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Administrative Violence: First Instance Decision-Making in Sexual Diversity Asylum Claims

Alex Powell*

Public law scholarship has a tendency to focus on the high-profile and the precedential. We have embedded this into our legal education systems, encouraging students to analyse appellate cases and focus on moments which make law. As a result of this, the experiences of people coming face-to-face with the administrative state—and the ways in which these experiences impact their lives, rights, and realities—are given limited consideration in academic and student facing literature. A snapshot of the life-changing consequences these interactions can have was brought to light in some of the harrowing tales which emerged from the Windrush scandal, where ill-conceived administrative policy decisions resulted in people, lawfully resident in the UK, being denied fundamental rights such as access to healthcare.¹ To remedy some of the omissions of previous scholarship, this chapter focuses on first instance decisions—that is decisions which initially decide whether or not a claimant is able to rely on a given legal entitlement—with a view to shedding light on how administrative decision-making systems promote or deny access to legal rights.

This chapter argues that, in a context where the realisation of rights is dependent upon recognition by administrative institutions, greater analysis of how people experience first-

* Lecturer in Law, Oxford Brookes University. Contact at a.powell@brookes.ac.uk

¹ See Generally: Gentleman, A. (2019), *The Windrush Betrayal: Exposing the Windrush* London: Faber Publishing.

instance decision-making is required.² To draw attention to the significance of first-instance decision-making for the operation of public law, I draw on a case study of asylum claims by sexually diverse people.³ This case study is informed by eight semi-structured interviews with sexually diverse people who secured refugee status in the UK based on their sexual diversity. Interviews explored how participants understood their own sexual diversities, as well as how they had experienced the UK asylum process. These self-understandings were then compared and contrasted with the 2016 Asylum Policy Instruction: ‘Sexual Orientation in Asylum Claims’⁴ in order to understand the extent to which UK asylum policy and practice corresponds to the heterogenous lived realities of sexually diverse asylum seekers.⁵ Narratives also reflected on the forms of violence the UK asylum process itself produces. These examples of violence form the subject matter of this chapter. The chapter proceeds over three sections. Section one sets out a working definition of administrative violence building on the work of Arendt.⁶ Section two sets out the law and policy framework of asylum in the UK. Finally, section three explores examples of first-instance decision-making through the framework outlined in section one.

1. Administrative Violence

² Wade and Forsyth effectively chronicle the huge expansion of the administrative state over the past two centuries. See: Wade, W. and Forsyth, C. (2014) *Administrative law* (11th Edn), Oxford: Oxford University Press, pp 4-13.

³ For discussion of the term sexually diverse see: Powell, A. (2021) ‘Sexuality Through the Kaleidoscope: Sexual Orientation, Identity and behaviour in Asylum Claims in the United Kingdom’, *Laws*, 10(4) 90: 1-20.

⁴ UK Visas and Immigration, ‘Asylum Policy Instruction: Sexual Orientation In Asylum Claims’, (Home Office 2016)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf> (Accessed 31/08/2021).

⁵ See Generally: Powell, A. (2021) *Queering Refugee Law: A Study Sexual Diversity in Asylum Policy and Practice*. PhD Thesis: City, University of London.

⁶ See Generally: Arendt, H. (1963) *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Viking University Press; Arendt, H. (1970) *On Violence*. New York: Hancourt Press.

Administrative justice literature has thought through both the nature and quality of decision-making regarding state entitlements.⁷ As Halliday argues, research of this nature focuses on the challenges and issues that lead to poor decision-making.⁸ Because such research focuses on the idea that decision-makers are rational, it proposes solutions that are premised on the provision of better information and skills. This is useful, but it leads to a failure to recognise the role of emotions and other non-rational factors in decision-making.⁹ I offer the supplement of administrative violence to provide a language within which harms caused to claimants can be articulated.

Administrative violence is marked out by manifesting in the form of ‘daily, mundane, business as usual acts.’¹⁰ To fully understand this, it is also worth noting that violence can encompass psychological injury as well as restrictions to freedom and goes far beyond the simple idea of physical harm that is most frequently associated with the term violence. As Arendt argued, one of the most unsettling things about violence is its mundanity.¹¹ Indeed, the form of government most often permitted to dispense violence is ‘bureaucracy or the rule of an intricate system of bureaus in which no men... can be held responsible, and which could properly be called rule by nobody.’¹² Bauman and Butler have insightfully explored how bureaucratic mindsets contribute to unjust distributions of violence.¹³ For our purposes,

⁷ See Further: Adler, M. (2004), ‘A Socio-Legal Approach to Administrative Justice’ 25:4 *Law and Policy* 323; Adler, M. (2010), *Administrative Justice in Context*. London: Hart Publishing.

⁸ Halliday, S. (2021) ‘Administrative Justice and Street-level emotions: Denial in Entitlement decision-making. Oct, *Public Law* 727, 727-732.

⁹ *Ibid*

¹⁰ Spade, D. (2015) *Normal Life: Administrative Violence, Critical Trans Politics, & The Limits of Law*. Durham & London: Duke University Press. P 151.

¹¹ Arendt H (1963), ‘Eichmann In Jerusalem’ *The New Yorker* <<https://www.newyorker.com/magazine/1963/02/16/eichmann-in-jerusalem-i>> [accessed 6 April 2020]. See Also: Powell, A. (2018) ‘Officials Working Within Hostile Government Departments Are Not Free From Blame’ *The Conversation* <<https://theconversation.com/officials-working-within-hostile-government-departments-are-not-free-from-blame-98741>> [Accessed 23 March 2021]

¹² Arendt, H. (1970) *On Violence*. New York: Hancourt Press. P 38.

¹³ See: Bauman, Z. (1988) ‘Sociology after the Holocaust’ 39:4 *The British Journal of Sociology* 469-497; Butler, J. (2009) *Frames of War: When is Life Grievable*. London & New York: Verso.

it is enough to say that, through putting process, objectivity, and efficiency above human needs, bureaucracy causes forms of harm and violence. The concept of administrative violence draws on multiple strands of Arendt's¹⁴ work to be defined as '*injury sustained through the implementation of instrumental, formal processes which are justified as a social necessity, and operating at a level of abstraction, where attribution of individual responsibility is obscured or entirely denied.*'¹⁵

Bureaucratic processes such as refugee status determination involve multiple sites at which administrative violence may be enacted. As Halliday has argued, '[b]ureaucracies are central to the delivery of law in modern society.'¹⁶ Drawing on the work of Arendt, it becomes clear that within bureaucratic administrative systems, violence is frequent. Indeed, 'the relationship between legal interpretation and the infliction of pain remains operative even in the most routine of legal acts.'¹⁷ The very function of administrative determinations as authoritative, purportedly objective, acts often leads to the coercive infliction of force on people.¹⁸ Think, for example, of the legal process of assigning a sex to a baby. This initially appears harmless yet may later present life-changing consequences, some of which are rightly described as violent, in adulthood.¹⁹

The potential of public law issues to enact violence is well explained in the description of modern administration as revolving around, '[p]recision, speed, unambiguity,

¹⁴ See Generally: Arendt, H. (1970) *On Violence*. New York: Hancourt Press.

¹⁵ Powell, A. (2021) *Queering Refugee Law: A Study Sexual Diversity in Asylum Policy and Practice*. PhD Thesis: City, University of London. P 347.

¹⁶ Halliday, S. (2021) 'Administrative Justice and Street-level emotions: Denial in Entitlement decision-making', *Public Law*, Oct: 727-46, 727.

¹⁷ Cover, R. (1986) 'Violence and the World', *Yale Law Journal*, 95: 1061-1629, P 1607. See also: Butler, J. (2020) *The Force of Nonviolence*. London and New York: Verso, pp 122-141.

¹⁸ See further: Powell, A. (2018) 'Officials Working Within Hostile Government Departments Are Not Free From Blame' *The Conversation* <<https://theconversation.com/officials-working-within-hostile-government-departments-are-not-free-from-blame-98741>> [Accessed 23 March 2021].

¹⁹ See further: Spade, D. (2015) *Normal Life: Administrative Violence, Critical Trans Politics, & The Limits of Law*. Durham & London: Duke University Press. See Also: Baars, G. (2019) 'Queer Cases Unmake Gendered Law, or, Fucking Laws Gendering Function' 45:1 *Australian Feminist Law Journal* 15-62.

knowledge of the files [or processes] ... a discharge of business according to calculable rules and “without regard for persons”²⁰. As this suggests, the administrative state seeks to produce ‘objective’ outcomes from human interactions. Such issues become a concern for public law scholarship when they impact people’s ability to access their rights. Central to this conception of administrative violence is a recognition of how the day-to-day processes of the contemporary administrative state figure as acts of harm. The asylum system can enact administrative violence because it is a formal process justified on the basis of a need to detect and deny “false claims”.²¹ This process operates at a high-level of abstraction, with decisions being rendered as the view of the Home Secretary.²² The result of this abstraction is that no individual who interacts with a claimant is required to recognise the full consequences of their role. This is despite the fact that, in possessing the power to deny an asylum claim which may result in the deportation of the claimant, decision-makers are able to enact forms of power which can push the claimant into what Agamben called ‘bare life.’²³ Indeed, as Agamben poses, ‘the refugee causes the secret presupposition of the political domain—bare life—to appear for an instant within that domain’.²⁴ Essentially, what Agamben means here is that the refugee, in needing to prove their entitlement to status, and its associated rights, shows the reality that anyone can fall outside of the protective framework of rights at any time, if they lose the protection of a state. It is for this reason that the potential for administrative violence—the ticking of the box literally a withdrawal of protection—should be a central concern of public lawyers.

²⁰ Gerth, H & Mills C.W. (eds) (1970) *From Max Weber: Essays in Sociology*. Oxford: Routledge pp. 214-215.

²¹ See: Jubany, O. (2011) ‘Constructing Truths in a Culture of Disbelief: Understanding Asylum Screening from Within’ 26:1 *International Sociology* 74-94.

²² Bauman explored how processes of abstraction and moral distancing distorted and disarmed the moral objections of civil servants assigned to administer the Holocaust within Nazi Germany. See Further: Zygmunt Bauman, ‘Sociology after the Holocaust’ (1988) 39 *The British Journal of Sociology* 469-497, PP 485-497.

²³ See for definition: Agamben, G. (1998) *Homo Sacer: Sovereign Power and Bare Life*. Stanford: University Press 1998) PP1-12.

²⁴ *ibid* P131.

In the case of asylum claims made due to a fear of being persecuted on the basis of sexual diversity, administrative violence often includes symbolic violence. Bourdieu defines symbolic violence as being a ‘gentle, invisible violence, unrecognised as such.’²⁵ He situates it as relating to the issue of ‘mis-recognition’.²⁶ This issue of mis-recognition is appropriate for understanding decision-makers’ expectations of what sexually diverse identities look like.

²⁷ In this sense, one of the forms of violence within the asylum system arises from the imposition of dominant ways of being on marginalised people.

2. The Law, Policy and Politics of Refugee Status Determination in the UK

The UK is a signatory to the 1951 Refugee Convention²⁸ and its 1967 Protocol.²⁹ The Convention defines a refugee at Article 1A(2) as,

A Person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country...³⁰

The Convention definition of a refugee was brought into UK law by the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. Accounting for this, the Home secretary has obligations in both domestic and international law to recognise as refugees—entitled to all of the protections provided for under the Convention³¹—all people

²⁵ Bourdieu, P. (1992) *The Logic of Practice*. London: Polity, P 127.

²⁶ *ibid*

²⁷ See for an interesting discussion: Topper, K. (2002) ‘Not so Trifling Nuances: Pierre Bourdieu, Symbolic Violence, and the Perversions of Democracy’ 8:1 *Constellations* 30-56.

²⁸ Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137.

²⁹ Protocol Relating to the Status of Refugees, 31 January 1967, 606 UNTS 267.

³⁰ Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137, Article 1(A)2.

³¹ See further: Hathaway, J. (2010) *The Rights of Refugees Under International Law*. Cambridge: Cambridge University Press.

meeting the definition outlined above.³² However, the rights of refugees have become a deeply political issue. Maley argues there is often no connection between the Convention definition and common language invocations of the term.³³ The impact of political discourses on the administration of refugee law in the UK is further enhanced by the alarmist interventions of politicians and the press regarding the numbers of refugees and other migrants entering the UK.³⁴

Yeo has charted how policies such as the net migration cap have contributed to further politicisation of refugees by failing to distinguish between immigration and asylum.³⁵ This unhelpful conflation was at its most clandestine in August 2020 when a Home Office Twitter account posted a video which referred to lawyers representing asylum seekers who had come to the UK—often by unlawfully crossing the channel³⁶—as ‘activist lawyers’.³⁷ This suggested that lawyers functioned only to delay the government’s legitimate efforts to remove the claimants. This kind of communication gives the impression that all asylum

³² Note that since this piece was written the Nationality and Borders Act has come into law resulting in reasonably significant, but, as yet undefined, changes to the legal process. See: Prabhat, D; Rifath, R; Singleton, A; Ziegler, R; Powell, A; Sedacca, N (2022). ‘Reconsidering Asylum: Is it for those who need protection’ available at <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2022/05/reconsidering> (accessed 21/07/2022).

³³ Maley, W. (2016) *What is a Refugee?* Oxford & New York: Hurst & Company, PP 37-42. See Also: Campbell, J. (2017) *Bureaucracy, Law and Dystopia in the United Kingdom’s Asylum System*. London & New York: Routledge, PP 16-98

³⁴ See Further: Gabrielatos, C & Baker, P. (2008) ‘Fleeing, Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press 1996-2005’ 36:1 *Journal of English Linguistics* 5-38.

³⁵ Yeo, C. (2020) *Welcome To Britain: Fixing Our Broken Immigration System*. London: Biteback Publishing PP 15-27; PP 109-145. See also: Dustin, M. (2018) ‘Many Rivers still to Cross: The Recognition of LGBTQI Asylum in the UK’ 30:1 *International Journal of Refugee Law* 104-127, PP 107-109.

³⁶ The Refugee Convention protects the rights of those needing asylum from prosecution or detriment suffered as a result of unlawful entry provided that certain other conditions are met.. See Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137. Article 31.

³⁷ See: Hyde, J (2020). “Activist” Tweet Deleted – As Number 10 Targets “Loudmouthed Lawyers” <<https://www.lawgazette.co.uk/news/activist-tweet-deleted-as-number-10-targets-loudmouthed-lawyers/5105445.article>> Accessed 4 May 2022. In the spirit of Diverse Voices in Public Law, I argue, it is increasingly important that analysis of social media posts by government agencies and politicians is taken seriously. Social media has taken on exceptional power to affect law and politics. In another context, I have argued that the framing of Brexit discourses may come to undermine accepted conceptions of the UK constitution, such as the Sovereignty of Parliament. See Further: Powell, A (2019) “‘The Will of the People’: The UK Constitution, Parliamentary Sovereignty, and Brexit” in Ahmed, T & Fahey, E. (Eds), *On Brexit: Law, justices and Injustices*. Cheltenham & Northampton: Edward Elgar.

seekers coming to the UK are illegitimate and that the government is simply being obstructed by lawyers.³⁸

The same attitude to claims is present in one immigration judge's suggestion that sexual diversity claims are 'easy to make and impossible to disprove.'³⁹ On the contrary, sexual diversity asylum claims have a higher rejection rate than claims made on other grounds.⁴⁰ Prior to the 2010 *HJ (Iran) and HT (Cameroon)* judgment, Rainbow Migration (Formerly known as: The UK Lesbian and Gay Immigration Group) identified a 98-99% rejection rate for claims based on sexual diversity.⁴¹ This was the result of 'expected voluntary discretion',⁴² which meant that decision-makers could find that an asylum claimant could be returned to their country of origin and keep their sexual diversity a secret to avoid persecution. This expectation was put by one Australian immigration judge as being a 'reasonable expectation that persons should, to the extent that it is possible, co-operate in their own protection.'⁴³ In the UK, the key test was whether the claimant 'would...adapt his behaviour so as to avoid persecution in...a way which was reasonably tolerable to him.'⁴⁴ As Dustin points out, this test could be viewed as a catch all excuse for rejection.⁴⁵ The idea of discretion was vociferously criticised and was eventually recognised by the Supreme Court as being incompatible with a 'fundamental

³⁸ See Further: Juss, S. (2015) 'Sexual Orientation and the Sexualisation of Refugee law' 22:1 *International Journal on Minority and Group Rights* 128-153, PP147-151.

³⁹ *Krasniqi v Secretary of State for the Home Department* [2001] UKIAT 01TH02140, [2].

⁴⁰ Recently released 'experimental statistics' covering LGBT asylum claims indicated a grant rate of 46% for claims involving sexually diverse asylum seekers. This represents a significant improvement from the 22% grant rate recorded in 2017. But was still below the 52% grant rate for claims where sexual diversity was not a relevant factor. See further: 'EXPERIMENTAL STATISTICS Asylum Claims On The Basis Of Sexual Orientation' (GOV.UK, 2020) <<https://www.gov.uk/government/publications/immigration-statistics-year-ending-june-2020/experimental-statistics-asylum-claims-on-the-basis-of-sexual-orientation>> accessed 3 October 2020.

⁴¹ UK Lesbian and Gay Immigration Group. (2010). 'Failing the Grade' available at (Uklgig.org.uk, 2010) <<https://uklgig.org.uk/wp-content/uploads/2014/04/Failing-the-Grade.pdf>> accessed 1 September 2020.

⁴² Chelvan, S. (2011) 'Put Your Hands up (If You Feel Love): A Critical Analysis of *HJ (Iran)* and *HT (Cameroon)*' 25:1 *Journal of Immigration, Asylum and Nationality Law* 56-66, P 58.

⁴³ V95/03527 [1996] RRTA 246, 247.

⁴⁴ *J v Secretary of State for the Home Department* [2006] EWCA Civ 1238 [13].

⁴⁵ See Further: Dustin, M. (2018) 'Many Rivers still to Cross: The Recognition of LGBTQI Asylum in the UK' 30:1 *International Journal of Refugee Law* 104-127, P 110.

characteristic and an integral part of human freedom.’⁴⁶ Thus, requiring an asylum seeker to return to their country of origin and be discreet was held to be contrary to the UK’s obligations under the Convention.⁴⁷ The Supreme Court also provided a three-stage test to be applied by decision-makers in sexual diversity claims.⁴⁸

Under the new test a decision-maker must firstly, ‘ask itself whether it is satisfied on the evidence that he is gay?’⁴⁹ If they are satisfied the claimant is a sexually diverse person, then the next stage of the test calls for them to consider whether they are ‘satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant’s country of nationality?’⁵⁰ If they are satisfied of this, then the third stage calls for them to determine ‘what the individual applicant would do if he were returned to that country?’⁵¹ If the claimant would be open about their sexual diversity, they are a refugee.⁵² If they would conceal⁵³ their sexual diversity to avoid the potential of persecution, they are a refugee.⁵⁴ However, if the claimant would be discreet as a matter of personal preference, then they are not a refugee.⁵⁵ The core change lies in decision-makers now being unable to decide that discretion would be reasonably tolerable; instead they determine what the claimant would actually do and why. Millbank expressed concern that this test would lead to a shift from discretion to disbelief, with an increased focus on whether or not the claimant was a sexually diverse person.⁵⁶ It appears, in light of findings that between 2011 and 2013, 86% of

⁴⁶ *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31. [33]

⁴⁷ *ibid.*

⁴⁸ *ibid* [82-83].

⁴⁹ *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31 [82]

⁵⁰ *Ibid* [82]

⁵¹ *Ibid* [82]

⁵² *Ibid* [83]

⁵³ See Further: The Equality and Human Rights Commission, ‘*HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department — Case for the Equality and Human Rights Commission*’ (2010) [29]; [44]

⁵⁴ *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31 [83]

⁵⁵ *Ibid* [83].

⁵⁶ See: Millbank, J. (2009) ‘From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and the United Kingdom’ 13:2-3 *The International Journal of Human Rights* 391-414

rejected sexual diversity claims were based on a lack of credibility, that Millbank's predictions have turned out to be accurate.⁵⁷

As such, one impact of this change has been to shift the main area of dispute towards determining whether or not the claimant is—or would be perceived—as a sexually diverse person. Despite the new test, some have argued that 'decision-makers still have no idea what claimants need to do to prove their sexual orientation.'⁵⁸ Indeed, as Juss argues, the test itself provides no guidance for how decision-makers should determine whether a claimant is sexually diverse, nor what constitutes evidence in this regard.⁵⁹ As I have argued elsewhere, this often leads to decision-makers focusing on tropes common to the development of sexual identities within the UK.⁶⁰ Guidance on how to approach asylum claims by sexually diverse people is provided by the Asylum Policy Instruction: *Sexual Orientation in Asylum Claims*.⁶¹ However, the way this policy is applied in practice often reflects the tropes referred to above.⁶² Accordingly, decision-makers' interpretations often come to be based on factors that might rightly be regarded as stereotypical.

These problems are exacerbated by the lack of viable appeal routes. In the context of asylum decisions, access to appeal is difficult because the system is being overwhelmed.⁶³

⁵⁷ UK Lesbian and Gay Immigration Group, 'Missing the Mark' (Unison 2013) <<https://uklgig.org.uk/wp-content/uploads/2014/02/Missing-the-Mark.pdf>> accessed 12 December 2017. See Also: Powell, A. (2020). 'Normative Understandings: Sexual identity, Stereotypes, and Asylum Seeking' in Ashford, C & Maine, A. (eds), *The Research Handbook on Gender, Sexuality and Law* Cheltenham and Northampton: Edward Elgar

⁵⁸ Lewis, R (2014). "'Gay? Prove It": The Politics of Queer Anti-Deportation Activism' 17:8 *Sexualities* 958-975, P 963.

⁵⁹ Juss, S. (2015) 'Sexual Orientation and the Sexualisation of Refugee law' 22:1 *International Journal on Minority and Group Rights* 128-153.

⁶⁰ See Generally: Powell, A (2021). 'Sexuality Through the Kaleidoscope: Sexual Orientation, Identity and behaviour in Asylum Claims in the United Kingdom' 10:4 *Laws* 90.

⁶¹ UK Visas and Immigration, 'Asylum Policy Instruction: Sexual Orientation In Asylum Claims' (Home Office 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf> Accessed 20th September 2019.

⁶² Powell, A. (2021) *Queering Refugee Law: A Study Sexual Diversity in Asylum Policy and Practice*. PhD Thesis: City, University of London, PP 279-344.

⁶³ Thomas and Tomlinson have also noted substantial issues regarding limited access to legal aid. See: Thomas R and Tomlinson J (2019) *Immigration Judicial Reviews: An Empirical Study*. London: Nuffield Foundation.

As Thomas has charted, there was an increase in the average time for an asylum appeal to be resolved from 9 weeks in 2013 to more than 35 weeks in 2016.⁶⁴ Such delays have been exacerbated by the Covid-19 pandemic. Thomas further identifies that the delays seen prior to the pandemic arose from both a limited number of tribunal judges and a rising number of cases.⁶⁵ Combining these factors, a picture emerges of poor access to appeals in an environment with extensive delays and poor first-instance decisions.

3. Bureaucracy, Chaos and Delay at First-Instance

Given that those who are claiming asylum are likely to have experienced trauma and may be vulnerable to re-traumatisation, it is vital that refugee status determination is undertaken in a sensitive manner. The process of making an asylum claim needs to be humane and offer claimants the opportunity to put forward their experiences and be heard. In this regard, it should be noted that overly adversarial approaches, while common,⁶⁶ are not supported by the guidance given to decision-makers.⁶⁷

This section explores some of the issues arising within first-instance decision-making. I document how these issues lead to potential *administrative violence* emerging within contemporary state decision-making bodies. In exploring these experiences, it should be recognised that—irrespective of the international framework—recognition as a refugee is dependent on being recognised by the state.⁶⁸ The question of refugee status is therefore

⁶⁴ See: Thomas, R. (2017). 'Immigration Appeals and Delays: On the Verge of a Crisis' UK Administrative Justice Institute. Available at: <https://ukaji.org/2017/05/18/immigration-appeals-and-delays-on-the-verge-of-a-crisis>.

⁶⁵ Ibid. See also: Independent Chief Inspector of borders and Immigration. (2021). 'An Inspection of Asylum Casework'. Available at: www.gov.uk/official-documents (accessed: 19/04/2022).

⁶⁶ 'Asylum Policy Instruction: Sexual Orientation In Asylum Claims' (Home Office 2016)<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf> (accessed 20th September 2021), 22.

⁶⁷ Schuster, L. (2020) 'Fatal Flaws in the UK Asylum Decision-Making System: An Analysis of Home Office Refusal Letters' 46:7 Journal of Ethnic and Migration studies 1371-1387.

⁶⁸ Hardy, C. (2003) 'Refugee Determination: Power and Resistance in Systems of Foucauldian Power' 35:4 *Administration & Society* 462-488, PP 467-468.

fundamentally one of recognition. Therefore, in a context of declining access to justice, it is important to interrogate the process through which recognition as a refugee is achieved in the UK. That process currently relies on the decisions made by Home Office decision-makers. Therefore, potentially life and death decisions are being made by the first-instance decision-makers administering the UK asylum system. Further, note should be taken that various forms of harm below the level of life and death are caused by mis-recognition and trivialisation of refugee narratives.⁶⁹

The first stage of the asylum process is a screening interview. This is when the claimant gives a brief outline of their claim. These are intended to be a short formal part of the claim process. Despite this, participants noted significant flaws in this screening stage. Adroa⁷⁰ reported that there was a lack of privacy where he had to give his screening interview, explaining that:

I went there for the screening and that is the first time I put my case forward and it was a very very difficult time. I remember one of the most challenging things was the lack of privacy. It was just an open building, there was no kind of little space where you could speak to anybody. You could just speak to someone behind a screen with a microphone and you just have to shout. I'm apply for asylum ... And there was no tick for sexuality. And then I have to say it is because I am a gay man and there are people there that are listening, because you have to shout so that you could be heard. Otherwise, she can't hear, and she was asking and asking. So, then I was expected to

⁶⁹ See For Example: Honkala, N (2022). "An Unhappy Interlude": Trivialisation and Privatisation of Forced Marriage In Asylum-Seeker Women;s Cases in the UK 41:3 Refugee Survey Quarterly 472-497.

⁷⁰ All participants' names have been changed to protect anonymity.

just give that kind of information... and I didn't want to express myself because for the first time I am standing in front of someone and expressing my sexuality.⁷¹

Adroa's experience calls attention to the fact that first-instance decisions in the UK are undertaken on a mass scale.⁷² This can often lead to a kind of conveyor belt system which is neither sensitive nor conducive to eliciting the deep, carefully articulated and well-developed narratives that the asylum process itself demands of claimants.⁷³ In Adroa's case, the first issue which arose was being asked to openly proclaim his sexual diversity in a semi-public setting to a uniformed official. Given that Adroa had previously experienced threats and arrest after his sexual diversity had become known, this will have risked causing Adroa substantial distress.⁷⁴

Babu also found the screening experience distressing. One cause of this distress was the fact that Babu was forced to sit in a waiting room for the entire day after his interview had taken place. He was then moved to a detention centre, even though his visa had not yet expired. In his words,

I waited for around 6 hours...to meet with the immigration officer and then the immigration officer asked me to wait for another few hours. And then after waiting that long time, I think it was around 3:30 in the afternoon or 4. They decided that....on the basis of deception... that I didn't claim asylum at the borders that they are going to detain me.⁷⁵

As Babu's example demonstrates, being forced to wait an extended period after the screening interview with the threat of detention hanging over you can cause distress. Babu's distress at

⁷¹ Adroa, Ugandan Refugee to Author.

⁷² Cwerner has usefully explored the issues of time and scale within the UK asylum system. See: Cwerner, S.B. (2004) 'Faster, Faster and Faster: The Time Politics of Asylum in the UK' (2004) 13:1 *Time and Society* 71-81.

⁷³ *ibid*

⁷⁴ Adroa, Ugandan Refugee to Author.

⁷⁵ Babu, Egyptian Refugee to Author.

this experience was made clear by the profound discomfort his body language displayed while he was recounting this experience.

Connected to this, two participants, including Babu, recounted the distress they felt at being detained in similar terms to the traumatic experiences that had led them to leave their countries of origin. Babu explained:,

It was very unlawful of them to detain me and there was nothing that I had done wrong. You know, I just claimed asylum. But then I was put in a detention centre and I had to wait another 6 or 7 hours before I was actually transferred from Croydon to that detention centre... And you're only allowed one phone call, and then they take your phone away from you so you can't call your family. You can't call anyone.⁷⁶

He situated the confusion and distress caused by being detained as having a lasting impact on his mental health. Babu also expressed that, even after his claim was granted, he was anxious that when the time came to renew his status after 5 years he would be returned to detention. This demonstrates the significance and continuing nature of administrative violence, because it is not just the immediate issues that were affecting Babu, it was also the continuing need to reapply for status and the idea of having to interact with these same administrative processes again.

Babu's scenario is an example of how administrative violence can arise within a system designed to protect those fleeing persecution. His experience meets all three of the articulated criteria for administrative violence. The harm he suffered—mental health trauma—was caused by an institutional (Home Office) formal process justified by the need to ensure that individuals without proper legal status are prevented from remaining in the UK.

⁷⁶ Babu, Egyptian Refugee to Author.

Additionally, the process operates at a level of abstraction whereby no individual can be properly held to account for the experiences Babu endured.

Babu's own interpretation of this was that the operative hearing his screening interview did not believe he was gay. While it is difficult to say that Babu's experience was a direct result of the person who conducted his interview not believing he was gay, even his subjective perception that this was the case demonstrates the potential of the process to trigger and exacerbate the trauma of applicants. Babu's immediate detention should also be examined against the principle that, regardless of the legal power under which someone is subject to immigration detention, there must be a reasonable prospect of removal from the United Kingdom.⁷⁷ This has a longstanding basis in the *Hardial Singh* principles, which established that detention can only be used when there is a reasonable prospect of removal within a reasonable timeframe.⁷⁸ Thus, the use of immigration detention during the early stages of the claim, when there is not a reasonable prospect of removal, is of questionable compatibility with the relevant legal framework. As this suggests, such issues at first instance can even point towards deficiencies with regard to the rule of law.

Not all participants found the screening to be a distressing process. Three out of eight found the screening interview to be very straightforward. Nonetheless, these issues within the screening process should be taken as building a picture of how the processes adopted within first instance decision-making can lead to enactments of administrative violence which undermine both the UK's ability to comply with its international obligations under the Refugee Convention, and the UK's ability to ensure that it offers appropriate protection to vulnerable claimants.

⁷⁷ See Further: Home Office, 'Detention General Instructions' (Home Office 2021) available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992285/detention-general-instructions-v1.0.pdf

⁷⁸ *R (Hardial Singh) v Governor of Durham Prison* [1983] EWHC 1 (QB)

Another element of the refugee status determination process which caused distress to claimants was the substantive interview. The substantive interview process is a crucial part of the asylum claim. It is the opportunity for the claimant to present their narrative. However, numerous researchers have documented the practice of decision-makers repeatedly asking similar questions with a view to finding, or producing, contradictions and inconsistencies.⁷⁹ While formally not a policy employed by the Home Office, participants documented this practice, with Abeo telling me that,

she had to ask these questions again and then she started those questions and I remember that...the interview that was supposed to take a few hours took almost two days because...I just kept breaking down. I just couldn't be able to talk about those things and, you know, everyone keep telling me that they can still deport me and the whole idea that I could be deported kept nagging at the back of my head.⁸⁰

This shows that discrepancy questioning adds to the trauma faced by asylum seekers by leading to longer and more stressful interview encounters. In this regard, it could even be understood as a form of secondary victimisation, forcing claimants to experience further distress. Abeo's experience also draws attention to the ongoing distress that can be caused by interacting with an organisation which presents a continuing threat to return the claimant to the country from which they have fled.

While it is recognised that some form of questioning is necessary to establish the validity of a claimant's narrative, it is submitted that, in line with the 2016 API, decision-makers should avoid searching for discrepancies in a claimant's narrative and should instead focus on creating a comfortable environment for claimants to put forward their narratives.⁸¹

⁷⁹ See Generally: Juss, S. (1997). *Discretion and Deviation in the Administration of Immigration Control*. London: Sweet and Maxwell, PP 62-67.

⁸⁰ Abeo, Nigerian Refugee to Author.

⁸¹ UK Visas and Immigration, 'Asylum Policy Instruction: Sexual Orientation In Asylum Claims' (Home Office 2016)

Or, preferably, the Home Office should move towards adopting a model for assessing asylum claims that centres the self-definition of claimants.⁸² Such a model would leave space for the experiences of asylum seekers to be examined, but would mean that statements that the claimant was, for example, lesbian or gay would be taken at face value.

This sheds light on the significance of first-instance decision-making because, when the processes themselves are producing harmful consequences for claimants, the fact that an appeal or reconsideration may be possible is no longer an adequate safeguard.

Prior expectations and experiences of decision-makers regarding the nature of sexual diversity can also produce forms of administrative violence. Decision-makers often bring expectations regarding what constitutes sexual diversity to their analysis of claims.⁸³ These expectations are often founded on UK tropes. Even the Asylum Policy Instruction reproduces tropes such as the idea of people moving through different stages in their sexual development.⁸⁴ This manifests in expectations that claimants will have ‘realised’ their difference from others during their teenaged years and then gone through a process of development before eventually embracing their ‘identity.’ In other work, I have problematized this focus on identity and the expectation for sexual diversity to manifest in simple or easily identifiable ways by exploring the more culturally specific ways in which refugees experienced their own sexual difference.⁸⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf Accessed 20th September 2019. 22-25.

⁸² Jansen and other associates of the SOGICA project have put forward a compelling case for giving a greater role to self-definition within the asylum claims of sexually diverse people. See: Jansen, S. (2020) ‘Pride or Shame? LGBTI Asylum in the Netherlands’ Online: SOGICA Conference, 7-9 July.

⁸³ Powell, A. (2020). ‘Normative Understandings: Sexual identity, Stereotypes, and Asylum Seeking’ in Ashford, C & Maine, A. (eds), *The Research Handbook on Gender, Sexuality and Law* Cheltenham and Northampton: Edward Elgar.

⁸⁴ Best, K. (2018) ‘What is the Reasonable Way for UK Asylum Seekers to Prove they are Gay’ *The Independent* <https://www.independent.co.uk/voices/comment/what-is-the-reasonable-way-for-uk-asylum-seekers-to-prove-they-are-gay-8879686.html> [accessed 2 August 2020.]

⁸⁵ See further: Powell, A (2021). ‘Sexuality Through the Kaleidoscope: Sexual Orientation, Identity and behaviour in Asylum Claims in the United Kingdom’ 10:4 *Laws* 90

The deployment of these tropes can lead to significant distress for asylum claimants who face both a denial of their asylum claims and the symbolic violence of having their lived experience as sexually diverse people denied. Far from making the objective decisions administrative bodies are expected to make, particularistic criteria are applied, undermining the quality of decision-making. For example, Abdullah told me that,

Their [the Home Office's] understanding of homosexuality was that of a gay person. To me, gay is so different than homosexual. I mean homosexual is your sexual attraction, full stop. But when you are gay it is not just your attraction, it is also how you express your attraction and the slogans which you use to express that attraction and the way that you conduct yourself in relation to that attraction. So, basically, you have to re-culture yourself in accordance with that attraction and if you haven't re-cultured yourself yet, then you are not gay yet. You are just homosexual.⁸⁶

Abdullah felt that the decision-makers had not understood his sexual diversity and that he had, therefore, been forced to modulate his self-presentation in line with their expectations. This is a form of administrative violence, as the need to categorise claimants such as Abdullah in terms intelligible to the decision-maker results in claimants being dehumanised by a check-box approach. Similar forms of administrative violence have been recognised within the context of decision-making by the Department of Work and Pensions, particularly in reference to the provision of Personal Independence Payment.⁸⁷ Such tick-box approaches instrumentally result in claimants being exposed to formal processes that lead to them being refused access to something they materially need. Often such processes adopt a rigidity which is of at least questionable compatibility with the legal framework under which these administrative bodies operate.

⁸⁶ Abdullah, Omani refugee to Author.

⁸⁷ Alldridge, P. (2019) 'On Being Able to Walk Twenty Meters: The Introduction of Personal Independence Payments' 46:3 *Journal of Law and Society* 448-475.

Some participants linked this denial of their lived experience to colonialism. For example, Babu recounted that

[o]ne of the most interesting things is like how gender identity and sexuality, all of these things, like you know homosexuality and on the broader scale in these countries such as Egypt were influenced by colonialism. Because prior to colonialism sexuality was not an issue. Like a lot of Arabic literature actually talks about men falling in love with other men and how absolutely fine it was hundreds of years before colonialism. And then once colonial powers overtook those countries, they changed the laws and these regulations that they put in place to make them perceive the things that Europe was perceiving at the time and among them was the idea of sexuality, that homosexuality was wrong. This was only imposed from a European perspective and now it has become what it is today.⁸⁸

Being expected to discuss their sexual diversity in terms of sexual identity to articulate their experiences in a manner recognisable to decision-makers itself featured as a source of discomfort for some claimants. This can rightly be understood as a form of symbolic violence as discussed in section one. This is because claimants are required to speak in a certain language—determined by the normative experiences of decision-makers—in order to make their narratives intelligible. Correctly understood, this symbolic violence contributes to the wider administrative violence of the process as claimants are forced to represent themselves in ways which do not correspond to their lived experiences and which may invoke feelings of discomfort or erasure.

Other claimants felt discomfort at being forced to articulate their experiences in fixed terms which did not account for why sexually diverse people may have behaved in a manner

⁸⁸ Babu, Egyptian Refugee to Author.

which the decision-maker perceived as incompatible with their expectations. For example, Masani told me:

I was forced to marry. I had no choice, because if I had refused then my sexuality would have been suspected. But when I came here, they said I was not a lesbian because I had been married. The letter made it sound so simple, you had a husband back in Uganda, therefore it is not credible that you are a lesbian.⁸⁹

As this suggests Masani had her first instance claim denied—though she was later successful on appeal—on the basis that her heterosexual marriage meant that her claim to be a lesbian was not credible. This example is particularly concerning, given that, as Giametta has identified, heterosexual marriage within the country of origin can often be a key strategy for preventing one's sexual diversity becoming known.⁹⁰ Further, the standpoint that someone who had been in a heterosexual marriage could not be a lesbian represents a fixed—and limited—way of understanding sexual diversity that does not correspond to the lived experiences of many sexually diverse people.

This denial of someone's self-defined identity based on the adoption of an overly essentialized conception of sexual diversity can be understood as a form of administrative violence. Once again, it arises as an injury—denial of identity can be a very painful and injurious experience⁹¹—as the result of a formal process, in the form of the Home Office interviews and decision. This injury is justified on the basis of a need to ensure false asylum claimants are identified and refused. Finally, the process, as Masani identifies, ends with a letter from the Home Office, in this case directly informing Masani that they have determined

⁸⁹ Masani, Ugandan Refugee to Author.

⁹⁰ Giametta, C. (2017) *The Sexual Politics of Asylum: Sexual Orientation and Gender Identity in the UK Asylum System* New York: Routledge, P 45.

⁹¹ See Generally: Sen, A. (2006) *Identity & Violence: The Illusion of Destiny*. London: Penguin

that she is not a lesbian. As Sen has argued, violence often will, and does, take the form of forcing people to adopt and conform to institutionally valorised identities.⁹² Thus, the humiliation, denial of lived experience, and pain brought about by such an official declaration should not be underestimated.

A further relevant theme of administrative violence arises as a result of the delays which are so common within refugee status determination in the UK. These delays arise both from slow decision-making on the part of the Home Office, and the difficulties that many asylum claimants face when seeking appeals and re-considerations of previous decisions. For example, Adroa told me of how isolated, disconnected and disempowering his days were before gaining refugee status. He said that before gaining status he waited,

5 years. From 2005 until 2010... Christmases could just come and pass by. Summer comes, winter comes, and I was just living, just surviving. Every single day was different. There was not any kind of particular time when things were consistent. It was very very difficult. Time just passed away.⁹³

The significance of delays such as this is well articulated in Hannah Arendt's argument that,

What makes a man a political being is his faculty of action; it enables him to get together with his peers, to act in concert, and to reach out for goals and enterprises that would never enter his mind, let alone the desires of his heart, had he not been given this gift—to embark on something new.⁹⁴

Each of these factors is denied to asylum seekers who are awaiting a decision on their asylum claim due to the continuing ban on employment.

⁹² *ibid* PP 1-40.

⁹³ Adroa, Ugandan Refugee to Author.

⁹⁴ Arendt, H. (1970) *On Violence*. New York: Hancourt Press, P 82.

4. Conclusion

This chapter explored how factors such as delays, the perspectives and pre-conceptions of decision-makers, and the use of tactics such as attempting to elicit contradictory responses, all result in forms of administrative violence. These incidents of administrative violence can, in turn, have an impact on the UK's ability to comply with its obligations under the Refugee Convention of 1951, and may at times even undermine the strength of the rule of law in the UK. The argument has proceeded across three sections. Section one outlined the framework of administrative violence, building on the work of Arendt to advance a definition which situates the enactment of formal processes which are justified on the basis that they pursue a given end and which are not related to any accountable individual as being at the core of administrative violence. It has been argued that this form of violence often arises in the context of contemporary administrative decision-making. In this regard, the examples I drew upon of sexually diverse asylum seekers are intended to be *demonstrative* of some of the issues, rather than showing any generalisable trends. The second section of the chapter set out the legal framework, outlining both the international and domestic frameworks in which these administrative bodies operate. Finally, section three drew on a series of semi-structured interviews undertaken by the author to offer examples of when and how administrative violence can be enacted within the process of first-instance refugee status determination.

This chapter draws attention to the impact first-instance decisions can have for the lives of asylum claimants and presents an argument for why first-instance decision-making and the results it can have should be given greater consideration within public law scholarship. Although the chapter has only directly looked at issues relating to refugee status determination, it is argued that these issues are present in relation to other administrative

decision-making bodies such as the Department of Work and Pensions.⁹⁵ Research into the issues arising in the context of decisions relating to disability support is included as one of the five recommended readings which accompanies this chapter. In a context of declining access to justice, increasing delays, and an inevitable backlog of cases resulting from the global coronavirus pandemic which began in March 2020, it is important the researchers and policy-makers within the field of administrative law pay greater attention to the significance and potential impacts of first-instance decision-making.

⁹⁵ Alldridge, P. (2019) 'On Being Able to Walk Twenty Meters: The Introduction of Personal Independence Payments' 46:3 *Journal of Law and Society* 448-475.

Recommended Reading:

- 1- Spade, D. (2015) *Normal Life: Administrative Violence, Critical Trans Politics, & The Limits of Law*. Durham & London: Duke University Press.
- 2- Heimer, R.D.V.L. (2020) 'Homonationalist/Orientalist Negotiations: The UK Approach to Queer Asylum Claims' (2020) 24 *Sexuality and Culture* 174-196.
- 3- Alldridge, P. (2019) 'On Being Able to Walk Twenty Meters: The Introduction of Personal Independence Payments' 46:3 *Journal of Law and Society* 448-475.
- 4- Schuster, L. (2020) 'Fatal Flaws in the UK Asylum Decision-Making System: An Analysis of Home Office Refusal Letters' 46:7 *Journal of Ethnic and Migration studies* 1371-1387.
- 5- BurrIDGE, A & Gill, N. (2017) 'Conveyor-Belt Justice: Precarity, Access to Justice, and Uneven Geographies of Legal Aid in UK Asylum Appeals' 49:1 *Antipode* 23-42

Reference List

- Honkala, Nora. (2022) “An Unhappy Interlude”: Trivialisation and Privatisation of Forced Marriage In Asylum-Seeker Women;s Cases in the UK 41:3 Refugee Survey Quarterly 472-497
- Prabhat, Devyani; Rifath, Raawiyah; Singleton, Ann; Ziegler, Ruvi; Powell, Alex; Sedacca, Natalie (2022). ‘Reconsidering Asylum: Is it for those who need protection’ available at <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2022/05/reconsidering> (accessed 21/07/2022).
- Halliday, Simon. (2021) ‘Administrative Justice and Street-level emotions: Denial in Entitlement decision-making. Oct, *Public Law* 727
- Home Office, ‘Detention General Instructions’ (Home Office 2021) available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992285/detention-general-instructions-v1.0.pdf
- Powell, Alex. (2021) *Queering Refugee Law: A Study Sexual Diversity in Asylum Policy and Practice*. PhD Thesis: City, University of London.
- Powell, Alex. (2021) ‘Sexuality Through the Kaleidoscope: Sexual Orientation, Identity and behaviour in Asylum Claims in the United Kingdom’, *Laws*, 10(4) 90: 1-20.
- Independent Chief Inspector of borders and Immigration. (2021). ‘An Inspection of Asylum Casework’. Available at: www.gov.uk/official-documents (accessed: 19/04/2022).
- Hyde, John (2020). “Activist” Tweet Deleted – As Number 10 Targets “Loudmouthed Lawyers” <<https://www.lawgazette.co.uk/news/activist-tweet-deleted-as-number-10-targets-loudmouthed-lawyers/5105445.article>> Accessed 4 May 2022.
- Powell, Alex. (2020). ‘Normative Understandings: Sexual identity, Stereotypes, and Asylum Seeking’ in Ashford, Chris & Maine, Alex. (eds), *The Research Handbook on Gender, Sexuality and Law* Cheltenham and Northampton: Edward Elgar
- Schuster, Liza. (2020) ‘Fatal Flaws in the UK Asylum Decision-Making System: An Analysis of Home Office Refusal Letters’ 46:7 *Journal of Ethnic and Migration studies* 1371-1387.
- Yeo, Colin. (2020) *Welcome To Britain: Fixing Our Broken Immigration System*. London: Biteback Publishing
- Thomas Robert and Tomlinson Joe. (2019) *Immigration Judicial Reviews: An Empirical Study*. London: Nuffield Foundation.
- Alldridge, Peter. (2019) ‘On Being Able to Walk Twenty Meters: The Introduction of Personal Independence Payments’ 46:3 *Journal of Law and Society* 448-475
- Baars, Grietje. (2019) ‘Queer Cases Unmake Gendered Law, or, Fucking Laws Gendering Function’ 45:1 *Australian Feminist Law Journal* 15-62
- Gentleman, Amelia. (2019), *The Windrush Betrayal: Exposing the Windrush* London: Faber Publishing
- Powell, Alex (2019) ““The Will of the People”: The UK Constitution, Parliamentary Sovereignty, and Brexit’ in Ahmed, Tawhida & Fahey, Elaine. (Eds), *On Brexit: Law, justices and Injustices*. Cheltenham & Northampton: Edward Elgar.
- Best, Keith. (2018) ‘What is the Reasonable Way for UK Asylum Seekers to Prove they are Gay’ *The Independent*
- Dustin, Moira. (2018) ‘Many Rivers still to Cross: The Recognition of LGBTQI Asylum in the UK’ 30:1 *International Journal of Refugee Law* 104-127

- <<https://www.independent.co.uk/voices/comment/what-is-the-reasonable-way-for-uk-asylum-seekers-to-prove-they-are-gay-8879686.html>> [accessed 2 August 2020.]
- Powell, Alex. (2018) 'Officials Working Within Hostile Government Departments Are Not Free From Blame' *The Conversation* <<https://theconversation.com/officials-working-within-hostile-government-departments-are-not-free-from-blame-98741>> [Accessed 23 March 2021]
- Campbell, John. (2017) *Bureaucracy, Law and Dystopia in the United Kingdom's Asylum System*. London & New York: Routledge
- Giametta, Calogero. (2017) *The Sexual Politics of Asylum: Sexual Orientation and Gender Identity in the UK Asylum System* New York: Routledge
- Thomas, Robert. (2017). 'Immigration Appeals and Delays: On the Verge of a Crisis' UK Administrative Justice Institute. Available at: <https://ukaji.org/2017/05/18/immigration-appeals-and-delays-on-the-verge-of-a-crisis>.
- UK Visas and Immigration, 'Asylum Policy Instruction: Sexual Orientation In Asylum Claims', (Home Office 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf> (Accessed 31/08/2021).
- Maley, William. (2016) *What is a Refugee?* Oxford & New York: Hurst & Company
- Juss, Satvinder. (2015) 'Sexual Orientation and the Sexualisation of Refugee law' 22:1 *International Journal on Minority and Group Rights* 128-153
- Spade, Dean. (2015) *Normal Life: Administrative Violence, Critical Trans Politics, & The Limits of Law*. Durham & London: Duke University Press.
- Lewis, Rachel (2014). "'Gay? Prove It": The Politics of Queer Anti-Deportation Activism' 17:8 *Sexualities* 958-975
- Chelvan, S. (2011) 'Put Your Hands up (If You Feel Love): A Critical Analysis of HJ (Iran) and HT (Cameroon)' 25:1 *Journal of Immigration, Asylum and Nationality Law* 56-66.
- Wade, William. and Forsyth, Christopher. (2014) *Administrative law* (11th Edn), Oxford: Oxford University Press
- Jubany, Olga. (2011) 'Constructing Truths in a Culture of Disbelief: Understanding Asylum Screening from Within' 26:1 *International Sociology* 74-94.
- UK Lesbian and Gay Immigration Group. (2010). 'Failing the Grade' available at ([Uklgig.org.uk](http://uklgig.org.uk), 2010) <<https://uklgig.org.uk/wp-content/uploads/2014/04/Failing-the-Grade.pdf>> accessed 1 September 2020.
- Adler, Michael. (2010), *Administrative Justice in Context*. London: Hart Publishing.
- Hathaway, James. (2010) *The Rights of Refugees Under International Law*. Cambridge: Cambridge University Press.
- Butler, Judith. (2009) *Frames of War: When is Life Grievable*. London & New York: Verso.
- Millbank, Jenni. (2009) 'From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and the United Kingdom' 13:2-3 *The International Journal of Human Rights* 391-414
- Gabrielatos, Costas & Baker, Paul. (2008) 'Fleeing, Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press 1996-2005' 36:1 *Journal of English Linguistics* 5-38.
- Sen, Amataya. (2006) *Identity & Violence: The Illusion of Destiny*. London: Penguin
- Adler, Michael. (2004), 'A Socio-Legal Approach to Administrative Justice' 25:4 *Law and Policy* 323

- Cwerner, Saulo (2004) 'Faster, Faster and Faster: The Time Politics of Asylum in the UK' (2004) 13:1 *Time and Society* 71-81
- Hardy, Cynthia. (2003) 'Refugee Determination: Power and Resistance in Systems of Foucauldian Power' 35:4 *Administration & Society* 462-488
- Topper, Keith. (2001) 'Not so Trifling Nuances: Pierre Bourdieu, Symbolic Violence, and the Perversions of Democracy' 8:1 *Constellations* 30-56
- Agamben, Giorgio. (1998) *Homo Sacer: Sovereign Power and Bare Life*. Stanford: University Press 1998)
- Juss, Satvinder. (1997). *Discretion and Deviation in the Administration of Immigration Control*. London: Sweet and Maxwell
- Bourdieu, Pierre. (1992) *The Logic of Practice*. London: Polity
- Bauman, Zygmunt. (1988)'Sociology after the Holocaust' 39:4 *The British Journal of Sociology* 469-497
- Cover, Robert. (1986) 'Violence and the World', *Yale Law Journal*, 95
- Gerth, H & Mills C.Wright. (eds) (1970) *From Max Weber: Essays in Sociology*. Oxford: Routledge
- Arendt, Hannah. (1970) *On Violence*. New York: Hancourt Press
- Arendt, Hannah. (1963) *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Viking University Press

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