The Institution of Gender-Based Asylum and Epistemic Injustice: A Structural Limit

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Abstract

One of the recent attempts to explore epistemic dimensions of forced displacement focuses on the institution of gender-based asylum and hopes to detect forms of epistemic injustice within assessments of gender related asylum applications. Following this attempt, I aim in this paper to demonstrate how the institution of gender-based asylum is *structured* to produce epistemic injustice at least in the forms of testimonial injustice and contributory injustice. This structural limit becomes visible when we realize how the institution of asylum is *formed* to provide *legitimacy* to the *institutional comfort* the respective migration courts and boards enjoy. This institutional comfort afforded to migration boards and courts by the existing asylum regimes in the current order of nation-states leads to a systemic prioritization of state actors' epistemic resources rather than that of applicants, which, in turn, results in epistemic injustice and impacts the determination of applicants' refugee status.

Keywords: epistemic injustice, institutional comfort, gender-based asylum, epistemic resources

According to the United Nations High Commissioner for Refugees (UNHCR), forced displacement of people has doubled in less than twenty years. In 2015, 65.3 million people were displaced: 40.8 million of these people were displaced in their home countries, 21.5 million were refugees, and 3.2 million were seeking asylum (UNHCR 2015).[1] Citing these numbers is a dangerous endeavor. While it is one of the only ways in which we can articulate what is happening on a larger scale, it is inevitably reductive, and it leaves untouched the question of how many of us can actually make sense of what it means for 65.3 million people to be displaced in many different ways. Attempting to explore the epistemic dimensions of forced

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[1] For detailed definitions of refugees, asylum seekers, and internally displaced people, see http://www.unrefugees.org/what-is-a-refugee/.

displacement is not an easy task. An attempt has to be context-dependent, movement-sensitive as well as temporally and spatially specific.

One of the recent attempts to explore epistemic dimensions of forced displacement focuses on the institution of gender-based asylum and hopes to detect forms of epistemic injustice within assessments of gender-based asylum applications (Wikström 2014). The institution of asylum, in general, refers to the (internationally) institutionalized reality of the idea of asylum as an important mechanism for international refugee protection as it is practiced through different asylum regimes. "Regime," here, refers to "the institutional environment within which international policies are made" (Soroos 1986, 21–23, quoted in Bauman and Miller 2012, 8).[2] The institution of gender-based asylum, then, refers to the institutionalized reality of the idea of gender-based asylum as it is practiced through different asylum systems. I use the term "gender-based asylum claims" to refer to a range of different claims where gender-related persecution is a relevant consideration for the determination of refugee status (UNHCR 2002).[3]

In this paper, my aim is to demonstrate that the institution of gender-based asylum has a structural limit: it is *structured* to produce epistemic injustice at least in the forms of testimonial injustice and contributory injustice. And I will argue that this structural limit can be understood when we realize how the institution of gender-based asylum is formed to provide *legitimacy* to the *institutional comfort* the

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[2] Asylum regimes can also be seen as subregimes of the international refugee regime defined by Liisa Malkki as the international order "in which contemporary 'refugee problems' are managed" and "in which humanitarian aid and legal protection efforts unfold" (Malkki 1995, 517). Also see Betts and Durieux (2007, 510).

[3] Gender-related persecution, according to the UNHCR, refers to the kind of persecution where gender "influences" or "dictates" the type of persecution or harm suffered (UNHCR 2002, 3). According to the UNHCR guidelines, gender-related persecution has "typically encompassed, although [is] by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals" (UNHCR 2002, 1–2). Karen Musalo also notes that "the term 'gender-asylum' is generally understood to describe two types of claims: (1) claims in which the form of persecution is unique to, or disproportionately inflicted on women (for example, female genital cutting (FGC), domestic violence, rape, forced marriage) regardless of the 1951 Geneva Convention Relating to the Status of Refugees (Refugee Convention) ground for which it is inflicted and (2) claims in which the harm may or may not be gendered, but the reason (nexus) it is imposed is because of victim's gender" (Musalo 2010, 46–47).

respective migration courts and boards enjoy in decision-making. By institutional comfort, I mean the ways in which state actors in migration courts and boards are systemically afforded the ability to arbitrarily and ambiguously misinterpret asylum applicants' experiences, cultures, and countries. This institutional comfort afforded to migration boards and courts by the existing asylum regimes in the current order of nation-states leads to a systemic prioritization of state actors' epistemic resources rather than that of applicants, which, in turn, results in epistemic injustice.

This paper will proceed in two parts. I will first turn to a recent article by Hanna Wikström (2014), which identifies cases of testimonial injustice in assessments of gender-based asylum applications in Sweden, and I will underline three cases where the institutional comfort of the Swedish migration authorities is visible. I will argue that detecting forms of testimonial injustice allows us to observe this *institutional comfort* in three different forms: comfort in denying applicants' experiences, comfort in ignoring available information, and comfort in deciding which information/criteria to use. I will then use Gaile Pohlhaus Jr.'s (2012) and Kristie Dotson's (2012, 2014) analyses of dominant *epistemic resources* in order to demonstrate how the institution of gender-based asylum is formed to provide legitimacy to this institutional comfort. I will conclude by hinting at a few implications of this analysis for the institution of asylum in general.

1. The *Institutional Comfort* of the Migration Board and Court

In "Epistemic Injustice in Practice," Franziska Dübgen notes that "reflecting on the workings of epistemic injustice" can be a useful tool in grasping different forms of domination and exclusion if "the grammar of epistemic injustice" is used for and adapted to the singular case studies (Dübgen 2016, 1, 2, 5). I consider Wikström's (2014) work in "Gender, Culture, and Epistemic Injustice: The Institutional Logic in Assessment of Asylum Applications in Sweden" to be one of these adaptations. By focusing on the workings of epistemic injustice in gender-related asylum assessments, Wikström aims to access and articulate specific forms of domination and exclusion pervasive in the institutional logic of Sweden. Wikström's empirical material consists of 62 cases of asylum applications of asylum seekers from a wide range of countries. Among these 62 cases, Wikström notes, "Five women and one man are accepted as refugees, 27 are given subsidiary protection, and 29 applicants are denied" (Wikström 2014, 212). The subsidiary protection is granted to asylum seekers as a temporary form of protection when decision makers in Sweden do not believe the applicant in question qualifies for

refugee status, and thus as a temporary form of protection, it does not offer all the benefits of refugee status.[4]

UNHCR defines an asylum seeker as follows:

> . . . an individual who has sought international protection and whose claim for refugee status has not yet been determined. As part of internationally recognized obligations to protect refugees on their territories, countries are responsible for determining whether an asylum-seeker is a refugee or not. . . . This responsibility is derived from the 1951 Convention Relating to the Status of Refugees and relevant regional instruments and is often incorporated into national legislation. (UNHCR 2014, 5n2)[5]

The legal definition of refugee status can be found in Article 1 A(2) of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees:

> The term refugee shall apply to any person who . . . owing to 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; or, who, not having a nationality and being outside of the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[6]

In what follows, I will briefly summarize how Wikström emphasizes the importance of credibility assessments in gender-related asylum applications and highlights how testimonial injustice occurs. I will then cite three exchanges

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[4] https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/When-you-have-received-a-decision-on-your-asylum-application/If-you-are-allowed-to-stay/Residence-permits-for-those-granted-subsidiary-protection-status-.html. Also see:
http://www.bamf.de/EN/Fluechtlingsschutz/AblaufAsylv/Schutzformen/SubsidiaererS/subsidiaerer-schutz-node.html.

[5] Here, I should note that we should not confuse the legal refugee status granted to asylum seekers with a more common definition of a refugee as "someone who has been forced to flee his or her country because of persecution, war, or violence" (http://www.unrefugees.org/what-is-a-refugee/).

[6] The convention is available at http://www.unhcr.org/en-us/1951-refugee-convention.html.

Wikström narrates between an asylum applicant and the Migration Board or Court that have resulted in subsidiary protection rather than refugee status.[7] According to Wikström, the frequent use of subsidiary protection rather than refugee status in gender-related persecution cases suggests that decision makers in Sweden fail to recognize the kinds of persecution in question as gender-related persecution, and thus fail to recognize those applicants as entitled to asylum (Wikström 2014, 211). The following three exchanges can be used to articulate the institutional *comfort* the respective migration courts and boards enjoy in *deciding* how to read, interpret, and process the cultures and the countries in question and the applicants' experiences within them.

Institutional comfort, here, refers to how migration boards and courts are systemically afforded the ability to arbitrarily and ambiguously misinterpret asylum applicants' experiences, cultures, and countries. In other words, the institutional comfort calls attention to the discretionary space systemically afforded to state actors within their institutional roles and how *easily* this discretionary space can be used to produce inconsistent, ambiguous, and arbitrary assessments of applicants' experiences.[8] Even though the existence of discretionary space is not unusual for the institution of asylum in general, how *easily* it can used by state actors to negate applicants' narratives, where gender-related persecution is a consideration, is worrisome (Baillot, Cowan, and Munro 2014; McKinnon 2016; Querton 2012).

The internationally inconsistent approach to gender-based asylum exacerbates this situation further. The UN High Commissioner for Refugees initially has suggested that gender-based claims and gender-related persecution can be evaluated under the category of "membership of a particular social group" (Musalo 2010; UNHCR 1991).[9] They further encouraged states to develop their own

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[7] I should note here that Wikström's analysis (2014) is more complicated and extends further than what I will be focusing on here. A significant part of the analysis, for instance, tracks how "gender-based" cases are understood to mean cisgender and heterosexual women's cases. Although I briefly mention the importance of the question of "what counts as gender-based or gender-related" in the next paragraph, I do not provide a detailed analysis of that problem in this paper. See McKinnon 2016 for further discussion.

[8] I thank the reviewers for helping me clarify this point.

[9] As Musalo (2010) highlights, this was after EXCOM Conclusion No. 39 in 1985 stating that "states, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh and inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a 'particular social group' within the meaning of Article 1 A(2)

guidelines for gender-based asylum claims, and in 2002 they issued new guidelines to encourage a gender-sensitive interpretation to the refugee convention as a whole (Musalo and Knight 2002, 59; UNHCR 2002). These efforts, of course, do not guarantee a clear and consistent approach to gender-based asylum. In a recent report, for instance, Christel Querton notes that despite the common understanding that refugee convention requires a gender-inclusive and gender-sensitive approach "there are vast and worrying disparities in the way different EU Member States handle gender-related asylum claims" (Querton 2012, 2). This is especially concerning because how we answer 'why and how gender matters' for the determination of refugee status relies on how we answer the following questions: At what point does discrimination become persecution? What constitutes protection in the country of origin? What does it mean to belong to a particular social group? What can be counted as gender-based or gender-related? Thus, within this context, I take institutional comfort to refer to how the institution of gender-based asylum is structured to enable its state-actors to carry out systemically arbitrary and ambiguous assessments of applicants' cases comfortably.

To start the asylum process in Sweden, applicants register with the Migration Board, and the board reaches an initial decision. If the decision is negative, it can be appealed at the Migration Court and afterwards at the Migration Court of Appeal. In court, Wikström states, the board becomes the counterpart to the applicant and their lawyer. The assessments, Wikström says, focus on the reasons for asylum and the credibility of the applicant's narrative. The applicant has to present and justify that her fear of persecution is well grounded. That is to say, the applicant has to provide information about their country and their position within their country of origin, which will later be compared with the "available information" that the migration authorities have on the country in question. In Sweden's case, this available information is usually retrieved from the country information database:

> The approach to, and nature of, Country of Origin Information in Sweden is factual. . . . Lifos [database] is a compilation of "facts." The idea is that there are a number of observable facts about countries and societies that can be captured and structured in a database. The underlying logic seems to be that anyone . . . can use these facts to come to the right (and thus the same)

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of the 1951 United Nations Refugee Convention" (http://www.unhcr.org/en-us/excom/exconc/3ae68c43a8/refugee-women-international-protection.html).

conclusion." (Flärd 2007, 38, quoted in Wikström 2014, 215; Wikström's brackets and ellipses)[10]

This comparison between the information given by the applicant and the information retrieved from the database is crucial because it allows authorities to justify first whether the applicant's reasons for asylum are well grounded and further whether there is possibility of protection in the country of origin, which, then, negates the reasons for asylum application. Within this context, Wikström suggests, "asylum assessments largely rest on credibility assessments," which leads to the argument that asylum applicants suffer from testimonial injustice (Wikström 2014, 210).[11]

Testimonial injustice, for Miranda Fricker, "occurs when prejudice causes a hearer to give a deflated level of credibility to a speaker's word" (Fricker 2007, 1). The prejudice in question tracks "the subject through different dimensions of social activity—economic, educational, professional, sexual, legal, political, religious, and so on," and therefore relates to social identity in a systematic way (Fricker 2007, 27). Fricker calls such prejudice "identity prejudice" and argues that in a central case of testimonial injustice, a speaker "receives a credibility deficit owing to identity prejudice in the hearer" (28). In other words, testimonial injustice occurs when

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[10] Wikström (2014, 215) also notes that Lifos (the country information database) relies on a realist/positivist paradigm that the migration authorities depend on in forming their beliefs.

[11] Wikström defines epistemic injustice at the beginning of the article by presenting Fricker's definition of testimonial injustice and hermeneutical injustice together and does not necessarily announce for every case she mentions whether it amounts to testimonial injustice, hermeneutical injustice, or both. One case where she clearly indicates an instance of hermeneutical injustice is related to the use of gender in law, which I will not discuss here. However, since the cases (and especially what I choose to emphasize about the cases here) bring up the issue of credibility assessments, I'm categorizing them as testimonial. I should also note here that because Fricker's (2007) initial discussion of hermeneutical injustice assumes one set of collective hermeneutical resources and does not differentiate between making sense to ourselves and making sense to (different) others (as discussed by Dotson [2012], Mason [2011], Medina [2013], and Pohlhaus [2012]), applying that notion to asylum applicants and their cases has to be done very carefully (cf. Rusin and Franke 2010). That is one reason why I think a discussion of hermeneutical injustice in the context of gender-based asylum should be addressed in a separate paper. Also see Medina 2017 for further discussion on hermeneutical injustice.

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there is an identity-prejudicial credibility deficit in the hearer that is caused by a negative identity-prejudicial stereotype, which is defined by Fricker as

> a widely held disparaging association between a social group and one or more attributes, where this association embodies a generalization that displays some (typically, epistemically culpable) resistance to counter-evidence owing to an ethically bad affective investment. (Fricker 2007, 35)

The following exchanges between the Migration Board and the applicants demonstrate how the board gives applicants a deflated level of credibility based on its stereotypical understanding of the culture, the culture's norms, and how the culture forms identities. In these exchanges, we witness the Migration Board demonstrating a strong "disinclination to believe" in the applicants' testimonies (Dotson 2012, 27). For Wikström, "epistemic injustice becomes evident as the reasoning of the authorities shows how arguments of culture are primarily used to negate individual claims, and in that resistance to and deviations from dominant cultural norms [that the Board assumes/considers itself to know] are not seen credible" (Wikström 2014, 214; citing Fricker 2007). "As such," she continues, "epistemic injustice" [or testimonial injustice] occurs when applicants suffer from "a deflated level of credibility" compared to other sources of information (Wikström 2014, 215).

It seems to me, then, that detecting cases of testimonial injustice in assessment of asylum applications allows us to observe the *institutional comfort* the Migration Board enjoys in three different forms: comfort in denying applicants' experiences, comfort in ignoring available information, and comfort in deciding which information/criteria to use. In what follows, I will discuss each comfort through an exchange between an applicant and the migration authorities.

A. **The comfort in denying applicants' experiences:**
This comfort refers to the ease with which the Migration Board is able to reject the reality of an applicant's experiences. In other words, it refers to how easily the Migration Board can reject a lived reality as narrated by an applicant especially when the lived reality does not correspond to how decision makers understand these applicants, cultures, and countries (Wikström 2014, 214). Wikström explains:

> Sara is an applicant of Kurdish descent and from Iraq. She claims that her family arranged for her to be married against her will. Despite this, she had a sexual relation with a work colleague of hers. One day Sara's brother caught the couple in her family's residence and a fight and shooting ensued. Sara fled and went to the police. An officer told her he would have killed her

himself had she been his sister, and that the police could not do anything "since it was an honour-related crime" (Verdict 15:2). The Board (MB) turned Sara's application down because it did not find her credible:

> MB: It is odd and not very likely that she would initiate a sexual relation with another man when she knows she is going to marry her cousin. . . . That she would be so blinded by love and disregard the consequences is not a reasonable explanation, with the culture that is prevalent in northern Iraq and with her family traditions in mind. . . . Furthermore, it must be considered striking that, at her age, an arranged marriage has not occurred earlier. (Verdict 15: 3)

[. . .]

> [When] Sara responds to a number of things she claims the Board has misunderstood, she also states that: "It is not strange for women to initiate secret relationships." (Verdict 15: 4)
> (Wikström 2014, 214, quoting the Migration Board verdict; unbracketed ellipses are Wikström's)[12]

In this case, we witness the Migration Board giving Sara a deflated level of credibility by relying on stereotypes that label her as a subject that cannot possibly show any agency within a "homogeneous" culture that has full control over its subjects.[13] The interplay between the cultural stereotypes the court holds in terms of what kind of a culture Sara's culture is and the identity-prejudicial stereotype about how a woman in her circumstances behaves (must behave) proves to the board that Sara's testimony cannot be believed. Her experiences are found unreal mostly because her culture is interpreted in an essentialist way. Essentialist, here, refers to the way in which cultures are interpreted to have an essence that is static and present for every member in the same way. As Trina Grillo states:

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[12] As I have mentioned above, the court later grants Sara subsidiary protection (Wikström 2014, 215). It is important to remember here that, first, subsidiary protection only offers a temporary form of protection and does not offer all the benefits of a refugee status. Second, subsidiary protection in this case, as Wikström notes, suggest that the persecution Sara suffers from is not recognized as the kind of persecution that qualifies for refugee status in light of the 1951 Refugee Convention. Third, I should note here that Sara is granted subsidiary protection only after initially being denied asylum by the board.

[13] Also see Narayan (1997) on totalizations/totalizing pictures of cultures (15) and "death by culture".

> An essentialist outlook assumes that the experience of the group under discussion is a stable one, one with a clear meaning, a meaning constant through time, space, and different historical, social, political, and personal contexts. (Grillo 1995, 19)

This interpretation, while rendering applicants' cultures intelligible for decision makers, also demonstrates how gender-based violence is not only salient but also "endemic and essential" to those cultures (McKinnon 2016, 30).[14] As a result, an essentialist frame of culture places gender-based violence "at the core of what it means to live as a woman in the region and these countries" (McKinnon 2016, 30). It also ends up "racializing" and "ethnicizing" gender-based violence as well, where gender-based violence is understood to be an essential problem of certain "races" and "ethnicities" (McKinnon 2016, 30). In other words, when the board listens to Sara, they do so through a frame in which "non-white" women seem intelligible insofar as they are without any agency, and their cultures seem intelligible insofar as they are all oppressive. Thus, the board uses the fact that Sara's narrative does not fit into a monolithic "image of an average third world woman" who is "powerless" and doesn't have any agency as a reason to find her experiences unintelligible (Mohanty 1988, 65, 66). What is striking here is the comfort, the ease, with which the Migration Board can find her experiences to be unreal or unlikely to occur when she tells them specifically that they are not.

B. The comfort in ignoring available information:

This comfort refers to the ease with which the Migration Board can overlook and disregard the information provided in applicants' testimonies. This comfort can be read as both underlying and caused by the first comfort I identified. This is because the ease with which the board declares an applicant's experiences unreal due to essentialist approaches to cultures enables its members to overlook the available information provided in the testimony. At the same time, ignoring the available information that is present in testimony (such as the fact that it is not strange for women to start sexual relationships) allows the board to sustain its approach to Sara's "culture." Thus, giving applicants a deflated level of credibility prevents the board from paying attention to the information present in testimonies or enables them to disregard the available information present in testimonies. This becomes clear in Nesrin's case:

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[14] Also see McKinnon 2012.

Nesrin is of Kurdish origins and from Iraq. She claims to have had a love affair with Omed. Nesrin's family rejected Omed's proposal to Nesrin, as she was promised to a cousin of hers. As a result of the proposal, Nesrin's family repeatedly abused and threatened her and Omed. While the couple prepared to escape the country, Omed was murdered by Nesrin's family and Nesrin managed to escape through the aid of a women's organization. (Wikström 2014, 212–213)

Wikström explains that in the case of Nesrin,

> the Board finds the protection of abused women in northern Iraq satisfactory:
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> > MB: For abused women there is generally a possibility of good enough protection against HV[15] (Verdict 12: 4).
>
> They further state that:
>
> > MB: Nesrin did not make contact with the police, other authorities or alternative mediation institutions in Iraq [for her protection] before seeking international protection (Verdict 12: 5).
> > (Wikström 2014, 215; bracketed insertion is Wikström's)

In Nesrin's case, the board does not believe her testimony that the protection in her own country was not a possibility anymore. The board seems to question Nesrin's capacity to evaluate her own situation and decide that "going to the police was not an option." More importantly, the board (in order to maintain that there was sufficient protection in Iraq) ignores the fact that Nesrin's brother, uncle, and cousin were employed by the police force. Thus, they ignore the fact that going to the police for Nesrin would be equivalent to going back to her family. Furthermore, the board ignores "Nesrin's claim that it was a women's shelter that helped her to escape" (Wikström 2014, 216). As Wikström highlights, ignoring available information seems to be a technique that is frequently used by the Migration Board in order to suggest that the country of origin is still relatively safe and therefore the international protection is not needed.[16]

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[15] Honour-related violence.

[16] Despite the fact that the court later ends up giving Nesrin subsidiary protection, it is important to note here that, similar to Sara's case, her application for asylum is initially denied by the board. However, the court claims that "according to the

C. The comfort in deciding which information/criteria to use:

This comfort refers to the ease with which the migration boards can be arbitrary and ambiguous in their decision-making processes. Wikström describes a third case that demonstrates this comfort:

> Almas and Afya are both from Syria; they both refer to HV and claim to have been severely abused by their families and threatened to death; they applied for asylum during the same period of time. In the case of Almas, the ruling court relies on six both national and international country reports, based on which the Court concludes that the lack of protection in the country of origin is established by law:

> > MC: HV and murders take place all over Syria. *Syrian law statutes impunity or punishment mitigation* in honour-related violations. The State indicates that 30 such murders take place every year. NGOs put the number at 2,000–3,000 such cases. (Verdict 21: 7)[17]

> The case of Almas is awarded refugee status. In the case of Afya (Verdict 24), only the internal report from the Swedish Board is used as country information. The Board, which in its claim stresses the *equal legal status* of murders with and without honour motives, states:

> > MB: Generally considered, the number of honour killings has gone down in the country in recent years. It is said that people have become more enlightened and changed their attitudes in this matter. Men more often refrain from killing in the name of honour because they know they will be sentenced to harsh prison terms when they are not granted sentence reductions. (Verdict 24:4)

country information, the authorities in the Kurdish area have made several efforts to stop HV and murders, but that the protection is not necessarily good enough" (Wikström 2014, 216). Nevertheless, the court gives Nesrin subsidiary protection instead of refugee status because it argues that the persecution Nesrin suffers from is not gender-related persecution since the man she had a relationship with is killed as well (213). And because her persecution is not registered as gender-related, she is not granted refugee status.

[17] Wikström notes that "the country report from which the number is taken reads '200–300' such cases, not 2000–3000, indicating that the Court misrepresented the number in this citation" (Wikström 2014, 217n4).

This is contradictory to statements made in the case of Almas (Verdict 21). It also differs from what the *Court*, in the case of Afya (Verdict 24: 7), chooses to stress regarding the same country information, namely that HV is said to have "deep cultural roots," that the "police see threats and less serious offences as part of upbringing" and that HV has not been a high priority. The Court also states that:

> MC: Any deviation from the family's rules can lead to punishments. Sometimes you kill the person wronged. Many young women are married off to older men in return for payment. . . . NGOs report that between 200–300 women are killed in the name of honour each year. The authorities, however, believe that the number is 30–35. (Verdict 24: 9)

> The court refers lack of protection in the country of origin to "habits of culture," and Afya is granted subsidiary protection. (Wikström 2014, 215; Wikström's emphases and ellipses)

The fact that Almas and Afya are both from Syria and claim honour-related violence does not automatically render their cases the same. However, what is striking here is the *comfort* of the Migration Board and Court in turning to different reports concerning honour-related violence in Syria and not identifying why they do so. In other words, the migration authorities can *with ease* refer to the reports of NGOs or not, choose different authorities to count on, and in fact offer two different interpretations of Syria with respect to honour-related violence. This suggests that the Migration Board and Court can read, interpret, and process the cultures and the countries in question as they please. Wikström thinks that the decision processes described in Almas's and Afya's cases "show the arbitrary nature of the use of country information" by the migration authorities (Wikström 2014, 215). The use of country information can be arbitrary, but the fact that the authorities *can arbitrarily decide* which information/criteria to use, speaks to the institutional comfort they enjoy. Thus, the problem is not only that they rely on essentializing and racialized discourses of culture and different country reports, but that they can also be ambiguous and arbitrary in their reliance. This is to say that the courts can easily seem arbitrary about their decisions to choose what information to use, and they can also be ambiguous about how they will use that information.

I have tried to demonstrate above that the Migration Board and Court enjoy a certain institutional comfort that we can disentangle by following an analysis of testimonial injustice in assessments of gender-based asylum applications in Sweden.

This comfort can be seen in three forms: comfort in denying applicants' experiences, comfort in ignoring available information, and finally comfort in deciding which information/criteria to use for evaluations. An analysis of testimonial injustice allows us to address the unwarranted credibility deficit the asylum applicants suffer from. However, what seems to underlie the cases of testimonial injustice is that the board and court can afford to be arbitrary and ambiguous when negating and ignoring applicants' experiences, when selectively determining what is salient about the country in question, and when structuring what "good enough" or "efficient" protection looks like in the country in question. In these cases, the problem is not that the decision makers rely on other reports such as country of origin reports and expert reports to assess these claims. The problem is that the decision makers can afford to be ambiguous and arbitrary in their reliance in a way that usually ends up negating applicants' contributions to these cases. In other words, the Migration Board and Court can afford to be arbitrary and ambiguous in their reconstruction of applicants' experiences, cultures, and countries during the review process. Being able to afford to be arbitrary and ambiguous in processing the cultures, the countries, and the applicants' experiences in a way that negates applicants' own experiences is what comprises this institutional comfort. And this institutional comfort performed in the review process at the same time performs the authority of the current order of nation-states in the existing asylum regimes. In what follows, I aim to show how the institution of gender-based asylum structurally legitimizes this institutional comfort and why that is important.

2. The Structural Limit: Legitimization of the Institutional Comfort

This institutional comfort is not limited to Sweden's Migration Board and Courts. Other scholars have pointed out that applicants in gender-related asylum cases in the UK and the US get assigned lower epistemic authority and credibility compared to any other source of information (e.g., country of origin reports, websites providing information about these countries, or experts) and suffer from inconsistent, ambiguous and arbitrary assessments (Baillot, Cowan, and Munro 2014; Kelson 1997; Kennady 1998; McKinnon 2016; Neacsu 2003). This is to say that these dynamics that we were able to identify and discuss for these cases are not isolated incidents: they are part of a process that seems to be continuously and regularly juxtaposing how asylum applicants make sense of their situations with how "authorities in respective countries" make sense of applicants' situations. The question I would like to ask is, Can the institution of gender-based asylum as it is practiced today allow an environment where "how applicants make sense of their situations" can be acknowledged and affirmed? I think that the answer is most likely no. This is because, I argue, the institution of asylum is built to legitimize the institutional comfort of migration courts and boards. And this legitimization

prioritizes the epistemic resources of the boards and courts rather than that of applicants. This legitimization further overlooks and actively ignores applicants' epistemic resources. Epistemic resources, here, refers to various sense-making mechanisms that we need in order to make sense of what is salient and relevant in a given situation.[18]

In order to know the world well, Pohlhaus (2012) notes, a knower attends to her world. When a knower attends to her world, her particular location in the world matters since it determines what is more likely for her to notice and attend to (what is salient and relevant for her).[19] Knowers, she continues, need epistemic resources that can make sense of their experiences of attending and noticing things in the world. These epistemic resources are developed and circulated by groups of other knowers who attend to the world in different ways. Thus, she says, in a given epistemic landscape, it becomes important for a knower to be a part of the process of developing epistemic resources that are calibrated based on what is salient for her and at the same time enjoy the already circulating epistemic resources' ability to articulate what is salient for her.[20] However, Pohlhaus notes that "in a socially stratified society, some persons are situated in positions that allow their experiences to count more in the development and circulation of epistemic resources" (Pohlhaus 2012, 718). Thus, when the dominant epistemic resources (developed and circulated) do not suffice to make sense of what is salient for certain knowers who are situated in particular ways, these knowers need to "recalibrate and/or create new epistemic resources" in order to "know the world more adequately" (Pohlhaus 2012, 720). However, since creating new epistemic resources is an interdependent endeavor, that is, one that cannot be completed only by individual efforts, it is easy to imagine different groups that maintain and cultivate different epistemic resources.

Looking at Wikström's narration of Sara's and Nesrin's testimonies, for instance, we see that they know "perfectly well what is happening" to them (Pohlhaus 2012, 725). As knowers, they have the epistemic tools (developed and [re]calibrated collectively) to make sense of their experiences and what those experiences mean within the context of their country. In other words, they have their own sense-making mechanisms. What seems to happen is that the epistemic resources that the migration authorities use to make sense of the world are not

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[18] Even though I discuss decision makers' epistemic resources here, Akram (2000) points out that epistemic resources of advocates and lawyers can also be problematic.

[19] Also see Alcoff 2007, Code 1993, Harding 1991, and Hill Collins 2009.

[20] For Dotson (2014), the former relates to the efficiency of epistemic resources, and the latter relates to sufficiency of them.

calibrated for and do not allow the authorities to understand the "intelligibility" of Sara's and Nesrin's claims (Pohlhaus 2012, 725). As Pohlhaus suggests, "the resources that would call their [the board's] attention to those aspects of the world to which they do not attend are the very ones under contestation" (728). Thus, it is nearly impossible to demonstrate to the board that the epistemic resources they are using to attend to the parts of the world are inadequate without using the epistemic resources that the board dismisses to begin with.

The Migration Board's insistence on using the dominant epistemic resources that cannot make sense of the applicants' testimonies is at the same time a systematic refusal and active undermining of different hermeneutical resources developed and calibrated by the applicants themselves. In other words, the Migration Board's refusal to find Sara and Nesrin credible is not just a mere "not understanding" or an "inability" but an active, systematic and coordinated misinterpretation of the world as it makes sense to Nesrin and Sara (Pohlhaus 2012, 731). In Sara's case, the board *cannot understand* that it is not strange for a woman to initiate secret relationships. In Nesrin's case, the board *ignores* the fact that that she couldn't go to the police and the fact that a women's shelter helped her escape. What seems obvious in both cases is that the board selectively and systematically refers to the epistemic resources that makes sense of the country, the culture, and Nesrin's and Sara's identities in a way that *ends up* negating Nesrin's and Sara's experiences.

Pohlhaus suggests that willful hermeneutical ignorance occurs "when dominantly situated knowers refuse to acknowledge epistemic tools developed from the experienced world of those situated marginally" (2012, 715). "Such refusals," she continues, "allow dominantly situated knowers to misunderstand, misinterpret, and/or ignore whole parts of the world" (715).[21] For Dotson, in this case, the board commits contributory injustice: The board's "willful hermeneutical ignorance in maintaining and utilizing structurally prejudiced hermeneutical resources thwarts a knower's ability to *contribute* to shared epistemic resources within a given epistemic community by compromising her epistemic agency" (Dotson 2012, 32; my emphasis).[22] Thus, in the cases listed above we witness how the migration

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[21] Pohlhaus suggests that "willful hermeneutical ignorance may be a type of the broader category of contributory injustice insofar as the former is one way dominant knowers can refuse to acknowledge the significance of contributions of marginalized knowers to the general knowledge pool" (2012, 734).

[22] For Dotson, epistemic agency concerns "the ability to utilize persuasively shared epistemic resources within a given epistemic community in order to participate in knowledge production and, if required, revision of those same resources" (2012,

authorities can comfortably utilize dominant hermeneutical resources, disregard different hermeneutical resources, dismiss applicants' contributions to the shared epistemic resources, and maintain its ignorance with respect to the applicants' epistemic resources and experiences as a matter of process.

Migration boards and courts do this because the epistemological framework that maintains and sustains the institution of gender-based asylum is structured to provide "legitimacy" to arbitrary and ambiguous use of the epistemic resources of the authorities in the given nation-state that is evaluating the asylum applications as a matter of procedure. The problem here is not only that the institution of gender-based asylum structurally marginalizes and ignores epistemic resources of asylum applicants, but also that the structure of the institution is, to use Dotson's terminology, built to "uphold" and "preserve" the epistemic resources of the evaluative mechanisms in the respective nation-states (Dotson 2014, 131). In other words, the institution of gender-based asylum is structured not to provide the conditions for the possibility of asylum applicants' epistemic resources to be legitimized.

The epistemological framework that sustains the institution of gender-based asylum and provides the legitimacy mentioned above is supported further by another one: "the contemporary order of sovereign nation-states as given" (Malkki 1995, 502). Liisa Malkki calls this "the national order of things." As Malkki argues, "the national order of things secretes displacement, as well as prescriptive correctives for displacement" (516). This is also to say that the entire legal, political, social, historical, and economic culture at work positions refugee claimants as problems for the benefit of the states of refuge (Rusin and Franke 2010). Within this national order of things, "the refugee determination process performs the state's authority to protect the freedom of its citizenry, through the right to exclude refugee claimants on grounds of security and past behavior, and to demand particular manners of civil conduct from those who seek refuge" (Rusin and Franke 2010, 195).

This national order of things, for example, is reflected in the arguments made by opponents to gender asylum. As Karen Musalo suggests, there are usually two kinds of arguments used against gender-based asylum and gender-related persecution (Musalo 2010, 47). The first one states that the 1951 Refugee Convention and the 1967 Protocol were never meant to extend international protection to "domestic" and "private" issues. The second one asserts that accepting gender-based and gender-related claims "will open the floodgates and result in a deluge of claims" (Musalo 2010, 48). Despite UNHCR's efforts to

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24). She also notes that her definition of epistemic agency is influenced by Cynthia Townley's (2003) definition of agency.

encourage a gender-sensitive interpretation of the refugee convention, many countries' failure to follow through guidelines concerning gender-related persecution, their failure to apply their own guidelines in a consistent manner (without forgetting that consistent does not mean just), and their arbitrary interpretation of gender-related persecution demonstrate to us that the current order of nation-states and their border control politics also influence the evaluative mechanisms of those states. Thus, the contemporary order of sovereign nation-states as given facilitates the institutional comfort these migration courts and boards enjoy and legitimizes the epistemological framework that upholds and preserves the dominant epistemic resources, which delegitimize applicants' experiences.

Concluding Remarks

I have tried to demonstrate that the institution of gender-based asylum has a structural limit, that is, it is structured to produce epistemic injustice at least in the forms of testimonial injustice and contributory injustice. This structural limit becomes visible when we realize how the institution of gender-based asylum is structured to provide *legitimacy* to the *institutional comfort* the respective migration courts and boards enjoy in *deciding* how to read, interpret, and process the cultures and the countries in question and the applicants' experiences within them. In other words, I have followed Wikström's attempt to identify epistemic injustice in gender-based asylum cases and used her article as a case study to show how migration boards and courts are systematically afforded the ability to arbitrarily and ambiguously misinterpret asylum applicants' experiences, cultures, and countries. I've suggested that although testimonial injustice can indicate the unwarranted credibility deficit applicants suffer from, contributory injustice can demonstrate to us how epistemic resources of decision makers are prioritized. Paying attention to this systemic prioritization allows us to underline systemic misinterpretation afforded to migration boards by the existing asylum regimes in the current order of nation-states. Following this analysis, I think it is important to raise at least two questions: (1) What is it that a structural and epistemological analysis can do in this case? (2) Can this analysis be extended to the institution of asylum in general? I now try to answer these questions briefly.

First, it is important to articulate what a structural and epistemological analysis can enable in the context of gender-based asylum. I should note here that the point of this analysis is not to overlook or undermine the success of how gender-based asylum is used by advocates and lawyers to obtain refugee status for many asylum seekers; the point is to understand the failures of this institution better. If the institution of gender-based asylum is structured to produce epistemic injustice, then we have to ask: What do we need to pay more attention to in developing

guidelines, practices, and policies for gender-related persecution in order to make sure that states comply with the 1951 Refugee Convention when considering gender-related persecution? If, for example, in order to overcome this structural limitation, migration boards and courts need to be able to learn different epistemic resources and to shift among different epistemic resources, the question to ask is, what kinds of institutional practices could enable that? Both Dotson (2012) and Pohlhaus (2012) point out that learning different epistemic resources and being able to use them is not impossible, but it is quite difficult. This is because it requires a fluency in differing hermeneutical resources, which is not easy to achieve.[23] This difficulty further raises the question of what institutional practices can carry migration boards and courts and their evaluative mechanisms closer to that fluency without abusing the material, social, historical, legal, and political power they have held. This question is crucial to remind ourselves that "the law cannot on its own create justice" (Davis 2005, 88). Thus, a structural and epistemological analysis in the context of gender-based asylum can allow us to acknowledge the limits of national and international law, which is significant for projects that plan to create more just institutional practices (Davis 2005, 88).

Furthermore, it is important to ask whether this analysis can be extended to the institution of asylum in general. Is the institution of asylum structured to produce different forms of epistemic injustice? Although answering this question requires a more detailed and extensive discussion, I would like to mention a few points that speak to the importance of raising that question. When discussing refugee claimants in Canada, Jill Rusin and Mark Franke cite an excerpt from an interview with a Nigerian refugee claimant. This claimant complains about the lack of clear guidelines and criteria in courts' interpretation of race, political opinion, and the social and political context in the countries of origin:

> To go to the level of the hearing proper, I don't know the criteria that they are using to make their judgements. I told you before about the Nigerian from Viessa state, Orgoniland. I felt he should have won status here but he lost his case . . . I know that that area is being wracked by violence between the indigenes and the government. The people from the area produce the wealth of the country while they are being neglected. They are environmentally being destroyed by the international oil companies: Mobil, Shell, Chevron. Based on my experience of what is going on in that area of the country, anybody from that area is at risk, a refugee in their own country. I feel if somebody from that area can lose his case, do I stand a good chance of winning mine? At least give some clear guidelines. You can make your

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[23] Also see "incommensurability" in Schutte (1998).

claim on race, religion, political opinion . . . but race in what way? It's not that clear. They are making this claim based on their political opinion or for religious reasons only to be told it is not this. . . . It is not fair for people to see the process as a gambling thing . . . cause you never know if you are going to win or not. (Lokhorst 2003, quoted in Rusin and Franke 2010, 188–189)

This excerpt suggests that decision makers' inconsistent, ambiguous, and arbitrary assessments of applicants' cultures, countries, and experiences can create problems for asylum claims other than those that are based on gender. In other words, state actors' approaches to asylum grounds such as race, political opinion, and religion, can also be arbitrary, ambiguous and inconsistent in a systemic and persistent fashion.

In addition, if we recall the five categories in the 1951 Refugee Convention—race, religion, nationality, political opinion, and membership of a particular social group—we can see that it matters significantly whether intersectional analyses can play a significant role in decision makers' approach to applicants' cases. Despite the fact that asylum applicants' experiences can speak to multiple grounds (such as race, gender, religion, and political opinion) in the refugee convention, it is not unusual for decision makers to approach applicants' cases with "expectations based on inappropriate nonintersectional contexts" (Crenshaw 1991, 1251).[24] For instance, some applicants are denied asylum on being found too feminine or not gay enough or based on the importance of class not being understood in relation to gender or based on gender-based violence and sexual orientation-based violence not being considered at the same time (McKinnon 2012, 2016; Neilson 2005; McDonald-Norman 2017). These issues show us that it is crucial to acknowledge the failures of the dominant epistemic resources employed by decision makers and to discuss the structural limits of the institution of asylum in general.

The UNHCR, in a 2012 report, states that "wealthier countries that are geographically removed from crisis zones implement numerous measures to deter and prevent the arrival of asylum-seekers" (UNHCR 2012, 9). This is to say that current asylum procedures are further influenced by how states manage immigration in general. According to the UNHCR (2012), the increasing border control mechanisms[25] make the institution of asylum less and less meaningful as a way of protecting refugees. However, the practice of asylum not only is made more

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[24] Also see Anthias 2012, McKinnon 2012, and McKinnon 2016.

[25] Border control mechanisms such as "border closures, push-backs, interception at sea, visa requirements, carrier sanctions, and offshore border control" (UNHCR 2012, 10).

difficult and complicated, but also is "fraught with inconsistencies" (UNHCR 2012, 10). States do not have a consistent understanding of asylum and offer very different types of protection. These inconsistencies, the UNHCR notes, undermine the integrity of the international refugee protection system (2012, 10). Within this context, then, paying attention to the structural limits of the institution of asylum is not only important for reforming or rebuilding asylum practices but also for "re-imagining" and building other types of institutions, ideas, and strategies for international protection (Davis 2005, 71). Diagnosing and recording the failings of the institution of asylum, in other words, can be useful for evaluating how "we" respond to forced displacement and for coming up with different ways to address forced displacement.

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