

Recognizing and Confronting State Subjectivity in Asylum Adjudications

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Abstract

United States law charges America's asylum officers with providing humanitarian protection for refugees while simultaneously securing the nation from external threats. This mandate requires that asylum officers balance potentially conflicting claims as they seek to ensure just treatment of claimants. This article explores how officers charged with that responsibility can develop a regime-centred subjectivity that often conditions them to view applicants with fraud and security concerns foremost in mind. This analysis also examines the potential efficacy of practical strategies linked to aesthetic, cognitive, affective, and moral imagination that may allow officials to become more aware of their state-centred subjectivity and how it influences their perceptions of threats to national security and to fraud. This analysis encourages adjudication officers to strive for a more nuanced understanding of what constitutes fraud and national security concerns and what are instead presuppositions created by the United States population-protection agenda.

Résumé

La loi aux États-Unis investit les agents préposés aux demandes d'asile avec la responsabilité d'accorder la protection humanitaire aux réfugiés et en même temps de protéger le pays des dangers venant de l'extérieur. Un tel mandat nécessite que les agents réconcilient des exigences potentiellement conflictuelles tout en assurant un traitement équitable des demandeurs. Cet article étudie le processus selon lequel les agents chargés de cette responsabilité peuvent développer une subjectivité axée sur le régime qui les conditionne souvent à voir les demandeurs dans une perspective privilégiant la sécurité et la fraude. Également,

cette analyse examine l'efficacité potentielle de stratégies pratiques liées à l'imagination esthétique, cognitive, affective, et morale qui pourraient rendre les agents plus conscients de leur subjectivité axée sur l'état et comment elle influe sur leurs perceptions de ce qui constitue un danger pour la sécurité nationale et un risque de fraude.

Introduction

United States law mandates that America's asylum officers provide humanitarian protection for refugees and secure the nation from external threats. This charge requires these individuals, including the lead author of this article, who work for the United States Citizenship and Immigration Services (USCIS), to balance potentially conflicting claims as they seek to ensure just treatment of claimants, many of whom have fled terrible conditions, while also protecting the United States from fraud and security threats. Asylum officers determine whether the facts of applicants' cases justify classifying them as refugees under United States law. United States asylum law is derived in part from international accords that include the 1951 Refugee Convention Relating to the Status of Refugees and the 1967 Protocol that extended both the temporal and geographic understanding of "refugee" among nations.¹ The U.S. Immigration and Nationality Act (INA) defines a refugee as an individual who has experienced persecution or has a well-founded fear of ill-treatment on account of a protected ground of political opinion, race, religion, nationality, or membership in a particular social group. The INA also provides the Department of Homeland Security authority to determine whether alien individuals meet this definition.

USCIS has many systems to ensure that officials accurately classify applicants and perform legally sufficient refugee

determinations. For example, asylum officers complete several weeks of residential training and four hours per week of continuing education on how to interpret relevant U.S. law. Administrators learn how to conduct thorough national security and fraud checks, who can be considered a refugee as well as how to process applications for so-called affirmative and defensive asylum applicants. In addition, a supervisor reviews every adjudication decision reached by an asylum official, and, in many cases, quality assurance specialists and/or second, third, and fourth reviewers may evaluate a decision as well. Asylum officers undergo extensive training in legal standards of interpretation, psychological understanding of trauma victims, and sociological sensitivity to gender and culture. The goal of all these efforts is to guarantee that those qualifying are granted protection, while those pressing fraudulent claims or who constitute a threat to national security are denied that standing. USCIS officials are government employees, and their adjudication of refugee narratives occurs under the aegis of the regime. In consequence, how these individuals conceptualize their relationship with the state often remains hidden, despite the fact that “power and politics are inseparable from the process of social construction that creates refugee systems.”²² As such, it is important to explore how refugee officials exercise state power and, in particular, to investigate how political forces may condition asylum determinations. As a result, it is useful to examine practices that asylum officers could employ to recognize and counter their state subjectivity.

State Sovereignty in Asylum Adjudication

A national approach to refugee protection through asylum makes the state invisible in that decision. That is, the government’s role in deciding the criteria on which asylum will be predicated is rarely questioned thereafter by those involved in refugee protection. As Beck has argued, “Methodological nationalism assumes that nation, state and society are ‘natural’ social and political forms of the modern world. It assumes a ‘natural’ division of humanity into a limited number of nations that organize themselves from within and demarcate themselves externally by drawing boundaries between themselves and other nations.”²³

He has contended that this assumption affects the ways in which individuals collect, interpret, and generate concepts and has challenged analysts to work outside this perspective to remain mindful that all regime processes are political and socially constructed. Viewing the individual asylum officer within the context of his or her position as state agent allows scholars to consider how these individuals are enmeshed in regime politics and “regain sovereignty and the ability to shape events through the nation state system.”²⁴

Weber’s work concerning “simulating sovereignty” is useful when examining how asylum decision-makers regain/gain sovereignty in this sense.⁵ Weber has employed Foucault to contend “that some foundational truth underwrites a particular organization of knowledge and that truth is not opposed to but is an effect of power.”⁶ She questions how “a search for meaning diverts attention from the production of meaning ... in other words, [Weber raises the question of whether] interpretive communities [are] effects of discourses of truth and the workings of power.”⁷ Foucault posited that individuals enact certain discourses to represent state interests.⁸ Likewise, as asylum officers focus on the facts of cases to determine whether an individual fits the statutory definition of a refugee, their attention can be diverted from the state-centred power dynamics that influence how that understanding was produced.

Weber turned to Baudrillard to explore embedded, simulated constructions of the state.⁹ She argued that the referent to which Foucault pointed is itself a constructed subject and that the state, the authoritative or represented power, is therefore simulated, because it cannot be a referent of itself. That is, Weber has contended the state and state boundaries constitute ideologies. Following this argument, one may suggest that as United States asylum officers listen to narratives and decide who qualifies as a refugee, they represent not just state power, but also a process of simulation of the self as state, and the petitioner as an “other” outside the regime.

Legitimation is key to Weber’s theory of simulating sovereignty. She has suggested that individuals normalize their understanding of the state by first determining who is outside the nation’s confines.¹⁰ For the refugee, this occurs through discursive legitimation through simulation. Weber has argued that a domestic community must be differentiated from “other” groups and that disenfranchised individuals, including refugees, are constantly crossing the boundary of who is considered a member of such social constructs.¹¹ In this sense, state boundaries, like the distinction one draws between citizens and non-citizens, can be seen as ideological structures. If one accepts Weber’s view that nation and state borders are created via regime arbiters who simulate and legitimate the state, one may also ask how this scenario shapes asylum narrative adjudication decisions. As Weber has observed, “Only by maintaining control over the depiction of its people can the state authoritatively claim to be the agent of its people. Without the ability to make credible its claims to both political and symbolic representation, the state risks forfeiting its presumed ability of representation and ultimately its sovereignty.”¹²

The analyst must examine the practices through which asylum officers gain and give power to the state when

applying Weber's logic to adjudications. This in turn involves investigating how these officials make decisions and how they legitimate themselves by allying their choices with representations of the state ideal and how that inclination affects their evaluations of asylum applications and narratives.

The Ethos, Pathos, and Logos of "Simulating" the State

Since asylum represents a metaphoric and legal unification with the state, identifying the avenues through which officials embody and perpetuate the regime when making this decision is important. For the same reason, it is helpful to illuminate steps that officers can take to dignify and respect applicants in that process. The USCIS officer constructs and simulates the state and the refugee by deciding which individuals attain protection, and by making decisions that shape policy implementation and influence law. However, asylum-seekers are not the only actors discursively constructed in determination. The same is true of those interacting with them. Indeed, the refugee is "produced through a complex process of social construction involving ourselves."¹³ To influence systems that define asylum recipients depends on "having access to formal authority, control over key resources, or the ability to discursively manage legitimacy."¹⁴ As asylum officers determine the status of refugees, they solidify their own standing as symbolic referents of the state.

An Aristotelian approach to examining how officers claim their standing as state representatives allows the analyst to view that process in terms of ethos, pathos, and logos-based appeals. In a classical Aristotelian argument, the audience is extremely important. A request may fail if spectators do not accept the legitimacy of the individual making a claim (ethos), if the contention is contrary to the beliefs of the audience (pathos), and/or if the onlookers do not accept the reasoning on offer (logos). Viewed this way, asylum officers simulate sovereignty through professionalization (state ethos), morality conditioning (governmental pathos), and legal interpretations (public logos).

The asylum officer simulates herself as the state and is legitimized as a regime arbiter by representing the government ethos. In the process of professionalization as state worker, the official creates a boundary between herself and applicants, even as she represents herself as a sovereign United States decision-maker. Put differently, by professionalizing and following established and purportedly institutionalized and routinized decision criteria, asylum officers "become" the state.

Professionalization begins even before the officer is offered a position, when she prepares herself with a graduate or law degree, fine-tunes social skills and organizational ability, and learns how to work within a bureaucratic

structure. To attain a government post, individuals must fit the mould of a successful asylum officer. By obtaining a position as such, an official becomes a market success, as revealed by financial compensation, stable work, benefits, and opportunities for career progression. Officers adopt additional symbols of professionalization to adhere to state ethos, such as wearing a badge that signals authority and security clearance.

In addition to these physical manifestations of professionalization, asylum officials learn to navigate the U.S. government's linguistic environment. For example, they master the language of the acronym: "PSG cases" (particular social group—a specific category of individuals that can be protected under United States law), "RAIO" (refugee, asylum, and international operations—the home of the Asylum Division within USCIS), and "CAT claims" (Convention against Torture—referring to a specific type of applicant assertion). Officers must also become familiar with the agency's governance structure. Professionalization legitimizes the individual as a power-holding government official. All of these capacities are simulations of state power that separate asylum-seekers and officers.

Asylum officers also simulate sovereignty and legitimize themselves as government arbiters by representing regime pathos. In doing so, they adopt a moral stance matching their employer's (the nation's) definition of refugee protection and of state authority within such decision-making. Officials learn to view themselves as insurers of refugee protection and of Americans' safety. In some cases, this role may lead officers to define themselves as patriots, demarcating what is moral and immoral in international relations. In one now-infamous historical incident, the MS *St. Louis*, a German ocean liner whose captain was seeking refuge for his 937 Jewish passengers, was turned away from the United States in 1939 and sent back to Europe, where more than a quarter of the ship's travellers perished in Nazi concentration camps. Today, that choice seems outrageous, but in 1939, officials made the decision in the name of American state sovereignty.¹⁵ Often, however, such distinctions and judgments receive little public attention, and yet they are routinely drawn. President Lyndon Johnson, for example, explicitly welcomed asylum seekers from Cuba because U.S. policy-makers then perceived it as a threat to American security. The larger point is that United States leaders have always distinguished among groups when making asylum policy decisions.¹⁶ And like all policy, these choices are often informed as much by prejudice and prevailing norms as by explicitly articulated criteria. They therefore change as popular sentiments and imaginaries shift.

During training, officers learn from torture survivors and also learn instances of national security and fraud breaches by unscrupulous applicants. Examples of both

helpless refugees and U.S. citizens harmed by terrorists play on officers' compassion as well as hubris, and together these experiences work to justify their official role as protectors. Assuming the role of guardians of national sovereignty and security in turn "provides [officials] further justification of the determination process" and reinforces a fixed notion of what defines a refugee.¹⁷

Similarly, asylum officers adhere to state pathos by presupposing the U.S. approach to international politics. USCIS asylum officers use and uphold the United States' cause-based approach to refugees. Instead of a cosmopolitan human rights-based method that views fundamental rights as grounds for asylum, the United States upholds a cause-based conceptual frame for protection.¹⁸ This focus can steer asylum officers toward a stance of prosecutors and government guarantors rather than seeking to ensure human rights and dignity for all applicants. So, for example, instead of seeing a fearful unaccompanied minor refugee from Central America as deserving basic human rights and potentially able to benefit from asylum, United States law and practice classify this person, using statist rhetoric, as a potential asylee, but also a possible national security threat. Put differently, national security rhetoric on border protection and transgressors effectively criminalizes defensive-filing applicants, which de facto erodes their basic human rights.¹⁹

Shemak has explored this tension in U.S. asylum law, and in the asylum officer role, thoughtfully and poignantly. As she has observed, "Asylum speaker testimonies rest upon their perceived truth-value. These testimonies reflect the confrontation between the nation-state and testimonial articulations as they are under constant scrutiny for their credibility, or lack thereof."²⁰

Even the resources that asylum officers employ as country-condition evidence reflect the government's political agenda.²¹ Asylum decision-makers rely on reports produced by the Department of State and Western organizations to help them make "legally sufficient" decisions, but these analyses are designed foremost to protect the political and economic interests of America and its allies. For example, the United States 2013 country report on human rights regarding its United Kingdom ally noted, "Unsuccessful applicants for asylum and stateless persons are detained [in Britain] pending deportation," without highlighting the fact that those individuals are often held as well before they are given a hearing, suggesting a U.S. effort to avoid censuring its partner as well as an effort to avoid revealing its own practices, which are identical.²²

Also, rape and domestic violence alone have not historically been grounds for asylum in the United States. They have been viewed instead as types of harm that could befall a group that could be categorized as sufficient for protection.

However, the identity of that group must be particular, immutable, and socially distinct.²³ In consequence, "Persecution that more closely resembles western discrimination against women, such as rape or domestic violence, is less readily regarded as political."²⁴ As such, instead of considering acts of rape or wartime rape as political violence, asylum officers have often historically defined this scenario as not linked to a protected status outlined in legislation and international agreements. While this practice is changing with a recent landmark decision by the Board of Immigration Appeals finding that women who had been victims of domestic violence could be considered members of protected social groups, this fact highlights the centrality of state-centred criteria in officer discretionary decision-making.²⁵ Moreover, in day-to-day adjudication of specific cases, there is no space or place for asylum officials to consider United States actions that could have contributed to the creation of refugees in the first place. Relevant law also does not ask whether the conditions confronting potential asylum-seekers constitute "an inevitable if unintended consequence of the international state system."²⁶

Asylum officers also simulate themselves as state arbiters and legitimize their roles by representing state logos concerning legal understandings of what qualifies an individual as an asylee. They are guided by requirements that "ensure that decisions are based on appropriate factors and correct application of the law."²⁷ USCIS officials translate refugee petition narratives into case facts and concentrate on determining whether an applicant's story fits protection definitions as outlined in the Immigration and Nationality Act, the Code of Federal Regulations, and relevant case law. These analyses employ country-of-origin information and "facts" to simplify complex narratives by sorting their elements into categories of supposed legal truths. In effect, asylum officers are "fix[ing] immigrant identities within networks of coded writing [to] perform instrumentalized readings of them."²⁸ Ramji-Nogales, Schoenholtz, and Schrag have offered several hypotheses concerning why there are wide differences among judicial asylum decision-makers in their decisions and contend that the statutory definitions are actually difficult to implement. For this reason, in their view, immigration judges, like asylum officers, depend inescapably, and in considerable measure, on disposition and judgment.²⁹ They have argued, therefore, that individual decision-makers can and do play distinctive, determinative roles in the asylum program's implementation and consequently its outcomes.³⁰

Recognizing State Subjectivity and Breaking Down Binaries

The United States employs asylum officers, and these individuals serve the sovereign's fraud-prevention and

security-assurance roles. Indeed, the regime delegates power to them to address those functions. However, a lack of awareness of the processes and implications of this manifestation of power through the officer's state simulation may lead to an over-emphasis or an overly broad approach to fraud prevention and security prevention. If officials are able to understand their representations of state logos, ethos, and pathos, then on an analytic level at least, they can identify the constructs and boundaries that are created by the government and simulated in their day-to-day work and adjust their frame of understanding accordingly. If officers become more aware of their state-centred subjectivity and how it influences their perceptions of threats to national security and to fraud, they can better ensure that they are not casting too wide a net, or unnecessarily inflating supposed risks. Instead, they can strive for a more nuanced understanding of what constitutes fraud and national security concerns and what are instead presuppositions created by the United States population protection agenda.

Dawson has observed that the refugee claims "process necessarily overlooks the fact that all stories—regardless of whether or not they were designed to tell the truth—are imaginative constructs shaped by the words that are available (or not) to the teller, and by the context in which they are told, heard, or read."³¹

Similarly, Powell has suggested that as displaced applicants seeking asylum move across geographical space and time, the identities and realities of their narratives are rendered more complex.³² As such, navigating the complicated reality of an applicant's story and claim for asylum within discourses of state power may prove difficult. As asylum officials exercise their authority through simulations of professionalization and state morality and legality, they routinely define refugee identity, perhaps unconsciously, as outside of the regime and a potential threat not only to national sovereignty, but also to the state-centred, state-protector identity that officers simulate.

In interpreting refugee applicant stories, "we [asylum officers] 'think like a state.'"³³ Perhaps such officials are "hungering for the 'coherent wholeness' that will allow us, in effect, to process his [the applicant's] claims, and to do so in a manner that demonstrates our altruism as the beneficent gatekeepers of a benign and manifestly multicultural nation."³⁴ Although asylum administrators may view themselves as part of a humanitarian regime, their construction of themselves as state through simulations of professionalization, governmental morality, and legality instead creates boundaries between them and their petitioners and makes it more difficult for them to perceive and address the tension implicit in their roles as protectors of human rights and of security and sovereignty.

As Powell has noted, "Naming individuals as [refugees] is a way to mark them as other, and discursively binds them with narrative expectations of displacement ... marking the displaced as other is a way of categorizing fears ... so that the other remains at a distance from ourselves."³⁵

Indeed, the United States Asylum Division is charged with ensuring that there are no breaches to national security via fraud deterrence and detection. These aims are central to officers' roles as state agents. This point was well made in a 2013 report on assessing applicant credibility in European Union asylum systems: "Societal and political context is concerned with preventing irregular immigration and ensuring that the asylum system is not abused by persons fabricating evidence. Some determining authorities are located in government departments that have the objective to prevent irregular immigration. This may influence the mind-set of decision-makers and make it more challenging to implement an institutional culture in asylum procedures that is adequately human rights and protection-oriented."³⁶

Asylum officers' actions and decisions as adjudicators are tied to their state-centred subjectivity and they may therefore, presumably unconsciously, "other" applicants, perhaps even dehumanize them in their decision-making.

It seems reasonable to separate legitimate fraud concerns and the burnout among officers that may result from too often encountering individuals seeking to defraud the United States to gain entry, from our broader contention that asylum officials routinely enact state-centred criteria in their choices. While we recognize the problem of high levels of fraudulent claims, we want here to contend that that situation makes it all the more important that asylum officers be self-consciously aware of the in-principle claim for compassionate consideration of all petitioners notwithstanding. As the old saying goes, it is imperative not to throw the baby out with the bathwater if broader claims for due process and justice are to be served in the asylum adjudication process.

That is, responsible officials must be reflective and self-aware so as to avoid falling into "thinking like a state" in binaries that categorize themselves as gatekeeper (whether of the burned out or newly minted variety) and asylum applicants as simply national security threats.³⁷ As Bhandar and Dawson have observed, "Because of the extent to which the new normal involves construing migrants as a security threat, any attempt to think critically about citizenship must begin 'by taking the position that citizenship should be viewed from the position of the immigrant, migrant, or refugee.'"³⁸

Taking this injunction seriously suggests a need for holistic adjudications that humanize the individuals seeking refuge and a new construction of the "normal" of asylum officer representations of state ethos, pathos, and logos.

This involves breaking down nation-centred dichotomies and fixed categories of identity and truth grounded only in regime-grounded, structuralist understandings.

Moving from existing binaries requires that asylum officers employ creative conceptualizations. Many officers may do this subconsciously, but in order to draw conscious attention to state subjectivity, we can conceive creative conceptualizations in the form of what Stephenson and others have described as imaginaries.³⁹ Stephenson has argued that leaders must “understand the imaginaries or ways in which others are viewing the world,” and that they can do this by employing different “facets of imagination.”⁴⁰ Stephenson quoted Green, who has observed that practising imagination “is to become able to break with what is supposedly fixed and finished, objectively and independently real. It is to see beyond what the imager has called normal or ‘common sensible’ and to carve out new orders in experience.”⁴¹ Although officers may already enact imaginaries without consciously calling their processes “imaginaries,” Stephenson has identified four analytical facets of imagination—*aesthetic, cognitive, affective, and moral*—that can be employed to recognize, understand, rethink, and reframe asylum officer state-centred subjectivity.

Challenging State Subjectivity: Aesthetic Imagination

First, the form of imagination Stephenson dubbed “aesthetic” can be employed to “capture in a few words or a brief narrative or symbol a complex reality in order to obtain a connection and shared aspiration with those with whom they [leaders] are engaged.”⁴² This type of imagination can help officers avoid the trap of focusing foremost on fraud and national security concerns. Employing aesthetic practices offers an opportunity for decision-makers to recognize intricacies and complex symbols and metaphors present in petitioner stories and to use them to broaden narrow, engrained representational practices arising from the language of state security and protection.⁴³ This can help USCIS officials look beyond the state discourse to engage applicant narratives more fully instead of fitting them into predefined legal categories. In employing aesthetic imagination, officers can consciously recognize key points of meaning or components of the applicant’s story and the complexities or different ways of knowing outside of official public discourse those narratives may convey.

For example, if an asylum officer is interviewing an applicant who claims to be a victim of domestic violence and rape, but who could not give an accurate account of the number of times she had been raped, or why she did not leave her spouse, or why she had returned to that partner previously reporting the situation, an officer may come to the

conclusion that her narrative was not sufficiently detailed and/or contradictory, and might consequently perceive the story as fraudulent, as it did not fit easily within the confines of what is generally regarded as credible testimony.

However, if one uses the lens of aesthetic imagination, one can imagine the complex realities and meanings that underlie the concept of rape, instead of classifying it simply as a type of harm that can rise to the level of persecution in certain situations. Rape is not just one harmful act; it is a violation of external and internal freedoms, an imposition of power, an act of shaming, a loss of freedom, and a psychological penetration, among other complexities. When an applicant testifies about a rape, officers can conceptualize the harm that the individual has experienced as involving multifaceted realities of power and consider that their interplay may influence the manner in which an asylum-seeker testifies. In effect, aesthetic imagination can help USCIS officials address complexities and intricate realities that do not otherwise accord neatly with established law and practice.

In addition to building more nuanced understandings of complex realities, aesthetic imagination can help officers identify symbols or metaphors in applicant narratives. Asylum officials can analyze artwork, photography, poetry, or literature regarding refugee flight in order to problematize and render visible symbols of state politics/power. This may allow decision-makers to identify instances where supposed scientific thinking could overshadow important symbols in asylum applicant realities. For example, if a Congolese woman testifies that men in uniforms came to her house and raped her, but she is not able to offer more information, an asylum officer might find identifying the particular motivations behind the harm she experienced challenging and may consider the applicant insufficiently credible and/or not able to access a protected legal justification for asylum. However, if this same official had previously analyzed symbolism in a creative work relating to an experience of a Tutsi Congolese woman who was raped by Mai Mai militiamen, for example, he or she might be able to consider that the individual applying for asylum could have been a representation of purity to those fighters, and that by raping her, they were making a political statement. This understanding of what befell the woman might offer the officer expanded opportunities for questioning that could generate testimony involving a protected ground for asylum. Analysts have developed an extensive literature concerning the implications of trauma for asylum-seekers and particularly how such events may shape their presentation of self and demeanour during the application process. For present purposes, the analytic question is one of seeking to ensure officer sensitivity to these complex realities during consideration of individual narratives and cases.⁴⁴

Challenging State Subjectivity: Cognitive Imagination

Officers can also employ cognitive imagination in their decision processes, which Stephenson has suggested involves “[sorting] through complex concerns, [understanding] them, and [suggesting] mechanisms by which they might reasonably be addressed” or “offering alternative conceptions of shared purpose and processes.”⁴⁵ This form of thinking requires expanding one’s frame to broaden collective “capacity to understand the basic assumptions and claims that underpin the arguments and worldview of others pressing alternate claims and a companion ability to develop new analytic frames that transcend those.”⁴⁶

For example, “The REAL ID Act,” which amended section 208 of the Immigration and Nationality Act, allowed officers to assess petitioners’ demeanour, candour, and responsiveness when determining the credibility of their claims.⁴⁷ This charge raised the importance to case outcomes of officials’ perceptions of refugee physical and verbal cues.⁴⁸ However, even though officers now have the legal right to deny a case on the basis of physical behaviour or verbal cues, they could nonetheless consider self-consciously their understanding of “expected” body language and human reactions and be sensitive to the fact that their perceptions do not necessarily translate to the “normal” understandings of those from different countries.⁴⁹ In addition, individuals who have suffered trauma may be more likely to be nervous and act in “non-normal” ways during an asylum interview.

That is, USCIS administrators could incorporate alternative possibilities so as to see applicant body language during interviews as states along a range of contextually appropriate behaviours, rather than dichotomized alternatives. Thereafter, instead of viewing a fidgeting applicant, or an individual who is not looking an interviewer in the eye, and concluding the person might be a threat to state sovereignty, officials can humanize the asylum-seeker’s behaviours along a spectrum of normal. This opening up of conceptual space diminishes the psychological distance between the asylum-seeker and the officer while granting a measure of deference to the petitioner. A similar example of this expansion of “normal” interpretations involves Western perspectives of gay identities. If asylum officials are able to conceive of sexual identity along a band of possibilities, then instead of pursuing lines of questioning common to Western notions, such as “coming out stories,” that may not be applicable to individuals living in societies that are extremely oppressive to gay individuals, officials could pursue alternate areas of concern without assuming that the lack of a “coming out” story signals fraud.⁵⁰

Challenging State Subjectivity: Affective Imagination

The third facet of imagination that Stephenson has described, “affective imagination,” involves a self-awareness that allows individuals to discipline themselves as they relate to other “different” individuals while practising empathy, or “[perceiving] the needs of those with whom they interact.”⁵¹ An officer with profound self-knowledge can confront how he or she constructs state subjectivities and can thereafter act on that knowledge and assist other decision-makers to develop such affective awareness and self-knowledge.

To exercise affective imagination, officers must recognize that the state and the refugee are discursively constructed and then acknowledge how USCIS officials help to create and perpetuate that boundary by constituting themselves as state. Doty has recognized the silent presence of the self in research and practice and contended that there is “a power inherent in this absence, a power that enables [officers] to present their work as authoritative, objective and neutral.”⁵² There is an unobtrusive state subjectivity in the adjudication decision, through the officer’s re-authoring of the refugee story to accord with the state legal framework. While asylum decision-makers may pride themselves on their analytical reasoning abilities and their capacity to consider sociological, psychological, legal, and other perspectives in their analyses of cases, their role as protectors of state sovereignty suggests that they are neither objective nor neutral in their adjudications. As Hardy, Phillips, and Clegg have argued, one cannot just recognize “the situatedness of knowledge.” Instead, “We need to develop new representational practices ... that reflect on the system.”⁵³ Ideally, this stance could lead to officers recognizing their state-oriented subjectivity, finding ways to mitigate it, and assisting asylum-seekers in understanding better how officers view them and why.

In short, using affective imagination could help asylum officials help themselves, but it could also assist other decision-makers to understand how their choices are shaped by state subjectivity. Officers can encourage each other to take advantage of opportunities for critical reflection and ask questions about the different influences, including the state’s authority, that guide them as they make their decisions. As Stephenson has observed, “The significance of latent and rarely articulated ideas shape how engaged actors view their world or make sense of their environments. They do so, often unconsciously, on the basis of shared narratives, assumptions and claims. Likely, many would never express those unless brought to realize self-consciously their existence and contour.”⁵⁴

Officers can and should undertake the effort to become conscious of their state-based dichotomizations and

assumptions. Gannon has suggested that taking time to ponder one's partiality through reflective writing, perhaps in the spirit of autoethnography, can be useful in revealing the power discourses that influence one's work: "Autoethnographic writing within a poststructuralist frame leans toward the ancient imperative to care for the self in a constant practice of reflective attention to the past, present, and future moments of subjectification within complex and contradictory discursive arenas."⁵⁵ USCIS officers might well benefit from experimenting with just such practices.

In addition to educating themselves and other decision-makers concerning broadening critical and reflective thinking in asylum adjudications, decision-makers can practise empathy in order to recognize applicants' perspectives and to acknowledge the fact that petitioners are unlikely to understand how officers create state subjectivity. This implies that asylum administrators must make an effort to educate applicants concerning the constructed character of the decision criteria they follow. This use of affective imagination demands empathy and it can start with assisting petitioners in understanding officers' *logos*, i.e., making a personal effort to ensure "plain language" explanations of different legal terms that guide decisions, but that refugees may not understand. For example, with certain types of asylum filings, USCIS officers are required to provide a decision to applicants after their interview. If the official does not find the petitioner to have a credible fear of persecution or torture, she must inform the individual of her decision. This may result in applicants protesting that they do not understand why the administrator did not believe them. However, at the beginning of the interview, officers could instead help the refugee appreciate that they are truly listening to their stories and recognize that they may have suffered great trauma, but that what they are specifically adjudicating is whether their claim fits within state-specific definitions. If such were undertaken, petitioners could understand better that officers are not seeking to invalidate their stories as their primary aim. Instead, they are constrained by law concerning how to interpret the narrative they hear.

Practising empathy could also include making a personal effort to ensure the petitioner understands the ethos of asylum officers. In effect, USCIS officials could help applicants grasp Western morality and how this shapes decision-making concerning their cases. For example, when officers ask petitioners many detailed questions about fraud and national security, they can inform petitioners that these are routine questions they ask all applicants, that they do consider fraud and national security issues, but that these concerns are just one part of the interview and that they are not singling them out. Additionally, administrators can explain that they recognize that structural violence or a complex

array of interrelated factors, including economic concerns, could contribute to why the applicant experienced or might encounter harm in his country. Nonetheless, they are tasked with determining whether petitioner claims represent protected concerns as specified in United States law.

Challenging State Subjectivity: Moral Imagination

Finally, Stephenson has suggested that "moral imagination" is "inevitably linked to commons-related claims demanding that its practitioner act on behalf of a collectivity beyond self."⁵⁶ USCIS officers may enact moral imagination by making a conscious effort to practise cosmopolitan thinking in adjudications and employing techniques that do not "replace the nation state [ideology] but instead integrate it."⁵⁷ Instead of conceiving of themselves as simply U.S. Department of Homeland Security officials, officers could view themselves as wearers of multiple hats with responsibility for keeping the nation secure from external threats, but also as working in partnership with asylum decision-makers around the world to ensure that eligible refugees are granted safe haven. That is, officials can avoid regarding petitioners solely within a United States-centred view and instead think of why/how refugees are created in the first place and why America subscribes to international law regarding this population. They could consider how their individual decisions affect an interconnected web of people and legitimize the refugee protection system as a whole. From this perspective, officials could consider applicants not just as individuals from another nation who represent a potential threat to the United States, but instead as people like themselves who have families, hopes, and dreams, who have allegedly undergone trauma, and who may in fact be a future neighbour or friend.

Multivocality may be used as a tool to realize this form of cosmopolitan thinking. Within the context of researcher (asylum officer, in this case) and research subject (refugee[s]) interaction, "multivocality can (a) highlight power differences in a research scenario between the researcher and participants, (b) encourage the researcher to consider how competing aspects of her or his identity shape relationships, and (c) expose underlying research vulnerabilities or tensions."⁵⁸ If officers employed multivocality during asylum adjudications, it could allow them to consider a case from multiple perspectives, including their personal identities as well as those of fellow neighbours or family members and so on, in addition to the state's stipulations. So, for example, in lieu of an administrator opening a file from a country known to have a high incidence of terrorist activity and automatically supposing that the person before them represents a potential threat to national security, or instead of picking up case documents from a nation belonging to a

visa category that has a high incidence of fraud and assuming that this new application will also be fraudulent, the official can begin review of the file by asking, how can I best ensure protection of this applicant from individuals in his country who may be persecuting him, and how can I effectively ensure protection of this individual? This orientation integrates the nation-state system as a tool through which to dignify, humanize, and value individual applicants, while at the same time recognizing the officer's need to conduct thorough security checks.

Employing moral imagination through cosmopolitan thinking and multivocality can start with something as simple as sharing and drinking water with the applicant, or chatting before the interview about love for family, to create a human-level connection, instead of countenancing a formal and de facto adversarial relationship. As Doty has contended, asylum officials need to connect to the human beings and not just the objects of the state.⁵⁹ This idea of connectedness "goes against the grain of traditional empiricism, which assumes that the knower and the known inhabit disconnected worlds."⁶⁰ Instead, this notion of relatedness requires greater depth of understanding and feeling about those about whom decision-makers write.⁶¹ It involves recognizing one's own vulnerability, and feeling the horror and sadness in the applicant stories, and not viewing petitioners as just another case to process. This orientation also demands imagining claimants as a potential U.S. citizen. Similarly, it requires increased engagement with applicants and understanding of the asylum officer as an individual witness to refugee experiences. It requires official cognizance that all applicants deserve compassion. This stance involves not simply seeking to see the petitioner's story from the perspective of the asylum seeker, or trying as an officer to put herself in the applicant's shoes, but a willingness to be vulnerable to feelings during exchanges with petitioners.

Conclusion

Examining how asylum officials define refugee identities at the micro-level can supplement high-level policy analysis regarding the role and function of the state in humanitarian protection for refugees. U.S. asylum officers decide whether applicants should receive protection. The refugee officials' understanding of who qualifies as an asylee is enmeshed with their regime's power to determine who belongs within the sovereign realm and who does not. The USCIS officer simulates this state power through professionalization, or representing national ethos, through morality conditioning, or regime pathos, and also through formal legal interpretations, or exemplifying state logos.

Since protecting the sovereign realm is central to the duties of an asylum officer, fraud and national security concerns

cannot and should not be ignored in status decisions. Nonetheless, state power creates "refugees." Asylum officers are often conditioned only to recognize their role as according legal recognition from the state in the form of asylum. As a result, de-centring to reflect critically on the role of the government in the categorization and subsequent adjudication of refugees is necessary.⁶² If officials do not consciously recognize, consider, and counter regime subjectivities, asylum applicants are likely to be seen as fact patterns and threats to state sovereignty. None of this is to suggest that other stakeholders in the process do not question regime criteria concerning asylum and otherwise work to ensure due process for claimants. Rather, it is to suggest only that asylum officers are positioned to accept and apply state law and assumptions rather than daily to inquire searchingly into them. What is at stake in this process for the state is the assurance of due process and a "fair hearing" for asylum seekers, even as against delimited criteria, and a clear role for the asylum officer that can at once help to secure that result and to allow these state actors space for considered understanding of their complex roles.

As officials listen to individual stories of displacement, they can protect national borders and simultaneously dignify refugees by employing forms of imagination to confront their own state-centred subjectivity and bias. Individual officers can and should be trained and encouraged to recognize their partiality through practices of aesthetic imagination, cognitive imagination, affective imagination, and moral imagination. They can extend their focus to envisioning complex realities and symbols in applicant narratives, broadening frames through reflective and critical thinking, practising empathy, and sensitizing other officers and applicants to their state-constructed subjectivity. These practices can help officers recognize and uncover their biases and help them identify fraud and national security threats while also upholding the United States government's ideals of human rights and freedom from oppression. Employing these forms of imagination can decrease the distance between asylum interviewers and applicants and allow refugees a genuine opportunity to receive a full hearing of their stories.⁶³

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Notes

- 1 For more on the historical evolution of U.S. immigration and asylum law, see April Shemak, *Asylum Speakers: Caribbean Refugees and Testimonial Discourse* (New York: Fordham University Press, 2011): 5–8.
- 2 Cynthia Hardy, Nelson Phillips, and Stewart Clegg, “Reflexivity in Organization and Management Theory: A Study of the Production of the Research ‘Subject,’” *Human Relations* 54 (2001): 541.
- 3 Ulrich Beck, *Twenty Observations on a World in Turmoil* (Cambridge, MA: Polity, 2012), 135.
- 4 *Ibid.*, 137.
- 5 Cynthia Weber, *Simulating Sovereignty: Intervention, the State and Symbolic Exchange* (New York: Press Syndicate of the University of Cambridge, 2005).
- 6 Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, ed. Colin Gordon, trans. Colin Gordon, Leo Marshal, John Mepham, and Kate Sober (New York: Pantheon, 1980). In Weber, *Simulating Sovereignty*, 33.
- 7 Weber, *Simulating Sovereignty*, 34.
- 8 *Ibid.*
- 9 Jean Baudrillard, *Simulacra and Simulation*, trans. Sheila Glaser (Ann Arbor: University of Michigan Press, 1995). In Cynthia Weber, *Simulating Sovereignty*.
- 10 Weber, *Simulating Sovereignty*, 6.
- 11 *Ibid.*
- 12 *Ibid.*, 28.
- 13 Hardy, Phillips, and Clegg, “Reflexivity in Organization and Management Theory,” 532.
- 14 *Ibid.*
- 15 Carol Bohmer and Amy Shuman, *Rejecting Refugees: Political Asylum in the 21st Century* (New York: Routledge, 2008), 1.
- 16 Philip Schrag, *A Well-Founded Fear: The Congressional Battle to Save Political Asylum in America* (New York: Routledge Publishers, 2000).
- 17 Hardy, Phillips and Clegg, “Reflexivity in Organization and Management Theory,” 542.
- 18 Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca, NY: Cornell University Press, 2013).
- 19 Juliet Stumpf, “Introduction,” in *Social Control and Justice Crimmigration in the Age of Fear*, ed., Maartje van der Woude, and Joanne van der Leun, 7–16 (The Hague: Eleven International Publishing, 2013); César Cuauhtémoc García Hernández, “Creating Crimmigration,” *Brigham University Law Review* 6 (2013): 1457–1515.
- 20 April Shemak, *Asylum Speakers: Caribbean Refugees and Testimonial Discourse* (New York: Fordham University Press, 2011).
- 21 Bohmer and Shuman, *Rejecting Refugees*, 16.
- 22 United States Department of State, *Country Reports on Human Rights Practices for 2013: United Kingdom 2013 Human Rights Report* (Washington, DC: Bureau of Democracy, Human Rights and Labor, 2013), 6.
- 23 *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014).
- 24 Bohmer and Shuman, *Rejecting Refugees*, 6.
- 25 Amy Grenier, “Landmark Decision on Asylum Claims Recognizes Domestic Violence Victims,” *Immigration Impact*, 2 September 2014, <http://immigrationimpact.com/2014/09/02/landmark-decision-on-asylum-claims-recognizes-domestic-violence-victims/>.
- 26 Emma Haddad, *The Refugee in International Society: Between Sovereigns* (Cambridge, UK: Cambridge University Press, 2013), 2.
- 27 United States Citizenship and Immigration Services, *Asylum Officer Basic Training—Decision Writing Part II: Legal Analysis* (Washington, DC: Refugee, Asylum and International Operations Asylum Division, 2006), 4.
- 28 Carrie Dawson, “On Thinking Like a State and Reading (about) Refugees,” *Journal of Canadian Studies* 45, no. 2 (2011): 61.
- 29 Andrew Schoenholtz, Philip Schrag, and Jaya Ramji-Nogales, *Lives in the Balance: Asylum Adjudication by the Department of Homeland Security* (New York: New York University Press, 2014), 208–11.
- 30 Jaya Ramji-Nogales, Andrew Schoenholtz, and Philip Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform* (New York: New York University Press, 2011).
- 31 Dawson, “On Thinking Like a State and Reading (about) Refugees,” 62.
- 32 Katrina Powell, “Rhetorics of Displacement: Constructing Identities in Forced Relocations,” *College English* 74 (2012): 302.
- 33 Nandita Sharma, “Canadian Nationalism and the Making of a Global Apartheid,” *Women and Environment* 68–9 (2005): 9. In Dawson, “On Thinking Like a State and Reading (about) Refugees,” 69.
- 34 Dawson, “On Thinking Like a State and Reading (about) Refugees,” 69.
- 35 Powell, “Rhetorics of Displacement,” 318.
- 36 The United Nations Refugee Agency and the European Refugee Fund of the European Commission, *Beyond Proof: Credibility Assessment in EU Asylum Systems* (Brussels: United Nations High Commissioner for Refugees, 2013), 39.

- 37 Dawson, "On Thinking Like a State and Reading (about) Refugees," 64–70.
- 38 Davina Bhandar, "Renormalizing Citizenship and Life in Fortress North America," *Citizenship Studies* 8, no. 3 (2004): 275. In Dawson, "On Thinking Like a State and Reading (about) Refugees," 64.
- 39 Max Stephenson, Jr., "Exploring the Connections among Adaptive Leadership, Facets of Imagination and Social Imaginaries," *Public Policy and Administration* 24, no. 4 (2009): 417–35.
- 40 *Ibid.*, 424.
- 41 Maxine Greene, *Releasing the Imagination: Essays on Education, the Arts, and Social Change* (San Francisco: Jossey-Bass Publishers, 1995), 19. In Stephenson, "Exploring the Connections among Adaptive Leadership," 424.
- 42 Stephenson, "Exploring the Connections among Adaptive Leadership," 426.
- 43 Roland Bleiker, *Aesthetics and World Politics (Rethinking Peace and Conflict Studies)* (New York: Palgrave Macmillan, 2009).
- 44 John Wilson and Boris Drozdek, eds., *Broken Spirits: The Treatment of Traumatized Asylum Seekers, Refugees, War and Torture Victims* (New York: Brunner-Routledge Publishers, 2004); Claudia Tazreiter, *Asylum Seekers and the State: The Politics of Protection in a Security Conscious World* (Aldershot, UK: Ashgate Publishing, 2004), especially 189–210.
- 45 Bleiker, *Aesthetics and World Politics*, 427.
- 46 *Ibid.*
- 47 REAL ID Act of 2005, Pub.L. No. 109–13, 119 Stat. 231 § 101(a) (3), amending new INA § 208(b)(1)(B)(iii), codified at 8 USC § 1158(b)(1)(B)(iii) (2012).
- 48 Audrey Macklin, "Truth and Consequences: Credibility Determination in the Refugee Context," in *International Association of Refugee Law Judges Conference*, 134–40 (Ottawa: International Association of Refugee Law Judges, 1998).
- 49 Cécile Rousseau, François Crépeau, Patricia Foxen, and France Houle, "The Complexity of Determining Refugee-hood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board," *Journal of Refugee Studies* 15, no. 4 (2002): 43–70.
- 50 Rachel Lewis, "Lesbians under Surveillance: Same-Sex Immigration Reform, Gay Rights, and the Problem of Queer Liberalism," *Social Justice: A Journal of Crime, Conflict, and World Order* 37, no. 1 (2010): 90–106.
- 51 Stephenson, "Exploring the Connections among Adaptive Leadership," 428.
- 52 Roxanne Doty, "Autoethnography: Making Human Connections," *Review of International Studies* 36 (2010): 1048.
- 53 Hardy, Phillips, and Clegg, "Reflexivity in Organization and Management Theory," 555.
- 54 Stephenson, "Exploring the Connections among Adaptive Leadership," 423.
- 55 Susanne Gannon, "The (Im)Possibilities of Writing the Self-Writing: French Poststructural Theory and Autoethnography," *Cultural Studies, Critical Methodologies* 6 (2006): 480.
- 56 Stephenson, "Exploring the Connections among Adaptive Leadership," 429.
- 57 Beck, *Twenty Observation on a World in Turmoil*, 137.
- 58 Robert Mizzi, "Unraveling Researcher Subjectivity through Multivocality in Autoethnography," *Journal of Research Practice* 6 (2010): 7.
- 59 Doty, "Autoethnography," 1048.
- 60 Michael Jackson, *Paths toward a Clearing: Radical Empiricism and Ethnographic Inquiry* (Bloomington: Indiana University Press, 1989), cited in Caroline Ellis, "Emotional and Ethical Quagmires in Returning to the Field," *Journal of Contemporary Ethnography* 24 (1995): 94.
- 61 Ruth Behar, *The Vulnerable Observer: Anthropology That Breaks your Heart* (Boston: Beacon, 1997), 165.
- 62 Michel Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government*, trans. David Fernbach (Malden, MA: Polity, 2011).
- 63 The lead author of this article has designed and successfully offered a training program for fifty asylum officers at a DHS-USCIS regional office based on the argument offered here. Division leaders have expressed interest in providing the workshop to additional asylum decision-makers at other offices.

