, that students don't know what a university is, and what it's for, and what their role as a students is, and what our role is. And they, the perception is it's a bit like school, but not quite, so they come with a certain attitude. (Female lecturer)

Teachers are anxious that they are then compelled to play an inappropriate nurturing role in order to fix the attitudinal problems of students associated with WP. There are a number of problematic assumptions to pull out here in thinking through the complexities of teachers' pedagogical positioning and the perspectives of those teachers and implications of this for practice. First of all, the feminization of HE discourse is highly problematic and derisory and connected to historically misogynist assumptions, which are related to the privileging of knowledge and experience associated with

certain forms of white, racialized masculinity (Burke and Jackson, 2007; Leathwood and Read, 2009). Connected to this, the teachers below express an anxiety that they might be complicit in encouraging passivity in students:

… we are giving them too much and so therefore they don't feel they need to listen, and they don't feel they need to engage, because they know they are getting it all anyway. (Male Lecturer)

It's perhaps fear of taking initiative … is it fear … have we created that perhaps a bit? (Male lecturer)

There's something about some courses that's feeding into that passivity, this kind of 'I'll just stand at the front and talk and you'll just listen.' (Female Lecturer)

Anxieties and desires to distance from softness and passivity are connected to the dominant concern to produce active and independent learners, traits traditionally associated with masculinity, together with boldness, competitiveness and individualism (Francis, *et al.*, 2003) but also are part of the requisite disposition for succeeding in a highly competitive, individualistic, neo-liberal framework. This is the case for both students and academic staff. Hence to be active and independent one must perform the self in particular non-emotional and non-collaborative ways; contributing to discussion in ways that tend to foreground rational thought and overshadow emotional and/or personal responses. Some students are confused by this, since there is a mismatch here between their expectations of university learning and opportunities and the reality of their experience.

Some say they want discussion but they stand there 'we are the lecturer' and if you critique something you get a steely eyed stare and complete 'no way' and it's almost too frightening. We can't really say anything we feel and so there is just silence. Do they know it's easier to learn if you are arguing from your own point of view rather than being read out somebody else's ideas?

Yet pedagogical spaces in contemporary higher education are complex and ridden with contradictions that lecturers and students must continually decode and negotiate. Within neoliberal frameworks, some forms of emotion are elevated; for example those emotions that might be seen as useful to the development of employability as "tools that can be used by subjects in the project of life and career enhancement" (Goleman, 1995 in Ahmed, 2004: 3). The performativity of caring is a key example of the way some forms of emotion are elevated but only within the constraints of neoliberal discourses. This requires the continual working on the self and control over emotions through appropriate practices. For example, good teachers should teach in ways that demonstrate that they care about their students and good students

should learn in ways that demonstrate that they care about their learning as indicated by the following. Here the student makes the point that gender does not matter but the extent to which the person "cares" about their education does. This point resonates with debates about who has the right to higher education in relation to derogatory discourses of "underserving" students from backgrounds associated with WP (Burke, 2012).

And here [university] seems like heaven in this respect, no matter if you are a girl or a boy if you talk you are listened to, you are heard. So it's so much different [than school]. We have two girls in our class, they are so loud, they are so…they don't pay attention, seriously they couldn't care less about what we are talking [about], and they continue to interrupt and stuff. There are guys that don't give anything to the course, but still it's not because they are guys or girls, because they are people like that, they don't care. (Female, first generation, working class, mature, student)

Such themes of caring and having passion for learning, or not, can operate as signifiers of difference and not belonging – marking out bodies out of place. Beverley Skeggs (2004) points out that the problem of differentiation in contemporary social contexts is not distance but *proximity*. As higher education is becoming increasingly characterized by diversity, the anxiety about closeness of the "Other" to those deemed to be worthy of higher education participation is expressed through narratives about the contamination of pedagogical spaces – by those Other bodies who do not know how to be or act as university students. Pedagogical practices are assumed to have been dumbed down in order to accommodate those different and "Other" students who are deemed to be plagued with a range of deficit disorders, including lack of passion for learning, low expectations and lack of self-discipline. For example, the following student draws on dividing practices to relocate himself amongst those who know how to aim higher and who demonstrate a passion for learning.

I would say, it sounds so bad, I would say like maybe eighty percent, this is just me, this is a guestimate, eighty percent of people who come from a lower class, whose parents didn't go to university, might not address learning in general with as quite a passion as those who maybe came from middle-class, or those who had their parents who went to university. Like going back to what I said when I came here I saw university as the way to finish it, because college wasn't. I went to a secondary school which although it was state it was quite top end, we had the PM's children there, and from there you always had high expectations bred into that sort of way of thinking. You moved into that way of thinking, that that is the way forward, and that is a normal thing to do, whereas people who went to other schools might not see it like that, like some say oh, I can get a job without a degree,

they don't really…or they say I only need three GCSEs, they don't aim for high enough because they don't know any higher. (Male, white, middle class 'traditional' student)

Thus the marking out of difference is central to subjective construction and the processes of becoming a (certain kind of) student in (highly differentiated) pedagogical spaces. Interest in and passion for learning, and for teaching, which are framed in tightly prescribed ways, are drawn on to create the surfaces and boundaries around inclusion and recognition and the marking out of otherness and difference.

I am very very very passionate about it. It's something I've always since year 10 I've very much enjoyed studying it. I had a fantastic History teacher at school who completely sort of inspired me to do it. That's the reason why I did History at university. And then the first lecture we had at university one of my favorite lecturers was on Medieval Europe and completely inspired me again to study. … I adore talking about History. It's what I love doing at the museum as well. At the moment I'm a volunteer sort of a front of house volunteer so I'm talking to the visitors. When I do my internship this summer, I will be immersed in people of a similar interest to me who happily talk about History for a long time. So it's something I'm massively passionate about. (Female, upper middle class, student)

Conclusions

The narrative of a crisis of masculinity presents an over simplistic analysis of the increasing numbers of women accessing higher education in some parts of the world. It also rests on patriarchal and misogynist assumptions that women's position should always be in a minority (Morley, 2010) and anxieties that feminized forms of emotion are contaminating pedagogical practices. Complex gendered inequalities have been reduced to a presumed battle of the sexes, failing to engage with the intricate ways that formations of gender are tied to the working of emotion on the body and the ways gendered subjectivity is produced and performed in different pedagogical spaces and disciplinary contexts, privileging particular kinds of practices, knowledge, emotions and desires.

Drawing on the accounts of students and lecturers, we have shown how gender plays out in complex ways across pedagogical practices, relations and spaces, both influenced by *and* challenging to hegemonic patriarchal discourses of gender. Attention to formations of gender within pedagogical relations reveals the important ways that intersections of gender and masculinity with other, pathologized identities inflame problematic anxieties about "lowering of standards" and the neoliberal imperative for higher education

to produce disciplined subjects (Foucault, 1977). In some instances, certain forms of emotion work to mark out belonging and legitimacy – for example "caring" and "passion" – might be drawn on but only in constraining and narrow ways and within particular gendered, neoliberal, classed and racialized pedagogical spaces.

Pedagogies are profoundly shaped by the different power relations at play, the changing contexts in which teaching and learning takes place and the embodied subjectivities and emotions of teachers and students. Simultaneously, pedagogies are constitutive of subjectivities through the discursive practices and regimes of truth at play in particular pedagogic relations, and the work/ing and mark/ing of the emotional on different subjects in pedagogical space. Pedagogies both shape and are shaped by complex identity formations, epistemological frameworks and processes of mis/recognition. Pedagogies do not simply reflect the classed, gendered and racialized identities of teachers and students but pedagogies themselves are classed, gendered and racialized, intimately bound up with historical and masculinized ways of being and doing within higher education spaces, which privilege particular forms of the rational, independent and active over other forms of the emotional, collaborative and passive. Pedagogical relations are thus deeply implicated in the processes and politics of identity, recognition and misrecognition and profoundly interconnected to the impact of the emotional on the body and the self (Ahmed, 2004) and this has particular implications for struggles over the right to higher education.

REFERENCES

Ahmed, S. (2003), "The Politics of Fear in the Making of Worlds," *International Journal of Qualitative Studies in Education* (QSE) 16(3): 37798.

Ahmed, S. (2004), *The Cultural Politics of Emotion.* New York: Routledge.

Atencio, M., and Wright, J. (2009), "'Ballet It's Too Whitey:" Discursive Hierarchies of High School Dance Spaces and the Constitution of Embodied Feminine Subjectivities," *Gender and Education* 21(1): 31–46.

Bernstein, B. (2000), *Pedagogy, Symbolic Control and Identity.* Rev. edn. Lanham, MD: Rowman and Littlefield.

Bourdieu, P. (1984), *Distinction*. Cambridge: Polity Press.

Bourdieu, P. (2000), *Pascalian Meditations.* Cambridge: Polity Press.

Burke, P. J. (2012), *The Right to Higher Education: Beyond Widening Participation*. London and New York: Routledge.

Burke, P. J., Crozier, G. *et al*. (2013), *Formations of Gender and Higher Education Pedagogies*. York: Higher Education Academy. https://www.heacademy.ac.uk/project/7965

Burke, P. J., and Jackson, S. (2007), *Reconceptualising Lifelong Learning. Feminist Interventions.* London and New York: Routledge.

Burke, P. J., and McManus, J. (2009), *Art for a Few: Exclusions and Misrecognitions in Art and Design.* London: National Arts Learning Network and HEFCE.
Charlesworth, S. J., Gilfillan, P., and Wilkinson, R. (2006), "Living Inferiority," *British Medical Bulletin* 69: 49–60.
Crozier, G. Reay, D. Clayton, J., and Colliander, L. (2008), "Different Strokes for Different Folks: Diverse Students in Diverse Institutions," *Research Papers in Education* 23(2): 167–177.
Foucault, M. (1977), *Discipline and Punish: The Birth of the Prison*. Trans. A. Sheridan. New York: Pantheon Books.
Francis, B., B. Read, J. Robson, and L. Melling (2003), "Lecturers' Constructions of Gender and Undergraduate Writing," *British Journal of Sociology of Education* 24(3): 357–373.
Fraser, N. (1997), *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition.* London and New York: Routledge.
Fraser, N. (2009), *Scales of Justice: Reimagining Political Space in a Globalizing World*. New York: Columbia University Press.
Freire, P. (1972), *Pedagogy of the Oppressed.* Harmondsworth: Penguin Books.
Furedi, F. (2003), *Therapy Culture: Cultivating Vulnerability in an Uncertain Age.* London: Routledge.
Goleman, D (2005), *Emotional Intelligence: Why It Can Matter More than IQ.* New York: Bantam Books.
Haywood, C., and Mac an Ghaill, M. (2001), *The Significance of Teaching English Boys: Exploring Social Change, Modern Schooling and the Making of Masculinities.* Buckingham: Open University Press.
HEFCE (2014), *National Strategy for Access and Student Success in Higher Education.* London: Department for Business, Innovation and Skills. April.
Higher Education Policy Institute (HEPI) (2009), *Male and Female Participation and Progression in Higher Education.* Oxford: HEPI.
Hill-Collins, P. (2008), *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment.* New York and London: Routledge.
Jackson, C. (2007), "On the Edge: Fear, Girls and Schooling." ESRC Girls 3–16 seminar series, June 13, in Lancaster University.
Jackson, C. (2013), "Fear in and about Education," in Brooks, R., McCormick, M., and Bhopal, K. (eds.), *Contemporary Debates in the Sociology of Education.* Hampshire: Palgrave Macmillan.
Leathwood, C. (2008), "International Stratification and Higher Education Policy." Draft paper for the *SRHE HE Policy Network*, 30 June.
Leathwood, C., and Hey, V. (2009), "Gender/ed Discourse Emotional Sub-texts: Theorising Emotion in UK Higher Education," *Teaching in Higher Education* 14(4): 429–440.
Leathwood, C., and Read, B. (2009), *A Feminised Future? Gender and the Changing Face of Higher Education.* London: SRHE & Open University Press.
Lillis, T. (2001), *Student Writing: Access, Regulation, Desire*. London: Routledge.
McNay, L. (2008), *Against Recognition.* Cambridge: Polity Press.
Mirza, H. (1997), *Black British Feminism: A Reader.* London & New York: Routledge.

Morley, L. (2010), "Imagining the University of the Future." Professorial lecture, University of Sussex, May 25.

Morley, L. (2011), "Misogyny Posing as Measurement: Disrupting the Feminisation Crisis Discourse," *Contemporary Social Science* 6(2): 223–235.

Quinn, J. (2003), *Powerful Subjects*. Stoke on Trent: Trentham Books.

Raphael Reed, Lynn, Croudace, Chris, Harrison, N., Baxter, A., and Last, K. (2007), *Young Participation in Higher Education: A Sociocultural Study of Educational Engagement in Bristol South Parliamentary Constituency. Research Summary. A HEFCE-funded Study*. Bristol: University of the West of England.

Rhoads, R., and Szelenyi, K. (2011), *Global Citizenship and the University: Advancing Social Life and Relations in an Interdependent World*. Stanford, CA: Stanford University Press.

Phipps, A., and Young, I. (2013), *That's What She Said: Women Students' Experience of 'Lad Culture' in Higher Education*. London: National Union of Students.

Said, E. (1979), *Orientalism*. New York: Random House.

Skeggs, B. (2004), *Class, Self, Culture*. London and New York: Routledge.

Skelton, A. (2007), "Democratising Excellence: Can a New and Universal Vision of Excellence Be Developed for the 21st Century?" *Excellence*. Vol. 7. York: Higher Education Academy.

Stevenson, J., Burke, P. J., and Whelan, P. (2014) *Pedagogic Stratification and the Shifting Landscape of Higher Education*. York: Higher Education Academy. https://www.heacademy.ac.uk/sites/default/files/resources/PedStrat_Finalreport.pdf

Williams, J. (1997), "Institutional Rhetorics and Realities," *Negotiating Access to Higher Education: The Discourse of Selectivity and Equity*. Buckingham: The Society for Research into Higher Education & Open University Press.

Williams, J. (2013), *Consuming Higher Education: Why Learning Can't Be Bought*. London: Bloomsbury Academic.

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SEXUAL ORIENTATION, GENDER IDENTITY AND THE REFUGEE DETERMINATION PROCESS IN CANADA

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ABSTRACT. Egregious human rights violations have compelled some lesbian, gay, bisexual, and transgender people to seek refuge in countries with better human rights protection. This in turn has led some countries to extend refugee protection to men and women who feared persecution in their home countries because of their sexual orientation or gender identity. This article outlines and analyses how sexual minority refugee claimants in Canada continue to encounter a specific set of challenges in having the refugee definition applied to their claims. The emphasis is on the Canadian inland refugee determination process and the discussion focuses chiefly on issues and principles pulled from Canadian cases.

Keywords: LGBT refugees; gay and lesbian refugees; refugee law; sexual orientation; gender identity; Canada

1. Introduction[1]

The human rights situation of sexual minorities[2] around the world continues to be unsettling. Many countries maintain serious criminal penalties for consensual sex between persons of the same sex, including the death penalty.[3] Sexual minorities also are frequent targets of police, community and family violence,[4] and are often victimized by blackmail and extortion.[5] In several countries, restrictions have been imposed on the freedoms of expression and association of sexual minorities,[6] while in others, homosexuality and transexuality are perceived as Western phenomena,[7] anti-revolutionary behaviours,[8] crimes against religion,[9] sexually deviant and immoral behaviours,[10] mental disorders[11] or unacceptable challenges to gender-specific roles.[12]

Egregious human rights violations have compelled some lesbian, gay, bisexual, transgender and intersex people (LGBTI) to seek refuge in coun-

tries with better human rights protection. In many cases, individuals flee directly to countries where significant progress has been made on LGBTI human rights and where they are able to make claims for asylum pursuant to the 1951 *UN Convention relating to the Status of Refugees* [Convention].[13] Indeed, several states have extended refugee protection to women and men fleeing persecution based on their sexual orientation or gender identity. In Canada, the first reported sexual orientation claim to be decided dates back to 1991.[14] In April 2002, *The Globe and Mail* reported that "[i]n the past three years, nearly 2,500 people from 75 different countries have sought asylum on the basis of sexual orientation in Canada."[15] In 2004 alone, 1,351 sexual orientation-based claims were decided in Canada.[16] More recent statistics show that between 1 April 2009 and 30 June 2011, 561 refugee claims based on sexual orientation were finalized before the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB], with 58 per cent of those claims being granted refugee protection.[17]

To be sure, the Convention has provided actual and tangible protection to many individual LGBTI since the early 1990s, more so than any other international human rights instrument. Yet, because of the growing number of asylum claims by lesbian, gay, bisexual, transgender and intersex individuals, there is a need for greater awareness among adjudicators of the specific experiences of LGBTI refugee claimants and of the particular legal questions involved in these cases. There is, indeed, a myriad of legal, procedural and social hurdles facing sexual minority asylum-seekers.

This paper reviews specific legal and attitudinal challenges facing LGBTI refugee claimants. Indeed, the objective is to outline and analyze how gay, lesbian, bisexual and transgender refugee claimants in Canada continue to encounter a specific set of challenges in having the refugee definition applied to their claims.

The emphasis is on the Canadian inland refugee determination process. The paper was first developed to support a Canadian professional training program developed for members of the RPD of the IRB. The purpose of the training was to ensure that Canadian adjudicators are alert to issues relating to sexual orientation and gender identity and that any hearings and interviews with LGBTI claimants proceed in a safe and respectful manner. The discussion therefore focuses chiefly on issues and principles pulled from Canadian case law – primarily, decisions of the Federal Court of Canada. Frequents references are also made to the 2012 *UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity*[18] [UNHCR Guidelines]. The United Nations High Commissioner for Refugees [UNHCR] is responsible for monitoring the application of the Convention by member States.[19] In order to do so, the agency provides interpretations of the legal norms set out in

the international refugee protection regime. In 2012, the UNHCR directly addressed the situation of sexual minorities with the release of the UNHCR Guidelines. The instrument is a valuable tool in understanding how to apply the refugee definition to sexual minority claimants.

2. Well-founded Fear of Persecution

2.1. Persecution v. Discrimination

For a claimant to be granted the status of Convention refugee, he or she must establish a well-founded fear of persecution based on one or more of the five enumerated grounds, and the inability to obtain the protection of her country of nationality or habitual residence.[20] The notion of persecution is at the heart of the definition of a refugee, and sexual orientation or gender identity refugee claims can often turn on the legitimacy of a claimant's well-founded fear of persecution.

The definition of persecution necessitates that the harm feared be serious and that it be inflicted in a persistent, repetitive or systematic way.[21] Serious harm includes the denial of the core protection provided by international human rights instruments. In relation to sexual minorities, the UNHCR Guidelines state the following:

> Although the main international human rights treaties do not explicitly recognize a right to equality on the basis of sexual orientation and/or gender identity, discrimination on these grounds has been held to be prohibited by international human rights law. For example, the proscribed grounds of 'sex' and 'other status' contained in the non-discrimination clauses of the main international human rights instruments have been accepted as encompassing sexual orientation and gender identity.[22]

It is consequently widely accepted today that all people, including LGBTI, are entitled to enjoy fundamental human rights on the basis of equality and non-discrimination.[23]

The requirement in refugee law that the harm be serious has led to a distinction between persecution, on one hand, and discrimination, on the other. According to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention* [Handbook], while discrimination may amount to a violation of human rights, it will not necessarily amount to persecution. Paragraph 54 of the Handbook states:

> Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not

> necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities.[24]

Thus, what distinguishes persecution from discrimination is the degree of seriousness of the harm.

Canadian refugee law adopts this important distinction between discrimination and persecution. At the same time, courts have recognized that discrimination may also rise to the level of persecution. In the case of *Sagharichi v Canada*,[25] the Federal Court of Canada stated that incidents of discrimination may very well amount to persecution. Refugee claimants must demonstrate that incidents cumulatively or singly "constitute a serious, systematic and repeated violation of core human rights."[26] Discrimination in itself does not establish persecution, but it may ground a finding of persecution if the incidents rise to the level of serious harm.

As recognized in the UNHCR Guidelines, "[d]iscrimination is a common element in the experiences of many LGBTI individuals." For instance, the Federal Court held that the failure by the RPD to determine whether employment discrimination faced by a gay and HIV-positive claimant amounted to persecution was unreasonable, and therefore, a reviewable error.[27] In Canada, only a handful of refugee claims based on sexual orientation or gender identity raised the distinction between discrimination and persecution before 1998.[28] This situation has since evolved: in the last fifteen years, decision-makers have increasingly evaluated evidence to determine whether a sexual minority claimant would be subjected to persecution or to the less serious harm of discrimination.[29]

One reason for the increased relevance of the distinction between persecution and discrimination is the fact that in several countries, the social, political and legal situation of sexual minorities has been changing. While some countries continue to seriously repress homosexuality, bisexuality and transexuality, other countries are becoming more accepting of sexual diversity. As Arthur Leonard has suggested in relation to a US case, "the changing conditions for gay people in areas where there had formerly been grounds to support asylum claims" make it more difficult to sustain claims of persecution.[30]

The impact of this progress is now often at issue in refugee hearings. Contentious cases involve claimants from countries that have emerging sexual minority communities and rights organizations and have adopted progressive legal reforms, such as Mexico and several other Latin American

and Eastern European countries. For example, in *Cuesta v Canada*, the RPD described the situation in Colombia in 2003 thus:

> I note it is very clear from the documents that there is a continuum of an improving situation for persons of the claimant's particular sexual orientation. The situation there is not perfect by any means, but it is clear that there have been improvements, starting in 1980 when consensual homosexuality was decriminalized. Regarding the Constitution of 1991, even his counsel described a very liberal Constitution.[31]

Similar conclusions have been drawn in numerous cases, including in a 2004 Brazilian claim where the RPD concluded that "[w]hile the panel accepts that in Brazil, deeply ingrained attitudes against homosexuality continue to exist, there are numerous examples in the documentary evidence that the situation for sexual minorities is improving."[32]

The UNHCR Guidelines rightly suggest that assessing whether the cumulative effect of discrimination rises to the level of persecution is to be made by reference to reliable, relevant and up-to-date country of origin information.[33] As will be examined further on, the fact that independent human rights documentation on the situation of sexual minorities continues to be difficult to obtain for many parts of the world means that assessments of whether a particular country's conditions constitute discrimination rather than persecution may have to be made on little objective evidence. Moreover, some adjudicators may continue to reason, as they did in the early sexual orientation and gender identity claims, that the scarcity or absence of reports evidences a lack of persecution.[34] This appears to have been the case in a decision reviewed by the Federal Court, where the RPD had consulted independent country information and concluded that:

> If violence against homosexuals was serious and widespread, it would have appeared in the United States' Department of State Report on Human Rights, Amnesty International Reports or the Human Rights Watch World Report. Since violence against homosexuals was not mentioned in any of these three reports, the Board concluded that it was not a serious and widespread problem in Hungary.[35]

Considering the comparatively recent mainstream attention given to persecution based on sexual orientation and gender identity, and the ongoing challenges in documenting human rights abuses, refugee claims adjudicators should be careful to avoid drawing conclusions that no persecution exists without clear positive evidence.[36] Amnesty International warns:

> Lesbians and gay men who have experienced torture or ill-treatment may not have access to documented evidence of their personal experiences. Patterns of torture and other abuses facing

> lesbians and gay men are not well documented in most countries, although some non-governmental organisations have begun to track these abuses.[37]

Adjudicators must "take into account reasons why reports of persecution may be unavailable."[38]

The lack of evidence is a challenge for both the claimant and the decision-maker. For instance, in *Zakka v Canada*,[39] the Federal Court stated that an applicant cannot simply rely on the existence of a law proscribing homosexual acts to demonstrate risk. The claimant must produce evidence that similarly situated persons were subjected to arbitrary harassment and detention under the law. This was the conclusion also in *Birsan v Canada*,[40] where the Federal Court held that "[i]t is certainly not unreasonable to conclude that the mere existence of a law prohibiting homosexuality in public cannot prove, if it is not enforced, that homosexuals are persecuted."[41] In *Oviawe v Canada*,[42] the absence of persuasive evidence regarding the manner and frequency with which section 214 of the Nigerian Criminal Code, which rendered sodomy punishable by up to 14 years' imprisonment, was enforced resulted in the conclusion that the claimant did not face persecution. In *Inigo Contreras v Canada*,[43] the documentary evidence, including the *2004 United States Department of State Report*, was far from definitive on the issue of persecution. The evidence suggested the existence of discrimination against homosexuals and acts of persecution, but also pointed to government efforts to fix the situation and to the work of NGOs in trying to improve the treatment of sexual minorities. In *Re JQU*,[44] the RPD pointed out that previous IRB decisions went both ways in relation to homosexuals from Poland on the issue of discrimination versus persecution. However, in *Muckette v Canada*,[45] the Federal Court held that the RPD erred in finding that the gay claimant was facing mere discrimination, stating that "the cumulative effects of the incidents tipped into the area of persecution when death threats, which had some degree of reality to them, were made."[46]

The challenge therefore for decision-makers is to make sure that in weighing the evidence, minor social and legal progress outlined in independent country information is not favored over more serious reports of homophobic violence and impunity. Moreover, progress on LGBTI human rights can be reversed; countries like Russia, Nigeria and Uganda, for example, have recently adopted measures that will stigmatize, not protect LGBTI individuals, and courts in India and Singapore have upheld laws that criminalize same-sex relations.

One of the problems lies in the type of country information that may be available to the adjudicators. In a 1999 case involving two gay men from Uruguay, the RPD concluded that the situation for homosexuals in Uruguay was not perfect, but constituted discrimination, falling short of persecution.[47]

Yet, the documentary evidence mentioned in the RPD's reasons focused exclusively on the improved social position of homosexuals. Independent country information, including information from a Uruguayan sexual minority rights group, outlined the existence of some gay groups in the capital city of Montevideo, the holding of a public parade and workshops, including one event where a psychiatrist held an open panel on homophobia at a town council.[48] However, this type of documentation does not provide useful assessments of the specific human rights situation of sexual minorities in a particular country. If the independent country information focuses on the mere existence of a sexual minority rights organization, adjudicators may fail to appreciate that this "does not reveal much detail about the conditions for that organization, the size or influence of the organization and/or any restrictions on its operations."[49] Adjudicators require a diversity of country information that paints a complete picture of the situation for them to be able to understand "the nature of homophobic persecution, which is cemented by a complex interaction between legal, political, social, religious and familial spheres."[50] For instance, in the Uruguayan case, the absence of penal provisions prohibiting homosexuality was mentioned by the RPD. Such absence, however, does not mean that same-sex conduct is legally condoned, especially in public settings. Many Latin American countries have used laws that penalize offences against morality and decency to repress homosexuality.[51]

In sum, there continues to be significant obstacles facing sexual minority claimants in meeting the threshold of persecution rather than discrimination. One of these hurdles is the fact that independent human rights documentation continues to be difficult to obtain for many parts of the world. This specific issue is examined later on in this paper.

2.2. Laws Criminalizing Homosexual Conduct

Decision-makers are increasingly called upon to assess the persecutory impact of laws criminalizing homosexual conduct. According to a 2014 world survey, at least 78 states – approximately 40 per cent of which are United Nations member states – have laws prohibiting same-sex activity between consenting adults.[52] Laws may specifically prohibit the consensual homosexual conduct of both women and men, "through terms that criminalize 'homosexual acts' or other similarly clear terms."[53] For instance, in *Bethany Lanae Smith v Canada*, the Federal Court identified the *Uniform Code of Military Justice* of the United States as the relevant legislation in the case of a lesbian military deserter; at the relevant time, the Code made sexual relations between people of the same sex an offense.[54] Such laws have been found to violate the international rights to privacy and equality before the law, and

their enforcement with terms of imprisonment has been regarded as a disproportionate or discriminatory punishment.[55]

The UNHCR Guidelines are clear that "even if irregularly, rarely or ever enforced, criminal laws prohibiting same-sex relations could lead to an intolerable predicament for an LGB person rising to the level of persecution."[56] Indeed, the mere fact that criminal prohibitions exist – whether enforced or not – can result in LGBTI abstaining from same-sex relationships or applying severe restrictions to their social life and personal identity in order to prevent arrests, extra-legal detention, harassment, extortion or prosecutions.[57] The UNHCR Guidelines further underline that laws criminalizing homosexual conduct "can promote political rhetoric that can expose LGB individuals to risks of persecutory harm," or "hinder LGB persons from seeking and obtaining State protection."[58] Moreover, the impact on lesbians of laws criminalizing male homosexuality should not be overlooked; "the existence of criminalizing provisions against men will create a fearful environment for sexual minorities overall, which includes women."[59] Consequently, decision-makers are required to analyze "[t]he legal system in the country concerned, including any relevant legislation, its interpretation, application and actual impact on the applicant," as well as the "scope, impact and enforcement of laws that criminalize same-sex conduct."[60] Rather than focusing on the actual number of prosecutions, what is required is specific information about how criminal sanctions "reinforce persecutory social environments and destroy opportunities for sexual minorities to seek protection from state authorities."[61]

The UNHCR highlights that in countries where homosexual practices neither are criminalized nor enforced, other laws may be directed at suppressing homosexuality, such as sanctions relating to "public morality or public order laws (loitering, for example)."[62] Indeed, laws that appear to have a general application, for instance laws against adultery or those that criminalize certain sexual acts between consensual partners of any sex or gender, may have disproportionately discriminatory impacts on sexual minorities because they are selectively applied, or the punishment is out of proportion to the objective of the law. The Federal Court held in 2012 that the RPD erred in failing to analyze the claim of a gay claimant from China that the "police arbitrarily use a variety of legal pretexts in order to penalize public displays of homosexuality," including arresting homosexuals to meet quotas established for prostitution arrests.[63] In Turkey, for instance, a traffic regulation containing misdemeanor offenses has been used by police to stop, search and fine or detain transgender women.[64]

2.3. Discretion/Concealment

A contentious issue has surfaced directly or implicitly in the national case law of several States. Some decision-makers have made a distinction between discreet and non-discreet homosexuals, and have suggested that sexual minority refugee claimants could be required to take reasonable steps to avoid persecutory harm by concealing their personal lives or identity.[65] While several courts have rejected the "discretion" approach,[66] the issue seems to resurface on occasion.

The UNHCR Guidelines are explicit and clear on this issue: "a person cannot be denied refugee status based on a requirement that they change or conceal their identity, opinions or characteristics in order to avoid persecution."[67] It is never a condition of protection that a claimant be required to take steps to conceal either their political opinions, religious beliefs, membership in a particular social group or their race or nationality to avoid persecution. According to the UNHCR, "[t]here is no duty to be 'discreet' or to take certain steps to avoid persecution, such as living a life of isolation, or refraining from having intimate relationships."[68]

The issue of concealment has surfaced directly or implicitly in some Canadian tribunal decisions,[69] but generally the requirement of discretion, and the classification of claimants into either "discreet homosexuals" or "non-discreet homosexuals" categories, has not taken a serious hold in Canadian decisions. The Federal Court clearly dismissed such a discretion requirement in *Fosu v Canada*.[70] The Court set aside a decision which denied refugee status to a Ghanaian gay man, rejecting the RPD's "finding which requires the claimant to deny or hide the innate characteristic which forms the basis of his claim of persecution."[71]

In fact, being compelled to forsake or conceal one's sexual orientation and gender identity may in and of itself amount to persecution. In *Sadeghi-Pari v Canada*, the Federal Court was clear that requiring a person to conceal or suppress their sexual orientation amounts to persecution:

> The meaning of persecution, as set out in the seminal decisions of *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 and *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, is generally defined as the serious interference with a basic human right. Concluding that persecution would not exist because a gay woman in Iran could live without punishment by hiding her relationship to another woman may be erroneous, as expecting an individual to live in such a manner could be a serious interference with a basic human right, and therefore persecution.[72]

The UNHCR Guidelines recognize that significant psychological and other harms may result when a person is forced to conceal their sexual orientation or gender identity, and this, in turn, could lead to intolerable predicaments amounting to persecution.[73] Essentially, insisting on discretion amounts to requiring refugee claimants to deny fundamental human rights to which they are entitled, like freedom of expression and freedom of association.[74]

2.4. Forms of Persecution

The UNHCR Guidelines do a commendable job of canvassing the different forms of persecution that sexual minorities may confront. They highlight the different forms of persecutory harms facing many LGBTI persons, including "[p]hysical, psychological and sexual violence, including rape."[75] Lesser forms of violence can include harassment, bullying, ostracism, intimidation and psychological violence, all of which can rise to the level of persecution. Examples of discriminatory measures amounting to persecution are outlined in the UNHCR Guidelines. For instance, the Guidelines recognize that LGBTI may not be able to fully enjoy their human rights, like the right to freedom of expression, association and assembly.[76] They may be denied access to normally available services such as education, housing, health care and employment – the cumulative effect of which may give rise to a reasonable fear of persecution.[77] The UNHCR also acknowledges that social, cultural and other restrictions can compel sexual minorities to enter into forced heterosexual marriages or relations, or be subjected to forced pregnancies or marital rape, all of which may reach the threshold of persecution.[78] The UNHCR Guidelines do set aside any suggestion that efforts to change an individual's sexual orientation or gender identity by force or coercion with the intention of "curing" them, "treating" them, or making them conform to gender roles, are anything other than persecution.[79] Intersex individuals may be particularly vulnerable to coercive surgical treatments aimed at "normalcy."[80]

The persecution of lesbians can be similar to the persecution of gay men in several ways. For instance, in a comparative study of asylum decisions from Canada and Australia, Jenni Millbank found that "sexual assault was a significant and persistent factor in the persecution of both lesbians and gay men."[81] However, a number of authors have identified elements of persecution involving lesbians that are similar to those involving women in general. Shannon Minter states that lesbians, as is the case with other women, are often victims of violence at the hands of family members. They are forced to marry; subjected to psychiatric treatment against their will; deprived of

their children; and are victims of discrimination with respect to housing, employment, education and health services.[82]

The main threat to the safety and survival of many lesbians are not criminal laws or violence perpetrated by agents of the State, but rather social norms based on gender that subordinate women economically and politically, control the sexuality and reproductive freedom of women, and, generally, do not give women full and free access to exercise their fundamental rights.[83] In terms of their sexuality, lesbians are viewed as resisting heterosexual imperatives prescribed by all patriarchal societies:

> La société patriarcale a imposé aux femmes certaines règles (explicites et implicites) régissant leur sexualité. Perçues comme étant la propriété des hommes, les femmes ne doivent exprimer leur sexualité que dans le cadre d'une relation avec un homme [...] Par conséquent, toute femme qui ne se soumet pas à cette obligation sexuelle est susceptible d'être marginalisée et frappée d'ostracisme.[84]

Jenni Millbank argues that rape is a "sexualized attack upon lesbians" which serves "as a punishment for their sexual and social nonconformity."[85] Because lesbianism is largely perceived as an affront to social or cultural norms relating to gender and sexuality, lesbians are particularly vulnerable to different forms of gender persecution designed to punish and to force them to conform to sexist and heterosexist norms.[86]

It must, however, be underlined that gender persecution is a relevant category for all sexual minorities because society tends to associate gender and sexual non-conformity.[87] Social, political, and legal disapproval of homosexuality is more often a reaction to the non-compliance to gender and social roles than a simple expression of contempt for the sexual practices of homosexuals.[88] Generally, gender roles are based on a heterosexual orientation. Non-conformance with gender norms by gay men, lesbians, and transgendered persons implies a refusal to behave in ways dictated by their biological sex and social classification.

For example, as Sylvia Law maintains, lesbians and gay men, in their existence and behavior, "deny the inevitability of heterosexuality."[89] James Wilets describes sexual minorities as "gender outlaws."[90] He states the following: "[s]exual minorities are also gender outlaws in the sense that their very existence as identifiable minorities is not based upon the sexual acts in which they participate, but rather on their relationship to the spectrum of gender conformity."[91] According to Wilets, non-conformity to gender and social roles by gay men and lesbians is the basis of persecution and discrimination. Men and women who display homosexual tendencies or adopt gender identities other than those prescribed by their societies have generally been penalized when their activities violate the "norms of male supremacy."[92]

Just as with lesbians, gay men and transgender people are victims of abuse because they do not conform to socially constructed gender roles. Shannon Minter explains the problem:

> [...] many human rights abuses against gay and transgendered people are also deeply rooted in and expressed through socially imposed gender norms. Like lesbians, many gay and transgendered people are extremely vulnerable to sexual and physical assault in families and communities, with little or no access to meaningful protection from the state.[93]

Amnesty International, in a report on abuses of sexual minorities, confirms that gay men are often perceived as traitors, having defied masculine privilege by adopting roles viewed as feminine.[94] In fact, in a number of cases, it is obvious that gay men and transgender people were targeted because they were perceived as having transgressed strict social norms governing the behavior of women and men. For example, in a patriarchal society like Mexico, gay men are held in contempt if they are "effeminate."[95] To a great extent, those who persecute gays perceive a direct connection between male homosexuality and femininity:

> [t]hus homophobia is not only a fear of the idea of having sex with other men, but also a masculine fear of being considered or appearing in any way weak or feminine. Because homosexuals are often perceived as having feminine characteristics and taking on feminine roles, it is not surprising that in the case of homosexuals, as is generally the case with women, sexual assault is a common form of persecution. In fact, a great number of gay claimants state they have been victims of sexual assault or rape.[96]

Another aspect of the intersection of sexual orientation and gender involves the agents of persecution. When a society's views about gender roles are reflected in violence against women and sexual minorities, this violence is often committed by individuals who do not represent the State.[97] Violent acts such as rape, assault and torture are employed to pressure both women and sexual minorities to conform to society's gender roles. In addition, persecution of women and sexual minorities serves not only to pressure for conformity, but also to intimidate by making examples of abused women and sexual minorities.

In spite of the presence of gender elements in claims made by sexual minorities, decision-makers (and claimants themselves) infrequently refer to the UNHCR *Guidelines on Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*[98] [UNHCR Gender Guidelines] or the Canadian gender guidelines entitled *Women Refugee Claimants Fearing Gender-Related Persecution*[99] [Canadian Gender Guidelines] when rendering a decision on

a claim made by sexual minorities. The importance of establishing a link between gender, sexual orientation and gender identify is, it is suggested, evident. Persecution against sexual minorities is based on the same notions of patriarchy and misogyny as repression against women. It is, therefore, imperative that the intersection of gender, sexual orientation and gender identity be established to reflect the reality, impact and scope of persecution suffered by refugees. A gender analysis recognizing that the repression of women's rights is analogous to the repression of non-conformity to social and sexual roles will undoubtedly improve the protection refugee law offers to both women and sexual minorities. In fact, the UNHCR Guidelines explicitly recommend that the document on sexual orientation and gender identity be read in conjunction with the UNHCR Gender Guidelines.[100]

3. Convention Grounds

Under Canadian refugee law, persons seeking asylum must satisfy two main legal tests: they must demonstrate a well-founded fear of persecution, and they must substantiate that the persecution they fear is on account of their race, religion, nationality, membership in a particular group or political opinion. The Convention definition of a refugee therefore requires that there be a nexus between the persecution that is feared and the civil or political status of a person (race, religion, nationality, membership in a particular social group or political opinion).

The UNHCR Guidelines acknowledge that refugee protection is most commonly extended to sexual minorities because of the persecution individuals fear they would be subjected to as members of a particular social group.[101] In Canada, the Supreme Court decision in *Ward v Canada*[102] confirmed, in *obiter*, that sexual orientation and gender constitute the basis of particular social groups as defined in the Convention.[103] As the UNHCR Guidelines further suggests, sexual orientation or gender identity cases may also be analyzed in relation to other Convention grounds such as political opinion or religion.[104]

3.1. Particular Social Group

The expression "sexual minority" is used to refer to people whose minority status is a result of their sexual orientation, sexual identity, practices with partners of the same sex, or their refusal to conform to gendered social roles tied to their biological sex at birth. It also includes individuals who have both male and female physical and sexual characteristics and organs. Thus, the notion of sexual minorities regroups gays, lesbians, bisexuals, transgendered – which includes transsexuals and transvestites – and intersex people.

In the context of refugee law, LGBTI individuals can be recognized to constitute particular social groups based on sexual orientation, gender or gender identity.

3.1.1. Sexual Orientation

As mentioned above, in 1993, the Supreme Court of Canada clarified in *Ward*[105] that sexual orientation can constitute the basis of a claim for membership in a particular social group. Justice LaForest defined social group by identifying three categories of groups.[106] The first category, "groups defined by an innate or unchangeable characteristic," embraced "individuals fearing persecution on such bases as gender, linguistic background and sexual orientation."[107]

The American Psychological Association [APA] defines sexual orientation as follows:

> Sexual orientation refers to an enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes. Sexual orientation also refers to a person's sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions. Research over several decades has demonstrated that sexual orientation ranges along a continuum, from exclusive attraction to the other sex to exclusive attraction to the same sex. However, sexual orientation is usually discussed in terms of three categories: heterosexual (having emotional, romantic, or sexual attractions to members of the other sex), gay/lesbian (having emotional, romantic, or sexual attractions to members of one's own sex), and bisexual (having emotional, romantic, or sexual attractions to both men and women).[108]

The APA also explains that different cultures may use identity labels to describe people who express some of these different attractions. In Canada, the most common labels are lesbians (women attracted to women), gay men (men attracted to men) and bisexual people (men or women attracted to both sexes). However, some people may use different labels or none at all.

In *NKL v Canada*, the Federal Court concluded that the RPD erred when it stated that it had specialized knowledge that "homosexuality is innate."[109] The RPD had relied on this "specialized knowledge" to conclude that the claimant was not a lesbian, "because she discovered her sexual orientation following a rape, rather than admitting that it was innate."[110] There is in fact no consensus in scientific, psychiatric and social science fields that sexual orientation is innate or fixed very early in life, or the product of social conditions. Indeed, many continue to debate whether sexuality is a "deep-rooted, fixed and intrinsic feature of individuals"[111] which develops separately

from social structures (referred to as the "essentialist" or "determinist" view); or whether it is a product of an individual's social environment, a perspective put forth by advocates of the social construction theory.[112] The APA states the following:

> There is no consensus among scientists about the exact reasons that an individual develops a heterosexual, bisexual, gay, or lesbian orientation. Although much research has examined the possible genetic, hormonal, developmental, social, and cultural influences on sexual orientation, no findings have emerged that permit scientists to conclude that sexual orientation is determined by any particular factor or factors. Many think that nature and nurture both play complex roles; most people experience little or no sense of choice about their sexual orientation.[113]

Regardless of the natural or social causes of homosexuality, the decision to express one's homosexuality or bisexuality by engaging in sexual conduct with persons of the same sex is a voluntary act.[114] Many women and men get involved in homosexual relationships after engaging in heterosexual relations for many years, or they may not engaged in an intimate relationship or sexual relations. At any rate, lesbian, gay and bisexuals refugee claimants are extended refugee protection because they are actively persecuted, regardless of the causes of homosexuality.

Sean Rehaag has canvassed the specific problems facing bisexual claimants in the US, Australia and Canada, and identifies trends that suggest bisexuality may be poorly understood by refugee decision-makers.[115] For example, the Australian Refugee Tribunal rejected a Pakistani man's claim to be bisexual, concluding that his relationship with another man while in detention was "simply the product of the situation, where only partners of same sex are available, and says nothing about his sexual orientation."[116] In relation to sexual orientation, decision-makers should consider whether a claimant is bisexual, rather than only examining the exclusive homosexual or heterosexual orientation of the claimant. For instance, in *Valoczki v Canada*, the Federal Court categorized as an error an omission by the RPD to consider the very real possibility that the claimant was bisexual.[117]

3.1.2. Gender

"Sex" refers to the biological category to which a person belongs at birth. However, "gender" is a concept referring to social, cultural and psychological values as well as learned beliefs. Gender refers to the social and cultural experience of being a woman or a man and the power relations between men and women. Thus gender is linked to the hierarchical relationships between men and women and it encompasses the identity, social

status and roles and responsibilities of men and women. Feminists in particular have been discussing this distinction since the 1970s, referring to gender as the social dimension of what can be perceived as biological sex.[118]

As previously mentioned, the UNHCR states at the outset that the Guidelines "should be read in conjunction with UNHCR's *Guidelines on Gender-Related Persecution.*"[119] In doing so, the UNHCR Guidelines make a direct link to conclusions it reached when it drafted the UNHCR Gender Guidelines: gender is relevant to LGBTI asylum and refugee claims made by both men and women. The UNHCR Gender Guidelines affirm that "refugee claims based on differing sexual orientation contain a gender element."[120]

Despite the intersection of gender and sexual orientation, this link is still infrequently made in determinations relating to membership in a particular social group. In one 1996 Canadian case, the decision-makers did apply the Canadian Gender Guidelines in a systematic way.[121] In that case, a Venezuelan lesbian had been the victim of violent, cruel and degrading acts at the hands of police. In deciding the claim, the members of the panel considered the connection between gender and sexual orientation:

> The claimant's strong self-identity as a lesbian woman places her at greater risk of detection by the authorities. It seems evident to me that a woman who is easily identifiable as a lesbian is more likely to be a target of harassment and abuse by the police. Such a woman is not only challenging the social norm of heterosexuality, she is also transgressing the social mores regarding the role of women in society. In his affidavit, Mr. xxxxxxxxx expresses this fact succinctly:
>
> In machista culture, the woman is subservient to the man in all facets of her existence and in particular to the sexual gratification of the man. As such, women are seen as objects satisfying the needs of men, and therefore subject to the whims and needs of the man. If a woman is also a lesbian she is seen as a danger to the status quo because she has rejected the notion that she is second to a man.[122]

According to the panel, the Canadian Gender Guidelines offer clear guidance in recognizing that some women can fear persecution "... as a consequence for failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their country of origin."[123] Judith Ramirez, who wrote the decision, added: "I therefore find that this claim is based on membership in two particular social groups, women and homosexuals, the two indivisible elements of being a lesbian woman."[124] Other sexual minority cases have also since referred to the Canadian Gender Guidelines.[125]

3.1.3. Gender Identity

The APA defines the term "transgender" as describing "people whose gender identity (sense of themselves as male or female) or gender expression differs from that usually associated with their birth sex... [b]roadly speaking, anyone whose identity, appearance, or behavior falls outside of conventional gender norms."[126] This may lead some to seek "gender reassignment," which usually involves hormones or surgery, to bring their physical characteristics into conformity with their gender identity. Others may simply choose to dress in clothes usually worn by the opposite sex.

The APA describes "intersex" conditions as including atypical developments of physical sex characteristics, including abnormalities of the external genitals, internal reproductive organs, sex chromosomes or sex-related hormones.[127] Some examples include external genitals that cannot be easily classified as male or female, or inconsistency between the external genitals and the internal reproductive organs.[128]

Transgendered claimants have raised their gender identity as an issue before the RPD at least since 1992. Testimony presented before the RPD demonstrates that the disgust society feels toward those who cannot conform to the stereotypical roles for men and women directly affects transgendered persons.[129] The UNHCR Guidelines explain that "[t]ransgender individuals are often highly marginalized and their claims may reveal experiences of severe physical, psychological and/or sexual violence."[130]

The UNHCR Guidelines also describe the type of persecutory harms that may confront intersex individuals:

> Intersex persons may be subjected to persecution in ways that relate to their atypical anatomy. They may face discrimination and abuse for having a physical disability or medical condition, or for non-conformity with expected bodily appearances of females and males. Some intersex children are not registered at birth by the authorities, which can result in a range of associated risks and denial of their human rights. In some countries, being intersex can be seen as something evil or part of witchcraft and can result in a whole family being targeted for abuse. Similar to transgender individuals, they may risk being harmed during the transition to their chosen gender because, for example, their identification papers do not indicate their chosen gender.[131]

Intersex individuals may be viewed by others as transgender. It is important to understand the distinction between the two groups. A report from the European Commission explains it as follows: "Intersex people differ from trans people as their status is not gender related but instead relates to their biological makeup (genetic, hormonal and physical features) which is neither

exclusively male nor exclusively female, but is typical of both at once or not clearly defined as either."[132]

In all traditional and patriarchal societies – in which non-conformity to clearly defined gender roles is not tolerated – people who identify as the opposite sex, who habitually wear the clothing or adopt the customs of the opposite sex, or who possess physical attributes of both sexes, have reason to fear persecution. Transgendered and intersex people are indisputably perceived as a threat to rigid gender and social norms.[133] Yet, it is still the case that the Canadian Gender Guidelines are not consistently taken into consideration.[134]

Some decision-makers have had difficulty distinguishing "sexual orientation" from "gender identity," which may partially explain the lack of gender-specific analyses in transgender and intersex cases.[135] The UNHCR Guidelines states that "[t]ransgender is a gender identity, not a sexual orientation and a transgender individual may be heterosexual, gay, lesbian or bisexual."[136] For example, a Lebanese claimant testified he was born a female but has dressed and acted like a male since childhood.[137] Furthermore, he has undergone a mastectomy and hormone treatments to change his biological sex. The RPD considered him to be transsexual, but they suggested that his case fell under "sexual orientation:" "I find the claimants' evidence regarding the claimant's sexual orientation, as an FTM transsexual who has begun the process of gender reassignment, to be credible."[138] In fact, it is not the claimant's sexual orientation that was raised (he considered himself heterosexual) but rather his gender identity: that is, the fact that he was in the process of changing his biological sex.

It is important to refer to transgender claimants by their chosen name and gender identity. If in any doubt, a claimant should be asked which personal pronoun he or she would like used. In *Martinez v Canada*,[139] the Federal Court concluded that the RPD mistakenly referred to a transgender man using feminine pronouns and found that he was a "transgender woman." While not a reviewable error in the circumstances of the case, the Federal Court does state: "It is, of course, unfortunate that the RPD would refer to [the male transgender claimant] with terminology that does not reflect his own self-concept."[140]

3.1.4. Intersection of Identity Markers

Many identity markers may intersect to create particular vulnerabilities to persecution. As mentioned above, gender is an important element to keep in mind. In many societies, what offends the dominant powers is often the way in which lesbians, gay men, transgendered and intersex people step outside the bounds of established social norms.[141] It is not so much their

sexual behavior, though that is often an irritant as well, but more so the fact that sexual minorities challenge dominant gender values.

Other factors may also intersect to create layered vulnerabilities.[142] For example, the complex intersection of sexual orientation, gender, and race was seriously considered in relation to a claim from a Tatar lesbian from Russia.[143] In assessing the risk of persecution faced by the claimant, the RPD concluded the following:

> […] it is clear that your additional characteristics of being a lesbian and being Tatar significantly increase your vulnerability to rape and physical attack. They do that in several ways. They marginalize you from society, which marginalizes you economically as well as socially. They also make you, certainly this rape incident is an example, more vulnerable to attack because of being perceived as a lesbian. The fact of being a lesbian, in terms of some rapists, is a reason for attacking you. It is also a reason for receiving even less protection from society.[144]

The claimant was granted refugee status on the basis that her sexual orientation, ethnic identity and identity as a woman made her vulnerable to persecution.

Finally, sexual orientation or gender identity may be only one aspect of the persecution faced by people with HIV/AIDS[145] or individuals who engage in specific kinds of sexual behavior (for example, prostitution or survival sex).

3.2. Establishing Membership in the Particular Social Group

Since gay, lesbian, bisexual, transgender and intersex claimants generally assert that they are members of a "particular social group," one of the legal elements to be satisfied is the claimant's membership in that group. Assessing the veracity of the claimant's sexual orientation or gender identity is a very difficult, sensitive and complex task in the context of an administrative or quasi-judicial hearing. In particular, the very private and intimate nature of an individual's sexual orientation or gender identity poses real challenges for decision-makers, who are nonetheless required to examine the claimants' personal lives and intimate relationships.

3.2.1. Credible or Trustworthy Evidence

Sexual minority claimants may face challenges in establishing LGBTI status. Few LGBTI claimants are able to provide conclusive documentary or witness evidence to confirm their membership in the particular social group.[146] Jenni Millbank cites an Australian decision that noted:

> [I]t is difficult for applicants to substantiate and for decision-makers to evaluate [claims on sexual orientation]. By their very nature, they involve private issues of self-identity and sexual conduct, and sometimes personal issues for individuals that may be stressful or unresolved. Social, cultural and religious attitudes to homosexuality in an applicant's society may exacerbate such problems.[147]

Therefore, one element in particular will be most determinative in establishing whether the claimant is a member of the particular social group: the claimant's credibility.

The determination of a claimant's membership in a particular social group will require decision-makers to determine whether they believe the claimant's evidence to that effect. In order to prove their membership, LGBTI must present factual evidence that supports their claim.[148] The claimant bears the onus of proof, and members of the RPD must determine whether the onus has been satisfied.[149] In doing so, members of the RPD will be called upon to assess the credibility of the claimant, other witnesses and the documentary evidence.

The credibility of a claimant's evidence relating to their membership in a particular social group "has to be evaluated in the light of what is generally known about conditions and the laws in the claimant's country of origin, as well as the experiences of similarly situated persons in that country."[150] Therefore, assessing the credibility of a claimant will require having some knowledge and information about the gay, lesbian and transgendered communities in the country of origin, and the legal and social reality of sexual minorities. It is important that decision-makers access reliable and accurate information about sexual minorities in a claimant's country of origin.

Finally, it is important to underline that determinations related to a claimant's membership in a particular social group are to be guided by the same principles and case law applicable to all assessments of credibility, including making clear findings on credibility and providing adequate reasoning.[151]

3.2.2. Lack of Corroborating Evidence

The UNHCR Guidelines suggest that a claimant's "own testimony is the primary and often the only source of evidence, especially where persecution is at the hands of family members or the community.[152] As the Federal Court has observed, "the acts and behaviors which establish a claimant's homosexuality are inherently private"[153] and "there are often inherent difficulties in proving that a refugee claimant has engaged in same-sex sexual activities."[154] In such cases, the Guidelines suggest that "[s]elf-identification as LGBTI person should be taken as an indication of the applicant's sexual

orientation and/or gender identity."[155] Indeed, the UNHCR Handbook, affirms that "if the applicant's account appears credible, he [or she] should unless there are good reasons to the contrary, be given the benefit of the doubt."[156]

In *Maldonado v Canada*,[157] the Federal Court of Appeal stated that when a claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. This principle was applied in *Sadeghi-Pari v Canada*,[158] where the Federal Court found the following in relation to a sexual orientation claim:

> However, a lack of corroborating evidence of one's sexual orientation, in and of itself, absent negative, rational or plausibility findings related to the issue, would not be enough, in my opinion, to rebut the *Maldonado* principle of truthfulness.[159]

The facts in *Houshan v Canada*[160] were distinguished from those in *Sadeghi-Pari*. In *Houshan*, the RPD made negative credibility findings in relation to the claimant's sexual orientation. The Federal Court found that the RPD's conclusions were not reviewable because they were based on negative, rational plausibility findings that rebutted the *Sadeghi-Pari* presumption of truthfulness.[161]

In sum, in rejecting claimants' testimonies regarding their sexual orientation or gender identity, members of the RPD must be careful to clearly identify the contradictions, inconsistencies, omissions or implausibility that support a negative conclusion on the issue of membership in the particular social group.

3.2.3. Implausibility

Members of the RPD are "entitled to make reasonable findings based on implausibility, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole."[162] However, members of the RPD must be careful when rendering a decision based on a lack of plausibility. The Federal Court has cautioned that because refugee claimants come from different cultures, actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's social, political and personal surroundings.[163]

Moreover, when a member of the RPD makes inferences concerning the plausibility of the evidence, there must be a basis in the evidence to support the inferences.[164] The Federal Court has stated that "findings of implausibility are inherently subjective assessments which are largely dependent on the individual Board members' perceptions of what constitutes rational behavior."[165] Therefore, the RPD decision must identify all of the facts which form the basis of the implausibility conclusions.[166] The Federal Court

has also "repeatedly warned that implausibility findings cannot be made on the basis of stereotypical attitudes or projected behavior that is unsupported by the evidence."[167]

In a claim based on sexual orientation, the RPD concluded as implausible the claimant's statement that his classmates and teachers discovered his homosexuality, given he also testified he lived a much closeted life. The Federal Court stated:

> It is obvious that the Applicant's fellow students did not need a public declaration to label and target him as a homosexual. It appears that the CRDD had trouble believing that the Applicant would be so labeled and targeted because he did not act as the CRDD might expect of a homosexual in Romania. As there is no evidence on the record to establish the contact of the profile and behavior the CRDD expected, I find that the implausibility finding unsupported by evidence and cannot stand.[168]

In another case, the Federal Court held that the RPD's implausibility finding could not be sustained; the Court was of the view the RPD speculated when it concluded that a father's shame over a daughter's homosexuality would outweigh his outrage, and it was implausible that the father would have called relatives to tell them his daughter was gay.[169] The Federal Court found two reviewable plausibility findings in *Dosmakova v Canada (Citizenship and Immigration*).[170] In that case, the RPD did not believe the claimant's sexual orientation because she hadn't realized her same-sex attractions until she entered into a lesbian relationship in her mid-50s. The RPD held that this was not plausible since "most homosexual people have some realization with respect to their sexual orientation when they begin to explore their sexuality in their teens or early twenties."[171] The RPD also found the claimant's emotional reaction to be implausible. The claimant had described that in entering a lesbian relationship "she felt happiness and sexually satisfied, that she was happy about it and had no regrets."[172] The RPD concluded that given the homophobia in her country, "it is reasonable to expect that she would express some misgivings with respect to her initial feelings."[173] The Federal Court overturned the decision, because the plausibility findings were "unsupported by the evidence and [were] patently unreasonable."[174]

3.2.4. Stereotyping

There are no universal characteristics and qualities that typify sexual minorities. The experience of sexual minorities around the world is tremendously diverse and different.[175] This is particularly true of the multinational and multicultural context of the refugee hearing room where stereotypical views

of sexual minorities are even more likely to be inaccurate and misleading when applied to a different cultural context. Jenni Millbank, for instance, has documented a troubling trend in Australian case law where decision-makers doubt or disbelieve the sexual identity of refugee applicants when they do not fit "highly stereotyped and westernized notions of 'gayness.'"[176] Barry O'Leary claims similar problems exist with some UK decision-makers.[177] Cases in the US and Canada have also relied on highly problematic stereotypes.[178]

Individuals experience and live their sexual orientation in many different ways, depending on their country of origin, gender, culture, social class, education, religion, family background and socialization. There is no uniform way in which LGBTI recognize and act on their sexual orientation or gender identity. Therefore, answers to decision-makers' questions about a person's sexual orientation will widely vary.

Hopefully, the increased visibility of lesbians, gay men and bisexuals in North America has informed most Canadians about some of the realities of the lives of lesbians and gay men living in Canada. Many live discreet or clandestine lives; others share their lives with their family and friends; and a smaller number engage in political and activist work for lesbian and gay rights. Even in Canada, women and men suffer from discrimination, harassment, and even violence because of their sexual orientation. Most important is the fact that every lesbian, gay and bisexual person in Canada experiences and lives their sexual orientation in a wide variety of ways.

While the experience of lesbians and gay men in this country is diverse, it is nothing compared to the tremendously divergent and different experiences of sexual minorities around the world. Human sexuality is strongly influenced by social, cultural, religious, and even political environments. It is also an aspect of human experience that is poorly understood and tremendously repressed in many countries. Moreover, individuals who have a different sexual orientation or gender identification from the majority are invariably among the most marginalized and oppressed groups in any society. Given the diversity of the global context, it is dangerous to make assumptions about the lives of members of a sexual minority.

The UNHCR Guidelines underline how important it is to avoid relying on stereotypical perceptions of sexual minorities in determining their membership in the particular social group: "This can be misleading in establishing an applicant's membership of a particular social group. Not all LGBTI individuals look or behave according to stereotypical notions."[179] The Federal Court has also clearly stated that using stereotypes is inappropriate. In *Dosmakova v Canada*, Justice Dawson observed "that plausibility findings cannot be made on the basis of stereotypical attitudes or projected behaviors that is unsupported by the evidence."[180]

In a recent case, the Federal Court held that the RPD's "insistence that an individual needs to go to the gay village to be gay" to be "stereotypical and thus unreasonable."[181] In yet another recent case, the Federal Court strongly rejected a plausibility finding based on an unacceptable stereotype. The Court held that the RPD was "effectively saying that gay men are promiscuous and that they are incapable of living in monogamous relationships," and that "no gay man would choose to live outside of the gay community."[182] Because of the use of stereotypes, the Federal Court rejected all of the RPD's credibility findings: "The idea that gay men are invariably promiscuous and incapable of establishing stable relationships is a pejorative characterization and it colors all of the Board's evidentiary findings, as well as its state protection finding."[183]

In a 2003 judicial review, the Federal Court found that the RPD wrongly relied on stereotypes about gay men in rejecting a Ukrainian teenager's refugee claim.[184] The Court stated that inferences made by the RPD "were based on stereotypical profiles that simply cannot be assumed to be appropriate to all persons of homosexual orientation . . ."[185] In 2004, the Federal Court of Canada allowed an application for judicial review because the RPD had erred in stating that "it is surprising that the claimant did not have any problems with the authorities even though his appearance and his artistic and occupational activities over many years might have suggested a tendency or orientation other than heterosexual."[186] In a similar finding, the Federal Court held in a 2005 ruling that the RPD's requirement that a claimant be effeminate in appearance or behavior constituted a "thoroughly discredited stereotype which should not have any bearing on the Board's judgment of the Applicant's credibility."[187] In another case, a Colombian woman alleged that "[...] as a result of her physical attributes, including her manner of speaking and walking, physical appearance, and her choice of attire, she is a visible target for cleansing squads and skinhead groups."[188] The RPD was not convinced; the decision reveals stereotypical ideas of how lesbians appear: "The claimant presents as an articulate, professional, well-groomed, and attractive young woman. Based on all these considerations, including the fact that she has yet to be targeted in Colombia as a result of her alleged physical attributes, the panel cannot conclude that the claimant's sexual orientation would be physically obvious to intolerant and bigoted segments of Colombian society.[189] Viewing gay men as effeminate or lesbians as masculine reveals prejudicial stereotypes about gay men and lesbians, and a narrow understanding of the construction of masculinity and feminity.

Manifestly, decision-makers should be very cautious about assessing a claimant's membership in a particular social group based on the perception of the claimant's physical appearance, mannerisms or manner of dress, or

on any expectations of how they are to behave. Such conclusions may constitute stereotyping unless based on a sound evidentiary foundation, such as evidence of how the claimant would be perceived in his or her home country. The Federal Court has stated that determinations of ethnicity cannot be based on the physical appearance of the claimant if such observations are simply based on the decision-maker's observations of a claimant's appearance or on stereotypical assumptions.[190] It is strongly suggested that the same principle applies to the determination of a claimant's sexual orientation or gender identity.

3.2.5. Appropriate Enquiries and Difficulties Relating to Testifying about Sexual Orientation and Gender Identity

Homosexuality remains a controversial topic for some Canadians. While the lives of Canadian lesbians and gay men have significantly improved in the last few decades, the levels of discrimination, homophobia and violence remain significant. Debates over the issue of same-sex marriage revealed that many Canadians held strong views against homosexuality.[191] It is important that decision-makers reflect on their own prejudices and assumptions about homosexuality in order for them to be able to fairly assess the credibility of a sexual minority's testimony. The UNHCR Guidelines recommend that targeted training sessions be held to ensure adjudicators and staff possess an awareness of LGBTI issues and that LGBTI claimants are interviewed by officials who are well informed about the distinctive aspects of LGBTI refugee claims.[192] The recurring training conducted by the IRB on sexual orientation and gender identity is certainly among the best practices in this area.[193]

Claimants may have difficulties discussing their sexual orientation or gender identity. For refugees around the world, asylum claims based on political opinion, religion, nationality or race are for the most part well-known and established grounds. There is generally no sense of shame or feeling of self-oppression in revealing the kind of information required to found their claim on these grounds. For sexual minorities, sexual orientation and gender identity issues may carry with them a sense of shame, self-hating and embarrassment given the very personal and private nature of the topic, and may be accompanied by fears of losing their life, freedom or livelihood. It is therefore important for decision-makers to keep in mind that it may be very difficult for sexual minorities to speak about their sexual orientation or gender identity and their lives, particularly to state officials.

The UNHCR Guidelines concur and state that "[e]xperiences of disapproval and of "being different" or the "other" may result in feelings of shame, stigmatization or isolation."[194] The Guidelines further suggest that

some LGBTI individuals "may be deeply affected by feelings of shame, internalized homophobia and trauma, and their capacity to present their case may be greatly diminished as a consequence. Where the applicant is in the process of coming to terms with his or her identity or fears openly expressing his or her sexual orientation and gender identity, he or she may be reluctant to identify the true extent of the persecution suffered or feared."[195]

Communication difficulties may be exacerbated by the need to rely on interpreters in the hearing room. The UNHCR Guidelines recognize that "the interpreter must avoid expressing, whether verbally or through body language, any judgment about the applicant's sexual orientation, gender identity, sexual behavior or relationship pattern."[196] Indeed, "[i]nterviewers and interpreters who are uncomfortable with diversity of sexual orientation and gender identity may inadvertently display distancing or demeaning body language."[197] In a recent case, the Federal Court noted that a translation difficulty was at the heart of an inconsistency finding made by the RPD. In that case, the Federal Court held that the RPD overlooked the testimony of the interpreter that Chinese characters could mean both "sodomy" and "prostitution," and that one translation, rather than showing a discrepancy, supported the claimant's version of events.[198]

In many countries, repression against sexual minorities is state sponsored or encouraged, so it is difficult for many to imagine that state officials could possibly be anything less than hostile to discussions of homosexuality. Indeed, some individuals believe that to speak frankly about their intimate life and sexual orientation or gender identity would only prejudice their case and exclude them from the refugee protection system. For instance, some gay and lesbian claimants have indicated that concerns about negative repercussions to their coming out explain either delays in applying for refugee protection or omissions in first mentioning sexual orientation as a basis for their fear of persecution.[199] The UNHCR Guidelines properly suggest that:

> Adverse judgments should not generally be drawn from someone not having declared their sexual orientation or gender identity at the screening phase or in the early stages of the interview. Due to their often complex nature, claims based on sexual orientation and/or gender identity are generally unsuited to accelerated processing or the application of 'safe country of origin' concepts.[200]

Decision-makers must remember to be sensitive with regard to questioning claimants about current or past relationships (presuming they have been involved in a same-sex relationship) since it involves personal and intimate information that the claimant may be reluctant to discuss, or have difficulty communicating in a quasi-judicial hearing. In some cases, claimants have asked their current partner to testify or submit an affidavit attesting to their relationship.[201] It would be inappropriate, however, to expect a couple to be

physically demonstrative at a hearing as a way to establish their sexual orientation.[202]

While the Federal Court held that it is open to the RPD drawing a negative inference from an applicant's inability to clearly describe sexual activities with an alleged lover,[203] the UNHCR Guidelines are clear that "[a]pplicants should never be expected or asked to bring in documentary or photographic evidence of intimate acts."[204] It is further suggested that asking questions about actual sexual practices can be an improper way to determine a claimant's sexual orientation or gender identity. Such questions can cause embarrassment, shame, humiliation and confusion, which in turn will make a credibility assessment that much harder to make. In fact, the Federal Court has also concluded that decision-makers should not define a claimant's homosexuality by the performance of certain acts.[205]

In addition, some lesbians and gay men have been the victims of sexual assault or sexual abuse at the hands of the agents of persecution.[206] Similar to the sexual assault of women, rape can be used as a tool to torture, humiliate and degrade LGBTI. Questioning surrounding such events should be conducted with the same respect and sensitivity as in the case of sexual assault victims more generally. In a 2012 decision, the Federal Court characterized comments made by the RPD that a claimant "was not particularly young when he was sexually abused at age 12" as "sarcastic and inappropriate."[207]

The one aspect of the lives of sexual minorities that is universal is the pervasive societal rejection of their sexual orientation or gender identity. There is no country where LGBTI can grow up free of prejudice, discrimination, persecution or repression. The result is that most LGBTI will struggle with their sexual orientation or gender identity at some point in their lives, and that struggle will often move them away, or place them in opposition of their families, friends, communities and society in general. It is suggested that inquiries into areas that touch upon the claimant's personal experience as LGBTI will provide the strongest basis for assessing the credibility of the claimant on the issue of whether he or she is a member of the particular social group.

But it is important to remember that how people experience sexuality and persecution may differ markedly from one claimant to another, even if they are from the same country. It cannot be stressed enough, however, that there are no true or uniform answers to questions about a claimant's experience of: their sexual orientation or gender identity; the reactions of their family and community; and their interaction with the larger society and the agents of persecution. The objective of questioning a claimant about their membership in a particular social group is to elicit evidence from the claimant that will assist in determining credibility. It is not so much the uniformity or homogeneity of the answers that is important, as answers to these types

of questions can differ from one individual to the next. Rather, the fact that the evidence elicited through this questioning will assist in evaluating the consistency and plausibility of the testimony as well as the overall demeanor of the claimant is important.

Jenni Millbank has documented Australian refugee decisions where the questioning to assess the veracity of claims to membership of a group based on sexuality or gender identity was contentious and at times highly inappropriate. For instance, Millbank asserts that:

> … in numerous cases it appears from the text of decisions that applicants were questioned principally about matters such as the locations and names of gay nightclubs in Sydney and Melbourne to assess their familiarity with the gay 'scene'. Surely it is an unreasonable expectation of individuals from elsewhere in the world who are attracted to members of the same sex that they should be interested in and attend gay bars and clubs in inner-city locations in Australia as a matter of course upon their re-location here. Yet when applicants responded that they were not familiar with the locations of gay bars, asserted a preference for socializing privately or in other venues or suburbs, or claimed to have gone to mainstream pornography venues for male/male sex, they were disbelieved. (Moreover when applicants did name bars they had attended, some tribunal members took steps such as telephoning the named bars to ask whether the staff remembered them.)[208]

In yet another Australian case, an Iranian refugee claimant was questioned about what was presented as universally known or accepted gay cultural icons, with the expectation the claimant would be familiar with such references to Western popular culture.[209] As Millbank suggests, decision-makers need to avoid relying on "stereotyped ideas of what it means to be gay, or preconceptions as to what a gay identity necessarily entails."[210]

3.3. Imputing Membership in a Particular Social Group

It is important to remember that a claimant does not actually have to be a member of the particular social group. According to *Ward*, it is sufficient that the agents of persecution believe the person to be a member of the particular social group.[211] The UNHCR Guidelines also rightly refer to the fact that a claimant does not actually have to be a member of the particular social group.[212]

This principle was applied by the Federal Court to claims based on sexual orientation in *Dykon v Canada*.[213] In that case, the claimant based his claim partly on his fear that he would be persecuted on the grounds of sexual orientation. He told the RPD that he had been raped by two Ukrainian men

after they confronted him about speaking Russian in a café.[214] The claimant stated he believed that the two men, who had photographed the assault, had spread rumors about the attack. As a consequence, some people believed him to be gay and subjected his mother and him to harassment. The RPD dismissed his claim based on sexual orientation because "there was no evidence presented that the claimant was in fact a homosexual, only that he was perceived as one by some people."[215] The Federal Court Trial Division rejected this finding, stating that the RPD seriously erred when it claimed that the applicant did not suffer persecution because he was not in fact gay. The court stated that "it is totally irrelevant . . . whether he was in fact a homosexual or not."[216] It is the beliefs of the persecutors that are important, and in this case the individuals responsible for the harassment perceived the claimant to be a homosexual.

4. State Protection

State protection has been an emerging and recurring issue in sexual orientation and gender identity claims. Increasingly, the outcome of many claims depends on whether the claimant has adduced clear and convincing evidence that state authorities cannot or will not protect sexual minorities.

International refugee law was designed to reinforce protection individuals may receive from their own countries. Absent a complete breakdown of the state apparatuses[217] or an admission by the state authorities that they are unable to protect the claimant, a claimant must advance clear and convincing evidence of the state's inability to protect him or her. In addition, courts have held that "where a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens, the mere fact that it is not always successful at doing so will not be enough to justify a claim that the victims of terrorism are unable to avail themselves of such protection."[218] In Canada, the Federal Court of Appeal has held that the burden of proof is proportional to the degree of democracy within the state in question.[219] The more democratic the state, the more available domestic remedies the claimant must exhaust before claiming refugee protection.

The Federal Court has however also stated that democracy alone does not ensure adequate state protection; the quality of the democratic institutions providing that protection must be considered.[220] With respect to Mexico, for instance, the Federal Court has recognized that "Mexico is a functioning democracy," but it has also noted that "there are well-documented governance and corruption problems that require decision-makers to engage in a full assessment of the evidence place before them on the issue of state protection."[221] In *Villicana c Canada*, the Federal Court applied this reasoning

to a claim made by a gay man and his family; the claimant testified that "the Mexican police discriminate against homosexuals and, as a result, assistance would not be forthcoming."[222] The Court concluded that the evidence before the RPD suggested "that all police forces in Mexico are riddled with corruption and are operating outside the law" and the RPD "had an obligation to review it."[223]

Several reasons explain the growing relevance of state protection in sexual orientation and gender identity claims. Availability of state protection has impacted the social, political and legal progress in several countries. Legal reforms include the implementation of specific measures to protect the human rights of sexual minorities, including remedies such as mechanisms for individual complaints to an ombudsman, human rights commissions and measures to counter homophobia within police and state security forces. Decision-makers have therefore begun to examine the extent to which a gay man, lesbian, bisexual or transgender person can seek protection in his or her country of origin rather than obtain refugee protection elsewhere.

Another reason the question of state protection is increasingly relevant in sexual orientation and gender identity claims is the fact that a significant number of claims identify private violence as the source of the feared persecution. Individuals who are not agents of the state often commit violence against sexual minorities — a fact acknowledged in the UNHCR Guidelines.[224] For instance, Shannon Minter states that lesbians, as is the case with other women, are often victims of violence at the hands of family members. They are forced to marry, subjected to psychiatric treatment against their will, deprived of their children and discriminated against in respect of housing, employment, education and health services.[225] Gay male claimants also testify about abuse received at the hands of family members[226] and the family and social pressures that require them to conform to strict gender-based social roles. Some of the gay claimants had been forced into marriages of convenience,[227] while others claim to have been pressured to have children.[228] In such cases, where the agents of persecution are private individuals, the availability of state protection becomes a key issue to be determined as it is presumed that a claimant could turn to the state for protection from family members or other private persecutors.

To rebut the presumption of state protection, refugee claimants must show clear and convincing evidence that state authorities in their countries of origin are unable or unwilling to protect them. This burden is more difficult for sexual minorities for a number of reasons. First, the existence of laws criminalizing homosexual activity can directly impact the availability of state protection. Penal prohibitions, whether enforced or not, can "reinforce persecutory environments and destroy opportunities for [sexual minorities] to seek protection from state authorities."[229] The UNHCR Guidelines recog-

nize that the existence of criminal sanctions for homosexuality may hinder access to State protection:

> Depending on the situation in the country of origin, laws criminalizing same-sex relations are normally a sign that protection of LGB individuals is not available. Where the country of origin maintains such laws, it would be unreasonable to expect that the applicant first seek State protection against harm based on what is, in the view of the law, a criminal act. In such situations, it should be presumed, in the absence of evidence to the contrary, that the country concerned is unable or unwilling to protect the applicant.[230]

A second, related issue is the fact that sexual minorities have to declare their sexual orientation and gender identity in order to access state protection. The question becomes whether this is realistic or reasonable.[231] Human Rights Watch published a report on homophobic violence in Jamaica in 2014 and their findings on police authorities are summarized as follows:

> Cases of police violence toward LGBT people appear to have decreased in the decade since Human Rights Watch documented such violence in our 2004 report, *Hated to Death*. However, the persistence of even isolated cases is of great concern given the police's role as a source of protection. At the root of much police abuse appears to be the same intolerance and homophobia found in Jamaican society more broadly. For example, Human Rights Watch interviewed a foot patrol police officer in Montego Bay who said LGBT people were criminals, and deserved the violence they experienced. A detective corporal from CISOCA, also in Montego Bay, told Human Rights Watch: "Gay men need to just stop being gay.… They are just greedy. I even think that the Police Force Order on Diversity should stop."[232]

The report details cases where the police failed to intervene, investigate and arrest perpetrators of homophic attacks. In other cases, the police were the instigators of violence and abuse towards LGBT individuals. In sum, the cases examined by Human Rights Watch support the conclusion that it would be unreasonable for Jamaican gay men and lesbians to seek state protection.

Third, as previously mentioned, independent country information remains hard to find for many parts of the world, and current information is often general and descriptive – rather than specific and evaluative – about state protection. For example, the 2014 ILGA report *State-Sponsored Homophobia* includes very little analysis of the scope, impact and enforcement of laws that criminalize same-sex conduct and their impact on the availability of state protection.[233] It is difficult to rebut the presumption of state protection when human rights documentation is unavailable or provides little information on attitudes and actual practice. While some cases benefit from

extensive and wide-ranging human rights documentation,[234] others rely on a relatively small range of sources.

Sexual minorities must be able to access State protection in a genuine and meaningful way. The UNHCR Guidelines states that:

> Where the legal and socio-economic situation of LGBTI people is improving in the country of origin, the availability and effectiveness of State protection needs to be carefully assessed based on reliable and up-to-date country of origin information. The reforms need to be more than merely transitional. Where laws criminalizing same-sex conduct have been repealed or other positive measures have been taken, such reforms may not impact in the immediate or foreseeable future as to how society generally regards people with differing sexual orientation and/or gender identity.[235]

In *Melo v Canada*,[236] the Federal Court noted that the RPD, in assessing the availability of state protection, only focused on the positive legislative changes that had been made in Brazil. The Court held that this was an error, as the "real life situation" of the claimants had to be examined.[237] It further stated that decision-makers must address "whether the legislative changes have in fact resulted in any meaningful protection" for sexual minorities.[238]

5. Internal Flight/Relocation Alternative

The concept of "internal relocation alternative," or "internal flight alternative" (IFA) has become integral to the determination of whether a claimant is a Convention refugee.[239] That said, however, the RPD must expressly raise the question at the hearing and the claimant must be afforded the opportunity to address it with evidence and argument.

In assessing whether a refugee's fear of persecution is well-founded, decision-makers determine whether the claimants can avail themselves of a safe place in the country of origin. The IFA rule essentially involves an analysis of the general situation in the country to determine the risks faced by the claimant in a proposed site of relocation. It also involves a consideration of the individual's personal circumstances to assess the claimant's ability to effectively access and integrate into that location.[240] Both of these conditions must be satisfied for a finding that the claimant has an IFA. Refugee protection will be denied if a claimant did not exhaust all possibilities of reaching safety in an area within the claimant's own country before seeking international protection.

IFAs are increasingly being assessed in claims based on sexual orientation and gender identity. Social, political and legal progress is sometimes highly localized in a state; more tolerant destinations may therefore constitute

an IFA for gay men, lesbians, bisexuals or transgender persons. In addition, meaningful protection in a different area of the country may indeed be available to a claimant when he or she is being persecuted by non-governmental entities acting independently of any governmental control or support. As mentioned above, private persecution is regularly raised in cases brought forth by members of sexual minorities.

The UNHCR Guidelines recognize the relevance of this issue in relation to sexual minority claims. The Guidelines state that if a country has laws criminalizing same-sex relations and the laws are enforced, "it will normally be assumed that such laws are applicable in the entire territory."[241] As a result, "[w]here the fear of persecution is related to these laws, a consideration of IFA would not be relevant."[242]

The UNHCR further urges decision-makers to probe the actual reality of state protection in another location before concluding that an IFA is available to sexual minorities:

> Intolerance towards LGBTI individuals tends to exist country-wide in many situations, and therefore an internal flight alternative will often not be available. Relocation is not a relevant alternative if it were to expose the applicant to the original or any new forms of persecution. IFA should not be relied upon where relocation involves (re-)concealment of one's sexual orientation and/or gender identity to be safe.[243]

The UNHCR also counsels that the presence of "United Nation agencies, non-governmental organizations, civil society, and other non-State actors are not a substitute for State protection."[244]

Many of the problems identified previously in the discussion on state protection apply to the viability of an IFA for sexual minorities. For instance, the concern that independent country information does not probe the actual reality of protection is a constant concern in refugee claims based on sexual orientation and gender identity.[245] The problem with independent country information is in large part due to the fact that an IFA is a highly specific refugee law concept. International and national human rights organizations generally engage in fact-finding in attempts to influence public opinion and international organizations, and to shame and stigmatize abusive governments. They are not primarily concerned with gathering information to meet the specific legal needs of asylum seekers and refugee claimants.

Therefore, human rights reports rarely compare internal locations to determine whether one part of a country is a safer place for minorities or targeted individuals. In their recent report on Turkey, Human Rights Watch provided a comprehensive picture of the discrimination and repression facing sexual minorities.[246] However, the report did not compare the status of gay men, lesbians, bisexuals and transgender persons relative to their geographic

location within the country. It is therefore unclear how useful the information in the report will be to a refugee claimant trying to counter claims that large cities such as Ankara or Istanbul may constitute IFAs.

Another relevant issue is the emergence of the "country of first arrival" principle and its potentially negative impact on sexual minorities. Increasingly, States are deflecting claimants to safe third countries, arguing that claimants should avail themselves of the protection of the first state through which they travelled when fleeing persecution. Jessica Young has examined the ways in which the safe third country can impact sexual minorities. Young claims that "an individual's failure to seek refugee status in a safe third country can have a negative impact upon [a decision maker's] assessment of his or her subjective fear of persecution."[247] In other words, a decision-maker may find a claimant's testimony in relation to their subjective fear of persecution less credible if they failed to seek asylum at the first opportunity. Jenni Millbank suggests UK decision-makers are "demonstrably less sensitive than those elsewhere to the prospect that a refugee claimant on the basis of sexual orientation may not be able, or may not feel able, to make their claim in another country en route."[248] LGBTI face particular challenges that need to be considered in relation to this question. As Young argues, "a number of factors relating to the experience of sexual minority claimants, such as a general lack of awareness of their ability to claim refugee status or being "closeted," may influence whether they seek asylum prior to their arrival" in the country when they eventually make a refugee claim.[249]

6. *Sur place* Claims

Persons who are not refugees when they leave their country, but who becomes refugees at a later date, are refugees *sur place*. The UNHCR Guidelines appropriately points out the relevance of *sur place* claims for some sexual minority claimants. Not all LGBTI applicants may have experienced persecution in the past. Some claimants may not have identified as gay or lesbian before their arrival in the country of refuge, or consciously decided not to act on their sexual orientation or gender identity in their country of origin.[250] The fear of persecution may arise while they are in the country of refuge, if they engage in political activism or media work, or if their sexual orientation is exposed by someone else.[251] Such a situation would make a claimant a refugee *sur place*. Decision-makers must keep in mind than some sexual minorities who are refugees *sur place* will not have personally experienced persecution, and their knowledge of gay and lesbian activities in their country of origin may be limited.

7. Independent Human Rights Documentation

To meet the requirements of the 1951 Convention definition of refugee, a claimant must present supporting evidence which normally consists of testimony of the claimant and general evidence of a country's human rights record. While a claimant's testimony may constitute the whole of the evidence if it is "plausible, credible and frank,"[252] independent country information will often be used to support a claim. For instance, assessing whether the cumulative effect of discrimination rises to the level of persecution is to be made by reference to reliable, relevant and up-to-date country of origin information. Such evidence is typically drawn from governmental, non-governmental, and media reports.

When claims based on sexual orientation and gender identity were first presented in the early 1990s, sexual minorities encountered a specific set of problems in the area of fact-finding.[253] First, in many countries, very little information was available on human rights violations against sexual minorities. Governmental and non-governmental organizations were not documenting human rights violations against sexual minorities and thus were not able to provide the independent country information necessary to prove the objective components of the definition of refugee. Second, when available information originated from gay, lesbian, bisexual and transgender organizations, their evidence was sometimes dismissed as biased and unreliable.

The situation has improved as mainstream human right organizations have expanded their mandates to include the investigation of discrimination and persecution against sexual minorities. In addition, documentation from sexual minority rights organizations is increasingly regarded as a credible source of information.[254] For instance, the Federal Court recently examined the RPD's preference in a case involving a Nigerian claimant for country condition evidence prepared by the Canadian High Commission over that of a LGBT advocacy group. The Court cautioned against dismissing information provided by advocacy groups:

> [38] The notion that evidence from a particular advocacy group or, for that matter, any advocacy group is consistently or uniformly less objective than country condition evidence prepared by diplomats, must be examined carefully in light of information from those closest to the situation, including diplomats, themselves, when and where they are privy to first-hand knowledge. This is to ensure that findings be considered as objectively as possible in light of tests of corroboration.
>
> [39] By this means of analysis, evidence which would otherwise not be brought forward would see the light of day for the purpose of analysis, and, not be dismissed out of hand, otherwise, the voice of the ordinarily voiceless, would remain voiceless;

> however, plausibility and consistency of evidence must not be overlooked in such an exercise; it requires the delicate, intricate and vigilant scrutiny of complete evidence analysis by decision-makers in each and every case.[255]

Nevertheless, while the developments described above increasingly allow LGBTI refugee claimants to provide some supporting evidence of their well-founded fear of persecution or their inability to access State protection, documentary challenges remain to this day.

First, availability of documentation remains a problem. The extent to which mainstream international human rights organizations and sexual minority rights groups are able to uncover worldwide abuses against sexual minorities is still limited. In most countries, stigma continues to attach to issues surrounding sexual orientation and gender identity. This often means that homophobic violence is not documented, making it difficult to investigate the problem. Louise Arbour, then-UN High Commissioner for Human Rights, declared in 2006:

> [b]ecause of the stigma attached to issues surrounding sexual orientation and gender identity, violence against LGBT persons is frequently unreported, undocumented, and goes ultimately unpunished. Rarely does it provoke public debate and outrage. This shameful silence is the ultimate rejection of the fundamental principle of universality of rights.[256]

Increased activism has also been met with attacks on gay, lesbian, bisexual, and transgender human rights defenders, which seriously impede their ability to document violations. The particular risks faced by human rights defenders working on issues of sexual orientation have been recognized by the Special Representative of the UN Secretary-General on human rights defenders in 2001:

> Greater risks are faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretation of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be women's human rights groups and those who are active on issues of sexuality especially sexual orientation and reproductive rights. These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but other social actors.[257]

The UN High Commissioner for Human Rights recognized the problem as well:

> I recognize that many LGBT human rights organizations work in extremely difficult circumstances. They are denied freedom of association when the authorities shut them down, or otherwise prevent them from carrying out their work. They are physically attacked when they organize demonstrations to claim their rights. Many have even been killed for daring to speak about sexual orientation. They are denied access to important fora, including at the international level, where they should be able to have their voices heard.[258]

Increasing the risks are the fact that, according to the *2014 State-Sponsored Homophobia* report, being a gay man or a lesbian risks penal sanctions in 78 countries and the death penalty in seven; moreover, several countries have either passed laws, or parliaments are considering Bills, regarding so-called "homosexual propaganda" laws.[259] Serious risks are therefore involved in investigating, documenting, and reporting human rights violations against sexual minorities, especially if researchers are themselves gay, lesbian, bisexual or transgender.

Resource limitations also hinder the ability of human rights groups to investigate and publish reliable, current and comprehensive information. Human rights organizations are not able to produce information about all countries. Moreover, only a fraction of situations, often the most egregious, make it into their documentation. Detailed country reports devoted exclusively to human rights violations against sexual minorities are infrequently released. Moreover, the reports that are produced may not investigate countries from which significant numbers of gay men, lesbians, bisexuals and transgender persons are fleeing. The IRB has dealt with a considerable number of Mexican gay, lesbian, bisexual and transgender claimants,[260] yet human rights organizations such as Amnesty International and Human Rights Watch do not have a current, comprehensive report on the human rights conditions for sexual minorities in Mexico. Even NGOs exclusively dedicated to documenting human rights violations against sexual minorities have limited abilities to investigate and publish information. Clearly, significant barriers continue to prevent the documentation of human rights violations against sexual minorities. This in turn translates into a scarcity of information that can be used to support refugee claims.

In addition to the scarcity of objective country documentation, the legal issues considered determinative of a refugee claim have shifted towards more complex issues of fact and law. The inquiry into a claim based on sexual orientation or gender identity has become increasingly layered. Rather than simply assessing the existence of serious human rights violations against sexual minorities, decision-makers are now interested in: (1) determining whether claimants fear discrimination rather than persecution; (2) whether they can access state protection; and (3) the extent to which another internal

location can serve as alternative refuge. All three of these issues are linked to objective conditions in the country of origin and therefore require documentation in order to properly evaluate their relevance to a claimant's case. The absence of independent country information that is sufficiently focused or detailed to meet these new issues often translates into poor assessments in the refugee hearing room.

Given the relative absence of reliable independent country information, decision-makers need to avoid using inappropriate sources as substitutes. Michael Battista, a refugee lawyer in Toronto, sent a letter to the IRB in 2002 to complain about material produced for a hearing of a claimant he was representing.[261] According to Battista, the package contained material promoting Mexico's gay tourist and travel industry. This included downloaded information from websites promoting Mexico's gay tourist destinations. Battista claimed that such material was inherently promotional and depicted social conditions in the most palatable light. In addition, the information was unreliable as sources or authors were not identified. Finally, Battista argued that the material was highly prejudicial, as it relied on stereotypical notions of gay men as primarily interested in socializing, parties and sexual activity.[262] Dauvergne and Millbank have similarly criticized the Australian Refugee Review Tribunal for relying on the *Spartacus Guide*, a travel guide aimed at gay men, at refugee hearings.[263]

8. Conclusion

The preceding discussion has attempted to demonstrate how gay, lesbian, bisexual and transgender refugee claimants in Canada continue to encounter a specific set of challenges in having the refugee definition applied to their claims. The 1951 Convention had provided actual and tangible protection to many individual LGBTI, more so than any other international human rights instrument. Some of the issues facing LGBTI refugees have evolved since 1991 when claims based on sexual orientation and gender identity were first introduced in the refugee determination process in Canada. Indeed, many of the legal questions most relevant to claims based on sexual orientation and gender identity have shifted over the last 20 years. Early cases turned on whether a claimant's fear of persecution was well-founded or whether the claimants were able to prove their sexual orientation. While some of those issues continue to be relevant, recent cases have focused on the distinction between persecution and discrimination, the availability of state protection and possible regional contrasts in the treatment of sexual minorities within a country, which in turn create new evidentiary challenges. Taken as a whole, sexual minorities continue to encounter a specific set of problems in having the refugee definition applied to their claims.

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NOTES AND REFERENCES

1. Sections of this paper are based on previously published work by the author. See Nicole LaViolette, "Overcoming Problems with Sexual Minority Refugee Claims: Is LGBT Cultural Competency Training the Solution?" in Thomas Spijkerboer, ed., *Fleeing Homophobia. Sexual Orientation, Gender Identity and Asylum* (Oxon, UK: Taylor & Francis Books, 2013) 189 [LaViolette, "Overcoming Problems with Sexual Minority Refugee Claims"]; Nicole LaViolette, "The UNHCR's Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity: A Critical Commentary" (2010) *Int'l J Refugee L* 173; Nicole LaViolette, "Independent Human Rights Documentation and Sexual Minorities: An Ongoing Challenge for the Canadian Refugee Determination Process" (2009) 13:2/3 *Int'l JHR* 437 [LaViolette, "Independent Documentation"]; Nicole LaViolette, "Gender-Related Refugee Claims: Expanding the Scope of the Canadian Guidelines" (2007) 19:2 *Int'l J Refugee L* 1 [LaViolette, "Gender-Related Claims"]; Nicole LaViolette, "The Immutable Refugees: Sexual Orientation in *Ward v. Canada*" (1997) 55:1 *UT Fac L Rev* 1 [LaViolette, "The Immutable Refuges"]; Nicole LaViolette, "Proving a Well-Founded Fear: The Evidentiary Burden in Refugee Claims Based on Sexual Orientation" in Sydney Levy, ed., *Asylum Based on Sexual Orientation; A Resource Guide* (San Francisco: IGLHRC, 1996) [LaViolette, "Proving a Well-Founded Fear"]; Nicole LaViolette, "Sexual Orientation and the Refugee Determination Process: Questioning a Claimant about Their Membership in the Particular Social Group" (San Francisco: IGLHRC, 1996); Russian authorities need to be taking serious measures to protect, not stigmatize, the LGBT community, Nicole LaViolette and Sandra Whitworth, "No Safe Haven: Sexuality as a Universal Human Right and Lesbian and Gay Activism in International Politics" [1994 Winter] *Millenium: Journal of International Studies* 563.

2. The expression "sexual minority" is used to refer to people whose minority status is a result of either their sexual orientation, sexual identity, practices with partners of the same sex or their refusal to conform to gendered social roles tied to their biological sex at birth. It also includes individuals who have both male and female physical and sexual characteristics and organs. Thus, the notion of sexual minorities regroups gays, lesbians, bisexuals, transgendered – which includes transsexuals and transvestites – and intersex people.

3. For a survey of laws prohibiting same-sex sexual conduct, see Lucas Paoli Itaborahy & Jingshu Zhu, *State-Sponsored Homophobia – A World Survey of Laws: Criminalisation, Protection and Recognition of Same-Sex Love* (International Lesbian and Gay Association, 2014), online: <http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf >. For examples of anti-homosexuality penal laws, see Human Rights Watch, *Guilty by Association: Human Rights Violations in the Enforcement of Cameroon's Anti-Homosexuality Law* (New York: Human Rights Watch, 2013), online: HRW <http://www.hrw.org/reports/2013/03/20/guilty-association>; Amnesty

International, "Zambia Urged to Release Two Men Charged with Same-sex Sexual Conduct", 8 May 2013, online: Amnesty International <http://www.amnestyusa.org/news/news-item/zambia-urged-to-release-two-men-charged-with-same-sex-sexual-conduct>.

4. See International Gay and Lesbian Human Rights Commission, *Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines* (New York: IGLHRC, 2012), online: IGLHRC <http://www.iglhrc.org/sites/default/files/philippines_report.pdf >; Human Rights Watch, *Fear for Life: Violence against Gay Men and Men Perceived as Gay in Senegal* (New York: Human Rights Watch, 2010), online: HRW <http://www.hrw.org/reports/2010/11/30/fear-life>; Human Rights Watch, *They Want Us Exterminated: Murder, Torture, Sexual Orientation and Gender in Iraq* (New York: Human Rights Watch, 2009), online: HRW <http://www.hrw.org/reports/2009/08/16/they-want-us-exterminated>; Human Rights Watch, *Forbidden: Institutionalizing Discrimination against Gays and Lesbians In Burundi* (New York: Human Rights Watch, 2009), online: HRW <http://www.hrw.org/reports/2009/07/30/forbidden-0>; Human Rights First, *Homophobia: 2007 Hate Crime Survey* (New York: Human Rights First, 2007), online: HRF <http://www.humanrightsfirst.info/pdf/07601-discrim-hate-crimes-web.pdf> at 5.

5. See International Lesbian and Gay Human Rights Commission, *Nowhere to Turn: Blackmail and Extortion of LGBT People in Sub-Saharan Africa* (New York: IGLHRC, 2011), online: IGLHRC <http://www.iglhrc.org/sites/default/files/484-1.pdf>.

6. See Amnesty International, *Freedom Under Threat: Clampdown on Freedoms of Expression, Assembly and Association in Russia* (London: Amnesty International, 2013) at 27–29, 39–41; Human Rights Watch, *Curtailing Criticism: Intimidation and Obstruction of Civil Society in Uganda* (New York: Human Rights Watch, 2012), online: <http://www.hrw.org/reports/2012/08/21/curtailing-criticism-0>. See also "Uganda: Police Close Down Gay Rights Workshop", (19 June 2012), online: Amnesty International <http://www.amnesty.org/en/news/uganda-police-close-down-gay-rights-workshop-2012-06-19>; "Cuba's First Gay Pride Parade Cancelled", (26 June 2008), online: *The Guardian* <http://www.guardian.co.uk/world/2008/jun/26/cuba>.

7. See Human Rights Watch, *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism* (New York: Human Rights Watch, 2008), online: HRW <http://www.hrw.org/reports/2008/12/17/alien-legacy>; Sonia Katyal, "Exporting Identity" (2002) 14 *Yale JL & Feminism* 97 at 125–32. See also *Re HFP* (8 June 1999), Toronto U98-01680 (*CRDD*) at para 15 (available on *QL*); *Re CXS* (30 October 1995), Toronto T94-07573 & T95-02911 (*CRDD*) (available on *QL*); *Re UFS* (30 March 1999), Toronto T98-04956, (*CRDD*) (available on *QL*); *Re JPR* (25 August 1999), Toronto T99-01313 (*CRDD*) at para 9 (available on *QL*); *Re MXJ* (19 July 2006), Toronto TA5-11669 (*RPD*) at para 8 (available on *QL*).

8. See *Re ULX* (12 March 1998), Toronto T97-02905 (*CRDD*) at para 2 (available on *QL*); *Re CYT* (11 June 1998), Toronto V96-03151 (*CRDD*) at para 2 (available on *QL*); *Re V (OZ)* (10 June 1993), Montreal M93-04717 (*CRDD*) (available on *QL*).

9. See Human Rights Watch, *"We are a Buried Generation": Discrimination and Violence against Sexual Minorities in Iran* (New York: Human Rights Watch, 2010), online: HRW <http://www.hrw.org/reports/2010/12/15/we-are-buried-generation-0>. See also *Re CXS*, *supra* note 7; *Re PLZ* (27 April 2000), Toronto T99-11167 (*CRDD*) at para 12 (available on *QL*).

10. See *Re L (MD)* (2 June 1992), Montreal M91-12609 (*CRDD*) (available on QL); *Re P (EU)* (11 June 1992), Toronto U91-09661 (*CRDD*) (available on *QL*); *Re BBY* (20 February 2003), Montreal MA2-06482 (*RPD*) at para 8 (available on *QL*).

11. See *Re L (MD)*, *supra* note 10; *Re GJM* (31 May 2002), Toronto TA0-17264 (*CRDD*) (available on *QL*). See also Marta Falconi, "Gay Italian Labelled as Disabled Wins Discrimination Case against Gov't", *Associated Press* (14 July 2008), online: <http://www.pentictonherald.ca/includes/datafiles/CP_print.php?id=121763&title=Gay%20Italian%20labelled%20as%20disabled%20wins%20discrimination%20case%20against%20gov%E2%80%99t>; "Gay Counselling' Call Rejected", (6 June 2008), online: BBC News <http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/7439661.stm>; "Homosexuality is a Disease", (28 June 2008), online: News 24 <http://www.news24.com/News24/World/News/0,,2-10-1462_2348827,00.html>.

12. See LaViolette, "Gender-Related Claims", *supra* note 1 at 180. See also Human Rights Watch, *They Hunt Us Down for Fun: Discrimination and Police Violence Against Transgender Women in Kuwait* (New York: Human Rights Watch, 2012), online: HRW <http://www.hrw.org/reports/2012/01/15/they-hunt-us-down-fun>; Human Rights Watch, *"We'll Show You You're a Woman": Violence and Discrimination against Black Lesbians and Transgender Men in South Africa* (New York: Human Rights Watch, 2011), online: HRW <http://www.hrw.org/reports/2011/12/06/well-show-you-youre-woman>; Human Rights Watch, *These Everyday Humiliations: Violence Against Lesbians, Bisexual Women, and Transgender Men in Kyrgyzstan* (New York: Human Rights Watch, 2008), online: HRW <http://www.hrw.org/reports/2008/10/06/these-everyday-humiliations-0>.

13. *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150, Can TS 1969 No 7 (entered into force 22 April 1954) [1951 *Convention*].

14. *Re R (UW)* (2 January 1991), Toronto T90-02900 (*CRDD*) (available on *QL*).

15. Marina Jimenez, "Gay Refugee Claimants Seeking Haven in Canada", *The Globe and Mail* (25 April 2004), online: <http://www.theglobeandmail.com/news/national/gay-refugee-claimants-seeking-haven-in-canada/article1136511/>.

16. Sean Rehaag, "Patrolling the Borders of Sexual Orientation: Bisexual Refugee Claims in Canada" (2008) 53 *McGill LJ* 70 at 71 [Rehaag, "Patrolling the Borders"].

17. Email from Alex Boyd to Nicole LaViolette (20 March 2012) (on file with author).

18. UN High Commissioner for Refugees, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (23 October 2012), HCR/GIP/12/01, online: <http://www.refworld.org/docid/50348afc2.html> [UNHCR Guidelines]. Guidelines are one of several soft law tools used by the UNHCR to provide persuasive legal interpretations to governments, decision-makers, practitioners, and

UNHCR staff carrying out refugee status determination in the field. As such, the Guidelines are a valuable tool in interpreting the Convention definition of a "refugee" as it applies to sexual minorities. The UNHCR Guidelines replace the UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity* (21 November 2008), online: <http://www.refworld.org/docid/48abd5660.html>.

19. 1951 *Convention*, *supra* note 13. The Preamble of the Convention provides that "the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner…"

20. *Ibid* at art 1.A(2).

21. *Sagharichi v Canada (Minister of Employment and Immigration)* (1993), 182 *NR* 398 at para 2, 42 *ACWS* (3d) 494 (*FCA*) [*Sagharichi*]; *Ranjha v Canada (Minister of Citizenship and Immigration)*, 2003 *FCT* 637 at para 42, 29 *Imm LR* (3d) 59; *NK v Canada (Solicitor General)*, 107 *FTR* 25 at para 21, 32 *Imm LR* (2d) 275.

22. UNHCR Guidelines, *supra* note 18 at para 6.

23. ICJ, *Yogyakarta Principles - Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, March 2007, online: Refworld <http://www.unhcr.org/refworld/docid/48244e602.html>.

24. UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (1 January 1992) at para 54, online: Refworld <http://www.unhcr.org/refworld/docid/3ae6b3314.html> [UN High Commissioner for Refugees, *Handbook*].

25. *Sagharichi*, *supra* note 21 at para 3.

26. *Kaish v Canada (Minister of Citizenship and Immigration)* (1999), 89 ACWS (3d) 1006 at para 9 (available on QL).

27. *Ballestro Romero v Canada (Minister of Citizenship and Immigration)*, 2012 FC 709 at para 7, 413 FTR 1 [*Ballestro*].

28. *Re DCJ* (1 December 1995), Montreal M94-04229 & M94-04258 (*CRDD*) (available on *QL*); *Re NKO* (1 March 1996), Vancouver V95-01061 (*CRDD*) (available on *QL*); *Re UYO* (24 April 1996), Toronto T95-05832, T95-05833, T95-05834 & T95-05835 (*CRDD*) (available on *QL*); *Re CLQ* (27 September 1996), Toronto T94-06354 (*CRDD*) (available on *QL*); *Re UVG* (23 October 1997), Toronto V96-00745 (*CRDD*) (available on *QL*).

29. See LaViolette, "Independent Documentation", *supra* note 1; *Francis v Canada (Citizenship and Immigration)*, 2012 *FC* 1141 at paras 52, 59, 222 *ACWS* (3d) 303 (the Federal Court held that the RPD's conclusion that the discrimination faced by the Applicant did not amount to persecution was unreasonable).

30. Arthur Leonard, "9th Circuit Rejects Asylum Petition from Gay Ukrainian" *Lesbian/Gay Law Notes* (22 April 2002) at 59.

31. *Cuesta v Canada (Minister of Citizenship and Immigration)* (28 November 2003), Vancouver VA3-00908 (RPD) at para 34 (available on *QL*).

32. *Re NEV* (12 March 2004), Toronto TA3-11061 (RPD) at para 7 (available on QL). After canvassing the situation in Ghana, the RPD decision-maker in *Titus-Glover v Canada (Minister of Citizenship and Immigration)* (19 January 2006), Toronto TA5-06018 (RPD) at para 25 (available on *QL*) stated that "[t]he overall impression I get is that there is definitely discrimination against homosexuals in Ghana but no persecution." A similar conclusion was reached in a 2006 case relating to South Korea: "Thus, while it is clear the situation for gays in South Korea is not as good as it is in Canada, I find there is insufficient evidence to show there is systemic and repeated violations of human rights or serious and sustained discrimination and harassment that amounts to persecution of all gays": *Re STV* (1 March 2006), Vancouver VA4-02012 (RPD) at para 16 (available on *QL*). In *JFE (Re)* (16 February 2007), Vancouver VA5-02751 (RPD) at paras 17, 21, the RPD described the incidents that a gay man faced while in Sri Lanka as discrimination insufficient to amount to persecution. However, the RPD further concluded that if the claimant returned to Sri Lanka, he would now confront an accumulation of factors that would rise to the level of persecution.

33. UNHCR Guidelines, *supra* note 18 at para 17.

34. For a discussion of how this has been an issue in Australian cases, see Ghassan Kassisieh, *From Lives of Fear to Lives of Freedom: A Review of Australian Refugee Decisions on the Basis of Sexual Orientation* (Sydney: Gay & Lesbian Lobby, 2008) at 37.

35. *AJM v Canada (Minister of Citizenship and Immigration)*, 2005 *FC* 98 at para 9, 137 *ACWS* (3d) 172.

36. Kassisieh, *supra* note 34 at 38.

37. Amnesty International, *Crimes of Hate, Conspiracy of Silence: Torture and Ill-treatment Based on Sexual Identity* (London: Amnesty International, 2001) at 27, online: <http://www.amnesty.org/en/library/asset/ACT40/016/2001/en/dom-ACT400162001en.pdf> [Amnesty International, "Crimes of Hate"].

38. Kassisieh, *supra* note 34 at 37.

39. *Zakka v Canada (Minister of Citizenship and Immigration)*, 2005 *FC* 1434 at para 11, 143 *ACWS* (3d) 336.

40. *Birsan v Canada (Minister of Citizenship and Immigration)* (1998), 86 ACWS (3d) 400 (available on *QL*) (*FCTD*).

41. *Ibid* at para 4.

42. *Oviawe v Canada (Minister of Citizenship and Immigration)* 2006 *FC* 1114 at para 14, 152 *ACWS* (3d) 128.

43. *Inigo Contreras v Canada (Minister of Citizenship and Immigration)*, 2006 *FC* 603 at para 12, 148 *ACWS* (3d) 782.

44. *Re JQU* (13 March 2001), Ottawa AA0-00450 (*CRDD*) at para 3 (available on *QL*).

45. 2008 FC 1388 (available on *QL*).

46. *Ibid* at paras 7-8.

47. *Re NWP* (7 January 1999), Toronto T98-04881 & T98-05326 (*CRDD*) at para 9 (available on *QL*).

48. *Ibid.*

49. Kassisieh, *supra* note 34 at 34.

50. *Ibid.*

51. Sonia Katyal, "Sexuality and Sovereignty: The Global Limits and Possibilities of *Lawrence*" (2006) 14:4 *Wm & Mary Bill Rts J* 1448.

52. See Itaborahy and Zhu, *supra* note 3 at 9.

53. Kassisieh, *supra* note 34 at 54.

54. 2009 *FC* 1194 at para 39, [2011] 1 *FCR* 36.

55. In *Toonen v Australia*, the Human Rights Committee held that the International Covenant on Civil and Political Rights prohibits discrimination on the grounds of sexual orientation: CCPR/C/50/D/488/1992, 4 April 1994, online: Refworld <http://www.unhcr.org/refworld/docid/48298b8d2.html>. In *X, Y, Z v Minister voor Immigratie en Asiel*, C-199/12 – C-201/12, European Union: Court of Justice of the European Union, 7 November 2013, available at: <http://www.refworld.org/docid/527b94b14.html>, the Court of Justice of the EU held that sanctioning consensual homosexual conduct with a term of imprisonment must be regarded as a disproportionate or discriminatory punishment, and is thus persecutory under refugee law [*X, Y, Z v Minister*].

56. UNHCR Guidelines, *supra* note 18 at para 27.

57. See *JFE (Re)*, *supra* note 32 at para 13: the RPD held that the existence of a Sri Lankan law against homosexuality, although "not enforced… appears to have provided the police with a handy blackmail tool."

58. UNHCR Guidelines, *supra* note 18 at para 27.

59. Kristen Walker, "Sexuality and Refugee Status in Australia" (2000) 12:2 *Intl J Ref L* 175 at 198.

60. UNHCR Guidelines, *supra* note 18 at para 29.

61. Kassisieh, *supra* note 34 at 56.

62. UNHCR Guidelines, *supra* note 18 at para 29.

63. *Su v Canada (Citizenship and Immigration)*, 2012 FC 554 at para 11 (available on QL) [*Su*]. See also *Bethany Lanae Smith v Canada (Minister of Citizenship and Immigration)* 2009 FC 1194 at para 86, [2011] 1 FCR 36.

64. As a result, transgender women tend to avoid certain areas for fear of being subjected to police abuse under the pretext of this traffic law: Amnesty International, *'Not an Illness or a Crime' Lesbian, Gay, Bisexual and Transgender People in Turkey Demand Equality* (London: Amnesty International, 2011) at 14–15, online: Amnesty International <http://www.amnesty.org/en/library/asset/EUR44/001/2011/en/aff47406-89e4-43b4-93ed-ebb6fa107637/eur440012011en.pdf>.

65. For example, the distinction made between discreet and non-discreet homosexuals arose in a series of Australian cases where it was accepted that gay and lesbian asylum seekers could avoid persecution by not drawing public attention to their sexual orientation: RRT Reference V96/05496; RRT Reference N97/14489; RRT Reference N98/21362; RRT Reference N98/24718; RRT Reference N98/23955; *Khalili Vahed v Minister for Immigration and Multicultural Affairs*, [2001] *FCA* 1404; *SAAF v Minister for Immigration and Multicultural Affairs* [2002] *FCA* 343; *Nezhadian v Minister for Immigration and Multicultural Affairs*, [2001] *FCA* 1415; *WABR v Minister for Immigration and Multicultural Affairs*, [2002] *FCAFC* 124.

66. A 2003 Australian High Court decision rejected the "discretion" approach in *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs*, [2003] HCA 71. The Australian decision was followed by the United Kingdom Supreme Court in *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Depart-*

ment, [2010] UKSC 31. More recently, the Court of Justice of the European Union held that sexual orientation is a characteristic so fundamental to one's identity that one cannot be expected to renounce or conceal it: *X, Y, Z v Minister*, *supra* note 55.

67. UNHCR Guidelines, *supra* note 18 at para 31.

68. *Ibid* at para 26.

69. See *Okoli v Canada (Minister of Citizenship and Immigration)*, 2009 *FC* 332 at paras 18, 34, 36, 79, Imm LR (3d) 253 [*Okoli*]; *Taheri v Canada*, 2001 *FCT* 886, 107 *ACWS* (3d) 849 (only gays and lesbians who are very public face a risk of persecution); *Serrano v Canada* (1999), 90 *ACWS* (3d) 451 (available on *QL*) (claimant did not fall into groups that risks persecution, such as visible or high profile gay activists); *Lara v Canada* (1999), 86 *ACWS* (3d) 950, (available on QL); *LJ v Canada* (1996), 64 *ACWS* (3d) 1202 (available on *QL*).

70. *Fosu v Canada (Citizenship and Immigration)*, 2008 *FC* 1135, 335 *FTR* 223 [*Fosu*]. See also *Okoli*, *supra* note 69.

71. *Fosu*, *supra* note 70 at para 17. See also *Okoli*, *ibid.*

72. *Sadeghi-Pari v Canada (Minister of Citizenship and Immigration)*, 2004 *FC* 282 at para 29, 37 *Imm LR* (3d) 150.

73. UNHCR Guidelines, *supra* note 18 at para 33.

74. *Ibid* at para 31.

75. *Ibid* at para 20. See also *Warner v Canada (Minister of Citizenship and Immigration)* 2011 *FC* 363 at para 7, 98 *Imm LR* (3d) 13 ("Repeated physical violence directed against someone because of his sexual orientation can amount to persecution.")

76. *UNHCR Guidelines*, *supra* note 18 at para 24.

77. *Ibid.*

78. *Ibid* at para 23. In *JFE (Re)*, *supra* note 32 at para 5, a gay Sri Lankan claimant testified that his parents, convinced that he was straight, attempted to set up a marriage for him. A Canadian decision, however, concluded that "immigration policies of countries which do not allow for the sponsorship of same-sex marriage partners" do not contravene international human rights standards: *IWP (Re)* (22 July 2010), Toronto TA9-03324 & TA9-03344 (RPDD) (available on *QL*). The decision further concluded that "at this time same-sex marriage and consequent sponsorship rights are not internationally recognized rights" *ibid* at para 17. Interestingly, the decision was rendered by a member whose appointment to the Refugee Protection Division of the Immigration and Refugee Board was controversial because of previous statements and campaigning against homosexuality and same-sex marriage. See Dale Smith, "Anti-gay Evangelical Appointed to Refugee Board", *Xtra!* (17 March 2009), online: <http://www.xtra.ca/public/National/Antigay_evangelical_appointed_to_refugee_board-6467.aspx>.

79. UNHCR Guidelines, *supra* note 18 at para 21. In *Pitcherskaia v INS*, the US Board of Immigration Appeals "found that the Russian militia and psychiatric facilities intended to 'cure'" a lesbian refugee claimant, and therefore she did not face persecution: Kristie Bowerman, "*Pitcherskaia v INS*: The Ninth Circuit Attempts to Cure the Definition of Persecution" (1997) 7 *Law & Sexuality* 101 at 102–03. See also Ryan Goodman, "The Incorporation of International Human Rights Standards into Sexual Orientation Asylum Claims" (1995) 105 *Yale LJ* 255.

80. UNHCR Guidelines, *supra* note 18 at para 21.

81. Jenni Millbank, "Gender, Sex and Visibility in Refugee Claims on the Basis of Sexual Orientation" (2003) 18:1 *Geo Immig LJ* at 77.

82. UNHCR Guidelines, *supra* note 18 at paras 23–24, which mention forced marriage, marital rape and denial of custody and visitation rights in relation to children. See also Shannon Minter, "Lesbians and Asylum: Overcoming Barriers to Access" in Sydney Levy, ed, *Asylum Based on Sexual Orientation: A Resource Guide* (San Francisco: International Gay and Lesbian Human Rights Commission and Lambda Legal Defence and Education Fund, 1996) at IB 5–6.

83. Minter, *ibid* at IB 6. An Amnesty International report confirms the following: "[t]he imposition of such penalties for same-sex relations must be viewed in the context of the repression of other forms of consensual sexual behavior which are seen to transgress strict religious or political codes, such as sexual relations between men and women outside marriage. Where gender discrimination is enshrined in law, women accused of any sexual activity outside marriage are particularly at risk of such penalties": Amnesty International, "Crimes of Hate", *supra* note 37 at 14.

84. Monique Gauvin, "La discrimination des lesbiennes en milieu de travail: de l'occultation à la prise de parole" in Irène Demczuk, ed., *Des droits à reconnaître: les lesbiennes face à la discrimination* (Montréal: Les éditions du remue-ménage, 1998) at 143.

85. Millbank, *supra* note 81 at 77.

86. Minter, *supra* note 82 at IB 14.

87. Simon Levay & Elisabeth Nonas, *City of Friends: A Portrait of the Gay and Lesbian Community in America* (Cambridge, MA: MIT Press, 1995).

88. Sylvia Law, "Homosexuality and the Social Meaning of Gender" (1988) 2 *Wis L Rev* 187 at 187.

89. *Ibid* at 210.

90. James D. Wilets says: "Gendered violence is frequently the consequence of perceived threats to a male dominated societal system by groups that do not conform to the norms appropriate for the continuation of such a system" in "Conceptualizing Private Violence Against Sexual Minorities as Gendered Violence: An International and Comparative Law Perspective" (1997) 60 *Alta L Rev* 989 at 992.

91. *Ibid* at 1011.

92. *Ibid* at 992.

93. Minter, *supra* note 82.

94. Amnesty International, "Crimes of Hate", *supra* note 37 at 6.

95. Research Directorate, Immigration and Refugee Board, *Mexico: Treatment of Sexual Minorities* (Ottawa: Immigration and Refugee Board, 1999) at 1.

96. *N(LX)(Re)* (9 April 1992), Toronto T91-04459 (*CRDD*) (available on *QL*) [*N(LX)(Re)*]; *J(FH)(Re)* (28 April 1993), Calgary C92-00568 (*CRDD*) (available on *QL*) [*J(FH)(Re)*]; *H(YN)(Re)* (4 August 1994), Toronto U93-11000 (*CRDD*) (available on *QL*) [*H(YN)(Re)*]; *Re SZR* (29 June 1995), Toronto T94-05727 (*CRDD*) (available on *QL*) [*Re SZR*]; *Re B(WB)* (30 October 1995), Toronto T95-03779 (*CRDD*) (available on *QL*) [*Re B(WB)*]; *Re I(XW)* (28 November 1995), Toronto U94-03700 (*CRDD*) (available on *QL*) [*Re I(XW)*]; *Re D(CJ)* (1 December 1995), Montreal M94-04229 & M94-04258, (available on *QL*) [*Re D(CJ)*]; *Re JJY* (31 July 1996), Montreal M95-03691 (*CRDD*) (available on *QL*) [*Re JJY*]; *Re CDT* (4 September 1996), Montreal M96-03167 (*CRDD*) (available on *QL*) [*Re CDT*]; *VYF*

(Re) (10 September 1996), Montreal M96-02939 (*CRDD*) (available on *QL*); *Re GEK* (4 November 1996), Montreal M93-10043 (*CRDD*) (available on *QL*) [*Re GEK*]; *Re ORC* (17 March 1997), Vancouver V96-00083 (*CRDD*) (available on *QL*) [*Re ORC*]; *Re CRH* (14 August 1997), Toronto T95-03078 (*CRDD*) (available on *QL*) [*Re CRH*]; *Re BWL* (9 October 1997), Toronto T95-06913 (*CRDD*) (available on *QL*) [*Re BWL*]; *Re SEX* (3 November 1997), Toronto T96-05722 (*CRDD*) (available on *QL*) [*Re SEX*]; *Re JKD* (9 December 1997), Toronto T96-04267 (*CRDD*) (available on *QL*) [*Re JKD*]; *Re TBE* (15 December 1997), Montreal M96-0062 (*CRDD*) (available on *QL*) [*Re TBE*]; *Re DEA* (6 January 1998), Toronto U96-05473 (*CRDD*) (available on *QL*) [*Re DEA*]; *Re JME* (28 January 1998), Toronto T96-04238 (*CRDD*) (available on *QL*) [*Re JME*]; *Re FVY* (30 January 1998), Toronto T97-01239 [1998] *CRDD* No 20 (available on *QL*) [*Re FVY*]; *Re UOD* (24 June 1999), Ottawa A98-01243 (*CRDD*) (available on *QL*) [*Re UOD*]; *Re YJE* (20 December 1999), Toronto T99-04575 (available on *QL*) [*Re YJE*]; *Re NPQ* (3 November 1999), Montreal M95-08923 (*CRDD*) [*Re NPQ*] (available on QL); *Re PJX* (7 June 2000), Toronto T99-07837 (*CRDD*) (available on *QL*) [*Re PJX*]; *ITL (Re)* (12 March 2001), Montreal M99-08212 (*CRDD*) (available on *QL*); *BYU (Re)* (12 May 2003), Toronto TA1-11950 (*CRDD*) (available on *QL*); *Re SCE* (8 April 2004), Toronto TA307587 (RPD) (available on *QL*) [*Re SCE*]; *Gorria v Canada (Minister of Citizenship and Immigration)* (21 April 2004), Toronto TA3-01040 (RPD) (available on *QL*); *BTE (Re)* (17 July 2006), Toronto TA5-04262 (RPD) (available on *QL*); *Campos v Canada* (17 February 2006), Toronto TA4-10820 (RPD) (available on *QL*); *Jack v Canada (Minister of Citizenship and Immigration)* (1 February 2006), Toronto TA5-06685 (RPD) (available on *QL*); *RPD File No TA8-06796* (6 April 2009), Toronto TA8-06796 (RPD) (available on *QL*); *RPD File No TA8-03943* (21 May 2009), Toronto TA8-03943 (RPD) (available on *QL*).

97. Wilets, *supra* note 90 at 991. See also Suzanne Goldberg, "Symposium – Shifting Grounds for Asylum: Female Genital Surgery and Sexual Orientation" (1998) 29 *Colum HRL Rev* 467 at 496, 500. In *Martinez v Canada (Minister of Citizenship and Immigration)* 2011 *FC* 13 (available on *QL*) [*Martinez*], the lesbian and transgender claimants testified they were both victims of domestic violence at the hands of male relatives.

98. UN Doc HCR/GIP/02/01 (7 May 2002) [UNHCR Gender Guidelines].

99. Canadian Immigration and Refugee Board, *Women Refugee Claimants Fearing Gender-Related Persecution* (Guidelines issued by the Chairperson of the Board in accordance with subsection 65(3) of the *Immigration Act*) (Ottawa: 9 March 1993); *Women Refugee Claimants Fearing Gender-Related Persecution: Update* (Updated version of the Guidelines issued by the Chairperson of the Board in accordance to subsection 65(3) of the *Immigration Act*) (Ottawa: 25 November 1996) [Canadian Gender Guidelines].

100. UNHCR Guidelines, *supra* note 18 at para 1.

101. *Ibid* at para 40. See also *X, Y, Z v Minister*, *supra* note 55 (the Court of Justice found that asylum applicants who have a same-sex sexual orientation and come from countries where consensual homosexual conduct is criminalized, form a particular social group for the purposes of EU refugee law).

102. [1993] 2 *SCR* 689, rev'g [1990] 2 *FC* 667, aff'g (1988), 9 *Imm LR* (2d) 48 [*Ward*].

103. *Ibid* at 739.

104. UNHCR Guidelines, *supra* note 18 at para 40. See *J (FH)(Re)*, *supra* note 96 (claimant also based fear of persecution on political opinion); *Re V (OZ)* (10 June 1993), Montreal M93-04717 (*CRDD*) (available on *QL*); *Re E (QR)* (13 October 1993), Toronto T93-02134 (*CRDD*) (available on *QL*) (claimant also based fear of persecution on the grounds of political opinion and religion).

105. *Ward*, *supra* note 102.

106. The three categories are: (1) groups defined by an innate or unchangeable characteristic; (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and (3) groups associated by a former voluntary status, unalterable due to its historical permanence (*ibid* at 739).

107. *Ibid.*

108. American Psychological Association, "Sexual Orientation and Homosexuality: Answers to Your Questions", online: APA <http://www.apa.org/topics/sexuality/orientation.aspx#>.

109. *NKL v Canada (Minister of Citizenship and Immigration)*, 2011 *FC* 28 at para 18 (available on *QL*).

110. *Ibid* at para 16.

111. Janet E Halley, "Sexual Orientation and the Politics of Biology: A Critique of the Argument from Immutability" (1994) 46 *Stan L Rev* 503 at 516.

112. Didi Herman, "Are We Family? Lesbian Rights and Women's Liberation" (1990) 28 *Osgoode Hall LJ* 789 at 812.

113. American Psychological Association, "Sexual Orientation and Homosexuality", online: APA <http://www.apa.org/helpcenter/sexual-orientation.aspx >. For a discussion of this debate as it relates to Canadian refugee law, see LaViolette, "The Immutable Refuges", *supra* note 1.

114. Jin S. Park, "Pink Asylum: Political Asylum Eligibility of Gay Men and Lesbians under U.S. Immigrations Policy" (1995) 42 *UCLA L Rev* 1069 at 1132.

115. See Sean Rehaag, "Bisexuals Need Not Apply: A Comparative Appraisal of Refugee Law and Policy in Canada, the United States, and Australia" (2009) 13:2 *Int'l JHR* 415; Rehaag, "Patrolling the Borders", *supra* note 16.

116. Caro Meldrum, "Refugee Review Tribunal 'Homophobic': Detainee" *Australian Broadcasting Corporation* (18 May 2007), online: *ABC News Online* <http://www.abc.net.au/news/newsitems/200705/s1927091.htm>.

117. 2004 FC 492, 130 ACWS (3d) 360 at para 17. See also *Odetoyinbo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 501 at para 6 (available on *QL*) ("…the Board's failure to make an explicit determination as to the applicant's bisexuality constitutes a reviewable error and justifies a redetermination of the applicant's claims."); *RPD File No TA8-14208* (6 October 2010), Toronto TA8-14208 (RPD) (available on *QL*); *Ramon v Canada (Minister of Citizenship and Immigration)*, 2012 FC 314, 9 *Imm LR* (4th) 198.

118. Kristina Folkelius & Gregor Noll, "Affirmative Exclusion? Sex, Gender, Persecution and the Reformed Swedish Aliens Act" (1998) 10 *Int'l J Ref L* 607 at 610; Sari Kouvo, "Gender Mainstreaming and International Human Rights" in Doris

Buss & Ambreena Manji, eds., *International Law: Modern Feminist Approaches* (Portland, Oregon: Hart, 2005) 237 at 245.

119. UNHCR Guidelines, *supra* note 18 at para 1.

120. UNHCR Gender Guidelines, *supra* note 98 at para 16.

121. *Re CLQ*, *supra* note 28.

122. *Ibid*.

123. *Ibid.*

124. *Ibid.*

125. See *Smith v Canada (Citizenship and Immigration)*, 2012 *FC* 1283 at paras 55–56 (available on QL); *Martinez*, *supra* note 97 at paras 73–75.

126. American Psychological Association, "Sexual Orientation and Homosexuality: Answers to Your Questions", online: APA <http://www.apa.org/topics/sexuality/transgender.aspx>.

127. American Psychological Association, "Answers to Your Questions about Individuals with Intersex Conditions", online: APA <http://www.apa.org/topics/sexuality/intersex.aspx>.

128. *Ibid*.

129. *J(HA) (Re)* (4 July 1994), Vancouver V93-01711 (*CRDD*) (available on *QL*); *N(OI) (Re)* (14 August 1995), Toronto T 94-07129 (*CRDD*) (available on *QL*) [*N(OI) (Re)*]; *Re UJJ* (25 January 1999), Toronto T94-07963 & T94-07973 (*CRDD*) (available on *QL*) [*Re UJJ*] (in this matter, the refugee claims of a transsexual claimant and his mother were heard jointly because the mother's fear of persecution was founded on the fact that as the parent of a transsexual, she was equally condemned by Lebanese society); *Re FLV* (17 June 1999), Toronto T98-08222 (*CRDD*) (available on *QL*) [*Re FLV*]; *EHF (Re)* 28 April 1999, Toronto T98-03955 (*CRDD*) (available on *QL*); *Re BDK* (13 March 2000), Toronto T98-04159 (*CRDD*) (available on *QL*) [*Re BDK*]; *Re JIC* (23 April 2002), Vancouver VA1-00875 (*CRDD*) (available on *QL*) [*Re JIC*]; *RPD File No MA8-4150* (23 June 2011), Montreal MA8-04150 (RPD) (available on *QL*); *Martinez*, *supra* note 97.

130. UNHCR Guidelines, *supra* note 18 at para 10.

131. *Ibid*.

132. Silvan Agius & Christa Tobler, *Trans and intersex people: Discrimination on the grounds of sex, gender identity and gender expression* (European Union, European Commission: June 2011) online: Refworld <http://www.refworld.org/docid/4fdedde32.html>.

133. For a discussion on the relevance of gender in a transgender refugee claim, see Jason Cox, "Redefining Gender: Hernandez-Montiel v. INS" (2001) 24:1 *Hous J Int'l L* 187.

134. *Re BDK*, *supra* note 129. But see *Martinez*, *supra* note 97 at paras 73–75.

135. See e.g. *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2007 *FC* 1297, 68 *Imm LR* (3d) 118; *Re JIC*, *supra* note 129; *Re UJJ*, *supra* note 129. But in other cases, the distinction is clearly identified: see *N(OI) (Re)*, *supra* note 129; *Re FLV*, *supra* note 129; *Re BDK*, *supra* note 129.

136. UNHCR Guidelines, *supra* note 18 at para 10.

137. *Re UJJ*, *supra* note 129.

138. *Ibid.*

139. *Martinez*, *supra* note 97.

140. *Ibid* at para 68.

141. "Persecution due to homosexuality is regarded as gender-related as it pertains to the roles which men and women are expected to play in society": K Landgren, "Gender Related Persecution" in M. Ellegaard, ed., *Women and Asylum - A Conference Report on Gender Related Persecution* (Danish Refugee Council, Information & Documentation Department: 1997). See also Law, *supra* note 88.

142. *Vasallo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 673 at para 2, 409 FTR 315 (claimant stated he had a well-founded fear of persecution based on sexual orientation, race and political opinion); *Erduran v Canada (Minister of Citizenship and Immigration)* 2011 *FC* 1299 at para 1 (available on *QL*) (claimant alleged persecution based on his Kurdish ethnicity and his identity as a gay man); *Kadah v Canada (Minister of Citizenship and Immigration)* 2010 *FC* 1223 at para 3 (available on *QL*) (claimant feared persecution based on his membership in a particular social group, that of Arab Muslim homosexuals in Israel).

143. *Re MRD* (8 August 1998), Ottawa A98-00268 (*CRDD*) (available on *QL*).

144. *Ibid.*

145. *Ballestro*, *supra* note 27; *Chalita Gonzalez v Canada (Minister of Citizenship and Immigration)* 2011 FC 1059 (available on QL); *Romero v Canada (Minister of Citizenship and Immigration)* 2012 FC 709.

146. Barry O'Leary discusses the difficulty of proving sexual identity in the context of UK refugee law: Barry O'Leary, "We Cannot Claim Any Particular Knowledge of the Ways of Homosexuals, Still Less of Iranian Homosexuals: The Particular Problems Facing Those Who Seek Asylum on the Basis of Their Sexual Identity" (2008) 16 *Fem Legal Stud* 87 at 93–94. See also Derek McGhee, "Accessing Homosexuality: Truth, Evidence and the Legal Practices for Determining Refugee Status – The Case of Ioan Vraciu" (2000) 6:1 *Body & Society* 29. Claimants themselves will sometimes provide supporting evidence of their sexual orientation, including asking their partners, families or friends to testify at the refugee hearing; providing photographs or videos of partners or activities in the gay, lesbian, bisexual, or transgender communities; submitting letters or proof of membership in gay, lesbian, bisexual, and transgender organizations; and presenting medical and psychological reports.

147. Millbank, *supra* note 81 at 400.

148. *Zamanibakhsh v Canada (Minister of Citizenship and Immigration)*, 2002 *FCT* 1137 at para 16, 118 *ACWS* (3d) 272.

149. *Ibid.*

150. See Immigration and Refugee Board, Refugee Protection Division, Legal Services, *Assessment of Credibility in Claims for Refugee Protection* (31 January 2004) at para 1.2 [Immigration and Refugee Board, *Assessment*].

151. *Ibid.*

152. UNHCR Guidelines, *supra* note 18 at para 64.

153. *Ogunrinde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 *FC* 760 at para 42 (available on *QL*).

154. *Gergedava v Canada (Minister of Citizenship and Immigration)*, 2012 *FC* 957 at para 10 (available on *QL*).

155. UNHCR Guidelines, *supra* note 18 at para 63.

156. UN High Commissioner for Refugees, *Handbook*, *supra* note 24 at para 35.

157. *Maldonado v Minister of Employment and Immigration* (1980), 31 *NR* 34,1 *ACWS* (2d) 167 (*FCA*).

158. 2002 *FCA* 80, [2002] 3 *FCR* 565.

159. *Ibid* at 38.

160. 2010 *FC* 650 (available on *QL*).

161. *Ibid* at para 20.

162. Immigration and Refugee Board, *Assessment*, *supra* note 150 at para 2.3.5.

163. *Ibid* at para 1.1.

164. *Ibid*.

165. *Leung v Canada (Minister of Employment and Immigration*), (1994) 81 *FTR* 303 at paras 14–16 (available on *QL*).

166. *Ibid*.

167. *Dosmakova v Canada (Citizenship and Immigration*), 2007 *FC* 1357 at para 12 (available on *QL*) [*Dosmakova*]. The Federal Court cites the additional cases: *Boteanu v Canada (Minister of Citizenship and Immigration)*, 203 *FCT* 299, 121 *ACWS* (3d) 329 [*Boteanu*]; *Slim v Canada (Minister of Citizenship and Immigration)*, 2004 *FC* 706, 134 *ACWS* (3d) 293 [*Slim*]; *Herrera v Canada (Minister of Citizenship and Immigration)*, 2005 *FC* 1233, 142 *ACWS* (3d) 304 [*Herrera*]; *Kamau v Canada (Minister of Citizenship and Immigration)*, 2005 *FC* 1245, 142 *ACWS* (3d) 303.

168. *Boteanu*, *supra* note 167 at para 7.

169. *Tsyhanko v Canada (Minister of Citizenship and Immigration)*, 2008 *FC* 819 at paras 16–18 (available on QL).

170. *Dosmakova*, *supra* note 167.

171. UNHCR Guidelines, *supra* note 18 at para 11.

172. *Ibid*.

173. *Ibid*.

174. *Ibid* at para 13.

175. See Peter Drucker, ed., *Different Rainbows* (London: Gay Men's Press, 2000); Gilbert Herdt, *Same Sex, Different Cultures* (Boulder, CO: Westview Press, 1997); Stephan Lokosky, ed., *Coming Out: An Anthology of International Gay and Lesbian Writings* (New York: Pantheon Books, 1992); Neil Miller, *Out in the World* (New York: Random House, 1992).

176. Millbank, *supra* note 81 at 392.

177. O'Leary, *supra* note 146 at 89–91.

178. See *In Re Vega Soto*, discussed in Fadi Hanna, "Punishing Masculinity in Gay Asylum Claims" (2005) 114 *Yale LJ* 913 and in Stephen Pischl, "Circumventing Shari'a: Common Law Jurisdictions' Responses to Persecuted Sexual Minorities' Asylum Claims" (2006) 5 *Wash U Global Stud L Rev* 425 at 438–39; *Trembliuk v Canada (Minister of Citizenship and Immigration*), 2003 *FC* 1264, 126 *ACWS* (3d) 853 [*Trembliuk*].

179. UNHCR Guidelines, *supra* note 18 at para 49.

180. *Dosmakova*, *supra* note 167.

181. *Essa v Canada (Citizenship and Immigration*), 2011 *FC* 1493 at paras 30-31 (available on *QL*) [*Essa*].

182. *Latsabidze v Canada (Citizenship and Immigration*), 2012 *FC* 1429 at paras 2–3 (available on QL).

183. *Ibid* at para 5 (the Federal Court notes that the RPD member used the same promiscuity stereotypes in another case that was overturned: *Kornienko v Canada (Citizenship and Immigration)*, 2012 *FC* 1419 (available on *QL*).

184. *Trembliuk*, *supra* note 178. But see *Laszlo v Canada (Minister of Citizenship and Immigration)*, 2005 *FC* 456 at para 10, 44 *Imm LR* (3d) 91 (the Federal Court concluded that the case is not a situation of stereotyping along the lines of *Trembliuk*, *supra*, but rather one where the applicant failed to establish his homosexuality with credible evidence. The Federal Court concluded that the Board makes a logical plausibility finding that a person belonging to a persecuted minority would be interested in a homosexual support association in his country, the documentation of which he submits as evidence).

185. *Ibid* at para 8.

186. *Slim*, *supra* note 167 at para 3. The Federal Court held that these comments betrayed a stereotypical and prejudicial view of homosexuals "and cannot be used to discredit the applicant's stated fear of being persecuted by the Lebanese authorities on the basis of his sexual orientation."

187. *Herrera*, *supra* note 167 at para 12.

188. *PWZ (Re)* (7 March 2000), Vancouver V99-00892 (*CRDD*) (available on QL).

189. *Ibid.*

190. Immigration and Refugee Board, *Assessment*, *supra* note 150 at 2.3.5; *Gyorgyjakab v Canada (Minister of Citizenship and Immigration)* 2005 FC 1119 at paras 15-16 (available on QL).

191. See Kathryn Blaze Carlson, "The True North LGBT: New Poll Reveals Landscape of Gay Canada" *The National Post* (6 July 2012), online: <http://news.nationalpost.com/2012/07/06/the-true-north-lgbt-new-poll-reveals-landscape-of-gay-canada/#anchor>; "Poll Shows Canadians Split over Same-sex Marriage" *CBC News* (5 September 2003), online: <http://www.cbc.ca/news/canada/story/2003/09/04/samesexpoll030904.html>.

192. UNHCR Guidelines, *supra* note 18 at para 60.

193. For a description of the Canadian training, as well as measures adopted in other jurisdictions and agencies, see LaViolette, "Overcoming Problems with Sexual Minority Refugee Claims", *supra* note 1.

194. UNHCR Guidelines, *supra* note 18 at para 63.

195. *Ibid* at para 59.

196. *Ibid* at para 60.

197. *Ibid*.

198. *Su*, *supra* note 63 at paras 7–9.

199. In some cases, claimants concocted false stories rather than based their refugee claims on sexual orientation. See *Re Q(BC)* (4 January 1993), Montreal M92-02751 (CRDD) (available on QL); *J(FH)(Re)*, *supra* note 96.

200. UNHCR Guidelines, *supra* note 18 at para 59. Millbank found that delay in sexuality claims "rarely was a major factor in negative determinations": Jenni Millbank, "'The Ring of Truth': A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations" (2009) 21:1 *Int'l J Refugee L* 1 at 14 [Millbank, "Ring of Truth"].

201. See *Essa*, *supra* note 181 at para 32; *Kazondunge v Canada (Citizenship and Immigration*), 2012 *FC* 1310 at para 5 (available on *QL*).

202. UNHCR Guidelines, *supra* note 18 at para 64.

203. *Magradze v Canada (Minister of Citizenship and Immigration)*, 2006 *FC* 20 at para 6 (available on *QL*) [*Magradze*].

204. UNHCR Guidelines, *supra* note 18 at para 64.

205. *Magradze*, *supra* note 203 at para 6.

206. *N(LX)(Re)*, *supra* note 96; *J(FH)(Re)*, *supra* note 96; *H(YN)(Re)*, *supra* note 96; *T94-06899* (23 January 1995) (IRB); *Re SZR*, *supra* note 96; *Re B(WB)*, *supra* note 96; *Re I(XW)*, *supra* note 96; *Re D(CJ)*, *supra* note 96; *Re JJY*, *supra* note 96; *Re CDT*, *supra* note 96; *Re* VYF, *supra* note 96; *Re GEK*, *supra* note 96; *Re ORC*, *supra* note 96; *Re CRH*, *supra* note 96; *Re BWL*, *supra* note 96; *Re SEX*, *supra* note 96; *Re JKD*, *supra* note 96; *Re TBE*, *supra* note 96; *Re DEA*, *supra* note 96; *Re JME*, *supra* note 96; *Re FVY*, *supra* note 96; *Re UOD*, *supra* note 96; *Re YJE*, *supra* note 96; *Re NPQ*, *supra* note 96; *Re PJX*, *supra* note 96.

207. *Diallo v Canada (Citizenship and Immigration)*, 2012 FC 562 at para 10 (available on QL) (the court concluded that the RPD's conduct could not be praised or even condoned, but it did not suggest bias or a lack of impartiality).

208. Millbank, *supra* note 81 at 400.

209. *Ibid* at 401–402.

210. *Ibid* at 200.

211. *Ward*, *supra* note 102 at 747.

212. UNHCR Guidelines, *supra* note 18 at para 39.

213. (1994), 87 *FTR* 98, 25 *Imm LR* (2d) 193.

214. Michael Battista, "Perception is Reality: Ukrainian Man Granted Refugee Status" *XTRA West* (1 December 1994).

215. 87 *FTR* 98 at para 3, 25 *Imm LR* (2d) 193.

216. *Ibid* at paras 3–4.

217. *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] *FCR* 605 (*CA*) (available on *QL*).

218. *Kadenko v Canada (Minister of Citizenship and Immigration)* (1996), 143 *DLR* (4th) 532 at para 5, 206 *NR* 272; *Canada (Minister of Employment and Immigration) v Villafranca* (1992), 99 *DLR* (4th) 334, 18 *Imm LR* (2d) 130 (*FCA*); *Sampayo v Canada (Minister of Citizenship and Immigration)* (5 February 2004), Toronto TA3-17809 (*RPD*) (available on *QL*).

219. *KN v Canada (Minister of Citizenship and Immigration)* (1996), 143 *DLR* (4th) 532 at para 5, 206 *NR* 272.

220. See *Katwaru v Canada (Minister of Citizenship and Immigration)*, 2007 *FC* 612 at para 21 (available on *QL*).

221. *Flores Zepeda v Canada (Citizenship and Immigration)*, 2008 *FC* 491 at paras 17–20, [2009] 1 *FCR* 237.

222. *Villicana v Canada (Minister of Citizenship and Immigration)*, 2009 *FC* 1205 at paras 70–77, 86 *Imm LR* (3d) 191.

223. *Ibid* at paras 78–79.

224. UNHCR Guidelines, *supra* note 18 at para 35.

225. Minter, *supra* note 82 at IB/5–6. See also *Re DAK* (24 August 2000), Vancouver V99-01904 (*CRDD*) at para 23 (available on *QL*) (where the *RPD* noted

that discrimination against lesbians in Mexico happened "usually only within the realm of private life").

226. *Re UJY* (19 February 2003), Toronto TA2-16053 (*CRDD*) (available on *QL*); *Perez v Canada (Minister of Citizenship and Immigration)* (3 February 2004), Montreal MA3-05082 (*RPD*) (available on *QL*). The situation of a Nigerian claimant shows the extent to which family members may become the agents of persecution: "The claimant's father and his three brothers confronted the claimant while he was at university, broke the information that they had about his homosexuality, horse-whipped him, and mistreated him, whereupon the father involved the village elders in a ritual and gave his son, the claimant, an ultimatum: either he be married or be gotten rid of by the father": *Re AMA* (17 April 2000), Toronto T99-06098 (CRDD) at para 4 (available on *QL*).

227. *Re FIN* (9 August 1995), Toronto T95-03152 (*CRDD*) (available on *QL*); *Re LUM* (29 May 1996), Toronto U94-03926 (*CRDD*) (available on *QL*) [*Re LUM*]; *Re OPK* (18 April 1996), Toronto U95-04575 (*CRDD*) (available on *QL*); *Re GUS* (8 October 1996), Toronto T95-07390 (*CRDD*) (available on *QL*); *Re UVG*, *supra* note 28. It is ironic that, in certain cases, a marriage or relationship of convenience is the only possible way to escape persecution: *Re LMD* (2 June 1992), Montreal M91-12609 (*CRDD*) (available on *QL*); *Re PEU* (11 June 1992), Toronto U91-09661 (*CRDD*) (available on *QL*); *Burgos-Rojas v Canada (MCI)* (1999), 162 *FTR* 142, 85 *ACWS* (3d) 648; *ORR (Re)* (26 June 2000), Ottawa A99-00956 (*CRDD*) (available on *QL*); *CRN (Re)* (10 February 2001), Toronto T99-14739 (*CRDD*) (available on *QL*).

228. *Re LUM*, *supra* note 227: "Being unmarried and without children would always subject me to ridicule and detection as a homosexual, and therefore, always at risk." See also *Re CYT*, *supra* note 7; *UFS (Re)*, *supra* note 7; *KVT (Re)* (14 April 1999), Ottawa A98-00492 (*CRDD*) (available on *QL*).

229. Kassisieh, *supra* note 34 at 56.

230. UNHCR Guidelines, *supra* note 18 at 36.

231. *Garcia v Canada (Minister of Citizenship and Immigration)*, 2005 *FC* 807, 139 *ACWS* (3d) 1065; *Re UOD* (24 June 1999), Ottawa A98-01243 (*CRDD*) (available on QL).

232. Human Rights Watch, *Not Safe at Home: Violence and Discrimination against LGBT People in Jamaica* (New York: Human Rights Watch, 2014) at 10, online: <http://www.hrw.org/reports/2014/10/22/not-safe-home-0>.

233. Itaborahy & Zhu, *supra* note 3.

234. For an extensive review of documentary evidence on state protection, see *Re SCE*, *supra* note 96.

235. UNHCR Guidelines, *supra* note 18 at para 37.

236. 2008 *FC* 150, 165 *ACWS* (3d) 335.

237. *Ibid* at para 6.

238. *Ibid* at para 7.

239. *Rasaratnam v Canada (MEI)*, [1992] 1 *FCR* 706 at para 9 (available on *QL*).

240. *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 *FCR* 589 at para 14 (available on *QL*).

241. UNHCR Guidelines, *supra* note 18 at para 53.

242. *Ibid*.

243. *Ibid* at para 54.

244. *Ibid* at para 51.

245. In *Orozco Gonzalez v Canada* (16 January 2004), Montreal MA2-08844 (RPD) at paras 16–17, Mexico City was considered a viable IFA on the basis of documentary information that indicated that the capital city had its own annual gay parade; the city government had adopted anti-discrimination legislation; and the police forces had created a preventive policing unit in order to address the issue of homophobia. Yet nothing in the independent country information addressed the actual implementation of the measures adopted by authorities in Mexico City; in fact, it appears that such an assessment was not available. The claimant, who had the burden of proof, could offer no objective evidence to rebut the suggestion that Mexico City was a viable IFA.

246. Human Rights Watch, *"We Need a Law for Liberation": Gender, Sexuality, and Human Rights in a Changing Turkey* (New York: Human Rights Watch, 2008).

247. Jessica Young, "The Alternate Refuge Concept: A Source of Systematic Disadvantage to Sexual Minority Refugee Claimants," (2010) *University of New Brunswick Law Journal* 60: 294.

248. Millbank, "Ring of Truth", *supra* note 200 at 15.

249. Young, *supra* note 247.

250. UNHCR Guidelines, *supra* note 18 at 57.

251. *Ibid*. See *Kyambadde v Canada (Minister of Citizenship and Immigration)*, 2008 *FC* 1307, 337 *FTR* 93.

252. James Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991).

253. LaViolette, "Proving a Well-Founded Fear", *supra* note 1.

254. But see *Neto v Canada (Minister of Citizenship and Immigration)*, 2007 *FC* 664, 158 *ACWS* (3d) 811 (The Federal Court allowed a judicial review application in a case where the RPD accepted as reliable one report from the International Gay and Lesbian Association (ILGA), but rejected a second one from ILGA on the basis that it did not come from a reliable and independent source). See also *Ndokwu v Canada (Minister of Citizenship and Immigration)*, 2013 FC 22 (available on QL) (the RPD held that reports from LGBT groups could not be considered objective and were less credible than an assessment by the Canadian High Commission in Nigeria because "it is written by an objective professional Canadian diplomat resident in Nigeria").

255. *Ibid*.

256. Louise Arbour, "Presentation of the Office of the United Nations High Commissioner for Human Rights, Ms. Louise Arbour to the International Conference on LGBT (Lesbian, Gays, Bisexual and Transgender) Human Rights" (Address, delivered in Montreal, 26 July 2006), online: <http://www.unhchr.ch/huricane/huricane.nsf/view01/B91AE52651D33F0DC12571BE002F172C?opendocument>.

257. United Nations Economic and Social Council, Commission on Human Rights, *Report of the Special Representative of the Secretary-General on Human Rights Defenders*, UN ECOSOC, 57th Sess, E/CN.4/2001/94 (2001) at 24, online: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/d6c1b351bf405ad3c1256a25005109bc/$FILE/G0110638.pdf>.

258. Arbour, *supra* note 256.

259. Itaborahy & Zhu, *supra* note 3.

260. Mexico was, until 2009, the largest source of refugee claimants generally in Canada. See Samantha Sarra, "New Hearing for Rejected Mexican", *Xtra!* (16 April 2008), online: <http://www.xtra.ca/public/viewstory.aspx?AFF_TYPE=3&STORY_ID=4648&PUB_TEMPLATE_ID=9>.

261. Letter from Michael Battista to Jean-Guy Fleury, Chairperson, IRB (4 December 2002) (on file with author). See also Joel Dupuis, "Believe the Hype: Refugees Evaluated according to Tourist Info", *Xtra!* (9 January 2003), online: <http://archives.xtra.ca/Story.aspx?s=14751297>.

262. *Ibid.*

263. Catherine Dauvergne & Jenni Millbank, "Burdened by Proof: How the Australian Refugee Review Tribunal Has Failed Lesbian and Gay Asylum Seekers" (2003) 31 *Federal Law Review* 299 at 317–20.

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"LEFTOVER WOMEN": POSTPONING MARRIAGE AND RENEGOTIATING WOMANHOOD IN URBAN CHINA

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ABSTRACT. In China since the mid-2000s, much media attention has focused on the plight of unmarried, highly educated, urban professional women who are at the forefront of a trend of delaying marriage. Called "leftover women" (*shengnü*), they are deemed increasingly unmarriageable due to their advancing age – starting from their mid-20s, and perceived unfeminine natures. This derogatory label evokes contempt and pity toward these women, and fuels their anxiety, as even younger women worry about becoming unmarriageable. To better understand how such individuals interpret and navigate social change, I explore their experiences of being single, in light of the negative media discourse; their views on marriage in relation to their self-identities and life goals; and their aspirations for the future. Fieldwork for this article was conducted in Beijing and Sweden in June 2008 and in Shanghai in June 2012. It included in-depth interviews and participant-observation with 14 highly educated professional women between the ages of 26–38, including 11 who were never married, 2 who were divorced, and 1 who was recently married (at age 33). My informants shared a profound ambivalence about marriage. They desire the good life, requiring financial security, and they expect romantic love, signified by autonomy in spouse selection and an egalitarian, companionate-style marriage. They also invoke notions of filial piety, accepting some parental interference in marriage and intending to bear them a grandchild. Further, they all expressed contradictions between their own aspirations and a social reality characterized by inflexible and unequal gender norms, relations, and roles, as well as a dearth of support for career women's double burden. Although they were negatively impacted by patriarchal constraints, including the pressure of being labeled "leftover women," these women were not stereotypically stuck or desperate. Rather, they contested normative gender by crafting new identities and roles as independent women, and critiqued gender inequality by promoting egalitarian gender relations in marriage. Therefore, I argue, these women are spearheading "emergent adulthood" in China: the renegotiation and potential redefinition of womanhood through fiat and fact of delaying of marriage.

Keywords: China; leftover women; marriage delay; womanhood; gender

Introduction: The Discourse of "Leftover Women"

In contemporary China, a palpable sense of concern pervades public discourse on (heterosexual) marriage, as a successful marriage is commonly perceived to be ever more difficult to realize. Divorces have increased, particularly since the liberalization of the Marriage Law in 1980 to accommodate no-fault divorce, followed by the streamlining of the divorce process instituted in 2003 (Wang 2001; Wang and Zhou 2010).[1] At the same time, the average age at first marriage has steadily risen over the past two decades (Cheng, Han, and Dagsvick 2011).[2] Especially in the large cities, a growing proportion of youth remains single into their late 20s and beyond. In Shanghai for example, the average age of first marriage rose from 28.8 to 30.1 for men and 26.5 to 28.1 for women between 2010 and 2013.[3]

Further, in these urban areas, a larger proportion of women than men remain unmarried after age 30, and the likelihood of marriage for women decreases significantly with increased education levels (Cheng, Han, and Dagsvick 2011). This cannot be attributed to straight demographics, because China has a "surfeit of bachelors" due to a shortage of potential brides that results from a skewed sex ratio at birth (Ibid; Das Gupta and Li 1999; Li et al. 2005). Indeed, as many as 10% of Chinese men born after 1980 are or will become "bare sticks:" lifelong bachelors without offspring (Jiang, Feldman, Li 2014).[4]

Clearly, social and cultural considerations, as well as individual preferences, limit the availability of desirable partners for highly educated, professional urban women who aspire to marry, as most do. Importantly, marriage in China has conventionally involved "matching doors and windows" (*mendang hudui*), pairing individuals from families of similar social status, as well as women "marrying up," i.e., female hypergamy, choosing a spouse from a family of higher social status or greater wealth. By contemporary standards, women typically prefer to marry someone slightly older than themselves, who is materially well-off and financially capable, but also romantic; men prefer to marry someone slightly younger and having equal or less education than themselves, who is attractive and has a good personality (Davin 2007, Yan 2002, Liu 2007).[5] Given these gender-asymmetrical criteria for spouse selection, women characterized by so-called "three highs" (high levels of education, high income, and advancing age) are distinctly disadvantaged.

In the mid-2000s, the media in China began to focus attention on this trend of marriage postponement and problematize it. A disproportionate amount of the negative media attention focuses on women. Typically, single women are blamed for their own predicament, accused of being too fickle, too materialistic, self-centered, and generally unrealistic in their expectations

of marriage (Gao 2011; Zhou 2010). Misogynist jokes and ditties circulate through media and reinforce conservative gender norms. An example is: "The world has three types of humans: Men, Women, and Female PhDs," suggesting that such highly educated women are extremely aberrant (Fincher 2014). In 2007, the official organization for Chinese women, the All-China Women's Federation, warned women that they must marry by age 27 or they would become "leftover women" (*shengnü*) that is, forever unmarriageable (Chen 2012).

Historically in China, heterosexual marriage has been the prerequisite for family formation and continuity, a paramount filial duty according to Confucian values,[6] and marriage has been nearly universal.[7] Along with childbirth, it is the central marker of adulthood. As a social and economic entity, the family unit is the building block for the modern nation-state, as the producer of citizenry and of labor. Symbolically, a harmonious family begets a stable society and polity. Given the significance of family historically and culturally in China, it is little wonder that shifts in marriage patterns garner extensive attention and cause consternation. Although the state encourages later marriage as part of its effort to limit family size, the specter of large cohorts of unmarried singles raises such alarm that, when first releasing the data indicating a rise in the adult single population, the Shanghai Municipal Statistics Bureau warned: "problems with relationships or marriage not only affect citizens' work, study, or life, but also bring about uncertainty to society as a whole" (Cao 2007).

Family is moreover an important arena of gender socialization and identity making. For much of Chinese history, a woman's identity, role, and status derived from her kinship position and membership in a kinship group (Barlow 1994). Still today, femininity is associated with those characteristics befitting a "traditional" "virtuous wife and good mother," although with the increase in nuclear family households, women's social status may depend more on the conjugal relationship than ever before (Xiong 2005). In patriarchal societies like China, single women are regarded as a "deficit" or "deviant" identity that requires justification (Allen and Picket 1987; Reynolds et al. 2007). Although the Chinese media also castigates single men for being playboys or commitment-phobic, delaying marriage does not detract from their masculinity, whereas being labeled a "leftover woman" implies a lack of femininity. Unlike women, men are considered marriageable at least through age 40, and they are not held to a sexual double standard of premarital sexual purity (Zhou 2010). Postponing marriage allows a man to increase his worth by accruing more income and assets, which increases his allure to potential mates (Liu 2007). In contrast, by seeming to prioritize education and career ahead of marriage and family, women who delay marriage challenge normative ideals of femininity and gender role, and thus

their marital status garners more public scrutiny and social opprobrium. Recently, a member of the Guangdong Political Consultative conference allegedly advised women to refrain from pursing higher education that could disadvantage them in marriage: "On a perspective of relationships, pursuing doctoral degrees adds no value to women, and decreases their value instead."[8] The ongoing censure of single women who delay marriage and the disparaging label "leftover women" no doubt compounds their social stigmatization. Further, it is sexist.

Despite the media frenzy, marriage remains a deeply held value among most Chinese and is still nearly universal (Xu 2010). Only a small fraction of the Chinese population is never married, and the rate of the never married among the general population has not increased in the past 30 years (Davin 2007; Xu and Yan 2014: 43). Of course, the trend of marriage postponement may result in larger populations of never married adults in the future. Yet the recent socio-economic privatization has also strengthened institutions of marriage and family, as well as women's traditional place in the domestic sphere and their traditional caregiving roles, now elevated to that of "scientific mothers and professional housekeepers" (Bulbeck 2008; Zhu 2010). The Confucian value of filial piety, including the paramount duty of continuing the family line, also endures, albeit modified to fit new contexts (Evans 2008; Yan 2011). Thus, numerous scholars (Chen 2012; Gao 2011; Zhou 2010), including marriage and family studies scholar Xu Anqi (interview June 2012), convincingly argue that marriage in China is in a transitional stage, and the discourse of "leftover women" is just a conservative reaction to the social changes that have accompanied China's rapid economic growth in recent decades. Most notably, successive generations of Chinese women have made significant gains in education and employment, which are key factors contributing to delayed marriage around the globe (Jones 2007). For example, in 2012 in China, the proportion of women earning Bachelors and Masters degrees slightly surpassed the proportion of men earning such degrees.[9] Eventually, cultural norms of marriage should adjust to these social changes.[10]

In a recent book, Leta Hong Fincher (2014) connects the "leftover women" discourse to a broader erosion of gender equality via the official reinforcement of women's domestic and reproductive roles, beginning with the disproportionate layoffs of women from state-owned enterprises during economic restructuring of the late 1990s to the more recent campaigns to promote marriage. Fincher draws important attention to women's material disadvantages that result from conventional gendered forms of intergenerational wealth transfer and marital gift exchange (i.e., bride wealth) favorable to sons/grooms, and new cultural values that equate masculinity with home ownership. Together these position men as rightful property owners,

and women as their dependents, regardless of actual financial inputs. The pernicious effects of the "leftover women" discourse compound this inequality: anxious not to be passed over for marriage, young women in Fincher's study were lowering their expectations, rushing into imperfect unions, and foregoing their right to claim a fair share of the marital property, which could have deleterious consequences in the event of divorce under new legal regulations.

I fully concur with Fincher that the "leftover women" discourse, along with other misogynist media attention, is harmful to women and an obstacle to advancing gender equality. But I am skeptical about a coordinated government campaign and a singular causal relationship between the "leftover women" discourse and individuals' marital decisions. From her research on delayed marriage among Chinese professional women, Sandy To (2013) demonstrates that filial constraints, as well as the gender constraints issued by women's male suitors and partners, exert a strong influence on women's marital choices. Moreover, though some women in both Fincher's and To's studies accepted (or rather succumbed to) traditional, gender-unequal marriages, others do not. Research I conducted among 14 late-marrying Chinese career women in Beijing and Shanghai, during June 2008 and 2012, respectively, further demonstrates the complex ways that such individuals interpret and navigate social change. Based on my findings, I argue that these women are at the forefront of an "emergent adulthood" in China: the renegotiation and potential redefinition of womanhood through fiat and fact of delaying of marriage, similar to their North American counterparts studied by Nancy Rosenberger (2007).

I employed interviews and participant-observation to ascertain their perspectives on being single, in light of the increased pressure from negative media discourse as well as their own experiences, as well as their perspectives on marriage – its importance to their self-identities and life goals – and of their futures. My informants shared a profound ambivalence about marriage, similar to the ten single educated Chinese women over the age of 30 interviewed by telephone in a study by Haiping Wang and Douglas A. Abbott (2013). They desire the good life, requiring financial security, and they expect romantic love, signified by autonomy in spouse selection and an egalitarian, companionate-style marriage. They also invoke notions of filial piety, accepting some parental interference in marriage and intending to bear them a grandchild. Further, they all expressed contradictions between their own aspirations and a social reality characterized by inflexible and unequal gender norms, relations, and roles, as well as a dearth of support for career women's double burden. Although they were negatively impacted by patriarchal constraints, including the pressure of being labeled "leftover women," these women were not stereotypically stuck or desperate. Rather,

they contested normative gender by crafting new identities as independent women, and critiqued gender inequality by promoting egalitarian gender relations in marriage. In this article, I present their testimonies in order to highlight their agency in transforming cultural meanings and practices of womanhood in urban China. Such transformations, which involve critiques of normative gender and marriage in China, can become the foundation of further social changes.

Research Method

This article is based on ethnographic research in Beijing and in Sweden during June 2008 and in Shanghai during June 2012 that included participant-observation and interviews (7 of which were audio-recorded) conducted with 13 unmarried, and one recently married, highly educated urban Chinese professional women, aged 26–38, all of whom identified as heterosexual. Of the unmarried informants, 11 were never married and 2 were recently divorced; 6 were currently in relationships, including 2 who were involved with married men and 3 who were contemplating marriage proposals (i.e., engagement). Among the fourteen informants, 3 held an international MBA, 4 held a PhD, 5 held an MA, and 2 held the BA degree only. They were employed in academia, research, government, journalism, joint-venture industry, and global financial or legal consulting firms. Their social economic status in their respective settings, as determined by their education, income levels (at least 10,000CNY/month), assets (most owned their own apartment), and residential status (i.e., having household registration in either Beijing or Shanghai), was solidly middle class or well above. The women were cosmopolitan; all had traveled internationally and several has lived abroad for study or work, in the US, France, Australia, Japan, and Russia, and/or in Hong Kong. In addition, one had both US permanent residency and a Hong Kong residence permit.

Each informant was interviewed once for at least 1.5 hours and as long as 3 hours. In order to learn their perspectives and experience as women who fall outside the norm or, more positively, are trendsetters, I posed open-ended questions about their current lives, past relationships, and expectations for their futures, and allowed conversation to flow. In addition, I spent at least an afternoon or evening if not a full day with eight of the thirteen women, participating in everyday activities like window shopping, going to a park, to see a film, hanging out at home, or meeting with their friends in a bar or club, in order to build up rapport and get a sense of their personalities and lifestyles.

The remainder of this article is organized as follows. First I discuss how my informants explained their postponement of marriage and, in so doing,

critiqued normative constructions of gender and marriage that denigrate women of advancing age and higher education and income. Next I explore their expectations of marriage and the ideal spouse, highlighting the contradictions between their aspirations and the limitations set by patriarchal practices in the family and in employment, and their renegotiation of gender roles and relations within such constraints. Throughout, I illustrate each topic by quoting directly from the informants or through anecdotes from their life stories as told to me. In the "discussion" sections, I summarize the informants' orientations to the topic, and analyze their overall significance to the transformation of discourse on gender and marriage in contemporary China. I conclude with a brief discussion on "emergent womanhood" in China.

Becoming "Leftover"

Too Old for Marriage

My informants all concurred that men prefer to marry women younger than themselves, and so women who waited to marry would have greater difficulty finding a spouse. In 2012, 34-year old Lili invoked the societal pressure put on women to marry by citing the "leftover women" discourse: "The pressure [to get married] starts at age 25, especially for women. Everyone pressures her to quickly marry and bear a child. After age 28 you are labeled a "leftover woman" and considered unmarriageable." Juhua, age 35 in 2008, stated frankly: "It's too late for romance and love. Men don't want a woman as old as I." A commonly held belief is that a woman's optimal period of fertility ends by her mid-30s, and that pregnancy after this point incurs a higher risk for birth defect. Therefore, as Lili elaborates, "After age 35, there's no more pressure on women to have children." After a woman turns 35 or so, external pressure to marry all but disappears.

Even as their advancing ages narrowed their options for marriage, many of the women still felt attractive and desirable, and questioned the common wisdom that equates femininity with youth. For example, 35-year old Juhua wondered aloud, "I am not so bad looking, though neither am I beautiful. I am average. So why [aren't men still attracted to me]?" Divorcé Cecilia, age 30 in 2008, told me she owns dozens of formal gowns, which she used to wear to parties that she enjoyed attending when she was living abroad. Now in Beijing, she frequently turns down invitations to go out to dinner, clubs, or parties, because she "prefers a quiet life alone." However, she confessed, "I sometimes just put them on in front of the mirror. So I know I can still look gorgeous if I dress up." Clearly, Cecilia took pleasure and pride in her appearance and her potential to appear attractive to others. But at present, she had no time or inclination to socialize.

At age 35 in 2008, Xia's conception of youthfulness is not explicitly focused on age nor attracting men so much as attaining wellbeing and being healthy. She swims regularly and has been practicing yoga at a fitness center for four years. Recently she had taken up boxing and was looking into salsa dancing. Her knowledge of TCM was extensive and she often advised me on what herbal tonics or supplements to take to stay healthy. Every month she has a facial and full-body massage. Her parting words to me, which I received as a text message at the Beijing airport, urged me to think positively: "Dare to dream and you will never grow old." Xia's dream involved getting married, but for the time being she emphasized the importance of caring for the self, also advising me: "Drink lots of water, and love one's self and one's body."

At age 34, Lili understands that her fertility is in decline, but she refuses to allow her age and single status to stand in the way of her goal of conceiving a child. "If things don't develop smoothly with this boyfriend, I'm thinking of finding a place to have my eggs harvested and frozen," she confided.

Bad Timing, Bad Romance

How did it happen that these women had not settled down by their mid-20s? Many of them were focused on pursuing their education goals and then establishing their careers, and had no time or inclination to find romance. Juhua, who has a PhD, says she missed out on plentiful opportunities to have a boyfriend while a student during her 20s because she was oblivious to men's interest in her. When male classmates would invite her to do something fun with them, she would just tell them truthfully that she was too busy studying. At that time, she did not realize that her refusal of their advances would lead to her being still single at age 35. In retrospect, she regrets not making the time to meet someone while attending university or graduate school, which she now knows was probably the optimal time to meet someone. Indeed, most of her currently married friends met their spouses while at university. After graduation, opportunities and outlets for socializing decrease, so it is difficult to meet new people. Further, as the years pass and she aged, her chances of attracting a single man also decreased, as the pool of available men dried up.

Similarly, 26-year-old Zhuo, interviewed in 2012 in the midst of preparing for her upcoming winter wedding, explained that as an undergraduate at a university in Shanghai, she was too young to even consider romance. Also, she spent every weekend at home with her parents, and thus had little opportunity to socialize. As Zhuo entered graduate school and worked toward the PhD, however, her parents "started to get a bit nervous" about her not yet having a boyfriend, so they used their social networks of kin

and colleagues to locate eligible bachelors to introduce to her. As she felt too busy with her studies to start a romantic relationship, she merely conversed a bit with these men online, through MSN instant messenger for example, but did not seriously consider any of them during her first couple of years of graduate school.

Although 36-year old Jade, interviewed in 2008, did meet her "first love" as an undergraduate at a university, she turned down her classmate's marriage proposal. At the time she wasn't ready for marriage, because she wanted to first develop herself, pursue her own interests (including an MBA degree), and discover her own talents. She has kept in touch with the ex-boyfriend over the ensuing years; he eventually married and had a child. Some of the women in my study had invested much time in at least one serious relationship that they expected would lead to marriage, but ultimately it did not, or it led to marriage, but ended in divorce. Divergent social aspirations or statuses, separations over time and distance, and parental objections were prevalent reasons for the demise of these relationships.

At age 26, Xia had fallen in love with a divorced man sixteen years her senior. She followed her heart, although her parents strongly objected to the match due to their age difference and the fact of his being divorced. However, out of consideration for her parents she declined to marry him before he left China to pursue business opportunities in Latin America. Rather, she chose to wait for him to return, or to send for her once he could support them both. Meanwhile she enrolled in Spanish language lessons, planned their wedding ceremony, and communicated regularly with him through Internet and telephone. She supported his decision to hire a young Chinese woman, a college student studying abroad and fluent in Spanish, to help his business succeed. But she would never forgive his forsaking her to marry the translator.

Lili had a 5-year-long relationship that had ended in 2006. She met her ex-boyfriend in graduate school in Shanghai, and they were together for two years. When he relocated to the US to continue his studies, he asked her to join him, or wait for him to return to China. Lili says she faced a "conundrum." Her parents strongly objected to her choice of boyfriend, because he was "too short" and therefore his children would likely also be too short, which in China is akin to having a disability and likely to result in discrimination. They did not wish their daughter to go abroad to join him, and Lili did not wish to displease them. "I would feel bad to be with him" without her parent's approval, she told me. His parents also disapproved of their relationship. For three years, the couple sustained the relationship through Internet video chat tools, like Skype. But they could not resolve their parents' opposition to their union. When her ex-boyfriend returned from the US, he sought her out immediately and proposed marriage. "But

when he came back for me, I had already decided to end the relationship. I felt we weren't right for each other." Ultimately, Lili discovered she could not accept a marriage that lacked the support of both families. Similarly, Jade had the opposite problem. Her "second love" was a Hong Kong man who broke up with her because his prejudiced parents could not accept their son marrying a Mainlander.

Both 38-year old Ning, and 30-year old Cecilia, interviewed in 2008, had a similar experience of marrying the wrong guy. Each married a foreigner, then separated from their spouse after about 6 months, and initiated divorce. Ning met her American husband in graduate school in the US. After marriage, he became abusive and exhibited signs of mental instability. She moved away from him but provided emotional support to him from afar while he received professional psychological intervention. Although he made good progress in treatment, she felt she "couldn't stay married to him after what I'd been through," and proceeded to initiate a divorce. Cecilia met her Korean husband while an undergraduate in China. She set aside her own plans to attend graduate school in the US to marry and settle in his native county, but only on the condition that he devote himself to learning English so they could apply to study in the US together later. But not long into her marriage she discovered her husband preferred going out drinking with friends to studying. His "inability to hold up his end of the bargain," combined with his unwillingness to censure his parents for putting inordinate pressure on her to conceive a child, drove her to separate from him, and then pursue a divorce. However, he contested her decision so the process dragged out for two years. In retrospect, she said to me, she has realized that her-ex husband completely lacked ambition, discipline, and ability.

Feminine/Masculine

Several informants reflected on their own shortcomings that may have prevented them from finding romance or having a successful relationship. Juhua berated herself for being too independent, too strong, and too inflexible. Her friends likewise criticize her for not being "tender" (*wenrou*), insufficiently modest or self-effacing. She explained to me that most Chinese men do not want a woman like her who expresses strong opinions, especially ones counter to theirs. Indeed, she frightened off one prospective boyfriend not long ago by arguing about politics on a date! She attributed her strong personality to having become a responsible adult at an early age, taking care of her younger sibling following the death of their mother. By linking her personality to childhood experience, Juhua indicated that she would be unlikely to ever change.

Olivia, age 27 in 2008, likewise feels she is too "open" for most Chinese men to accept. They judge her harshly, finding her too experienced and too

worldly, and not feminine enough. "They just don't get my jokes," she complained. She wishes Chinese men could accept her as she is, and recognize that, deep down, she is really a "virtuous wife and good mother" who longs to marry and have "a big family with many children." On the other hand, Olivia was wary of being too "weak" around men and in a relationship. When she discovered her first serious boyfriend, a college classmate, was cheating on her, her first reaction was to forgive him. The moment was an epiphany for her. She recognized in herself the same despicable tendency displayed by her mother, who for years excused her husband's infidelities. Determined to be stronger than her mother ever was, Olivia forced herself to break up with her boyfriend. Similarly, 38-year-old Min, also interviewed in 2008, broke up with her long-term boyfriend because she did not like the subservient way she behaved after they moved in together. Like a perfect housewife she did all the laundry, cleaning and cooking. Reflecting on this, she exclaimed perplexed, "But I hate cooking!"

These women's testimonies also imply that they were as critical of men as they were of themselves in apportioning blame for missed opportunities or failed relationships. In particular, they strongly objected to male chauvinism and were turned off by egotism and hypermasculinity. For example, 26-year old Zhuo shares Juhua's assessment of Chinese men: "I feel that a lot of guys are self-centered. Perhaps this is a common ailment of our generation. They are miserly. I don't mean just in regards to money, but in all aspects. They are not very tolerant." An example she provided was, "He will tell you how a woman should be, that she should do [all of the] household chores, or be 'soft' [i.e., *wenrou*: pleasingly affectionate]." Olivia was similarly convinced that "Chinese men are very insecure," especially in regard to their virility and sexual performance. She says she will never tell her Chinese lovers that she has slept with Western men, because they would feel inadequate. Moreover, when she is with them physically she must constantly reassure them of their masculinity and sexual prowess, which she says "is a real drag." Their insecurity means she cannot be entirely truthful with them about her own sexual experience and desires. Thus, she has concludes, "I cannot truly be myself with them."

Fang, age 27 in 2012, had dated extensively as a student in China as well as overseas, but always discovered some flaw in each boyfriend that would motivate her to sever the relationship. As an undergraduate she had a long and turbulent relationship with a former high school classmate, whom she accused of "male chauvinism." She broke off their relationship because she disapproved of his habits of smoking and drinking with business clients and his dictatorial manner. In mixed Chinese and English she explained: "He was a 'little leader' in the army and so always was like, 'Give this order, give that order' – hierarchical. He never experienced an egalitarian social-

relationship environment, so our outlooks were different." While studying for a graduate degree abroad, she dated other men from China, but the same pattern repeated. One, an entrepreneur, was "too materialistic" and stubborn; though he listened to her opinions, he never agreed with them. Another was three years younger than her, which is uncommon for Chinese couples, and still had a few years' study to complete his graduate education. Eventually, Fang decided she could not wait for him. She dated another fellow for several months, but certain of his mannerisms grated on her nerves and eventually she ended that relationship too. Fang objected to how he "ate fast and noisily" and "liked to show off" and "drop names." Above all, she detested his inability to admit to shortcomings or weaknesses; that is to say: "he cared too much about *face*." Juhua, who holds a PhD, agrees that "Chinese men care about face too much," because she would happily marry a man who earned less than her, or who was less educated, but no Chinese man she knows would accept that.

Hesitant to Marry

As mentioned above, women in China today are given primary responsibility for child rearing, and motherhood is increasingly a full-time occupation that involves following expert advice and utilizing a plethora of technologies and consumer products (Greenhalgh and Winckler 2005; Zhu 2010; Gottschaung 2007). Moreover, female college graduates face widespread gender discrimination in hiring practices; companies resist hiring childless women to avoid paying for maternity leave, which is mandated by law. Perhaps as a pragmatic response to this discriminatory practice, parents pressure their daughters to marry young in order to get childbearing of the way, so they can concentrate on their career growth while still in their 20s and 30s, reports Xu Anqi (interview, 2012). The difficulty of balancing family responsibilities with professional and personal goals lead career women to feel ambivalent about undertaking marriage, which almost inevitably entails starting a family. Lili describes the dilemma:

> I really want to have kids, but now I hesitate. I still really want to continue my studies, because I have only a Master's degree; it's not enough. The question is whether I can do it all? I want to have a kid, and also marry, and also continue my studies, and have my own career, and take care of a family. I'm very worried. Can I accomplish so many goals at the same time? … In China, we women have to choose family or career.

Doctoral degree holder Peng, age 31 in 2012, was certain to become engaged to her boyfriend soon, and was concerned about life changes that would ensue. As a government employee, she did not worry so much that marriage

and family would derail her career; rather, she worried about the demands of motherhood on her personal time and energy:

> It won't impact my job so much, at least not as much as it would someone working in a private enterprise. Still, once you have a child, you can't just have someone else take care of everything. So of course raising and educating the child is a big problem…If I have a child, I feel it is my responsibility to cultivate and raise the child. Of course I need my mother-in-law's, or my own mother's, advice; they've already raised children and have experience. But for the education and cultivation of a child, the child needs "mother-love"; it is important to the "physical" or "psychological" wellbeing of the child."

Similarly, Fang believes marriage entails a loss of freedom and time to maintain friendships:

> "After you marry, your experience is richer: you have your family, and you also have your work. In this situation, your limitless energy to devote to your friends will be constrained. Right now, I just don't want to give all this up and change. So, I am not willing to enter into a long-term, stable relationship or marriage."

Discussion

In this section I investigated these women's reasons for delaying marriage, and I conclude that none are single by choice *per se*. Rather, most postponed marriage purposefully or unwittingly while they dedicated themselves to attaining education and establishing careers (see also To 2013). Some, such as Olivia and Fang, have been enjoying an emergent culture of dating (Farrer 2002), and are simply not yet ready for courtship and marriage. Others had committed relationships that might have led to marriage but for irreconcilable differences of social aspirations or statuses, parental disapproval, or long separations. Two women sought divorce to maintain their wellbeing and integrity. Their narratives are complex, as are narratives of singleness generally (Gordon 1994). Their stories contain ambivalences and contradictions common to testimonies of single women elsewhere in the world, such as a mixture of chance and choice, or fate and agency (e.g. Reynolds et al. 2007), of voluntary and involuntary results (e.g. Stein 1981), and internal and external causal factors (e.g. Lewis and Moon 1997).

Their experiences also demonstrate their frustration with conflicting gender identities and role expectations. As modern women, they are encouraged to pursue education and develop their careers, and be confident and independent. They also desire to follow the traditional path of marriage and family. The possibility to achieve both goals is near impossible when potential mates, and society in general, judge them by inflexible gender norms and roles

into which they do not easily fit. Further, they are challenged to achieve a work-life balance in the context of employment discrimination against working mothers and the increasingly high expectations of motherhood. Encountering these contradictions motivates them to postpone marriage.

In the next section I consider how single women negotiate dual understandings of marriage as both a filial duty and a personal desire, and their notions of the ideal spouse. Accepting marriage and childbearing as filial duty, they were obliged to respond to the matchmaking efforts of their parents and friends. They also aspired to an egalitarian, companionate-style marriage, characterized by mutual affection, compatibility, and respect. Significantly, in contrast to the women described by Fincher (2014), my informants are not succumbing to pressure by rushing into marriage or settling for a man who does not respect an independent, confident, and intelligent woman as his equal.

Perspectives on Marriage and the Ideal Spouse

Filial Duty

Although childless couples (so-called DINKs) are increasingly common in urban China, and gaining acceptance, the traditional value of filial piety, which entails marriage for the purpose of procreation, remains prevalent. For example, on Olivia's 26th birthday, her grandfather reminded her that biology determines age of marriage; girls must marry before 25 or risk infertility. He warned her that if she waited another year, she might start thinking differently and lose the desire to marry. Moreover, he emphasized, it was her duty (to the family) to marry in the coming year. Lili, age 34 in 2012, believes that the pressure on single women is mainly about ensuring their reproduction, albeit within the bounds of marriage: "The biggest issue is reproduction. If it was not an issue, I would not care – marry or don't marry, who would care? Parents probably also would not care." She reasons that parents pressure their daughters to marry and have a child in order to ensure their future financial, emotional, and physical security: "If I don't marry or have a child, my parents fear there won't be anyone to care for me when I am old." Such reasoning partly reflects the continuing utilitarian value of the traditional intergenerational contract in the developing nation; until universal social security is achieved, spouses and children (and other close relatives) are the main sources of support for the elderly and disabled (Jeffries 2006).

One indication of single women's sense of filial duty is their acceptance of direct or indirect parental interference through matchmaking. However, their willingness to participate in matchmaking does not signify their sub-

mission to marriage pressure, as they maintain the right of refusal. For instance, since the serious talk with her grandfather, Olivia had been on two dates arranged by her grandparents. However, she did not find either of the men to be right for her, as they were not as open-minded, fluent in English, or worldly enough for her taste. Likewise, Juhua had been on several "coffee dates" arranged by her married-couple friends. She is willing to go on the dates, but also feels pressured to go because her friends think she should be married. In fact, she is shy when speaking with strangers and finds the dates awkward. None has turned out well, as she found the men to be patronizing, as explained above.

Both Min and Jade's mothers had tirelessly sought eligible men to introduce to their daughters. Min's mother attended matchmaking events regularly held in public parks, but her daughter refused to meet with the potential suitors. Recently her mother has stopped making efforts. Min explains, "My siblings all have children so my parents are content to leave me alone." Jade's mother has doggedly scoured singles' advertisements in the newspapers, screened candidates, and set up dates for her daughter to meet eligible men. Jade plays along, keeping secret her long-running affair with a married man 15 years her senior. She has met some very compatible men through such meetings, but not one who she felt was equal to her lover. Indeed, the dates only reinforce her commitment to her illicit relationship.

Love and Companionship

The women in my study spoke of marriage as a filial duty but also as a means to satisfy desires for love and companionship, and for personal growth, as befits a companionate marriage. Financial stability was also important, but not the sole criterion for marriage. Thus, Olivia says she shares her grandfather's goal of seeing herself wed, but she just won't settle for anyone. Rather, she is looking for a "true love." Olivia used to view marriage as only about securing a future through money, a car, and a house. But she has learned from her successive romances to view marriage as a vehicle for emotional development. "Relationships are about give and take," she explained. She is currently dating an older, divorced foreign man, and feels she has grown a lot through their relationship.

Through their own experience of dating men, or indirectly through friends, these women gained insight into what makes for a successful companionate marriage. For example, Xia explains that men want more than just beauty and sexual gratification in a spouse: "In marriage, men seek a woman they can love, because only feelings can make a marriage last." Despite having been jilted by her boyfriend of seven years, Xia maintained a romantic outlook. Indeed, Xia lost all respect for her former boyfriend because he married someone he did not truly love, for the sake of his career

aspirations. Though her friends scold her for being naïve and overly trusting of men, she is sure that she will find someone who can make her feel happy. Xia's idealistic view of love surely helps her to keep a positive view of her future and make sense of the past, as it puts her on moral high ground compared with her ex-fiancé. It also distinguishes her favorably from other women who might pursue men for only money or sex.

Jade's faith that she and her lover are meant for each other makes her certain that the difficulties they face as a couple (i.e. his being married) will somehow be overcome. She describes their relationship as an intellectual and spiritual partnership in which together they have matured emotionally and grown individually. She also credits the relationship with her career success; although she is ambitious, it is her partner who gives her confidence and strength to move forward, especially in face of the sexism she has encountered in her professional life. Paradoxically, she admires her lover's deep commitment to his wife and grown children. In Jade's estimation, his generous economic support to his family makes him a good husband and father, and thus a good person worthy of her love.

Peng, aged 31 in 2012, was in the midst of courtship ("tan lianai"), which she expected would result in an engagement later that year, and marriage in about two more years. She met her boyfriend on a blind date set up by a mutual acquaintance, one of her colleagues, and most certainly did not experience "love at first sight." Rather, she found him "tolerable enough:" they could communicate well together and were companionable. Peng emphasized that, although he is from a small city in the provinces whereas she is from Shanghai, they have shared interests and similar educations and professional status. Her boyfriend is "capable and ambitious, but not too ambitious," and thus "reliable;" she reasons that he would not be seduced by easy money or power, and would remain faithful. She distinguished their steady and mature mutual affection from the more wild but immature "love" she shared with an ex-boyfriend and other men she had dated in her youth:

> "Love is not a priority. …It is enough to have some feelings of 'like.' … So long as you like each other a little bit, you will develop stronger feelings. And I've experienced those strong emotions; you don't need to have that very strong 'crazy love' feeling."

Similarly, Zhuo distinguishes her stable relationship with her fiancé from the passionate affairs of her single girlfriends who date handsome, wealthy, and powerful men:

> "At first, I didn't think much of my boyfriend. But as time passes, I appreciate him more. My classmates are of a different mind. They still want to find a guy who is superior to them, who

> can tell them what to do. …I have a lot of self-respect. Love and chemistry can quickly disappear. You can't rely on them."

Understandably, Cecilia's past experience hardened her heart toward love. The satisfaction she derived her professional accomplishments was tempered by her belief that, in her words, "I have been unsuccessful in my personal life." Her divorce had been finalized in 2003, but her parents hid the news from extended relatives, friends, and neighbors because they found it scandalous. Their unsupportive attitude reinforced Cecilia's sense of ineptitude, of having fallen short of their high expectations of her. Although she was not actively seeking a partner, she expects that when she is ready to date she will choose someone who is financially stable, as her ex-husband most certainly was not.

Changing Ideas of "Mr. Right"

A majority of the women had hope of marrying (again) someday, but were realistic in their expectations about what men were available to them and whom they would most likely attract. In various ways, they adjusted their desires to meet the reality of a constrained marriage market. However, there were limits to their willingness to accede to conservative norms of femininity, or compromise their progressive notions of gender roles and relations.

As divorce rates in China have risen, so too remarriages have become more common and are gradually losing their social stigma (Wang and Zhou 2010; Xu and Yan 2012). Juhua said she would be happy to marry a divorced man over 45, with or without kids. Moreover, she felt someone at this age would be serious about the relationship and marriage. Xia likewise was open to dating someone divorced, although not with children. In fact she had recently been introduced to a divorced man and was keen to get to know him better.

Like Olivia, both Cecilia and Ning favored western men. Each has foreign coworkers, former classmates, and friends, and hence ample opportunity to meet such men for romance. But their preference is not just happenstance. It is also their rejection of rigid codes of behavior applied to their gender by Chinese men that propels them to seek out Western men, whom they believe to be less bothered by their lack of "traditional Asian femininity." In this regard they are a lot like young professional Japanese single women studied by Karen Kelsky (2001). Many informants also share with their Japanese counterparts a desire for a cosmopolitan partner, which some felt they could not find among local men. For example, on a first date with a Chinese guy arranged by her grandfather, Olivia suggested going out for *sushi*, and was aghast to learn that her date had never tried it. Moreover, men from wealthier foreign countries were seen by some to embody modernity regardless of their

particular class status or family background. Likewise, Xia was intrigued by Western men: she told me a fairy tale about someone she knew who had met a foreign man in Beijing, fallen in love, and then emigrated. But her ignorance about them combined with her poor English language skills ruled out her dating foreign men.

A few informants seem to have accepted that they will likely never marry. Jade believes she has "destiny" (*yuanfen*) with her lover, and says he is her "ideal life partner." Although she longs to have a big family of her own, she also wants him. "That's the situation," she says, and she is resigned to it. Min lives independently in an apartment she bought several years before, sharing the space with three cats. She has decided against marriage on principle, the only one of my informants to do so, because she does not like the person she would likely become if she married, based on her past relationships. Indeed, a recent break-off of a long-term affair with a married man was premised on a rejection of a stereotypical and unequal gender role. She became angered by the many demands he placed on her to prevent their relationship from being discovered by his wife and kids, such as not calling on weekends.

Several women I interviewed in Shanghai in 2012 were in promising relationships with men who did not conform to normative ideals of "Mr. Right," but could meet their demand for an egalitarian companionate marriage. Zhuo's fiancé comes from a family of lower social status than hers, as they are not from Shanghai. Further, he has only BA degree whereas she has a PhD, although he intends to begin an MS degree program of study. Also, he is not considered attractive, as he is rather short, heavy-set and dark-skinned. Yet, the couple is mutually compatible and their relationship is not hierarchical, which is important to Zhuo and, she believes, distinguishes her from many of her friends:

> "In China, men think that if a woman studies too much, she will feel too much pressure [about marriage]. But he [my boyfriend] feels that if you want to study, and like to study, you should study. The thing is, people will ask: 'What level of education is your boyfriend? Eh?! You ought to find another PhD!' … And another thing is, a guy might think that you are weird, that you are too intellectual, and that he himself has no culture. He [my boyfriend] doesn't feel this way at all. He thinks that if a woman is willing to study and become an academic, it is actually a good thing."

Fang's current boyfriend is "a bit fat" for her liking, and her parents do not wholly approve of him, because his family is of a lower socio-economic status and he must support his younger sister. Yet, Fang is willing to marry him, because he shares her vision of marriage:

> "My boyfriend and I both believe that two people should share a similar personality, not opposite, and we should have similar shared interest. … We should understand each other and also be 'reliable' and also get along well, and trust each other. We should not put pressure on the other person. Because, after marriage, each person has their work and their parents, and these are two things that both must face in the future. Both must work together hard at the relationship problems. Finally, we must have steady feelings for each other, so there is no fear of one cheating on the other, so that both feel secure."

Lili had recently begun to date a man she met independently of parents, friends or colleagues. She is not yet ready to speak of him publicly or to introduce him to her parents in part because he might not meet others' expectations: he is less highly educated, having only a BA compared with her MA. But Lili enjoys his company and they share common interests. She appreciates his maturity, his entrepreneurial spirit, and his "independent outlook." Most importantly, "He supports my career development. Also, I'm more mature now, so I won't just allow myself to depend on anyone, and so he respects me. Whatever I do, for example going abroad, he supports me."

Summary

In the above section I demonstrated how women negotiated pressure put on them by parents and others who remind them of their duty to marry, and their own desire to wait until they find the right person to marry. Like women elsewhere in Asia where pressure to marry is great, such as in Japan (Rosenberger 2007) and Indonesia (Situmorang 2007), my informants developed creative strategies to cope. I also considered their ambivalence over whether to marry for love or for more practical reasons. Interestingly, most informants implied that they had gained new knowledge, about themselves or about others, in the process of dating and falling in love, as well as through the painful process of heartbreak. Their experience led them to appreciate a more nuanced notion of love and more diverse notions of the ideal spouse. Counter to any stereotype of time wasted, they turned the process of being single (or becoming single again) into a fruitful project of self-making that is central to the experience of modernity (Giddens 1992).

In the final section, I continue to probe these women's identities by examining their lateral social relationships, including with families of origin, and their thoughts on sexual relations. I discuss how they reconcile their current life trajectory as unmarried and childless adult women with the normative life course, in which adulthood for women is attained through a linear progression from daughter to wife and mother.

Emergent Womanhood

On the one hand, most of my informants believed in innate gender differences and held marriage and motherhood to be a fundamental aspect of womanhood. On the other hand, they were actively constructing their lives around alternative conceptions of female personhood, rooted in traditional kinship roles (e.g., filial daughters), as well as modern roles (e.g., as home owners and consumers, financiers, entrepreneurs, professionals, cosmopolitans, or social activists), which offer potential to challenge and transform normative ideas of femininity and the life course, and foster new models of womanhood in today's China.

Jade is the eldest of three daughters and is both filial and responsible. She used her earnings from her corporate job in an international company to purchase her parents a new apartment in the city and to pay her younger sister's university tuition. Another sister is married and has a son, whom Jade adores. Every night she speaks to her nephew before he goes to sleep. Speaking of him, Jade speculated that perhaps she could accept never having children, because she so enjoys being an aunt. Jade adamantly believes men and women are fundamentally different. "Every woman needs a man. Women need men to support and care for them." Yet, she also knows women can be mutually supportive, even in regard to career development. In 2007 she organized a meeting of several of her single female friends, all professionals. Since then, the original group had grown to about a dozen members who met monthly to network and share knowledge about developing their careers and starting businesses. Four of its members had already launched a successful small business.

Juhua also believes men and women are naturally different. But, unlike Jade, she believes that it is easier for a woman to stay single than it is for a man, in part because a woman can forego sex whereas a man cannot. In her opinion, a man who foregoes sex with a woman is abnormal, though not necessarily homosexual, and for this reason she shies away from dating men who are still bachelors at the age of 40. Similar to Jade, Juhua feels quite satisfied in her kinship roles, and does not particularly want children. In fact, she has been like a mother to her younger sister since her teens, when their mother passed away. Currently she visits her father in his apartment almost every weekend, and also spends a lot of time with her sister, brother-in-law, and niece. With a fulfilling academic job, an apartment of her own, numerous friends and many things to do in a cosmopolitan city, and international travel, she rarely feels lonely. "I like my life," she said frankly.

Xia likewise owns a big apartment in the suburbs. But she doesn't live in it because she feels lonely. Instead she stays with her retired parents in their cramped apartment in the city. Even living with them, she often feels

lonely, for example when it is raining and she has no one to call to chat with. “I don’t have many people to talk to,” she said. She also believes that if she doesn’t ever marry, she would become weird (*guai*). In her opinion, all spinsters become eccentric mainly because they do not have sex. She also said, matter-of-factly, that she would unlikely be financially self-sufficient should she remain single, at least not with her current employer, because the company rarely promoted women and also they would probably let her go early. In China’s state-owned industry, the legal retirement age for women is lower than for men, which negatively impacts women’s job promotions and lifelong earnings. As mentioned previously, Xia kept a positive attitude that her ongoing search for a husband would pan out. Nonetheless, she also had a contingency plan, to turn her passion for fitness and health food into a business: a combined yoga center and organic food store/café in the suburbs. Indeed, she was already looking into training as a yoga instructor.

Like many of the women, Lili is concerned about her future and the possibility of never marrying. But she refuses to engage in matchmaking: “I don’t want to waste my personal time on spouse-seeking. Let me see what Fate brings.” Instead of dwelling on the unknown future, Lili concentrates on her goals of career growth and financial independence: “I don’t think so far ahead. I just focus on the present, on doing things well, as we cannot know what the future will bring. Perhaps I will meet the ‘right one’ soon. Or, perhaps my career will advance smoothly and successfully. If so, that will resolve the marriage issue.” In her spare time, she indulges her love of music with voice and music lessons, and makes plans for moving abroad temporarily for her work. Likewise, in their respective cities of Beijing and Shanghai, Olivia and Jing are consummate consumers and cosmopolitans, who enjoy having freedom of mobility. Olivia was making plans to study for a MA degree in Europe; Jing would go abroad as a visiting scholar.

Min in Beijing and Rong in Shanghai, age 35 in 2012, are part of a vibrant and growing network of feminists who channel their free time, energy, and passion into spreading feminist ideas through social activism. Each has a background in journalism and regularly publishes feminist analysis and commentary in national media, and also keeps a Blog. Each has spearheaded small-scale local social protests that use performance art to publicize important gender issues and injustices, and participated in subversive events (e.g., Gay Pride Week, performances of The Vagina Monologues). They are forging transnational activist networks through links to international NGOs. Their personal status as unmarried women who are publically disparaged as “leftover women” no doubt inspires their critical feminist outlooks, which in turn encourages them to uphold high standards for themselves in regard to gender relations and marriage.

Summary
The narratives presented above suggest that these women do not only identify with the linear life course, or define themselves solely through relationships to marriage and children. Careers, travel, home ownership, consumer culture, civic engagement, virtual communities on the Internet, as well as friends and family of origin provide them with important and satisfying sources of emotional and intellectual fulfillment and identity. Research on unmarried women in Europe, North America and Australia historically and into the present, as well as in contemporary Japan, demonstrates they have played important emotional, social, and economic roles in their families of origin as well as in religious organizations and civic groups, and in turn obtain legitimate social identities from these roles (e.g. Adams 1996; Allen and Pickett 1987; Berend 2000; Burnley 1987; Rosenberger 2007; Watkins 1984). My research indicates similar findings for unmarried women in contemporary China. Informants also held diverse views on female sexuality. For most, single status did not preclude sexual relationships. Such views reflect a general trend in China toward greater tolerance of sex independent from marriage and procreation (e.g. Jeffreys 2007).

Conclusion

The research presented in this article clearly demonstrates that the experiences and perspectives of unmarried professional women in urban China are diverse and complex. Importantly, they are not all succumbing to official pressure on so-called "leftover women" by rushing into unequal marriages (see Fincher 2014), or marrying for money rather than for love (Liu 2007), or lowering their expectations of a spouse (Wang and Abbott 2013). Most women in my study adhered to firm expectations of egalitarian companionate marriage, honed through rich past history of dating or divorce, as well as by contrasting to friends' unsatisfactory relationships. A few were contemplating marriage to men who did not meet normative criteria of the ideal spouse in terms of looks or status, but who were likely to meet more important criteria of mutual affection, compatibility, and respect. Some women in my study were already over age 35, and increasingly unlikely and even unwilling to marry.

The women's accounts are also similar in that they all express ambivalence toward marriage. Their attitude indicates the tensions and contradictions of women confronted with numerous opportunities and choices, and new expectations and desires, including for both successful and fulfilling careers and marriages, which are not easily attained within a patriarchal environment. In contemporary China, femininity implies traits like being "tender" and nurturing, which reinforce a normative womanhood grounded in domestic

roles and asymmetrical gender relations. Their stories illustrate the lack of social acceptance and support for single women in contemporary China. Yet these women are independent, confident, and intelligent. They are constructing meaningful lives by attaining educational and career goals, building social networks, and playing important social roles in their families of origin and elsewhere. Their refusal to conform to rigid gender prescriptions or compromise their aspirations implicitly challenges patriarchal constraints.

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NOTES

1. China's crude divorce rate (number of divorces per 1,000 population) increased from 0.33 in 1979 to 1.59 in 2007, and its refined divorce rate (number of divorces per 1,000 married population) increased from 0.85 to 2.62 over the same period, according to calculations based on the China Statistical Yearbook (Wang and Zhou 2010).

2. In 1980, the average age of first marriage in the urban areas was 25.5 for men and 23.9 for women, dropping to 24.4 and 22.8 respectively in 1990, and rising to 26.9 and 25.1 in 2010, according to the Chinese National Bureau of Statistics (Xu and Yan 2014: 43). In rural areas, the trend was similar (ibid.): the average age at first marriage increased from 24.4 for men and 22.3 for women in 1980 to 24.8 and 22.8 respectively in 2010 (Ibid.).

3. As reported by the Marriage Registration Statistics Report of the Civil Affairs Bureau in Chinese Women's Research Network 1/28/2011, http://en.wsic.ac.cn, and in shanghaidaily.com 2/28/2014.

4. The "female deficit" is in turn attributed to sex discrimination exercised through son preference and sex-selective new reproductive technologies, and is an unintended side effect of the strict family planning policies (Greenhalgh and Winckler 2005).

5. However, historically this was not always the dominant or only pattern. For example, at the turn of the century in South China, a common practice for poorer families involved adopting a young girl as a daughter-in-law who could first serve as a nursemaid to her younger future husband.

6. The family is literally reproduced through procreation and also reproduced as a socio-economic unit, as marriage entails transfer of labor and property, and symbolically as it perpetuates the ancestral line.

7. Compared historically with Western Europe, Asia as a whole and China in particular had a very low percentage of never-married women (Watkins 1984). A survey conducted with 200,000 farm families in China around 1930 found fewer than 1 in 1,000 women were never-married (Ibid). Even so-called sworn sisters or marriage resisters of Guangdong and Hong Kong in the early 20th century were ritually married.

8. "Netizens debate on highly-educated 'leftover women.'" *Women of China*. January 21, 2014. http://en.wsic.ac.cn/academicnews/5598.htm. Accessed 7/7/2014.

9. According to 2012 statistics from the Ministry of Education, women in China earn 51% of all undergraduate bachelor's and associate's degrees as well as 51.46% of master's degrees, although just 36.45% of all PhD degrees (http://news.ifeng.com/gundong/detail_2013_11/07/31026525_0.shtml. Accessed 7/20/2014).

10. The trend of delayed marriage is also a predictable result of a shift to companionate marriage ideals, which were introduced in the 1950 Marriage Law, but could not be realized until the recent decades (Whyte 1990; Xu and Whyte 1990; Yan 2003*)*. As demonstrated by historian Stephanie Coontz (2005), once love replaces all other criterion for marriage, such as political expediency or economic necessity, marriage itself becomes optional.

REFERENCES

Adams, Christine (1996), "A Choice Not to Wed? Unmarried Women in Eighteenth-century France," *Journal of Social History* (June): 883–894.

Allen, Katherine, R., and Robert S. Pickett (1987), "Forgotten Streams in the Family Life Course: Utilization of Qualitative Retrospective Interviews in the Analysis of Lifelong Single Women's Family Careers," *Journal of Marriage and the Family* 49 (August): 517–526.

Barlow, Tani (1994), "Theorizing Woman: Funu, Guojia, Jiating (Chinese woman, Chinese state, Chinese family)," in Angela Zito and Tani E. Barlow (eds.), *Body, Subject, Power in China*. Chicago, IL: University of Chicago Press, 253–289.

Berend, Zsuzsa (2000), "'The Best or None!' Spinsterhood in Nineteenth-Century New England," *Journal of Social History* 33(4): 935–957.

Bulbeck, Chilla (2008), *Sex, Love and Feminism in the Asia Pacific: A Cross-Cultural Study of Young People's Attitudes*. London-New York: Routledge.

Burnley, Cynthia S. (1997), "Caregiving: The Impact on Emotional Support for Single Women," *Journal of Aging Studies* 1(3): 253–264.

Cao, Li (2007), "Single Women on the Rise in Shanghai," Chinadaily.com.cn, 13 February. (http://en.bcnq.com/china/2007-02/13/content_807828.htm...) Accessed 9 July 2008.

Chen, Yaqiang (2012) (February), "New Analysis on Urban "Leftover Women," *Law and Society*. (in Chinese)

Cheng, Yuan, Han Xuehui, and John K. Dagsvik (2011), "Marriage Pattern in the City of Shanghai: Behavioral Two-Sex Marriage Model and Multistage Marriage Life Table Approach," *Chinese Sociology and Anthropology* 43(4): 74–95.

Coontz, Stephanie (2005), *Marriage, A History: How Love Conquered Marriage*. New York: Penguin.

Das Gupta, Monica, and Li Shuzhuo (1999), "Gender Bias in China, South Korea, and India 1920–1990: Effects of War, Famine, and Fertility Decline," *Development and Change* 30: 619–652.
Davin, Delia (2007), "Marriage Migration in China and East Asia," *Journal of Contemporary China* 16(50): 83–95.
Evans, Harriet (2008), *The Subject of Gender: Daughters and Mothers in Urban China.* Lanham, MD: Rowman and Littlefield.
Farrer, James (2002), *Opening Up: Youth Sex Culture and Market Reform in Shanghai.* Chicago, IL: University of Chicago Press.
Fincher, Leta Hong (2014), *Leftover Women: The Resurgence of Gender Inequality in China*. London: ZED Books.
Gao, Xiujuan (2011), "A Sociological Perspective on Leftover Women Finding it Difficult to Marry," *Journal of Beijing Youth Politics* 20(1). (In Chinese)
Giddens, Anthony (1992), *The Transformation of Intimacy: Sexuality, Love, and Eroticism in Modern Societies.* Cambridge: Polity Press.
Gordon, T. (1994), *Single Women: On the Margins?* MacMillan: Basingstoke.
Gottschaung, Suzanne (2007), "Maternal Bodies, Breast-Feeding, and Consumer Desire in Urban China," *Medical Anthropology Quarterly* 21(1): 64–80.
Greenhalgh, Susan, and Edward Winckler (2005), *Governing China's Population: From Leninist to Neoliberal Biopolitics.* Stanford, CA: Stanford University Press.
Jeffreys, Elaine (ed.) (2006), *Sex and Sexuality in China*. London and New York: Routledge.
Jiang, Quanbao, Marcus W. Feldman, and Shuzhuo Li (2014), "Marriage Squeeze, Never-Married Proportion, and Mean Age at First Marriage in China," *Population Research Policy Review* 33: 189–204.
Jones, Gavin (2007), "Delayed Marriage and Very Low Fertility in Pacific Asia," *Population and Development Review* 33(3): 435–478.
Kelsky, Karen (2001), *Women on the Verge: Japanese Women, Western Dreams.* Durham, NC: Duke University Press.
Lewis, K. G., and S. Moon (1997), "Always Single and Single Again Women: A Qualitative Study," *Journal of Marital and Family Therapy* 23(2): 115–134.
Li Shuzhuo et al. (2005), "Son Preference and the Marriage Market Squeeze in China: An Integrated Analysis of the First Marriage and Remarriage Market," Abstract. (http://www.popline.org/docs/312739) Accessed 17 July 2008
Liu Jieyu (2004), "Holding Up Half the Sky? Reflections on Marriage in Contemporary China," *Feminism & Psychology* 14(1): 195–202.
Reynolds, Jill, Margaret Wetherell, and Stephanie Taylor (2007), "Choice and Chance: Negotiating Agency in Narratives of Singleness," *The Sociological Review* 55(2): 331–351.
Rosenberger, Nancy (2007), "Rethinking Emerging Adulthood in Japan: Perspectives from Long-term Single Women," *Society for Research in Child Development* 1(2): 92–95.
Situmorang, Augustina (2007), "Staying Single in a Married World," *Asian Population Studies* 3(3): 287–304.
Stein, P. J. (1981), "Understanding Single Adulthood," in P. J. Stein (ed.), *Single Life: Unmarried Adults in Social Context.* New York: St. Martin's Press: 9–21.

To, Sandy (2013), "Understanding Sheng Nu ('Leftover Women'): The Phenomenon of Late Marriage among Chinese Professional Women," *Symbolic Interaction* 36(1): 1–20.
Wang, Haiping, and Douglas A. Abbott (2013), "Waiting for Mr. Right: The Meaning of Being as Single Educated Chinese Female over 30 in Beijing and Guanzhou," *Women's Studies International Forum* 40: 222–229.
Wang, Qingbin (2001), "China's Divorce Trends in the Transition toward a Market Economy," *Journal of Divorce & Remarriage* 35(1/2): 173–189.
Wang, Qingbin, and Qin Zhou (2010), "China's Divorce and Remarriage Rates: Trends and Regional Disparities," *Journal of Divorce and Remarriage* 51(4): 257–267.
Watkins, Susan Cotts (1984), "Spinsters," *Journal of Family History* 9: 310–325.
Whyte, Martin King (1990), "Changes in Mate Choice in Chengdu," in D. Davis and E. Vogel. (eds.), *Chinese Society on the Eve of Tiananmen.* Cambridge: Harvard University Press.
Xiong, Yu (2004), "The Status of Chinese Women in Marriage and the Family," in Tao Jie, Zheng Bijun, and Shirley L. Mow (eds.), *Holding Up Half the Sky: Chinese Women Past, Present and Future.* New York: CUNY Feminist Press, 172–178.
Xu, Xiaohe, and Martin King Whyte (1990), "Love Matches and Arranged Marriages: A Chinese Replication," *Journal of Marriage and the Family* 52(3): 709–722.
Xu, Anqi (2010), "Husband and Wife Living Together Forever: A Fairytale in the New Century?" *Youth Research* 4: 1–13 (in Chinese).
Xu, Anqi, and Yan Xia (2014), "The Changes in Mainland Chinese Families during the Social Transition: A Critical Analysis," *Journal of Comparative Family Studies (Special Issue: Changing Chinese Families)* XLV(1): 31–53.
Yan, Yunxiang (2002), "Courtship, Love and Premarital Sex in a North China Village," *The China Journal* 48: 29–53.
Yan, Yunxiang (2003), *Private Life under Socialism: Love, Intimacy, and Family Change in a Chinese Village 1949–1999*. Stanford, CA: Stanford University Press.
Yan, Yunxiang (2011), "The Changing Moral Landscape," in Arthur Kleinman et al. (eds.), *Deep China: The Moral Life of the Person: What Anthropology and Psychology Tell Us about China Today*. Oakland, CA: University of California Press: 36–77.
Zhou, Songqing (2010), "Leftover Women and the Gender System," *Chinese Youth Research* 5. (In Chinese)
Zhu, Jianfeng (2010), "Mothering Expectant Mothers: Consumption, Production, and Two Motherhoods in Contemporary China," *Ethos* 38(4): 406–421.

NEWW Conference:

Intellectual Women: Dissatisfied Modernities

Facultad de Filología
Universidad Complutense de Madrid

November 2014, the 13th and 14th
Salón de grados (Building A)



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Intellectual Women: Dissatisfied Modernities

NEWW International Conference
Complutense University (Madrid)
November 13–14, 2014

The international conference *Intellectual Women: Dissatisfied Modernities*, organized by Amelia Sanz, Begoña Regueiro, and Patricia Barrera, within Complutense University, Madrid, had as a starting point of discussions the term of "Modernism" and its cultural tendencies across European literature and culture.

Continuing the tradition created within the NEWW network and the COST Action "Women Writers in History," the Complutense Groups LEETHI (European Literatures from Texts to Hypermedia) and TEGEP keep on working to make visible the dialogues between European women and to analyze the answers that these dissatisfied women gave to the modernities. Thus Amelia Sanz and Begoña Regueiro the representatives of the research group in Complutense University presented the electronic databases about women writers in the context of globalization and media approaches.

Session 1, "Highlighting Women," chaired by Jenny Bergenmar, opened with the presentation "'Hurricane Jessie:' A Case Study," authored by Tatiana Crivelli (University of Zurich). In order to contribute to highlighting women's intellectual exchange and its relevance in establishing national ideals in modern Europe, her paper discussed the case of Jessie Withe Mario, "Hurricane Jessie" (1832–1906), a British intellectual, journalist and political activist who became a leading figure of the Italian Risorgimento, up to the point of being imprisoned for her involvement in the uprisings promoted in Genoa by Mazzini. Her writings dealt with most sensitive social topics – such as Southern poverty, children condition, women rights, popular education, penitentiary systems – and covered many genres, from the newspaper article, to narrative fictions, engaged essays and biographies (of Garibaldi).

The second presentation offered by Suzan van Dijk (Huygens Institute, the Hague) "The (Dis/satisfied?) Modernity of Isabelle de Charrière around 1900," brought into discussion the case of the Dutch-Swiss author Belle de

Zuylen/Isabelle de Charrière (1740–1805). She was herself "ashamed" about the fact that she had not been able to earn any money by her publications (letter 2504 February 1804). Her work has not been much re-issued, in spite of the fact that it was admired by such reliable evaluators as Benjamin Constant and Germaine de Staël. Recent critics have claimed that she might have been too "modern," which would have been the reason why her *Oeuvres complètes* eventually were published around 1980, and found their audience only after the second wave of feminism.

Session 2, "A Case-study: Romania," chaired by Tatiana Crivelli, focused the discussion on Romanian space, thus in her presentation, "Textual Battle-grounds: Towards a Feminine Romanian Romanticism," Carmen Beatrice Duțu (Dimitrie Cantemir University, Bucharest), aimed to lay down the theory that Romanian women's intersection with the European influence led to the gendering of Romanian Romanticism, whereby the masculine Romantic project dealt with nationalistic ideals and the feminine one pleaded for emancipation and redefining feminine identity vis-à-vis the public and private sphere. Ramona Mihăilă (Dimitrie Cantemir University, Bucharest) talked about "Intellectual Women's Space in the Late-Nineteenth Century Romanian Print Journalism" and intended to identify individual periodicals as representations of women's space at the end of the19th century and the beginning of the 20th century Romanian society since the entry of Romanian women into the profession of writing was a slow process that became clearer at the end of the 19th century. Thus, the first Romanian women writers were initially known as journalists; later some of them shifted towards writing poems and novels. Both presenters gave examples of women journalists and women writers highlighting the connections these Romanian intellectual women made with their opposites around the world.

Session 3, "Women Mediating," brought into discussion women writers in the Nordic countries. The first presenter, Jenny Bergenmar started her speech "Women Writing the Provincial. A New Nationalism or a Transnational Critique of Modernity?" asserting that modernity in literature is usually connected to the urban and then she gave examples of how Selma Lagerlöf's works were received around Europe. In Germany, she came to be interpreted as a traditional, provincial author, offering a healthy resistance to the cosmopolitan, urban and decadent modern literature or in Spain, taking into account Selma Lagerlöf's texts chosen for translations while putting the provincialism of the Swedish writer in a larger context by comparing her with two other women writers who used provincial settings in their novels, and who both were inspired by Selma Lagerlöf: Concha Espina and Grazia Deledda.

Viola Parente-Čapková (University of Turku) focused her presentation on "Finnish Women Writers/Intellectuals at the Beginning of the 20th Century"

and she outlined the ways intellectual women in Finland reflected on their possibilities at the beginning of the 20th century. First, she gave some historical background concerning the history of education of women in Finland, of their possibility to study at the university and becoming scholars or intellectuals in the broader sense of the word against the background of Finnish national revival, which was entering its culminating phase at the turn of the 19th and the 20th century. Then she concentrated on several examples of women who acted as writers and intellectuals and on their way to conceptualize the idea of "woman intellectual" in dialogue with foreign, i.e. non-Finnish, women's thought. Her main example was one of the major mediators of the French culture in Finland and an admirer of Germaine de Staël: the Finnish language writer, journalist, translator, essayist and versatile cultural figure L. Onerva (1882–1971).

Marie Nedregotten (Volda University College, Norway) talked about "Anglo-Nordic Connections in Turn-of-the-Century Feminism" emphasizing the fact that Norwegian readers and writers were influenced by foreign women. The great early feminist names of the nineteenth century – novelists, Camilla Collett and Amalie Skram, saw themselves in a larger European context, as did the next generation. Her presentation focused mainly on the period after concepts such as "feminists" and "suffragettes" were making their appearance at the turn of the century, and until the first world war resulted in a new world for professional women. The paper gave examples of connections between Anglophone and Norwegian women at this time, e.g. Clementina Black, Mary Dunne, Beatrice Harraden, and Annie Besant.

Session 4, "Women Distancing," chaired by Henriette Partzsch, opened with a presentation about "Love and Europeanness in Annette Kolb's Travel Novel *Das Exemplar* [*The Specimen*]" offered by Elisa Müller-Adams (University of Trier) who invited the audience to learn that around the turn of the century, Anglo-German relations became increasingly strained with literature reflecting and contributing to the cultural tensions between Britain and Germany. In the literary and highly gendered discourse about the estranged "cousins," women authors like, Katherine Mansfield and Elizabeth von Arnim played a major role. It is in this context that Annette Kolb's novel *Das Exemplar* [*The Specimen*] about a young German woman traveling to England to meet her estranged lover can be read.

Zsuzsanna Varga (University of Glasgow) brought into attention the Transylvanian Hungarian author, philosopher, psychologist and aesthete Emma Ritoók (1868–1945) in her presentation entitled "From Feminism to Conservativism: The Life and Career of Emma Ritoók." After she talked about Ritoók's works she also offered an analysis of her roman-a-clef *Spirit's Adventurers* (1921), which provides a satire and scathing critique of the *Sunday Circle* (Vasárnapi kör), a group of pre-war intellectuals, to which she

also belonged as the token woman. They were equally committed to ideas of social and intellectual modernization and also subscribed to Weininger's narcissistic theories of the genius, which suggested that belonging to that higher order also provides the license to deny private morality.

In her presentation, "Dissatisfaction about Intellectual Women inside a Non-Intellectual Environment: E. Marlitt's Female Protagonists," Ursula Stohler (University of Zurich) moved the discussion toward narratological issues like the construction of female characters and discussed how the type of a female, intellectual protagonist, which is typical of E. Marlitt's (1825–1887) novels, was related to novels by other female writers, both of high-brow and popular literature, during the first three decades of the nineteenth century in the Czech literary culture.

Session 6, "Women Creating/Destroying Fantasies," chaired by Amelia Sanz, analyzed works and literary fantasies of women writers both at the level of poetry and prose. The presentation *The Crisis of Identity: The Doppelganger in the early Poems of Slovene Poetess Lili Novy* delivered by Alenka Jensterle-Doležal (Charles University in Prague) analyzed the poetry of Lili Novy (1885–1958), an exceptionally educated female intellectual and translator, living in Ljubljana – having mixed cultural identities (Slovene and German) and writing lyrics in post symbolist style while her melancholic voice expressed longing for metaphysical ideals and eternity and her poetical world was full of visions and imaginary motives. Her new aesthetics was very typical for the intellectual poetry of Central European modernism of that time.

Senem Timuroğlu (Ozyegin University, Istanbul) invited the audience to "Harem Narratives: "Room of Their Own" of Ottoman Women in 19th Century" and discussed about the harem, as the most "mysterious" of places women occupied, by focusing on the writings of those who lived in it, endeavoring to narrate the history of the "room of their own" of Ottoman women in the 19th century from their own point of view. Thus, the speaker defeated the sexist rumors spread by the male European mentality with an Orientalist viewpoint. For the reason that, the harem was seen as the place that provided the background and education necessary for the writing like in two of the cases: Fatma Aliye's *Women of Islam* (1891) and Zeynep Hanım's *A Turkish Woman's European Impressions* (1913).

The two final interventions were united in the session "Women Positioning," chaired by Dolores Romero, offered a perspective upon women writers in the Spanish space. Thus Isabel Navas Ocaña (Universidad de Almería) talked about "A Landmark of Feminist Criticism in Spain: *Las escritoras españolas*, by Margarita Nelken (1930)," published only a year after the famous *A Room of One's Own* by Virginia Woolf. Nelken's work, along with *El feminismo en la literatura española* by María del Pilar Oñate (1938),

anticipated two aspects developed by American feminist criticism: female images in men writers and the study of women writers separately.

In her presentation, "Between Tourism and Pilgrimage: Women Hispanists in Spain during the Fin de Siècle," Alba del Pozo (Universitat Autonoma de Barcelona) addressed the shaping of the early American Hispanism and the essential role played by intellectual women in this process. In 1908 the philanthropist Archer Milton Huntington founded the Hispanic Society of America in New York and started hiring women and sending them to Spain to gather representative data, images, art and any kind of relevant objects. His main purpose was to create one of the biggest research centers in Hispanic issues worldwide. The speaker focused on two collaborators of Huntington, on their trips to Spain and on the intellectual production stemming from these visits: Georgiana Goddard King (1871–1931), an Art Historian and worked as professor in Bryn Mawr College (Pennsylvania), and her partner, Edith Lowber (1879–1934), also graduated at the same college and was a professional traveller and a photographer.

In the end, Astrid Kulsdom and Janouk de Groot gave a presentation about the new layout and conditions for working on NEWW Database, in order participants to compare women writers in Europe and around the world. They also brought into discussion some outcomes of the collaborative projects COBWWWEB and the ongoing HERA research project *Travelling TexTs*.

While the first evening of the conference was dedicated to launching the book *Women Telling Nations*, edited by Amelia Sanz, Francesca Scott, and Suzan van Dijk (Rodopi Publishing House, 2014), the second one ended in discussing further collaboration plans within European projects when all the participants were invited to come up with ideas and suggestions.

The international conference *Intellectual Women: Dissatisfied Modernities* successfully explored, as the organizers intended, the deep imprint that intellectual women left in the cultural history of Europe in the Modern period and the dialogues that got established between intellectual women from different countries while new and modern female voices proposed other possible modernities.

Ramona Mihăilă
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IV International Symposium Amonet

Women Scientists as Global Solution Providers

Celebrating AMONET 10th Anniversary

1-2 December 2014

Calouste Gulbenkian Foundation, Lisbon - Portugal

The IV International Symposium of Amonet will focus in the discussion of how women scientists are global solution providers. AMONET has chosen the picture of Maria de Lourdes Pintassilgo for the Symposium logo as homage to this leading Portuguese woman. Maria de Lourdes Pintassilgo (1930-2004) became Prime Minister of Portugal soon after the 1974 Carnation Revolution at a critical social, economic and political time, when democracy was being established in the country. A chemical engineer by training, her early interests included social and economic aspects and she boldly accepted the challenge to run the Portuguese government. There was no other woman to follow on her steps, and the percentage of women in the Portuguese governments continues to be still very far from parity.

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Women Scientists as Global Solution Providers
Celebrating AMONET's 10th Anniversary

Calouste Gulbenkian Foundation, Lisbon, Portugal
December 1–2, 2014, http://www.molinsight.net/4isa

The IV International Symposium Amonet took place at the Calouste Gulbenkian Foundation, in Portugal, Lisbon, during two days – 1st and 2nd December 2014. Celebrating AMONET's (Portuguese Association for Women in Science) 10th Anniversary was focused on "Women Scientists as Global Solution Providers," "Amonet Database – Mapping Portuguese Women in Science," and the Round Table: "As Mulheres na Ciência como Geradoras de Soluções" Moderators Margarida Marques/Isabel Lousada (UTAD, CESNOVA/UNL and AMONET)

Researchers and scientists of many areas of scientific knowledge attended the meeting and there was an interesting debate on several subjects such as female leadership, political participation, women writers and conciliation – family /work.

Claudine Pousada, renowed scientist, Ana Gomes, Member of the European Parliament, and Claudine Hermann, Vice-President of the EPWS – European Platform for women in Science, also co-founder and the first president of the association Femmes et Sciences – France, amongst Rector of Universidade de Évora, Ana Costa Freitas and Director of New University of Lisbon's Law Faculty were keynote speakers.

The IV International Symposium of Amonet allowed the discussion of how women scientists are global solution providers. AMONET has chosen the picture of Maria de Lourdes Pintassilgo for the Symposium logo as homage to this leading Portuguese woman. Maria de Lourdes Pintassilgo (1930–2004) became Prime Minister of Portugal soon after the 1974 Carnation Revolution at a critical social, economic and political time, when democracy was being established in the country. A chemical engineer by training, her early interests included social and economic aspects and she boldly accepted the challenge to run the Portuguese government. There was no other woman to follow on her steps, and the percentage of women in the Portuguese governments continues to be still very far from parity.

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BOOK REVIEW

Feminism, Law, and Religion
Marie A. Failinger, Elizabeth R. Schiltz, and Susan J. Stabile (eds.)
Aldershot: Ashgate, 2013, 444 pp.
ISBN 978-1-4094-4419-0

Being provided with the participation of important names in the world of gender, law and religion nowadays, this volume focuses on several conflicts at the conjunction between feminism, theology and law. The book explores a collection of themes recognized by certain traditions such as Christianity, Judaism, Islam and Buddhism and scrutinized from both practical and theoretical viewpoint. The subjects bring into discussion the transition from religious and non-religious significances and estimates in quest of a right jurisprudence for women, how the theological perceptions arising from religious heritage are applied to legal matters of feminist projects and tasks, as well as on feminist legal studies, from or relating to the Bible, concerning women's rights and the part the religious law has played in women's ecclesiastic journey.

What editors of this book aim to highlight by introducing before our eyes women's stories is that each tale and each experience brings something new to help our perception and interpretation of women's conditions, along with the human condition. Overall, the project of this book, comprising a collection of seventeen essays, is developed around the idea that religion plays a significant part within a more substantial contemporary critique of liberal feminism, mainly because religious heritage often highlight human sensitiveness and weak points rather than power, commitment to others rather than self-prerogatives.

The book comprises four parts and seventeen essays, preceded by Foreword that introduces readers to the religious communities where women make an "indispensible contribution in transmitting and manifesting a group's 'culture.'…[I]dealized and gendered images of women as mothers, caregivers, educators and moral guardians of the home come to represent the ultimate and inviolable repository of 'authentic' group identity … through

carefully crafted binary codes of 'respectable' behavior …" (cited in Shachar 2005: 51).

Part 1, "Feminist Legal Theory – Religious and Secular Encounters," includes four essays giving thought to Christian perspectives. Addressing a subject of Catholic theology, Elizabeth Schiltz ("A Contemporary Catholic Theory of Complementarity") argues about the theory of "integral complementarity," suggesting that it may be corrective to both liberal idea of equality as sameness and the rigidities of gender essentialism, having influence on legal issues such as parental leave in the work place.

Following the same Catholic policy and practice, Susan Stabile ("The Catholic Church and Women: The Divergence Between What is Said and What is Heard") considers the "reality gap" between Catholic teachings that shows respect to the dignity of men and women and the general understanding of the Catholic Church as discriminatory towards women. In "Deconstructing Equality in Religion," Cheryl Preston, a Mormon scholar, tries to demonstrate the liberal feminism's deconstruction of religion, pleading for a more serious consideration in God's agency, by replacing the male standard of comparison with a feminist Christian model for equality. Emily Albrink Hartigan's closing essay ("What is the Matter with Antigone?") offers a fundamental critique of western law rooted in the "false knowability" of Western science and rationality, based on Sophacles' play *Antigone*. Hartigan argues that public law should never be separated from the unwritten, sacred law based also on morality, criticizing the removing of religious language and motivation from American legal discourse when religion is known to represent a very important feature of most American's identities.

Part 2, "Theological Insights Applied to Dilemmas of Woman's Social Existence," includes seven essays relating to women and family, especially marriage and divorce and domestic violence. Ayelet Shachar evaluates the concept of religious privatization as a model for the relationship between civil courts and religious law. She requires an interaction between the civil and religious areas of law to protect vulnerable women mostly to potentially oppressive marriage and divorce law while simultaneously honoring these women's religious commitments. Asifa Quraishi-Landes ("A Meditation on *Mahr*, Modernity, and Muslim Marriage Contract Law") comes with an ideal response, in terms of partnership laws, to the sale-transaction model at the basis of Muslim marriage in which the husband practically buys the wife. Marie Failinger ("Co-Creating the Family: A Lutheran View of Marriage and Divorce Law") emphasizes the dynamic nature of family in the Lutheran tradition as a self-justification role in service of God that must be continuously redefined based on particular social circumstances and ongoing acknowledgement of the ways in which people sin and harm each other. These three essays on marriage offer three different views of religious mar-

riage. Juliane Hammer's essay discusses about domestic violence ("'Men are the Protectors of Women': Negotiating Marriage, Feminism, and (Islamic) Law in American Muslim Efforts against Domestic Violence") and creates a pragmatic/ironic approach similar to that described by Quraishi-Landes' on marriage, relating her surprise at the discovery that grass roots Muslim organizations use, rather than reject, patriarchal ideology in the Qur'an to respond to domestic violence in their communities.

Part 3, "Feminist Readings of Scriptural Texts on Women and Women's Rights," comprises only three essays. Frances Raday ("Modesty Disrobed – Gendered Modesty Rules under the Monotheistic Religions") examines, in a historical context, the modesty, the legal rulings against the Jewish movement Women of the Wall, and the case of a Muslim schoolgirl in England wearing a headscarf to school. Naomi Graetz ("Jewish Law: The Case of Wifebeating") summarizes the history of Jewish legal treatment of wife-beating, showing the range of approaches adopted in Jewish law and highlighting contemporary attitudes of denial and apologetics. Hina Azam ("Competing Approaches to Rape in Islamic Law") relates a legal debate between two Islamic schools – Hanafi and Maliki – in whether to consider rape as solely a divine offense or also as a property offense. The approaches are different and involve both procedural and evidentiary realms, thus making it much easier to institute proceedings against rape in the Maliki School. The main target of this analysis is to show the dynamic nature of Islamic law which gives the chance for further legal developments that may better and fully answer to the needs and experiences of women.

Part 4, "Women's Leadership and Standing within Religious Communities," is the last addressing cultural and geographical differences that lead to significant controversies and analyses. Sister Sara Butler ("Catholic Women and Equality: Women in the Code of Canon Law") offers a neat reading of 1983 revisions of the Juridical Code of Canon Law that increased the role of the laity in the Church, hence increasing the roles for women. Though a restriction against women being allowed to be priests is still in force, Butler asserts that this does not mean a depreciation of women's dignity, as the hierarchical structure of the Church does not encumber an equal participation of men and women. Rebecca French ("Daughters of the Buddha: The Sakyadhita Movement, Buddhist Law and the Position of Buddhist Nuns") focuses on Buddhist nuns, who work together to create an international movement in sustaining gender equity. In the final essay, Mary Szto ("Chinese Women Lawyers and Judges as Priests") turns to Chinese traditions and analyzes the gendered differential in China's legal marketplace, where women overall become judges rather than lawyers, playing a priest-like ritual part, and considers that this arrangement might be recorded as a longstanding religious tradition. Szto also indicates the possibility that women may also

"revive" religious rituals in the realm of law that can generate "trust, confidence, and ultimately justice."

This review is undoubtedly too short for such an advanced insightful exploration of the feminists, both religious and secular. The debates show the differences in values and visions for redeeming religious texts about women, giving them hope to work for their better future in both religious traditions and as made in the image of God. Therefore, all contributions brought to and gathered in this book call for a diligent and careful reading.

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