Sanctuary After Asylum: Addressing a Gap in the Political Theory of Refuge

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Abstract

This research note argues that political theorists of refuge ought to consider the experiences of refugees *after* they have received asylum in the Global North. Currently, much of the literature concerning the duties of states towards refugees implicitly adopts a blanket approach, rather than considering how varied identities may affect the remedies available to displaced people. Given the prevalence of racism, xenophobia, and homophobia in the Global North, and the growing norm of dissident persecution in foreign territory, protection is not guaranteed after either territorial or legal admission. This research note considers the case of LGBTQ refugees in order to demonstrate the analytical potential of more inclusive and diverse normative approaches. Taking the origin and extension of harm seriously requires a conceptualization of sanctuary *after* asylum that accurately reflects the experiences of the displaced. In doing so, questions arise regarding the nature and efficacy of territorial asylum.

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Introduction

Abderrahim El Habachi fled Morocco for the UK in 2017 to live openly as a gay man. In Morocco, being gay was not only a crime, but also put him at risk of violence from the police and his fellow citizens (Wakefield 2021). El Habachi filed for asylum and was relocated to Cardiff, Wales, where he hoped to begin a new life. However, in Wales, El Habachi encountered severe discrimination in an asylum accommodation center because of his sexual orientation. While his asylum application was processed, he was housed by the National Asylum Support Service. He told reporters "It was as though there was no effort to make LGBT+ people welcome, the drop-in centres for asylum seekers and refugees weren't LGBT-friendly, they were mainly aimed towards cis men. I was made to feel unwelcome." El Habachi has since called for specialized housing for LGBTQ[1] asylum-seekers who often face continued homophobic abuse in their country of refuge—from the host community, or from other migrants. He told reporters, "I had fled a country that was dangerous for me, because of who I am, and *I was put in an environment that felt more dangerous than the situation that I left.*"[2]

Habachi's case demonstrates the persistent harms that refugees often experience in the state of asylum, even after territorial admission. But for many LGBTQ refugees, including those who successfully receive full status, such injustices continue in the state of asylum after legal inclusion.[3] Many political theorists operate under the assumption that once someone is admitted to a state in the Global North – either territorially or by receiving formal refugee status – their security is guaranteed. That is, theorists have treated entry as their primary focus, rather than considering what happens after admission.[4] Given the prevalence of racism, xenophobia,

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[1] This article uses LGBTQ (lesbian, gay, bisexual, trans, queer) as the standardized inclusive term for non-hegemonic sexual orientations and gender identities. The term "queer" recognizes the diversity and cultural specificity of sexual orientations and gender identities.

[2] Emphasis added by authors.

[3] The term "asylum seeker" refers to an individual undertaking the legal process of seeking international protection. "Refugee" refers to an individual who has been displaced and requires such protection. We do not limit the use of the term "refugee" to those with Geneva Convention status, nor do we apply it to only those who have gone through a formal legal procedure. The term "refugee" can therefore apply during the asylum process. When discussing the process of refugee status determination, we use "asylum seeker" for additional clarity.

[4] In this piece, we focus on the current gap in the literature of political theory on questions related to post-asylum treatment of refugees. Our claim here does not focus on other political science sub-fields, though these other sub-fields should explore whether these biases persist in their own treatment of refugee experience post-asylum. We thank a reviewer for noting how other disciplines, such as sociology, have already begun considering these topics from more empirical perspectives, including work by Irene Bloemraad (2006) and Heba Gowayed (2022). Further, empirical questions of refugee integration have

homophobia, and transphobia in the Global North, this assumption of ensured protection is mistaken. In not considering post-asylum experience, political theorists of refuge potentially ignore the harms, and related normative questions, that persist in the state of asylum, or only arise *after* admission. The risk of this silence is that problematic dynamics go unquestioned and existing conceptualizations of asylum-granting states obscure continued injustice. Normative approaches here are essential, as any understanding of a just and effective refugee regime must consider the full experience of the displaced.

This research note argues for more inclusive approaches to the question of post-admission protection by considering the case of LGBTQ refugees. This requires a conceptualization of sanctuary *after* asylum that accurately reflects the diverse experiences of the displaced. This note will proceed as follows. First, we outline the current landscape in the political theory of refuge. Second, we consider the case of LGBTQ refugees. Third, we address the broader implications of this case and discuss how political theorists might proceed.

The Political Theory of Refuge

In recent years, the political theory of refuge, as in political theory concerning questions of asylum and displacement, has expanded enormously. Within this burgeoning literature, many focus on conditions for entry into the state of asylum or the ethics of admission (Parekh 2013). This emphasis on admission echoes Michael Walzer's early conceptualization of refugeehood as a forceful moral claim against the usual boundaries of the state. The claim to asylum is therefore a distinctly powerful force: "'If you don't take me in,' they say, 'I shall be killed, persecuted, brutally oppressed by the rulers of my own country'" (Walzer 1983, 49). The obligation to accept refugees therefore acts as a constraint on the state's ostensible right to exclude (Song 2019). This duty to admit refugees is not always taken to be absolute, but even the most stringent defenders of the state's right to border control generally make exceptions in the case of refugees (Wellman 2019). Two core debates have arisen from this focus on admission: (1) who counts as a refugee? and (2) why do states have obligations to assist the refugees? The first debate considers to whom states have these more stringent obligations, with some focusing on broad criteria such as human rights protection or violations of basic safety (Carens 2013; Gerver 2018; Gibney 2004; Miller 2016, 2018; Shacknove 1985; Song 2019) and others defending the Geneva convention's emphasis on persecution (Cherem 2016; Price 2009). The second debate concerns how we should ground state's obligations to refugees: through duties of rescue (Gibney 2004), duties of legitimacy (Brock 2020;

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been considered in the interdisciplinary field of refugee studies from both queer and broader perspectives (Smyth, Stewart, and Da Lomba 2010; Danisi et al. 2021; Held 2022)

Owen 2020), or duties of reparation (Souter 2014). Importantly, both debates retain a focus on admission in considering who exactly ought to be admitted and for what reason. Of course, admission to an alternative state is important, given the nature of displacement; refugees are those who require assistance elsewhere. Indeed, some argue that this need for admission is precisely what makes refugees distinct from other "necessitous strangers" (Cherem 2016; Walzer 1983, 47). However, Serena Parekh (2013) argues that the focus on admission precludes us from considering other important normative topics, such as what happens to those who do not qualify for international protection. We expand Parekh's critique, arguing that this focus also precludes consideration of what happens to refugees *after* entry to their new state.

Where political theorists do discuss the obligations of states to refugees beyond admission, they usually adopt a blanket approach, treating all refugees as entitled to similar remedies. David Miller (2016) argues that refugees require the protection of their basic human rights and Michael Dummett (2001) similarly views refugees as entitled to a minimally decent human life. Both accounts include the possibility of differentiated protection for specific sets of refugees: living a minimally decent human life presumably includes freedom from homophobic persecution and other forms of prejudice. What is missing, then, is not the ability to subsume these cases, but the lack of explicit consideration of those fleeing prejudice that extends across borders. David Owen (2019, 2020) discusses differentiating refugees on the basis of the harm that they have faced, arguing that those fleeing persecution are entitled to immediate citizenship in their state of asylum, whereas others fleeing generalized violence require protection of their human rights with an entitlement to membership developing over time. He distinguishes between three categories of protection: *asylum, sanctuary,* and *refuge.* However, this account alone cannot address the complex and varied harms faced by displaced people. Such harms often transcend borders and transform depending on context; the harms produced by displacement not only depend on their cause, but also the socio-political conditions that constitute one's vulnerability.

Annamari Vitikainen (2020) offers a normative argument in favor of liberal-democratic states prioritizing LGBTQ refugees for resettlement on the grounds that they are best able to protect against further injustice. According to Vitikainen, such a claim to priority only occurs in situations of extreme scarcity where the state must choose between claimants, and when they are equal in every aspect of their claim to asylum (2020, 76).[5] This paper appears to be the only published piece related to LGBTQ refugees in the political theory and ethics literature. Deeper engagement with this topic not only requires consideration of specific obligations to the LGBTQ

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[5] Other discussions of prioritizing refugees appear in Schweiger (2019) and Miller (2019). For a critique of this approach, see Fine (2020).

displaced, but also how inclusive practice could challenge core assumptions in the political theory of refuge more broadly.

Importantly, we do not argue that this absence is purposeful or intentional. We simply hope to issue a call to action that alerts theorists to this blind spot. We use the case of the LGBTQ displaced to show that consideration of these complex social harms has an impact on questions of post-admission protection.

The Case of LGBTQ Refugees

LGBTQ refugees face forms of violence that often persist after admission into the state of asylum. The enduring injustice faced by LGBTQ refugees thus challenges assumptions related to territoriality: that the harms faced by refugees are bounded by territorial borders and that admission (legal or territorial) resolves these harms. There are two ways of understanding "post-admission." First, one could address injustices faced during the refugee status determination (RSD) process. In these cases, claimants will be within or proximate to the borders of the state but have not yet been offered formal status. Second, one might attend to the injustices faced by individuals even after they have received legally recognized status.[6] Both approaches are required. Our aim in this research note, however, is to draw particular focus to the second: *what happens to refugees after they have been both territorially and legally admitted into the state of asylum?*

The first focus on the process of seeking asylum has been addressed by much of the scholarship on LGBTQ displacement within migration and refugee studies (Luibhéid 2008; Ritholtz 2022). Once the acceptance of LGBTQ refugees became established within the global refugee regime, scholars focused on the RSD process, particularly during the interview stage where prejudice can compound based on the applicant's sexual orientation, gender identity, race, religion, disability, and culture (Tschalaer 2020; Millbank 2015; Prearo 2021). These scholars argue that RSD processes privileged Global Northern conceptions of sexuality and gender, unethically mining traumatic experiences. Other scholars have identified how practices of the global refugee regime exacerbated vulnerabilities, such as when detention and encampment expose LGBTQ refugees to prejudice from other refugees and host communities (Cragnolini 2013). These works acknowledge the burdens experienced by LGBTQ refugees during the asylum process.

This scholarship has also addressed the normative, and exclusionary, impacts of current systems of inclusion. Meghana Nayak's (2015) work reveals how the refugee regime in the United States reinforces a narrow narrative of LGBTQ vulnerability to signify inclusion while distracting from prejudicial exclusions in its own asylum regime. Satvinder Juss (2015, 129) argues that this

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[6] We use the term "post-asylum" to pick out this specific concern.

acceptance of LGBTQ refugees has become a way for the Global North to signpost their "civility" against the "barbarism" of the Global South. Fatima El-Tayeb (2011) has explored how actors weaponize the values of LGBTQ inclusion to racialize and other minorities in Europe and thus, deny these minorities inclusion into the European body politic. These accounts reinforce Jasbir Puar's (2007) theory of homonationalism, where Global Northern countries use their "concern" for LGBTQ populations to justify intervention, often through homophobic institutions like the military, in the domestic politics of other countries. This scholarship reveals serious injustices in the RSD process and in supposedly inclusive reception policies. As a result, on the first understanding of post-admission as focused on the asylum-seeking process, we know that serious injustices and harms persist.

The second stage of post-admission, what happens to refugees *after* they have received formal status, shows a further weakness in the assumption that the granting of legal or territorial status prevents future harm. Scholarship outside of political theory on LGBTQ refugees reveals that though these displaced populations might enter a new state, they are rarely fully included. Their unique needs are not met and thus, in addition to violence and discrimination, they experience isolation and exclusion (Danisi et al. 2021; Jansen 2013). Sima Shakhsari (2014) identifies this state of refuge failure to provide proper support to LGBTQ refugees as its own form of violence. They recount the story of Mahtab, a Turkish transwoman refugee in Canada, who killed herself after learning that her state-provided housing support would be discontinued. The tragedy of Mahtab's story reveals the severe impacts of exclusion even after receiving admission in a new state.

LGBTQ refugees require more than simply admission. When LGBTQ refugees flee generalized societal persecution, they often cannot be resettled in communities with refugees from the same nation, as the social structures that permit prejudice-based persecution can persist in diaspora communities (Ritholtz and Buxton 2021). However, the sites of continued persecution and harm for the LGBTQ displaced are multiple and do not only arise within migrant communities. An individual's state of origin can also make it harder to flee as an LGBTQ person. The recent displacement of millions of people from Ukraine demonstrates this point. War affects everyone, but its impact is discriminate (Sjoberg 2013). For LGBTQ Ukrainians attempting to flee, their sexual and gender identities have an immense impact. Transgender people struggle to cross borders if their documentation does not reflect their gender identity, and when it does, they remain subjected to invasive practices such as strip searches. Many trans women have been forced into military conscription, even if the government formally recognizes their gender identity (Su and Ritholtz 2022). For those who seek asylum in neighboring states, their precarity will not end as

they are entering two states, Poland and Hungary, whose governments have been harassing their own LGBTQ populations for political gain (Ayoub and Page 2020). Such complications are obviated when the focus is primarily on admission.

While most LGBTQ refugees receive asylum for reasons other than their sexuality or gender identity, those that receive asylum on these grounds often travel alone as persecution can come from within families, giving them little access to community support. When they do stay in these communities, many remain in the closet (Heartland Alliance 2012). These structures of exclusion, even if unintentional, further marginalize LGBTQ refugees.

Continued harm in the state of asylum is not unique to LGBTQ refugees, who have many other identities. Thus, conceptualizing vulnerability to harm requires considering the intersections of these identities (Reid and Ritholtz 2020). Vulnerability in post-admission is required in discussions of other social groups such as women and refugees with disabilities, whether LGBTQ or not. Cis-and-straight women seeking asylum from domestic violence, for example, might be similarly situated to LGBTQ refugees vis-à-vis access to family and informal networks of support (Wachter, Cook Heffron, and Dalpe 2021). Moreover, new harms can be created in the process of resettlement. For instance, displaced people of color relocated to neighborhoods in countries with a history of racism or xenophobia are likely to face discrimination and hatred even when they are supposedly protected (Bentley 2020). Many of these refugees might be experiencing certain forms of prejudice for the first time from a hostile local population, but it again demonstrates that admission alone is insufficient for ensuring protection. Furthermore, in recent years, there have been a series of incidents of resettled refugees (often dissidents) in the Global North who become violently targeted by repressive regimes, including in Belarus, Russia, and Rwanda. All of this complicates the image of the Global North as a place of total safety free from violence and persecution.[7]

The literature on LGBTQ refugees from beyond political theory raises at least two substantive questions for normative approaches. First, can LGBTQ refugees be assisted through the usual standards of protection? Second, does the existence of harms that transcend and mutate across borders throw into question the very efficacy of the current asylum regime?

Sanctuary After Asylum

Persistent harms faced by LGBTQ refugees challenge existing theorization about displacement. Political theorists have yet to address the obligations of states after admission with a focus on these marginalized groups. A lack of focus on domestic injustice potentially mirrors

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[7] For more on the "dangerization" of particular zones in the Global South, see Andersson (2016).

Inéz Valdez's (2019, 128) critique of the global justice literature. When theorists *do* discuss the existence of injustice within the "prosperous West" they do not consider "forms of domestic injustice… whose redress might be empirically, normatively, and politically connected to causes we tend to identify with cosmopolitan justice." Most existing theories of refuge conceptualize harm as an external threat, outside of the Global North, posed to a specific kind of the refugee, either as a dissident fleeing individualized persecution or as someone escaping generalized harms such as breakdown of state protection. There is little discussion of those fleeing social harms fueled by prejudice that continue across borders perhaps more readily than other causes of displacement. Our focus on LGBTQ refugees, then, disrupts this problem of the imagination.

A lack of focus on post-asylum protection contributes to a worrisome assumption that once entry to the liberal-democratic state has been secured, there is little left to discuss. We know from the above cases that this is not true: the assumption that the liberal state always provides a minimal standard of protection bars any discussion on social wrongs like homophobia or oppression across borders. The universality of protection that is assumed post-asylum puts particular refugees at risk of further injustice and persecution. LGBTQ refugees therefore may be entitled to distinct remedies that take account of the kinds of harms that they face. As requested by El Habachi, LGBTQ refugees could be offered different forms of housing or be able to choose where they are resettled, for instance in places that have existing support structures or successful precedents of community inclusion for LGBTQ refugees. Further research could extend to remedying other harms that LGBTQ refugees face in new states, including accessing medical care, legal assistance, and family reunion.

However, the implications of this focus reveal deeper and more challenging questions for political theorists. That is, if homophobic persecution can *worsen* once in the state of asylum, thus denying admission to the Global North as a sufficient condition to guarantee protection, then the structure of refugee protection, in its current conceptualization of *admission as protection*, becomes unstable. The case of LGBTQ refugees therefore poses a more fundamental challenge to the political theory of refuge – it lays bare the latent methodological nationalism (Sager 2016), not only within our conceptualization of the state, but also within the ways we think about the protection of the globally displaced. How should political theorists respond to this challenge? First, they might diversify the kind of displacement around which they center their approaches. As we hope to have shown, shifting our attention to LGBTQ refugees (and others fleeing generalized forms of social exclusion and oppression) can reveal new conceptual challenges. Second, theorists may wish to further consider state obligation towards recognizing refugees as "necessitous strangers" and the broader category of migrants who suffer similar forms of continued harm. LGBTQ refugees and

LGBTQ migrants alike may have similar experiences of state protection or dereliction. Third, theorists might examine the extent to which legal (and theoretical) regimes tied to displacement obviate certain state features when it comes to meeting these obligations. We have shown that some sources of persecution and harm render physical borders inconsequential as they do not by themselves resolve the harms experienced by marginalized groups seeking refuge. As such, there may be a need to reconsider the efficacy of entry as the sole mechanism of protection. There are of course many more avenues that focusing on post-admission protection might uncover.

Conclusion

Our aim has been to call on others theorizing about displacement to expand their work to include political and ethical considerations of sanctuary after asylum, especially as they pertain to marginalized identities. Importantly, we urge scholars to further consider the dynamics of post-admission protection in their work. Here we have shown, through the case of the LGBTQ displaced, that the intersecting identities and social positions of refugees place them in a position of vulnerability to future harm in the country of refuge. This focus differs from previous considerations in political theory which have largely unproblematized the experience of refugees in their countries of refuge.

Through this research note, we highlight a gap in the literature that we hope other scholars can help to fill. Our proposed expansion of the political theory of refuge asks for considerations of justice to move beyond legal admission and incorporate the socio-cultural structures of reception afforded to refugees in their state of asylum. LGBTQ refugees and others fleeing broad prejudice-based social harms should not be thought of as a secondary, or specialized, research interests, as the unique harms they face reveal gaps present in established political theories of refuge. Failing to consider the transnational potential of prejudicial and persecutorial harms beyond borders—and thus, the continuation of these harms post-asylum—when thinking about refugeehood means that scholars miss key normative aspects of the post-admission asylum process.

Declarations

The authors affirm this research did not involve human subjects. The authors declare no ethical issues or conflicts of interest in this research.

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