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# VIOLENCE AGAINST WOMEN AND THE ASYLUM PROCESS

*John Linarelli\**

Perhaps no area of public legislation generates as much controversy, or attracts as much rhetoric, as immigration. Immigration is perceived as the core of who we are as a nation. Legal norms governing the movement and migration of people across the borders of countries determine who is entitled to live in a country and ultimately who will control its resources. Immigration goes to the heart of sovereignty, particularly where sovereignty is popular, such as in consolidated democracies.<sup>1</sup> Asylum is a controversial issue within the immigration debate.

This Article will interpret some of the recent developments in asylum law that are particular to asylum claims of women. In turn, it will attempt to develop some relevant theoretical issues outside of what has been labeled "radical" feminist theory.

The two principal remedies available in the United States legal system for victims of human rights abuses committed in other countries are asylum and recovery of damages under the Alien Tort Claims Act.<sup>2</sup> We can roughly analogize these statutory federal remedies to common law damages and equity, although, unlike the damages versus equity distinction, asylum and recovery under the Alien Tort Claims Act are not mutually exclusive.<sup>3</sup> This Article

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<sup>1</sup> See William P. Travis, *Migration, Income Distribution, and Welfare Under Alternative International Economic Policies*, 45 LAW & CONTEMP. PROBS. 81, 103 (1982) (stating that "[t]he immigration problem . . . touches the sensitive roots of income distribution, on which consensus is never directly possible").

<sup>2</sup> See 28 U.S.C. § 1350 (1994) (authorizing district courts of the United States to have "original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States").

<sup>3</sup> The federal asylum procedure does not preclude a refugee from suing under the Alien Tort Claims Act. See *id.*

deals with the asylum portion of this domestic remedial system—an affirmative remedy against actual or threatened persecution.

## I. VIOLENCE AGAINST WOMEN, PLAIN LANGUAGE, CULTURE AND HUMAN RIGHTS

Significant developments relating to women's claims for asylum have occurred in the past several years. In March 1994, in *Matter of Oluloro*,<sup>4</sup> an immigration judge sitting in Portland, Oregon granted an order suspending the deportation of a Nigerian woman because the likely imposition of female genital mutilation on her citizen children would have caused extreme hardship.<sup>5</sup> *Oluloro* was a case of first impression.<sup>6</sup> Last year, a woman from Sierra Leone, who was facing deportation, became the first person in United States immigration history to obtain asylum on the basis of forcible female genital mutilation.<sup>7</sup> On May 26, 1995, the United States Immigration and Naturalization Service (INS) took the momentous step of issuing Gender Guidelines (Guidelines).<sup>8</sup> The Guidelines recognize well established human rights norms condemning persecution of women, as reflected in the Universal Declaration of Human Rights,<sup>9</sup> the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>10</sup> the United Nations

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<sup>4</sup> No. A72-147-491 (Wash. EOIR Immigr. Ct. Mar. 23, 1994).

<sup>5</sup> See *id.*

<sup>6</sup> See Priscilla F. Warren, *Women are Human: Gender-Based Persecution is a Human Rights Violation Against Women*, 5 HASTINGS WOMEN'S L.J. 281, 314 (1994) (noting that the *Oluloro* case was "the first time[] a court saw a need to protect females from forced genital mutilation whether or not cultural traditions so demanded").

<sup>7</sup> See *Matter of M.K.*, No. A72-374-558 (Va. EOIR Immigr. Ct. Aug. 9, 1995) (The author's firm represented the petitioner in *M.K.*). See also Layli M. Bashir, *Female Genital Mutilation in the United States: An Examination of Criminal and Asylum Law*, 4 AM. U. J. GENDER & L. 415, 454 & n.138 (1996) (stating that asylum was granted to *M.K.*, primarily because of "persecution relating to her resistance to, and her subsequent forcibly-imposed female genital mutilation"). At about the same time that *M.K.* was decided, the author's firm represented an asylee in another case. See *Matter of D.J.*, A72-370-565 (Md. EOIR Immigr. Ct. Apr. 28, 1995). In *D.J.*, the Immigration Court in Baltimore, Maryland refused to grant asylum, asserting, among other things, that female genital mutilation was not a type of harm that could amount to persecution. See *id.* at 12.

<sup>8</sup> See Considerations for Asylum Officers Adjudicating Asylum Claims From Women, INS Mem. (May 26, 1995), reprinted in Deborah E. Anker, *Women Refugees: Forgotten No Longer?*, 32 SAN DIEGO L. REV. 771, 794-817 (1995).

<sup>9</sup> G.A. Res. 217A (III), U.N. GAOR, 2d Sess., at 71, U.N. Doc. A/810 (1948), reprinted in EDWARD LAWSON, *ENCYCLOPEDIA OF HUMAN RIGHTS* 1655-57 (1991).

<sup>10</sup> G.A. Res. 34/180, U.N. GAOR, 34th Sess., 107th plen. mtg. at 193-98, U.N. Doc. A/34/46 (1980).

Declaration on the Elimination of Violence Against Women<sup>11</sup> and other international instruments.<sup>12</sup> Recently, the Board of Immigration Appeals, the highest adjudicative body in the United States immigration system, decided *In re Fauziya Kasinga*,<sup>13</sup> establishing precedent for lower immigration courts and asylum officers.<sup>14</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, signed into law on September 30, 1996, despite other problematic provisions, makes it a crime to practice female genital mutilation on minors.<sup>15</sup>

The language of the United States Code provides for asylum for women and empowers the Attorney General with the discretion to grant asylum to any person who meets the definition of a refugee.<sup>16</sup> The Immigration and Nationality Act<sup>17</sup> defines a refugee as follows:

[A]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution *on account of race, religion, nationality, membership in a particular social group, or political opinion*.<sup>18</sup>

A plain reading of the asylum statute demonstrates that recognition of women's claims does not expand the scope of asylum law. While women can face persecution in all of the above categories, those categories that typically capture persecution specific to women are political opinion or membership in a particular social group.

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<sup>11</sup> G.A. Res. 48/104, U.N. GAOR, 48th Sess., 85th plen. mtg. at 1-7, U.N. Doc. A/RES/48/104 (1994).

<sup>12</sup> See, e.g., *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Agenda Item 99, U.N. Doc. A/RES/39/46 (1984) [hereinafter *Convention Against Torture*]; International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

<sup>13</sup> Interim Decision No. 3278 (U.S. Dep't Justice June 13, 1996) (noting that "female genital mutilation . . . can be the basis for a claim of persecution" and that "favorable exercise of discretion required for a grant of asylum is warranted"). See also Bashir, *supra* note 7, at 436 (summarizing Fauziya's story).

<sup>14</sup> See *In re Fauziya Kasinga*, Interim Decision No. 3278.

<sup>15</sup> See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009.

<sup>16</sup> See 8 U.S.C. § 1158(a) (Supp. 1996).

<sup>17</sup> See *id.* § 1101(a).

<sup>18</sup> *Id.* § 1101(a)(42)(A) (emphasis added).

Although women face unique forms of persecution, their persecution provides no less legitimate grounds for asylum than the persecution men face. Asylum law protects more than the stereotypical applicant—the educated male elite fleeing communism.<sup>19</sup> One of the principal reasons for amending the asylum law in 1980 was to eliminate such bias.<sup>20</sup> Thus, a traditional legal analysis of women's claims, based on the language of the law and established principles of statutory interpretation, such as the plain meaning rule, supports the recognition of women's claims.

This is not to suggest some naive approach at statutory interpretation. A good legal realist or post-legal realist may scoff at this argument. Indeed, there are potential pitfalls whenever the meanings of words are left to any decision maker, particularly a decision maker that is not an Article III judge. Statutes, however, should be subject to a principled interpretation based on the purposes of the statute that tribunals and parties can find and articulate. To this end, the Refugee Convention and its domestic implementing statute should be interpreted in the context of the human rights regime that has grown dramatically since the end of World War II, and with an informed understanding of events in asylee and refugee producing countries.<sup>21</sup>

### B. *The "Culture" Argument*

Immigration restrictionists depart from the language of the statute and essentially argue that a cultural relativist exception should be carved out of the asylum statute and applied solely, or at least primarily, to women's claims. Grants of asylum to women do not implicate concerns about the imposition of Western values on other cultures. Human rights are universal. They are to be enjoyed equally by the man in New York City and the woman in Lagos. Broadly accepted human rights instruments provide that culture cannot justify persecution of women.

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<sup>19</sup> See Harold H. Koh, *Who Are the Archetypal "Good" Aliens?*, 88 AM. SOC'Y INT'L L. PROC. 450, 451 (1994).

<sup>20</sup> See Mary J. Lapointe, *Discrimination in Asylum Law: The Implications of Jean v. Nelson*, 62 IND. L.J. 127, 133 (1986) (discussing the legislative history behind the 1980 Refugee Act).

<sup>21</sup> Some have asserted that the real reasons for asylum are found in foreign policy and politics. See Stephen H. Legomsky, *The Making of United States Refugee Policy: Separation of Powers in the Post-Cold War Era*, 70 WASH. L. REV. 675, 698 (1995). Permitting an INS asylum officer or a hearing officer of the Office of the Immigration Judge, however, to deny asylum based on politics could lead to a serious abuse of discretion. See *id.* at 713-14.

The persecution of women can be physically, mentally and emotionally traumatic. The culture argument is typically asserted in euphemisms that compel relentless attention to specifics. Female genital mutilation, bride burning, rape, mass rape, sexual abuse, spousal abuse, infanticide, forced marriage, child marriage, slavery, forced abortion and forced pregnancy are just some of the atrocities that are inflicted upon women around the world.<sup>22</sup> Many of these atrocities easily rise to the level of torture as defined in the Convention Against Torture.<sup>23</sup> These atrocities violate fundamental, nonderogable human rights.<sup>24</sup>

In the words of Alice Walker, "torture is not culture."<sup>25</sup> Arguments that the forcible cutting off of a girl's clitoris and removal of her labia minora by an intoxicated adult with a dirty razor should be a protected cultural practice are particularly noxious. Such violence in any legal, political, cultural or social system is or should be wrong. Cultural relativist defenses to human rights abuses are typically articulated by oppressive, nondemocratic regimes.<sup>26</sup> The argument for gender-based asylum is founded, at least in part, on the idea that there are wrongs that cannot be justified under the mantle of culture.<sup>27</sup>

Applying asylum law consistently with international human rights obligations does not result in any imposition of our values on others. In the asylum context, the asylee has chosen to espouse values different from those of her own society and to flee persecution.<sup>28</sup> Women asylees are not saying "change conditions in my country";

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<sup>22</sup> See Jill Lawrence, *Gender Persecution New Reason for Asylum Human Rights*, L.A. TIMES, Mar. 27, 1994, at A14.

<sup>23</sup> See *Convention Against Torture*, *supra* note 12, at 3.

<sup>24</sup> See Linda Cipriani, *Gender and Persecution: Protecting Women Under International Refugee Law*, 7 GEO. IMMIGR. L.J. 511, 542-43 (1993); Pamela Goldberg, *Anyplace But Home: Asylum in the United States for Women Fleeing Intimate Violence*, 26 CORNELL INT'L L.J. 565, 578 (1993); Daliah Setareh, Comment, *Women Escaping Genital Mutilation—Seeking Asylum in the United States*, 6 UCLA WOMEN'S L.J. 123, 138 (1995) (stating that "the right to be free from torture" is a fundamental human right which "can never be abrogated").

<sup>25</sup> David A. Kaplan et al., *Is it Torture or Tradition?*, NEWSWEEK, Dec. 20, 1993, at 124.

<sup>26</sup> See Evelyn Shaw, *Female Circumcision: Perceptions of Clients and Caregivers*, 33 J. AM. C. HEALTH 193, 194 (1985).

<sup>27</sup> See Cipriani, *supra* note 24, at 533 (arguing that "[c]ultural practices [e.g. female genital mutilation] that violate fundamental rights of women should be absolutely prohibited"); Setareh, *supra* note 24, at 138-39 (finding that female genital mutilation violates "fundamental human rights" and, in particular, the Universal Declaration of Human Rights).

<sup>28</sup> See Bashir, *supra* note 7, at 446 (demonstrating that most African countries fail to protect women who refuse mutilation, leaving them no choice other than to abandon their culture for fear of persecution).

they are simply saying "please do not send me back to be persecuted."<sup>29</sup> Abstract, theoretical concerns about imperialism should not have a privileged position over the pleas of women for protection.

In its raw essence, the "culture" argument of the immigration restrictionists degrades into a political debate. Their assertions appear to be unprincipled. How does one define culture? It can mean almost anything.<sup>30</sup> It can include law and politics. Political and social systems are often fused or indistinct in the countries that produce asylees and refugees.

### *B. Mitigating "Muddling Through"*<sup>31</sup>

Professor, and now INS General Counsel, David Martin, has said that "[a]sylum determinations provide perhaps the most ambitious and challenging adjudication known to our administrative law."<sup>32</sup> Unfortunately, some INS officials appear to apply a vague and unthinking assumption that every place is like the United States, or at least like an idealization of the United States. Some officials appear to have a perception that the testimony from an alien lacks credibility if it is beyond the experiences of the decision maker hearing the information.<sup>33</sup>

Politics and persecution should be examined in a comparative context that emphasizes functionality, not formality. The disciplines of comparative law and comparative politics—disciplines firmly grounded in the curriculums of United States law schools and universities—should be used to examine asylum claims. Asylum cases must be adjudicated in ways that reflect the realities of the alien's experiences in his or her country.

In many countries, no clear distinction exists between personal and political realms. Social order and cultural norms take the place of the political system, rule of law and the judicial system. Binding norms are manifested socially, not politically or judicially.

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<sup>29</sup> See Sunny Kim, *Gender-Related Persecution: A Legal Analysis of Gender Bias in Asylum Law*, 2 AM. U. J. GENDER & L. 107, 109 (1994).

<sup>30</sup> See Holly Maguigan, *Cultural Evidence and Male Violence: Are Feminist and Multicultural Reformers on a Collision Course in Criminal Courts?*, 70 N.Y.U. L. REV. 36, 52 (1995) (stating that it "may be impossible" to define culture in the context of criminal law).

<sup>31</sup> W. MICHAEL REISMAN & AARON M. SCHREIBER, *JURISPRUDENCE: UNDERSTANDING AND SHAPING LAW* 567 (1987).

<sup>32</sup> David A. Martin, *Making Asylum Policy: The 1994 Reforms*, 70 WASH. L. REV. 725, 727 (1995).

<sup>33</sup> Regan Ralph, Presentation at the 1995 Annual Meeting of the American Society of International Law (Wash. D.C., Mar. 30, 1996).

Political opinion can include a woman's attitude about her government, or her opinion on the treatment of women in her country, culture, or social, religious or ethnic group. It can include a woman's opposition to a law or custom that oppresses women in her country. Political opinion can be imputed to a woman based on the perception of members of the established socio-political structure that she holds inappropriate views because of her deviation from prescribed roles.

Women are often prohibited from entering into formal political roles, such as those involving prominence in public affairs or in the military. While men may be politically suppressed by means of murder or torture, the persecution of women is often accomplished through sexual violence.<sup>34</sup> Rape, as a form of political violence, is intended to subjugate a woman politically.<sup>35</sup>

In many countries, governments are too weak or choose not to enforce laws or regulate in the public interest.<sup>36</sup> Social orders take the place of political orders. Going to court to vindicate rights has no real meaning because the courts do not work or are relatively recent transplantations that do not replace the social system for resolving disputes.<sup>37</sup> Governments are complicitous in what is, in essence, permission to continue certain practices that are particularly harmful, physically, psychologically and emotionally to women, such as polygamy and female genital mutilation.<sup>38</sup> Such

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<sup>34</sup> See Nancy Kelly, *Gender-Related Persecution: Assessing the Asylum Claims of Women*, 26 CORNELL INT'L L.J. 625, 646-47 (1993) (explaining that the sexual abuse and torture of women is used as a political strategy to intimidate and coerce).

<sup>35</sup> See *id.* (including rape in the political strategy to punish women for their political opinions and for other reasons).

<sup>36</sup> The failure to regulate in the public interest may be a feature of all governments generally. See JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* (1962) (public choice theory foundation); Paul B. Stephan III, *Barbarians Inside the Gate: Public Choice Theory and International Economic Law*, 10 AM. U. J. INT'L L. & POL'Y 745 (1995) (discussing the application of public choice theory internationally); William N. Eskridge, Jr., *Politics Without Romance: Implications of Public Choice Theory for Statutory Interpretation*, 74 VA. L. REV. 275 (1988) (discussing how public choice theory indicates that legislatures will produce too few laws that serve public ends while producing many that serve private ends). Many governments of developing countries are not equipped to use the public interest model as a basis of governance. There is a fundamental failure of governance in these countries, particularly where there are nondemocratic regimes.

<sup>37</sup> See Catherine L. Annas, *Irreversible Error: The Power and Prejudice of Female Genital Mutilation*, 12 J. CONTEMP. HEALTH L. & POL'Y 325, 352 (1996).

<sup>38</sup> See *id.*; Bashir, *supra* note 7, at 422-24; Hope Lewis, *Between IRUA and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1, 6-7 (1995).



government inaction constitutes official persecution. In some countries, governments do not maintain a monopoly on state-sanctioned violence.<sup>39</sup>

Women have suffered long-standing forms of persecution that are only now being acknowledged. Asylum cases have developed on the basis of male experiences.<sup>40</sup> It is extremely difficult for women to discuss, in the detail necessary to prove their case, some of the physical, mental and emotional harms inflicted upon them.<sup>41</sup> This is true particularly when they must do so in a foreign country and in a foreign culture before male interpreters, male INS officers, male lawyers and male family members, often in the cold setting of an administrative courtroom.<sup>42</sup>

## II. REFUTING "FLOODGATE" ARGUMENTS: THE POLITICS OF IMMIGRATION

The argument that recognizing the persecution of women in the asylum law would lead to a massive flight of women to the United States is unfounded. Since Canada promulgated its guidelines in March of 1993,<sup>43</sup> the number of gender-based asylum claims there has not increased significantly,<sup>44</sup> despite the fact that Canada

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<sup>39</sup> See ARMEN A. ALCHIAN & WILLIAM R. ALLEN, *EXCHANGE AND PRODUCTION: COMPETITION, COORDINATION AND CONTROL* 7-8 (3d ed. 1983).

<sup>40</sup> See Kelly, *supra* note 34, at 627-28 (explaining that the lack of gender-based persecution asylum law is due to the male-dominated public sphere).

<sup>41</sup> See Walter Kalin, *Troubled Communication: Cross-Cultural Misunderstandings in the Asylum-Hearing*, 20 INT'L MIGRATION REV. 230, 232-34 (1986); Martin, *supra* note 32, at 727-28 (describing an asylum applicant and the difficulties an asylee may endure by being the only witness to her own persecution).

<sup>42</sup> See Anker, *supra* note 8, at 798-801 (stating that because of a female asylee's abusive experiences, she will have inhibitions disclosing such personal experiences to a male asylum officer or interpreter, particularly with male family members present).

<sup>43</sup> See Kristen E. Kandt, Note, *United States Asylum Law: Recognizing Persecution Based on Gender Using Canada as a Comparison*, 9 GEO. IMMIGR. L.J. 137, 151-57 (1995) (discussing the recently issued Canadian guidelines which recognize gender-related persecution as a basis for granting asylum (citing IMMIGRATION AND REFUGEE BOARD, GUIDELINES ISSUED BY THE CHAIRPERSON PURSUANT TO SECTION 65(3) OF THE IMMIGRATION ACT: WOMEN REFUGEE CLAIMANTS FEARING GENDER-RELATED PERSECUTION (1993))).

<sup>44</sup> This information was confirmed by a telephone interview with the INS Office of Int'l Affairs, Asylum Office, Wash., D.C. on Apr. 2, 1997; see also Bashir, *supra* note 7, at 452-54 (concluding that the "floodgate" argument is unfounded as illustrated by Canada's decrease in asylum claims by 8000 since having included gender as a basis of persecution); Anne M. Gomez, Note, *The New INS Guidelines on Gender Persecution: Their Effect on Asylum in the United States for Women Fleeing the Forced Sterilization and Abortion Policies of the People's Republic of China*, 21 N.C. J. INT'L L. & COM. REG. 621, 626-27 (1996) (noting that the Canadian Guidelines have not led to an overall increase in asylum claims and that only two

appears to provide a more hospitable forum for these asylees than does the United States. Similarly, since the promulgation of INS's Gender Guidelines, there has been no real increase in the number of gender-based asylum claims in the United States.<sup>45</sup> Asylees on the whole probably comprise the smallest group of immigrants.<sup>46</sup>

Asylum is an individual remedy.<sup>47</sup> The size of the group being persecuted is irrelevant to the question of whether the United States ought to grant asylum.<sup>48</sup> The number of males fleeing political oppression during the Cold War, for example, was very large, and asylum was often granted relatively easily, despite the large numbers of male dissidents living under oppressive regimes.<sup>49</sup> Large numbers of similarly situated persons corroborate an asylum claim, rather than detract from it.<sup>50</sup>

The requirements of United States asylum law are stringent.<sup>51</sup> Contrary to misperceptions about asylum, one cannot simply walk into the INS and say "I want asylum." Asylees must prove, among other things, a well-founded fear of persecution, or severe past persecution, due to membership in a particular social group, or

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percent of the claims were gender-based in 1994).

<sup>45</sup> This information was confirmed by a telephone interview with the INS Office of Int'l Affairs, Asylum Office, Wash., D.C. on Apr. 2, 1997.

<sup>46</sup> See David L. Neal, Comment, *Women as a Social Group: Recognizing Sex-Based Persecution as Grounds for Asylum*, 20 COLUM. HUM. RTS. L. REV. 203, 243 (1988) (explaining that asylum applicants represent the smallest group of immigrants and are "but a fraction of the overall number"); Todd S. Schenk, Note, *A Proposal to Improve the Treatment of Women in Asylum Law: Adding a "Gender" Category to the International Definition of "Refugee"*, 2 IND. J. GLOBAL LEGAL STUD. 301, 341 (1994) (stating that "[o]f all potential immigrant groups, those seeking refugee status comprise the smallest percentage").

<sup>47</sup> See Neal, *supra* note 46, at 244 (explaining that individual women will still be required to satisfy asylum standards of persecution if the definition of refugee were expanded to include gender-based persecutions, because "asylum is an individual remedy"); Schenk, *supra* note 46, at 342 (discounting the "floodgate" argument because asylum is an individual, rather than a class remedy).

<sup>48</sup> See Goldberg, *supra* note 24, at 596 (stating that under the Canadian Guidelines the relevant factor is not the size of the group, but whether the social group suffered or feared persecution); Kelly, *supra* note 34, at 654-55 (arguing that the size of a particular social group should not limit the protection offered its members, especially since large numbers tend to lend credibility to their persecution claim).

<sup>49</sup> See Koh, *supra* note 19, at 451.

<sup>50</sup> See Kelly, *supra* note 34, at 654-55 (arguing that the size of a refugee group only serves to support their claims of torture and persecution in their home country).

<sup>51</sup> See Linda S. Bosniak, *Membership, Equality, and the Difference that Alienage Makes*, 69 N.Y.U. L. REV. 1047, 1149 n.319 (1994) (showing the difficulty of gaining asylum status in the United States and stating that the asylee's "chances of success are exceptionally low").

because of political opinion, race, nationality or religion.<sup>52</sup> The INS has reviewed women's cases rigorously.

The overwhelming majority of women around the world cannot flee their regions of persecution.<sup>53</sup> Many women are unable or unwilling to depart from their country, while others may contend they have not been persecuted.<sup>54</sup> Those able to flee may seek lawful immigration through employment or family ties.<sup>55</sup> When the stringent requirements for asylum are examined in the context of the extremely sensitive nature of a woman's claim, women will likely view asylum as a last resort and claim asylum only if they have a well-founded and serious claim.<sup>56</sup> This is particularly the case when experienced counsel is involved.

Studies based on positive economics inform us that immigrants contribute to economic growth.<sup>57</sup> The real motivations of immigrant restrictionists may be to influence domestic wage rates in their favor,<sup>58</sup> or these restrictionists may simply be engaging in nativist prejudice.<sup>59</sup> More research needs to be performed in the asylum area. Applying the disciplines of constitutional economics may be fruitful in future studies of asylum.

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<sup>52</sup> See *supra* text accompanying note 18 (quoting the Immigration and Nationality Act that sets out what an asylee must prove).

<sup>53</sup> Deborah Anker, American Immigration Lawyers Association Meeting (Wash. D.C., Mar. 21, 1996).

<sup>54</sup> See Cipriani, *supra* note 24, at 545; see also Michele R. Pistone, *Asylum Filing Deadlines: Unfair and Unnecessary*, 10 GEO. IMMIGR. L.J. 95, 97 (1996) (concluding that many refugees fail to seek legal asylum out of fear of retaliation by their persecutors against family and friends remaining in their home country).

<sup>55</sup> See Carolyn Waller & Linda M. Hoffman, *United States Immigration Law as a Foreign Policy Tool: The Beijing Crisis and the United States Response*, 3 GEO. IMMIGR. L.J. 313, 344 (1989) (stating that there are two ways to get permanent resident status under the U.S. legal immigration structure: through "family-related petitions or an offer of employment").

<sup>56</sup> See Pistone, *supra* note 54, at 97-100 (explaining that many refugees have legitimate reasons for failing to file asylum applications and that women in particular view asylum as a last resort because they are unable to discuss details of their torture).

<sup>57</sup> See JULIAN L. SIMON, *IMMIGRATION: THE DEMOGRAPHIC AND ECONOMIC FACTS* (1995); Frederick G. Whelan, *Principles of U.S. Immigration Policy*, 44 U. PITT. L. REV. 447, 460, 474-75 (1983).

<sup>58</sup> See William F. Shughart II et al., *The Political Economy of Immigration Restrictions*, 4 YALE J. ON REG. 79, 80, 83-85 (1986) (positing that those with the aim of preventing reductions in wages have an incentive to restrict immigration).

<sup>59</sup> See Linda Bosniak, *Immigration Crisis, "Nativism" and Legitimacy*, 88 AM. SOC'Y INT'L L. PROC. 440, 441-42 (1994); Gerald L. Neuman, *Aliens as Outlaws: Government Services, Proposition 187, and the Structure of Equal Protection Doctrine*, 42 UCLA L. REV. 1425, 1428-29 (1995) (explaining that nativism is an intense hostility toward aliens leading to discrimination against aliens).

### III. CONCLUSION

Asylum and refugee law and policy pose formidable challenges for the coming decades. The approaches of asylee and refugee receiving countries should reflect an informed comprehension of the persecution of women and other groups that do not neatly fit into Cold War categories of political dissidence. Asylees and refugees will continue to exist as long as the root causes of persecution are not addressed, either nationally or internationally.

