Aziz wanted to meet at a small gay bar in the center of a Dutch university town that was the closest population center to his asylum center (AZC), but the bar was closed. After I suggested we check out a café across the street, he said he knew of only one other gay bar in the town. When I looked online, it too was closed. He followed me and our mutual friend, Gloria, into the café, but finding the seating too close to the well-populated bar area, we moved outside to brave the chill and wind in order to conduct our interview. I asked if he was comfortable sitting there.

“I have been uncomfortable for more than four years,” he replied, smiling only after a moment.

Aziz was from Kabul and left after his boyfriend was murdered by his own family in early 2014. The boyfriend’s family had threatened to kill Aziz too, and after he fled, they beat Aziz’s mother and siblings. He applied for asylum in the Netherlands but was rejected. After his rejection, while still in the asylum camp, he got into contact with an LGBT organization on the advice of a psychologist. They told him that he could apply for asylum based on his fear of persecution for being gay, and so he appealed his asylum decision on these grounds. He was told to gather as much documentation as he could; this was the way to build credibility for his story. He retrieved documents verifying that a tribal council had approved his boyfriend’s family’s request to kill Aziz on sight.

Again, his application for asylum was rejected. The letter he received from the asylum judge outlined the reasoning for the decision: The judge had deemed his story not credible because he doubted the authenticity of Aziz’s claim that he was gay, as he only informed the court of this fact after he had been initially rejected for asylum. Also, the court did not find credible the document Aziz’s family member had sent regarding the mortal danger of his return to Afghanistan because the judge did not believe an Afghan family member would help and support Aziz in this way, because he is gay.

The last I was in contact with Aziz, he had been sent to a “Freedom restricting location,” one of the facilities housing rejected asylum applicants while they await deportation from the Netherlands. However, Aziz’s case lies in limbo for now: he cannot be legally deported because Afghanistan is considered by the Dutch government to be unsafe for LGBT individuals.

The logic is dizzying, (nauseatingly so) but not unusual. To avail one’s self of the protection afforded by asylum involves the telling of a narrative credible to the asylum system, using the ideological idioms of sexuality, experience, and culture that are intelligible and
recognizable to Dutch officials. This necessitates a very explicit “performance” of gender and sexuality, (which Judith Butler (1990) explains as involving identity being produced, regulated, and enacted repetitiously) and the stakes of performing “LGBT Asylum Seeker” correctly are immensely high.

A 2011 report published in the Netherlands called “Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe” stated that approximately 200 asylum seekers apply in the Netherlands each year citing fear of persecution in their home countries for their sexual orientation or gender identity (Jansen and Spijkerboer 2011). The report estimates that some 10,000 LGBT related asylum applications are submitted in the European Union annually. How does the process of asylum exclude those who do not conform to a narrow set of identities and experiences? The Netherlands has done away with problematic de jure requirements that still function in other EU member states, including “the discretion requirement” (wherein an applicant’s case will be denied if they are judged able to cover up their sexual orientation or gender identity to avoid persecution,) and a requirement that the applicant’s home country must specifically legally criminalize “homosexuality” (while an individual may still be prosecuted for “crimes against religion” or “perversion,” as is in the case in Egypt and elsewhere; or where non-state actors, such as community or militia members, constitute a threat to LGBT individuals). However, as these obstacles are removed, asylum cases have come to rely heavily on the credibility of the applicant (Jansen and Spijkerboer 2011).

There have been various cases across Europe and in the Netherlands in which an asylum claim is denied because the applicant’s appearance and story did not fit stereotypes of what an LGBT individual must look like, act like, know about and experience in their home country. A young Pakistan man’s asylum claim was rejected because he did not cite any great personal struggle in a “coming out” process, and the courts did not believe that he could be gay in Pakistan without facing such a struggle (Jansen and Spijkerboer 2011). Others have been denied because the applicants were not familiar with the laws on homosexual behavior, or with the gay and lesbian bars in their home countries; applicants who are married to a person of another sex, or who have children, have also been denied (Jansen and Spijkerboer 2011). These examples, among others, show that not only are stereotypes about LGBT individuals used in adjudicating these cases, but also preconceptions about the home countries and cultures of the applicants.

These individual asylum decisions are not made in a vacuum, but are informed and constricted by national discourses and policies. Refugees are exceptions to closed-door immigration policies, designated as such because of their perceived position as suffering bodies being denied their human rights, in need of compassion. They are, (if their stories are deemed credible) what Mariam Ticktin calls “morally legitimate:” deserving of rights, worthy of refuge; and indeed the system is morally compelled to give it to them. Of course, as Ticktin argues, from this system “noticeably absent are the laboring bodies, the exploited bodies: these are not the exception, but the rule, and hence disqualified as morally legitimate.” (Ticktin 2011, 4) The mundane suffering of the poor and working class does not give one the right to asylum in Europe.

Whereas Ticktin sees “regimes of care” as imagining that a suffering body is imagined as a “victim without a perpetrator,” I argue that the LGBT asylum claimant is intrinsically tied to a perpetrator: her/his culture. Sally Engel Merry discusses a troubling usage of the notion of culture in the “discursive world
of human rights”, in which “culture” seems to govern lives in “traditional” societies-- those that are presumed stagnant, non-secular, and resistant to change (Ewing 2008; Merry 2006, Volpp 2000, Kapur 2002). These discourses work to position “the West” as “the site for authoritative condemnation” (Puar 2007) from which it gains the authority to inscribe the definition of human rights for the rest of the world. Can we extend Gayatri Spivak's poignant phrase, “white men are saving brown women from brown men” (Spivak 1988) to “white liberals are saving brown queers from brown men?”

**Infiltrating “Fortress Europe”**

The last thirty years in the Netherlands (as in much of the rest of Europe) has seen a resurgence of xenophobic, populist nationalism, along with continuing waves of migration, most notably from the former Dutch colonies as well as Turkey and Morocco. Dutch nationalists warn of the threat to Dutch culture and its mythic tradition of liberalism, integral to its “national imaginary,” with a particular anxiety concerning Islam and Muslim migrants (Ewing 2008). In the last decade or so, with the Muslim population exceeding a million, journalistic and scholarly reports on the supposed exceptional homophobia of Muslim migrant communities have ignited a public discourse and moral panic over “tolerating intolerance.” This panic has been amplified by the dramatic increase in refugees and migrants to Europe since 2015.

In a social and political climate that has produced politicians such as Pim Fortuyn, who crusaded to end immigration of Muslims to the country, and his successor, Geert Wilders, who has campaigned to ban the Qu’ran and to “send Moroccans back,” Islamophobia is a real political force. While both politicians are considered “far-right” and “extremist” by many, their platforms have allowed their messages about the threat of “Islamization of the Netherlands” to shape public discourse.

Despite proclaimed commitments to the universality of human rights, in practice, refugees are often met with suspicion. Muslim migrants in particular face the suspicion that their loyalty lies elsewhere, and therefore assimilation into the (presumed homogenous) “native” population’s values and ways of life will be more difficult or impossible. Political controversies across Europe regarding “the veil” illustrate this suspicion, constructing a woman’s choice of dress as the ultimate symbol of un-assimibility.

Meanwhile, “LGBT” asylum, it seems, may be a type of exception to this anxiety over Muslim migration. Even in a speech railing against “the rising tide of Islam,” and calling for the halt of migration to the Netherlands, Wilders mentions homosexuals being jailed and threatened in Iran, and stipulates that, “when it comes to asylum seekers, it’s a different story.” (Dowling 2013) It may be that they are tolerable because they are seen to somehow manifest subversion of Islam, a religion that has been stamped exceptionally and uniquely homophobic in public imagination. What is seen as their exceptionalism within their faith makes them desirable members of the nation. Additionally, they work as a buffer against accusations of racism, as their admission seems to say: “We’re not racist against Middle Easterners—look at these queer Muslims we saved from their culture.”

Of course, LGBT asylum (and asylum in general) involves moral panics of its own—in particular the specter of the fraud: an individual (often imagined in large numbers, or as an impending onslaught) who lies about their experiences (in this case about being LGBT) in order to take advantage of European welfare systems and economic opportunities. Much of the resistance to changing current asylum law seems to center on this
anxiety over “the fraud.” Underlying this moral panic are ideas about who is entitled to what resources, what are “authentic” expressions of sexuality, and an anxiety that the admittance of an individual is somehow directly “taking” from another.

“So, what, just believe everybody?”

Well… yes. I interviewed a journalist who was suing a town’s mayor for barring him from covering protests by asylum seekers at a nearby asylum center, and he wondered aloud what the solution to this credibility problem in admitting refugees might be. We had just been laughing at the idea, an image we’d described together, of a judge telling an asylum seeker, “you’re not gay enough. Sorry.” It is laughable, indeed, on many levels, starting with the ethnocentric view of sexuality that this system presumes.

Because the asylum process requires that a judge in the Netherlands determine if an asylum seeker is credible in her/his assertion that she/he is, 1) eligibly LGBT, and 2) justifiably fearful of persecution in her/his home country, there is an embedded assumption not only of the universality of the sexual categories and experience of persecution, but that both items may be immediately recognizable and understandable universally, or more specifically, by this single judge. As Foucault (1978) explains, the concepts of “homosexual” but also “heterosexual” are relatively recent ways of understanding personhood, coming out of late nineteenth century Western medical and judicial discourses. In the past century, anthropologists have detailed and catalogued various practices, social functions, and ways of talking about and understandings of sex, sexuality, and gender across the globe that rarely conformed to the stable identities reified in the “modern” period.

Of course, it’s not as simple as “believing everybody,” and the problem goes well beyond the particular and peculiar position of asylum seekers who are sexual minorities. This is the problem Europe is now facing (and other countries across the Middle East, Central Africa, and South Asia in particular have been facing for quite some time). Who gets to stay? Who is, to borrow Agamben’s phrasing, “let live”? Who is left, and let die? The only humane answer that can be given is summarized by Melissa Autumn White:

“…the solution to the geopolitical disparities organized through the nation-state form and its hierarchies of citizenship cannot be ‘citizenship for all.’ Rather, it must be the dissolution of borders and the dismantling of the differential rights that the categories of citizen, migrant, refugee, undocumented, and so on hold in place. To put it succinctly, as Nicolas De Genova does: ‘if there were no borders, there would indeed be no migrants—only mobility.’” (2014, 985)

Citizenship and refugee status are necessarily and by nature exclusionary. Working to expand the definition of a refugee, expand our definition of who fits in the categories of “LGBT,” still reproduces the hierarchies inherent in this system. Such limited reform still has us sorting piles of the worthy and unworthy, the “morally legitimate” and illegitimate, and credible and the frauds.

References


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