Which Women’s Rights?
A Comparative Analysis of Gender-Based Asylum Claims in US Federal Courts

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## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AG</td>
<td>Attorney General</td>
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<td>AO</td>
<td>asylum officer</td>
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<td>BIA</td>
<td>Board of Immigration Appeals</td>
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<tr>
<td>DHS</td>
<td>Department of Homeland Security</td>
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<td>DOJ</td>
<td>Department of Justice</td>
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<td>DV</td>
<td>domestic violence</td>
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<td>FGC</td>
<td>female genital cutting</td>
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<td>FGM</td>
<td>female genital mutilation</td>
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<td>GBV</td>
<td>gender-based violence</td>
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<td>IJ</td>
<td>immigration judge</td>
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<td>INA</td>
<td>Immigration and Nationality Act</td>
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<td>RAIO</td>
<td>Refugee, Asylum, and International Operations</td>
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<td>UN</td>
<td>United Nations</td>
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<td>USCIS</td>
<td>United States Citizenship and Immigration Services</td>
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Chapter 1

Introduction

In recent American political discourse, the rising number of asylum seekers has been a popular subject, characterized as a national security threat by the right and a humanitarian crisis by the left. 2017 saw a 21 percent increase in affirmative asylum applications from the year prior, with application numbers reaching their highest level since 1995.¹ Among the thousands of individuals fleeing persecution in their home countries are those seeking protection from gender-based violence. By examining the adjudication of female genital cutting (FGC) and domestic violence (DV)-based asylum claims, this thesis identifies certain trends in how courts understand gender-based violence. The exotification and othering of Africa in FGC cases and the reification of a public/private divide in DV cases expose how the United States remains reluctant to accept asylum claims based on forms of gender-based violence which are common within its borders.

Research Design

Scholarship on gender and asylum has drawn on feminist theory, international relations, and postcolonial thought to identify the lenses through which decision-makers in the asylum system view gender-based persecution and female asylum seekers. However, these theories have generally been developed only through limited studies of two or three asylum cases. I seek to expand upon this existing research by applying these theories to a larger segment of US asylum jurisprudence. My research investigates whether existing theories of judicial reasoning capture

trends in the system at large or only represent a limited set of cases and asks whether there are other frameworks at play which have gone unrecognized.

My research approach departs from existing legal scholarship on this topic by drawing on a large dataset to capture an understanding of the dominant reasoning trends in the asylum system at large rather than in a few select cases. Rather than focusing on case outcomes, I am interested in studying patterns in how asylum decision-makers understand GBV. Through a qualitative analysis of federal regulations and cases from the circuit court level of asylum adjudication, I examine judges’ reasoning to identify the frames through which decision-makers view GBV and the women making gender-based asylum claims. Then, I explore why those are the dominant frames in the US asylum system using feminist, international relations, colonial, and racial theory to examine the gendered and racialized dimensions of how the US exercises power in the asylum system.

Using the LexisNexis database of circuit court asylum cases, I gathered a dataset of all female genital cutting (38) and domestic violence (49) cases adjudicated at the upper level of the asylum system from 2009 to 2018. Because I did not have access to a full set of written decisions in cases below the circuit court level, I chose to leave the limited set of published BIA decisions out of my dataset. The data I have gathered is thus inherently skewed and cannot be used to draw conclusions about the asylum system as a whole because I am only examining cases which have made it to this upper level of appeals. However, these cases do illuminate how circuit courts in particular view gender-based asylum claims. The data I have collected is representative of the kind of thinking prevalent at the highest level of asylum adjudication.
The US Asylum System

US asylum law has its roots in the international refugee law which developed after World War II to address the mass flight from war-ravaged Europe. In 1951, the United Nations ratified the Convention Relating to the Status of Refugees, the first major piece of international law establishing refugees as a protected class and outlining states’ obligations to them. The Convention defined a refugee as someone who

as a result of events occurring before 1 January 1951 and 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 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.\(^2\)

The 1967 UN Protocol Relating to the Status of Refugees extended refugee protections beyond those affected by WWII by removing the date qualification from this definition.

The US is not a signatory of the 1951 Convention, but it is a signatory of the 1967 Protocol which incorporates the majority of the Convention’s articles. However, US law did not fully comply with UN refugee policy until the passage of the 1980 Refugee Act, an amendment to the Immigration and Nationality Act of 1952 (INA). Prior to the passage of the Refugee Act, asylum was not a part of US law, just refugees. Additionally, US refugee law was shaped by the political landscape of the mid-20th century; it restricted refugee status to only those fleeing communism.\(^3\) The Refugee Act removed the communist qualification from the INA and adopted the UN definition of refugee. Thus, it finally aligned US law with the international principles it had agreed to as a signatory of the 1967 Protocol.

\(^3\) Anker, “U.S. Immigration and Asylum Policy: A Brief Historical Perspective.”
Current US law adopts the language of the UN Convention and Protocol, defining a refugee as

any 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.4

Asylum-seekers are those who meet the definition of a refugee but are either already in the US or are seeking admittance at a port of entry.5 A grant of asylum allows the applicant remain in the US with the option to become a legal permanent resident.

The Asylum Process

The US offers three paths to asylum: affirmative asylum, defensive asylum, and derivative asylum. Individuals who are legally in the United States or at a port of entry go through the affirmative process; they submit an application for asylum and are interviewed by an asylum officer who judges whether the applicant meets the legal definition of a refugee. Those who initiate an asylum application while in removal proceedings go through the defensive process; this includes those who are at a port of entry without legal documents and those apprehended while illegally in the US. Defensive asylum claims are adjudicated in an immigration court rather than by an asylum officer. Finally, the spouses and children of individuals who have been granted asylum can receive a derivative grant of asylum through them.6

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4 Section 101(a)(42) of the Immigration and Nationality Act
5 8 U.S.C. 1158 - Asylum
6 “Family of Refugees & Asylees.”
The Department of Homeland Security (DHS) and the Department of Justice (DOJ) each have jurisdiction over parts of the asylum process. The Department of Homeland Security handles the initial steps of the asylum application process through US Citizenship and Immigration Services (USCIS). USCIS, founded in 2003 as a partial replacement for the Immigration and Naturalization Service (INS), is a federal agency in the Department of Homeland Security responsible for enforcing federal immigration law.

To begin the affirmative asylum process, an asylum seeker must submit Form I-589, Application for Asylum and for Withholding of Removal, to USCIS within one year of their arrival to the US. USCIS will arrange an interview for the applicant with an asylum officer (AO). AOs can grant asylum, but tend not to; grant rates have been consistently under 50 percent since the establishment of the Asylum Officer Corps in 1990, dipping as low as 22 percent in 1997.7 If an applicant is not granted asylum, the AO will either deny asylum if the applicant has legal immigration status or place the applicant in removal proceedings if they do not. If the asylum seeker is placed in removal proceedings, USCIS will refer them to an immigration court for a hearing. This is the result of the majority of affirmative asylum applications.8 USCIS also conducts “credible fear” interviews for those apprehended at a port of entry or within 100 miles of the border without valid legal documentation. Rather than going directly to an immigration court, these individuals must be found to have a credible fear of persecution in their home country before going before an immigration judge to argue for asylum.

If an asylum case has been denied by an AO, as happens in roughly 60 percent of cases,9 the DOJ handles the appeals process via the Executive Office of Immigration Review and the

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7 Miller, Keith, and Holmes, “Introduction.”
8 Miller, Keith, and Holmes.
9 Nayak, Who Is Worthy of Protection?
Board of Immigration Appeals. The Executive Office of Immigration Review (EOIR) oversees US’s 59 immigration courts and 260 immigration judges, and its director reports to the deputy attorney general.\textsuperscript{10}

Cases within EOIR immigration courts are adjudicated by immigration judges (IJs). Applicants in the defensive process will go straight to a hearing with an IJ, while affirmative applicants go before an IJ if they appeal an AO denial. Hearings with IJs are courtroom-like; the asylum applicant and the US government, represented by an Immigration and Customs Enforcement (ICE) attorney, both make arguments to the judge. The asylum seeker can hire an attorney, but the US is not obligated to provide one if they cannot afford to do so. IJs tend to issue grants of asylum in less than 50 percent of cases.\textsuperscript{11} IJs have significant discretion in decision-making, but federal regulations are binding on them. Thus, although IJ decisions are not published, federal regulations provide some limited insight to the kind of jurisprudence occurring at the IJ level. An analysis of federal policy is also useful because it demonstrates the frames through which the US government at large views GBV in the context of asylum.

As is the case with AO decisions, either the asylum seeker or the US government can appeal an IJ decision. If they do so, the case moves on to the Board of Immigration Appeals (BIA). The BIA, an administrative body whose 15 members are appointed by the attorney general, is the highest level of the immigration court system. The BIA reviews IJ decisions and will either uphold a denial or send the case back to the IJ for a new decision. If the BIA chooses to publish its decision and thus designate it as precedent, it is binding on future BIA and IJ decisions unless modified by the attorney general or a federal court.\textsuperscript{12}

\textsuperscript{10} Miller, Keith, and Holmes, “Introduction.”
\textsuperscript{11} Miller, Keith, and Holmes.
\textsuperscript{12} USCIS, “Adjudicator’s Field Manual - Redacted Public Version: Decisions of Administrative Appellate Bodies.”
If either the applicant or the US government appeals a BIA decision, the asylum case will enter the US federal circuit court system. The federal court can affirm the BIA’s decision or send the case back to the BIA with instructions to issue a new decision. Circuit court decisions are only binding for that circuit; different circuit courts may interpret the law in different ways. If the case is appealed again, the Supreme Court is given the option to hear the case. Supreme Court decisions are binding for all asylum adjudicators at every level.
The US Asylum System

Affirmative Asylum
- Enters US on valid visa
- Interview with USCIS asylum officer
- Asylum granted
- Federal circuit court hearing
- Asylum denied, deportation

Defensive Asylum
- Requests asylum at the border
- ICE detention, potential asylum application
- Does not request asylum at the border
- Credible fear interview with an asylum officer
- Immigration court hearing
- Board of Immigration Appeals hearing
Gender in US Asylum Law

To receive a grant of asylum, an applicant must establish five key elements in their case:

1. The asylum seeker has a well-founded fear of persecution;
2. The asylum seeker has a characteristic or belief that is protected under refugee law;
3. The persecution was motivated by this protected characteristic or belief;
4. There was government involvement in the persecution or the government failed to prevent the persecution, either through inability or a lack of desire to do so; and
5. The asylum seeker is credible.\(^\text{13}\)

Each of these requirements carries complexities which make it challenging for applicants making gender-based claims to receive grants of asylum. Notably, in relation to the second point, neither the UN nor US definition of a refugee explicitly includes gender in the list of protected characteristics which may motivate persecution. This is the most visible representation of the widespread, subtle neglect of gender and disregard for women’s experiences in asylum law.

Feminist scholars have pointed to the masculine bias of international human rights law and its maintenance of the gendered public/private dichotomy to expose how “universal” human rights are inherently gendered. Charlesworth and Wright, for example, discuss how because international law is state-focused, it excludes women from decision-making processes:

In both states and international organizations the invisibility of women is striking. Power structures within governments are overwhelmingly masculine: women have significant positions of power in very few states, and in those where they do, their numbers are minuscule….International organizations are functional extensions of states that allow them to act collectively to achieve their objectives. Not surprisingly, their structures replicate those of states, restricting women to insignificant and subordinate roles. Thus, in the United Nations itself, where the achievement of nearly universal membership is regarded as a major success of the international community, this universality does not apply to women.\(^\text{14}\)

Masculine bias in international decision-making and leadership has produced to masculine bias in international law. Human rights law prioritizes the public over the private in its neglect of

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\(^{13}\) Nayak, *Who Is Worthy of Protection?*

\(^{14}\) Charlesworth, Chinkin, and Wright, “Feminist Approaches to International Law,” 621–22.
social and economic rights, thereby marginalizing women, for whom violence and rights violations often occur in the private sphere. “Although international law is gender-neutral in theory,” writes Crawley, “in practice the public/private distinction is used in such a way that what women do and what is done to them is often seen as irrelevant.”

This masculine bias and focus on the public shapes asylum law. International and US refugee law was constructed for a certain image of a refugee: an educated male political dissident fleeing persecution by a communist state. Persecution became defined as public, not private, harms, resulting in the dismissal of many forms of gender-based harms as private violence rather than persecution worthy of asylum. Scholars argue that this dominant image of persecution shapes asylum jurisprudence to the detriment of some female asylum seekers who may have different experiences of persecution shaped by their gender. For example, the focus on the state as a perpetrator of persecution makes it difficult to frame domestic abuse as grounds for asylum; the persecutors are generally not tied directly to the state and their actions are not clearly motivated by any of the protected grounds.

Well-Founded Fear

US law requires an individual to have a “well-founded fear of persecution” in their home country to qualify for asylum. This means that “an asylum seeker must prove legitimate fear based on past or potential future experiences” and that the feared harm rises to the level of “persecution.” However, the precise meaning of “persecution” has been left up to interpretation, with the INA offering no definition. Thus, the legal interpretation of the term has

15 Crawley, “Gender, Persecution and the Concept of Politics in the Asylum Determination Process,” 17.
18 Nayak, Who Is Worthy of Protection?, 43.
been left to case law, resulting in different definitions from different courts.\textsuperscript{19} The chances of success for a gender-based asylum claim vary widely depending on the court and the judge hearing it; cases with extremely similar facts may have opposite outcomes.\textsuperscript{20} The structure of the US asylum system aggravates this variance—the eleven separate federal circuit courts make decisions independent of each other, which can lead to vastly different precedents established in each circuit.\textsuperscript{21} Thus, an asylum seeker’s fate can depend on which court hears their case.

\textit{Possession of Protected Characteristic or Belief and Nexus}

US and international law recognize refugees as those fleeing “persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”\textsuperscript{22} Applicants must prove that they have one of these protected characteristics and that they are or will be persecuted on account of that characteristic. The “on account of” requirement is known as the nexus requirement. It is not enough for an applicant to face persecution and have a protected characteristic; the persecution must be motivated by that characteristic. This simple list of five grounds becomes problematic and complex when looked at through a gender perspective.

Gender is not explicitly named as a protected characteristic which can motivate persecution, so how do asylum seekers with fleeing gender-related claims fit into the refugee definition?

One strategy is to argue that the gendered violence was motivated by one of the listed grounds, such as religion or political opinion.\textsuperscript{23} For example, applicants may be able to frame

\textsuperscript{19} National Immigrant Justice Center, “Basic Procedural Manual.”


\textsuperscript{21} Millbank and Dauvergne, “Forced Marriage and the Exoticization of Gendered Harms.”


\textsuperscript{23} Nayak, \textit{Who Is Worthy of Protection}?
gender-based persecution as persecution due to political opinion, such as in the case of violence against feminist activists or women who violate gender norms. However, women's claims of persecution may be dismissed because their political activities can differ from traditionally male-dominated forms. There may not be the same types of clear evidence of their political activities which are key to establishing credibility in asylum cases, or their activities may be depoliticized as personal, private choices rather than forms of political resistance. For example, resisting domestic violence could be understood as an act of political opposition to patriarchal systems of power or dismissed as a private, interpersonal conflict independent of larger sociopolitical structures.

Of the five protected characteristics, “particular social group” has been subject to the most debate in relation to gender. The term “particular social group” is vague; neither American nor international law have defined it in detail, so courts have interpreted and applied the term in diverse and inconsistent ways. Though some asylum seekers have successfully argued that a group of women constitutes a particular social group, the lack of legal clarity around the term means that courts do not always accept a gender-based social group proposed by an applicant.

Government Involvement

Asylum law defines persecution in relation to the state; an applicant must be “unable or unwilling to avail himself or herself of the protection of” their government. This means that the government is the perpetrator of the persecution or that the government cannot or will not prevent persecution perpetrated by a nongovernmental entity.

24 Nayak.
25 Crawley and Lewis, “Gender Issues in the Asylum Claim.”
27 Berger, “Production and Reproduction of Gender and Sexuality”; Casey, “Refugee Women as Cultural Others.”
28 Section 101(a)(42) of the Immigration and Nationality Act.
The issue of the non-state actor is a major barrier in gender-based cases. Because the site of GBV is often the private sphere—the home or family—the state is often not directly involved. Rather, perpetrators are private individuals or family members. The debate over GBV as grounds for asylum thus centers on the question of how much responsibility the state bears for persecution committed by non-state actors, with a focus on factors such as a lack of enforcement of laws against violence against women, the presence of laws restricting women’s rights, and other indicators of state-sponsored, structural discrimination against women.

In the case of domestic violence, for example, asylum may be the best option for victims because they are unable to seek protection from their own state. This may be due to a formal lack of protection for abused women, such as inadequate domestic violence laws, or an informal lack of protection, such as the police’s failure to enforce existing laws. It is important to consider whether women have access to state protection in reality, not just in theory.

_Credibility_

An asylum seeker must convince the adjudicator that they are trustworthy and their claim is truthful. Since the passage of the Real ID Act in 2005, IJs have focused increasingly on applicants’ credibility rather than their actual claims in making decisions. The Real ID Act gave adjudicators significant discretion in making credibility assessments; they may base their evaluations on the applicant’s demeanor, the perceived plausibility of their narrative, and consistency in statements. However, many asylum seekers exhibit behaviors or make statements that cause doubts in credibility but are actually products of cultural differences,

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30 Crawley and Lewis, “Gender Issues in the Asylum Claim.”
31 McKinnon, “Citizenship and the Performance of Credibility.”
linguistic barriers, or trauma. Applicants may be nervous around authority figures, struggle to describe the trauma they have undergone, display unconventional emotions or no emotions at all while discussing their experiences, or forget specific dates. While these are normal human responses to horrific events, adjudicators may see them as signs of a lack of credibility. If an asylum seeker does not match a judge’s (gendered) expectations in their displays of emotion and behavior, they may believe the applicant is faking an emotion, intentionally hiding information, or making up events.

**Domestic Violence and Female Genital Cutting**

To investigate the circuit courts’ understanding of gender-based violence (GBV), I focus on asylum cases involving female genital cutting (FGC) and domestic violence, as these claims are two of the most common and heavily studied types gender-based claims.

As defined by the World Health Organization (WHO), the term “female genital cutting” (also commonly known as “female genital mutilation” and “female circumcision”) “refers to all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.” The WHO sorts the variety of procedures which constitute FGC into four categories:

Type I: Partial or total removal of the clitoris and/or the prepuce (clitoridectomy). Type II: Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision). Type III: Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation). Type IV: All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterization.

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33 National Immigrant Justice Center.
34 McKinnon, “Citizenship and the Performance of Credibility.”
36 WHO et al., 4.
Most international organizations, including the UN and the WHO, and most US courts use the term “female genital mutilation” (FGM) to denote FGC’s harmful consequences, frame it as a human rights violation, and encourage its elimination. This paper, however, uses the term “female genital cutting.” As noted by some advocacy groups, “mutilation” can be alienating to those who engage in FGC and thus detrimental to efforts to work with community members to reduce FGC rates. Additionally, FGC carries less of a connotation of victimization; women who have undergone FGC may not see themselves as mutilated. By using this more neutral term, I seek to draw attention to how advocacy groups, political figures, and actors in the US asylum system strategically use the word “mutilation” to further a certain understanding of what FGC is and what kind of people engage in it.

US law defines domestic violence (DV) as “a crime of violence…in which the victim or intended victim is the spouse, former spouse, intimate partner, former intimate partner, child, or former child of the defendant, or any other relative of the defendant.” However, as used in this paper, the term “domestic violence” refers only to physical, psychological, or sexual violence enacted by an intimate partner.

Despite apparent similarities between DV and FGC—both are forms of gender-based violence generally propagated by non-state actors—each receives strikingly different treatment in the asylum cases heard by US circuit courts. My dataset of circuit court cases reveals trends in adjudication which affirm certain racialized and gendered narratives about what qualifies as persecution and who deserves the United States’ protection.

37 18 U.S.C. § 3561
Chapter 2

Literature Review

US asylum jurisprudence has a history of inconsistency and vagaries, particularly with respect to deciding gender-based cases. A lack of legal clarity in gender-based asylum jurisprudence and policy has left judges with immense discretion in deciding gender-based cases. In the absence of clear law or established government policy, what narratives and frameworks are shaping judicial reasoning? Before exploring those frameworks, I will provide an overview of research on inconsistency in gender-based asylum jurisprudence.

It is well established that in dealing with gender-related claims, adjudicators at all levels of the asylum system have made inconsistent decisions; among other factors, the chances of success for a gender-based asylum claim vary widely depending on the court and the judge hearing it. Because gender-based persecution is not an explicitly established grounds for asylum in US law, judges are left on their own to decide how to fit gender in the existing legal framework. Cases with extremely similar facts may have opposite outcomes, and claims which would result in grants from one immigration judge may be rejected by another. The structure of the US asylum system has been identified as a major factor in this variance—the eleven separate federal circuit courts make decisions independent of each other, which can lead to vastly different precedents established in each circuit.

39 Casey, “Refugee Women as Cultural Others.”
40 Kallinosis, “Refugee Roulette”; Casey, “Refugee Women as Cultural Others.”
41 Millbank and Dauvergne, “Forced Marriage and the Exoticization of Gendered Harms.”
Scholars of gender-based asylum have particularly focused on the discrepancy in the treatment of female genital cutting (FGC) and domestic violence (DV)-based claims. They argue that FGC-based asylum claims overcame initial resistance in the system fairly quickly, and fear of FGC is now “a well-established basis for protection in United States law.” In contrast, DV-based claims have met an enduring resistance, and the place of domestic violence in asylum law remains under debate. Despite “some movement towards consistent decision making,” research shows that “contradictory and arbitrary outcomes” are still the norm in DV-based cases. Rather than legal norms, judicial discretion continues to determine whether DV is treated as persecution worthy of asylum. It should be noted, however, that some scholars have challenged the claim that FGC is a settled issue in asylum law. For example, Meghan Casey argues that despite general recognition of FGC as persecution, existing precedential FGC asylum decisions lack the kind of theoretical clarity which would consistently guarantee FGC as basis for an asylum grant, demonstrated through the conflict over whether past FGC constitutes grounds for asylum. Remaining ambiguity in FGC case law thus potentially leaves room for judicial discretion to have a significant impact.

Legal scholars note that in gender-based asylum cases, judicial discretion is most important in the judge’s interpretation of “particular social group.” Neither international nor national law explicitly identify gender-based persecution as grounds for asylum. Rather, asylum-seekers are defined as those seeking protection from persecution “for reasons of race,

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42 Arbel, Dauvergne, and Millbank, Gender in Refugee Law, 93.
43 Arbel, Dauvergne, and Millbank, Gender in Refugee Law.
44 Bookey, “Domestic Violence as a Basis for Asylum,” 147.
45 Casey, “Refugee Women as Cultural Others.”
religion, nationality, membership of a particular social group or political opinion.” Because gender is not explicitly recognized in asylum law as a potential grounds for persecution, advocates have attempted to fit gender-based claims under “particular social group.” Applicants must construct a social group which they claim membership in and then argue that they have been persecuted on account of that group membership. However, the term “particular social group” is vague; neither American nor international law have defined it in detail, leaving “courts free to set their own standards resulting in widely varying applications and results.” The lack of legal clarity on what constitutes a social group means that courts do not always accept a gender-based social group proposed by an asylum applicant.

**Interpretive Frameworks in Judicial Reasoning**

In addition to establishing the inconsistency and unpredictability of gender-based asylum adjudication, scholars have sought to identify the frameworks which judges use to decide cases in the absence of clear legal norms. Research has attempted to identify patterns in the discourse around gender and asylum, and explain those patterns by connecting them to broader systems of power. Most of this research is based on extremely limited case studies of two or three asylum cases, so the proposed frameworks are more theoretical than factual. Theories of interpretive frameworks in the asylum system fall broadly into four categories: exotic versus familiar harms, public/private dichotomy, biological essentialism, and floodgate fears.

**Exotic vs. Familiar Harms**

The most discussed framework of judicial reasoning in gender-based asylum cases is the exotic/familiar dichotomy. Scholars argue that forms of gendered violence which can be blamed

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47 UNHCR, 14.
49 Berger, “Production and Reproduction of Gender and Sexuality”; Casey, “Refugee Women as Cultural Others.”
on foreign, non-Western cultures, such as FGC, are understood as asylum-worthy persecution while forms of violence which also occur in the US, such as DV, are dismissed. They assert that the asylum system engages in a process of othering which exoticizes, homogenizes, and deprecates non-Western people and cultures while lifting up the US and Western society. The nature of the asylum system requires women to present themselves as victims and their countries of origin as perpetrators of violence. Female asylum applicants then become representations of all non-Western women, who are simplified as helpless victims of exotic, backwards violence. Their countries of origin become spaces of universal and constant oppression, barbarism, and danger. This othering occurs via the delineation of which forms of gender-based violence should be considered harms and which should not. The racialization and exotification of harm reinforces a hierarchy of nations; when gendered harms are attached only to foreign countries, asylum decision-makers view themselves as saving women from a demonized, foreign “other” by inviting them into the civilized and superior US. Scholars in this school of thought conclude that differences in case outcomes can thus be attributed to whether judges interpret the GBV in question as foreign or familiar.

Asylum scholars assert that female applicants fleeing GBV are viewed “entirely through the lens of a type of violence deemed backward and cultural” and are “monolithically constructed as always at risk of death and oppression in their countries.” In order to demonstrate this, they examine how the applicants, their experiences, and their countries of origin are discussed by asylum lawyers and judges. The wording used in discussions of FGC, for example, often indicates the speaker’s position on the issue. In the landmark case *Matter of* 

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*Kasinga*, while the applicant herself used the term “circumcision” to describe the feared harm she was fleeing from, the Board of Immigration Appeals (BIA) used “mutilation” in its decision.

Sara McKinnon notes the significance of this choice:

> The use of ‘FGM’ in this instance rhetorically constructs the circumcision as persecution and as foreign. The term ‘circumcision' connotes religious ritual; genital mutilation connotes destruction. While the United States is a predominantly Christian nation, circumcision is a familiar practice. Genital mutilation, however, is destructive: invasive and sexual on the one hand, and distant on the other.\(^{51}\)

Additionally, scholars have identified the use of words such as “tribal,” “ritual,” “custom,” “ethnic,” and “traditional” as indications of a exotified, stereotypical view of countries of the Global South which discursively distances them, and GBV, from the US.\(^{52}\) While these words are frequently used in FGC-based cases, they are not in DV cases. Additionally, in contrast to the frequent minimization of DV, American adjudicators tend to describe FGC in graphic detail in their decisions, which scholars have interpreted as signifying fascination with an exotic, “barbaric” practice.\(^{53}\) Sinha argues that this is because FGC “can be ascribed to African tribal ritual” while DV cannot because it is common within the US and is not associated with “a particular nonwhite race.”\(^{54}\)

Berger has found that asylum seekers’ narratives of their experiences become simplified, misstated, or exaggerated in the process of translation and expert witness corroboration.\(^{55}\) This produces an oversimplified contrast between the US and applicants’ home countries: “the petition often compromises the complexity of power relations, both between the United States

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51 McKinnon, “Positioned in/by the State,” 186.
53 McKinnon, “Positioned in/by the State”; Millbank and Dauvergne, “Forced Marriage and the Exoticization of Gendered Harms.”
55 Berger, “Production and Reproduction of Gender and Sexuality.”
and the country in question and within the country of origin of the petitioner, thus resuscitating the colonial binaries of old.\textsuperscript{56}

Other research has found that applicants and their lawyers intentionally use simplified narratives of victimhood and exotified violence to achieve asylum grants. Lawyers encourage asylum applicants to construct their narratives of persecution in a way which will appeal to adjudicators, which often involves drawing on overly simplified, stereotypical portraits of violence and culture. Coffman’s analysis suggests that rather than “some form of indigenous auto-critique,” asylum seekers “put forth particular representations meant to enable them to achieve their personal goals of staying in the United States while positioning themselves as members of persecuted social groups.”\textsuperscript{57} Berger’s research on the experiences of LGBT asylum seekers supports this, finding that LGBT applicants must conform to stereotypes and homogenize their experiences to avoid American judges doubting their credibility. Lawyers encourage applicants “to appear ‘gay enough’ (read stereotypically effeminate and campy) to convince immigration judges of their sexual orientation and that the public harm they experienced was due to that orientation.”\textsuperscript{58} Additionally, asylum lawyers have been found to universalize the experiences of LGBT people; for example, in a case dealing with the persecution of an El Salvadorian lesbian woman, her lawyers discussed the treatment of all LGBT people in El Salvador, with a focus mostly on gay men and transgender people and providing limited information specifically about the treatment of lesbians, a move which “discursively essentializes gay identity.”\textsuperscript{59}

\textsuperscript{56} Berger, 669–70.
\textsuperscript{57} Coffman, “Producing FGM in U.S. Courts,” 77.
\textsuperscript{58} Berger, “Production and Reproduction of Gender and Sexuality,” 675.
\textsuperscript{59} Berger, 679.
These narratives have significant impacts. The homogenized construction of women as victims and foreign countries as spaces only of barbaric violence “reinforce[s] distinctions between ‘first’ and ‘third’ world countries” and “forces women to conform their stories to these monolithic depictions, even if their stories do not quite match.”\(^{60}\) The simplified experiences of a few women because representative of all women, thereby making it more difficult for women who do not fit into these universalized narratives to win asylum grants.\(^{61}\) Additionally, the portrayal of non-Western women as helpless victims generates a need for the West to intervene on their behalf. In contrast with “the image of the emancipated Western woman,” the Third World woman becomes “a minor needing guidance, assistance, and help.”\(^{62}\) Ratna Kapur argues that this colonialist infantilization serves as justification for interventionist policies on behalf of women who are “incapable of self-determination.”\(^{63}\)

Furthermore, scholars argue that exoticizing gender-based violence supports a hierarchy of states which puts US at the top and supports its self-image as the height of civilization. In international politics, gender equality has come to signal civilization and development due to the efforts of women’s rights activists to “put forward the narrative that civilized and superior states include women in political life.”\(^{64}\) Regardless of their actual commitment to women’s rights, states “find it politically expedient” to present themselves as champions of women’s rights due to the development of international norms on gender equality.\(^{65}\) Thus, an international hierarchy has

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\(^{60}\) Llewellyn, “Deciding What Counts as Persecution,” 15.
\(^{61}\) Coffman, “Producing FGM in U.S. Courts.”
\(^{63}\) Kapur, 19–20.
\(^{64}\) Nayak, Who Is Worthy of Protection?, 58.
\(^{65}\) Nayak, 57.
emerged with states supposedly committed to women’s rights at the top and oppressive states at the bottom.66

Scholars argue that the asylum system reinforces this hierarchy. The condemnation of “traditional” foreign practices supports a dichotomy of uncivilized and civilized societies which ignores women’s oppression within Western states. The focus on FGC and dismissal of DV in asylum law attaches GBV exclusively to countries in the Global South, thereby enabling attribution of GBV to “immutable social and cultural characteristics” of those “other” countries and erasing any connection to GBV in the US.67 The asylum system is relatively friendly to FGC-based cases compared to DV-based cases because condemning FGC allows the US to project an image of commitment to women’s rights without being forced to acknowledge forms of gender-based violence which occur in the US.68 “The real dynamics of gender inequality underlying all types of gender-related violence, whether ‘here’ or ‘there’ is not analysed,” writes Freedman.69

Additionally, linking GBV to tradition transforms it into a remnant of the past, a past which lingers in the supposedly stagnant, primitive Global South. This is presented in contrast to the modern US: “Within its imaginary, the United States is a modern state of the ‘here and now’ that is temporally disconnected from the patriarchal values that produce the ‘traditional’ culture and the subsequent persecution” which asylum applicants flee.70

To gain asylum, applicants must reject their own “backwards,” “traditional” culture and express a desire to be part of the US’s “advanced” society. Scholars argue that judges are more

66 Nayak, *Who Is Worthy of Protection?*
68 McKinnon, “Positioned in/by the State,” 186.
70 McKinnon, “Positioned in/by the State,” 185.
accepting of applicants who reject their home country's culture in favor of the US by demonizing their families and home countries in the narratives they present to adjudicators. Female asylum seekers must not only portray themselves as oppressed third world women, but also express the desire to become like the liberated Western woman. Women fleeing exotic harms are accepted via the asylum system because their desire to join American society emphasizes the “uncivilized” nature of other countries and reinforces the image of the civilized, modern US.

Public/Private Dichotomy

A second major theory in gender-based asylum scholarship considers the role of the public/private dichotomy. Scholars identify a tendency among judges and government bodies to interpret gendered harms, particularly domestic violence, as a private issue outside the realm of asylum law. They argue that because gender-based violence often occurs on an individual scale in the private sphere (ie., the home or the family) without direct state involvement, judges tend to reject attempts to frame it as persecution. GBV becomes a private, interpersonal conflict unrelated to broader patriarchal political structures. “The myth that the ‘private’ is not political, while successfully contested in other areas of the law, remains central in the application of refugee law,” writes Anita Sinha.

Scholars argue that the neglect of “private” harms in asylum jurisprudence comes from a general male bias in asylum law. International and national refugee law was constructed with a certain image of a refugee in mind: “a male political dissident fleeing a repressive state after

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72 Berger, “Production and Reproduction of Gender and Sexuality.”
being imprisoned and tortured.”74 Thus, the dominant understanding of persecution in asylum law is violence “committed in the public domain by the state or its representatives or at least with its acceptance.”75 This traditional, male-focused image of persecution and refugees continues to shape asylum jurisprudence, to the detriment of some female asylum seekers whose experiences of persecution may differ due to their gender. Asylum law was designed to address “the prototypical male experience of ‘public,’ and not ‘private,’ abuse,” so violence which is not clearly political or occurs outside the public sphere has been dismissed as “private wrongs” not meant to be addressed through the asylum system.76 Specifically, scholars identify asylum law’s evidentiary and credibility requirements and focus on the role of the state in persecution as the key barriers to gender-based asylum claims.

Forced marriage, rape, and DV cases have been referenced as examples of the influence of asylum law’s public/private divide. Millbank and Dauvergne, for example, demonstrate that in cases involving forced marriage, the harm is often dismissed as a personal conflict between families or an issue of “personal preference” of the victim, and thus not be considered persecution.77 Rape-based asylum cases also have a history of being dismissed under the public/private framework, with the violence “regarded as a manifestation of unrestrained—and unrestrainable—male sexual appetite” and any connection to a state-sponsored culture of impunity ignored.78 Domestic violence is a heavily cited example of the role of the public/private divide in asylum jurisprudence. Scholars have argued that “domestic violence cases heard in the

75 Berger, “Production and Reproduction of Gender and Sexuality,” 664.
76 Berger, “Production and Reproduction of Gender and Sexuality.”
77 Millbank and Dauvergne, “Forced Marriage and the Exoticization of Gendered Harms.”
78 Anker, “Refugee Law, Gender, and the Human Rights Paradigm,” 140.
U.S. are understood as interpersonal," with adjudicators referring to abuse as “‘private acts of violence’ that did not warrant political asylum protection.” Additionally, asylum law restricts the definition of persecution “to mostly physical forms of violence or public displays of threats and psychological torture,” preventing DV from being understood as extreme violence. Adjudicators tend to minimize the severity of DV because it does not fit the traditional definition of persecutory violence.

The issue of the non-state actor is a major barrier in cases of gender-based violence. Human rights law, which asylum law is founded on, was designed to apply to states, not individuals. However, because the site of GBV is often the private sphere—the home or family—the state is often not directly involved. Rather, perpetrators are private individuals or family members. The debate over GBV as grounds for asylum thus centers on the question of how much responsibility the state bears for persecution committed by non-state actors, with a focus on factors such as a lack of enforcement of laws against violence against women, the presence of laws restricting women’s rights, and other indicators of state-sponsored, structural discrimination against women.

Researchers argue that in DV-based asylum cases, adjudicators interpret domestic violence as the actions of one criminal individual rather than a manifestation of a patriarchal system upheld through state inaction. Matter of R-A- is frequently referenced, with scholars

82 Anker, “Refugee Law, Gender, and the Human Rights Paradigm”; Arbel, Dauvergne, and Millbank, Gender in Refugee Law.
83 Arbel, Dauvergne, and Millbank, Gender in Refugee Law.
highlighting how the BIA recognized the abuse suffered by the applicant as rising to the level of persecution, but asserted that it was still a private act of violence and thus outside the realm of asylum law. The BIA decision, though later overturned, reflected a view of domestic violence as an individualized criminal act disconnected from gender rather than “a pervasive and systemic exercise of patriarchal power” which “state action and inaction perpetuates.”

In sum, the public/private dichotomy shapes judicial reasoning by making judges resistant to interpreting gender-based violence as asylum-worthy persecution. GBV becomes an interpersonal, private issue disconnected from the state and therefore beyond the realm of asylum law.

**Biological Essentialism**

A third proposed framework shaping judicial reasoning is that of biological essentialism. This framework is understudied, but serves as promising starting point for further research. According to this theory, as proposed by sociologist Cheryl Llewellyn, the conflation of biological sex and gender in Western society limits recognition of gender-based persecution only to forms of violence which target markers of biological sex, such as FGC. Because of FGC’s focus on genitalia, it is more easily understood as violence motivated by gender than harms such as domestic violence. While domestic violence may be dismissed as an interpersonal dispute without a gender dimension, FGC is clearly seen as persecution which targets women because they are women. “Marks on faces and limbs seem to carry less weight for judges than those on labia or vulvas,” writes Llewellyn. Thus, when faced with cases of GBV, the asylum system

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87 See Llewellyn, “Deciding What Counts as Persecution”; Llewellyn, “Sex Logics.”
88 Llewellyn, “Deciding What Counts as Persecution,” 55.
focuses not on gender, per se, but on biological sex as a potential grounds for persecution. This makes it difficult for applicants with gender-related claims less clearly tied to sex to achieve asylum grants.

Biological or gender essentialism can be defined as the fixing of certain attributes to women. These attributes may be natural, biological, or psychological, or may refer to activities and procedures that are not necessarily dictated by biology. These essential attributes are considered to be shared by all women and hence also universal.  

Feminist theorists have worked to undermine essentialist conceptions of gender, separating gender from biological sex and arguing that gender is a constructed role which individuals perform and that is reinforced and shaped by the society they live in. Wittig, for example, argues that gender is a social system which gives neutral biological features meaning by shaping how the self and others perceive them. Butler presents a similar argument, describing gender not as an inherent characteristic but as a set of actions which individual repeatedly perform: “gender is in no way a stable identity or locus of agency from which various acts proceed; rather, it is an identity tenuously constituted in time—an identity instituted through a stylized repetition of acts.” In sum, gender is not guaranteed by biology; it is culturally and socially produced. Physical sex characteristics acquire gendered meaning as part of this process.

Llewellyn argues that due to the continued dominance of essentialist conceptions of gender in Western thought, when asylum adjudicators are faced with gender-based claims, they are actually making decisions based on biological sex. When applicants argue they have been persecuted on the basis of social group membership, judges examine the proposed social group

90 McCann and Kim, Feminist Theory Reader.
91 Butler, “Performatve Acts and Gender Constitution,” 519.
to decide, among other factors, whether the group is based on some immutable characteristic, similar to religious identity or ethnicity. Biological sex is thought to provide this sense of immutable identity. In FGC cases, “the immutable trait [is] the sexed body attacked by the applicant’s culture” and because “sex-based harms were unquestionably markers of gender persecution...applicants did not have to painstakingly construct a particular social group.”92 The court thus accepts FGC as gender-based persecution and grants asylum.

In contrast, “the sex-based group construction and its immutability was less evident in domestic violence cases.”93 Social groups proposed in DV-based cases often rely on more mutable characteristics less explicitly tied to gender, such as relationship status, rather than biologically based constructions of gender.94 Therefore, in absence of references to biological sex, the connection between violence and gender is less clear to adjudicators, and they are less likely to accept the validity of proposed social groups. “The same sex-based logic observed in female circumcision cases was not present in domestic violence asylum cases, making it more difficult to prove the immutability of the group claim,” concludes Llewellyn.95

Llewellyn is not the only scholar to address biological essentialism in the asylum system. Sociologist and feminist scholar Wairimu Ngaruiya Njambi draws on feminist theories of gender construction in her analysis of FGC-based asylum cases, arguing that anti-FGC discourse draws on “a universalized image of female bodies that relies upon particularized assumptions of what constitutes ‘naturalness’ and ‘normality.’”96 Njambi emphasizes that understandings of what constitutes a “normal” female body is a cultural construction rather than a universal fact and

92 Llewellyn, “Sex Logics,” 1125, 1128.
93 Llewellyn, 1125.
94 Llewellyn, “Sex Logics.”
95 Llewellyn, 1125.
96 Njambi, “Dualisms and Female Bodies,” 282.
pushes back against implications that the US asylum system “knows exactly how an ‘unharmed’ body looks.” She argues that Western body modification, such as piercings, cosmetic surgery, and male circumcision, is not scrutinized in the same way as FGC. Rather than taking a position on FGC itself, Njambi seeks to highlight how anti-FGC discourse in the US asylum system relies on a Western, essentializing conception of what a normal woman’s body is and brushes over the ways in which the women’s bodies are modified and constructed in the West. According to Njambi, the dominant trends in FGC asylum discourse implicitly assert the existence of a biologically given “normal” female body, disregarding the ways in which culture shapes bodies everywhere.

In sum, both Njambi and Llewellyn’s work suggests that adjudicators’ acceptance of gender-based asylum claims relies on a biologically based conception of gender. Forms of violence which target the sexed body are understood as gender persecution, while violence with less of a bodily connection are not. The role of essentialist gender theory in asylum adjudication needs more research, as it has only been thoroughly investigated by Llewellyn. Additionally, existing research only applies this theory to DV and FGC; it would be useful to investigate the role it may play in cases dealing with other forms of GBV.

Floodgates Fears

A final, frequently referenced but relatively understudied interpretative framework shaping adjudication is that of floodgates fears. Legal scholars argue that the US is resistant to expanding the set of harms considered basis for asylum due to fears that doing so would open a “floodgate” of immigration. Mullally, for example, argues that US asylum jurisprudence has

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97 Njambi, 291.
failed to keep pace with international human rights bodies on the issue of gender-based persecution due to the state’s concern with migration control; asylum obligations conflict with the state’s need to restrict migration flows.98 Scholars have suggested that floodgates fears have particularly impacted the acceptance of gender-based asylum claims: “if women constitute half of the world’s population and they all need asylum, the system cannot accommodate all of those cases.”99 According to McKinnon, floodgates rhetoric implies that expanding asylum to gender-based claims will result in an overwhelming, unmanageable number of immigrant women entering the country and normalizes GBV as a universal experience of women, thereby depoliticizing it.100

Scholars have done limited work in studying how floodgates rhetoric is used in cases dealing with specific forms of gender-based violence. Millbank and Dauvergne, for example, have identified floodgates fears as a factor in the limited acceptance of forced marriage as grounds for asylum. Additionally, scholars have noted that although FGC has become a generally accepted grounds for asylum, floodgates language appeared in early decisions. In one decision, the BIA stated its reluctance to extend asylum access to the “over eighty million females [who] have been subjected to FGM” and argued that asylum laws were not meant to apply “to broad cultural practices.”101 Additionally, the US government has tried to limit potential FGC claims by arguing against the inclusion of victims of past FGC.102 Now, however, floodgates discourse appears most often in DV cases. Scholars suggest that this is because DV is

98 Mullally, “Domestic Violence Asylum Claims.”
100 McKinnon, “Positioned in/by the State.”
102 Millbank and Dauvergne, “Forced Marriage and the Exoticization of Gendered Harms.”
seen as extremely widespread, more so than FGC. In particular, floodgates concerns have been identified as a major factor in the delay of resolving *Matter of R-A-*, a DV-based asylum case which remained unresolved for 18 years.

Scholars have argued that floodgates concerns rely on assumptions about the global prevalence of gender-based violence. However, there is some disagreement on what those assumptions are. Some assert that floodgates rhetoric indicates an ethnocentric view of GBV; domestic violence is seen as endemic in the US, and adjudicators universalize this US-centric perspective by implying that every country is full of abused women. Proponents of this perspective argue that this normalizes DV and renders it unworthy of asylum. A competing viewpoint is that judges assume countries in the Global South have high rates of DV while the US does not; floodgates rhetoric therefore others asylees from these countries and suggests that a threat of immigration from undesirable countries.

Aside from the limited scholarship on universalization and normalization of domestic violence rates discussed above, there has been limited application of theory to the issue of floodgates discourse. McKinnon, for example, uses feminist theory to suggest that the language of “floodgates” is evocative of discourse around the menstrual cycle and therefore reflects a fear of a feminine threat to the masculine norm: “metaphors of flood and 'floodgates' invariably signify the power and the threat of the feminine….Women’s bodies are uncontained from the inside out; a corporeal force recognized as unnatural, strange, and puzzling to the masculine

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105 Oxford, “Protectors and Victims.”
106 Llewellyn, “Deciding What Counts as Persecution.”
107 Mullally, “Domestic Violence Asylum Claims.”
norm.”\textsuperscript{108} Beyond this, however, there has been almost no application of feminist theory to the concept of floodgates fears in the asylum system. Additionally, floodgates discourse seems to provide a foundation for an analysis of the racial dynamics of the issue, but this topic has generally been overlooked in the literature.

**Conclusion**

Scholarship on gender and asylum has thus drawn on feminist theory, international relations, and postcolonial thought to examine the lenses through which decision-makers in the asylum system view gender-based persecution and female asylum seekers. However, the theories discussed above have generally been developed only through limited studies of two or three asylum cases. My work expands upon this existing research by applying these theories to a broader sector of US asylum jurisprudence. My research investigates whether existing theories of judicial reasoning capture trends in the system at large or only represent a limited set of cases and asks whether there are other frameworks at play which have gone unrecognized.

\textsuperscript{108} McKinnon, “Positioned in/by the State,” 191.
Chapter 3

Female Genital Cutting

The applicant’s fear is of imminent female genital mutilation, related to being forced to enter an arranged marriage, documented in the record as constituting a mandatory tribal custom. The harm or abuse amounting to persecution is the genital mutilation opposed by the applicant. The reason the persecution would be inflicted, the “on account of” element, is because of the persecutor’s intent to overcome her state of being non-mutilated and accordingly, free from male-dominated tribal control, including an arranged marriage.

There is no legitimate reason for FGM. Record materials state that FGM “has been used to control woman’s sexuality”...It also is characterized as a form of “sexual oppression” that is “based on the manipulation of women’s sexuality in order to assure male dominance and exploitation.”...The practice is a...“severe bodily invasion” that should be regarded as meeting the asylum standard even if done with “subjectively benign intent.” We agree with the parties that, as described and documented in this record, FGM is practiced, at least in some significant part, to overcome sexual characteristics of young women of the tribe who have not been, and do not wish to be, subjected to FGM. We therefore find that the persecution the applicant fears in Togo is “on account of” her status as a member of the defined social group.109

Board of Immigration Appeals,
Matter of Kasinga

In the 1996 case Matter of Kasinga, the Board of Immigration Appeals (BIA) for the first time took on the question of whether female genital cutting (FGC) is a basis for asylum.110 In 1994, 17-year-old Fauziya Kassindja fled threatened FGC and a forced polygamous marriage in Togo and sought asylum in the US.111 After she was placed in detention, an immigration judge denied her asylum on the basis of an adverse credibility finding and the belief that FGC was not grounds for asylum.112 Media attention around the case pressured the government into releasing

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110 In re Fauziya Kasinga (1996).
112 “Matter of Kasinga (1996).”
Kassindja, and in 1996, the BIA issued her a grant of asylum in a nearly unanimous ruling.\textsuperscript{113} In its decision, the BIA found that FGC constituted persecution on account of Kassindja’s membership in the particular social group of “young women of the Tchamba-Kunsuntu Tribe who have not had FGM, as practiced by that tribe, and who oppose the practice.”\textsuperscript{114}

Though it characterized FGC as gender-based oppression, the Board emphasized that FGC is uniquely “African,” disconnecting it from other forms of gender-based violence and precluding a more broad acceptance of gender-based asylum claims. Rather than taking on the larger issue of the place of gender-based claims in US asylum law, the BIA based its condemnation of FGC on its difference from American cultural norms, framing it as an exotic “tribal custom.”\textsuperscript{115} Kassindja’s victory was largely due not to a shift in how the BIA interpreted gender-based claims but rather to the Board’s “vilification of non-Western culture.”\textsuperscript{116} Despite the passage of 20 years since the \textit{Kasinga} decision, US courts continue their fascination with FGC as an exotic harm. In recent circuit court decisions, adjudicators continue to use FGC to frame Africa as primitive, irrational, and other. Rather than a rejection of patriarchal power, the courts’ condemnation of FGC is a condemnation of “African culture” and an implicit assertion of American superiority.

\textsuperscript{113} “Matter of Kasinga (1996).”
\textsuperscript{114} In re Fauziya Kasinga, 3278, United States Board of Immigration Appeals (1996).
\textsuperscript{116} Sinha, 1583.
FGC as Grounds for Asylum

At least 200 million girls and women in 30 countries have undergone FGC. The most common form of FGC is Type II, excision. FGC is usually done on girls under the age of 15, though some adult women are also subjected to FGC. Who performs the procedure varies by community; midwives, female relatives, or medical personnel may perform FGC. UNICEF research shows that FGC occurs globally, but mostly in certain African countries and parts of the Middle East and Asia. Prevalence varies widely by country. Somalia, Egypt, Guinea, and Djibouti have some of the highest rates of FGC, with around 90 percent of girls and women having been cut. In contrast, only 1 percent of girls and women have undergone FGC in Cameroon and Uganda. Additionally, countries may have regional variations in prevalence; for example, Mali's national FGC rate is about 90 percent, but only 25 percent in its three northern regions. Education tends to reduce risk of FGC, and cities tend to have lower rates. FGC rates have been declining over the past few decades, though at different rates in different countries; those in which FGC is less common have seen more rapid decreases in prevalence.

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121 UNICEF, “Female Genital Mutilation.”
123 UNICEF, “Female Genital Mutilation.”
124 Andro and Lesclingand, “Female Genital Mutilation around the World.”
125 Andro and Lesclingand, “Female Genital Mutilation around the World.”
126 Andro and Lesclingand, “Female Genital Mutilation around the World.”
Although FGC is now most common in Africa, the Middle East, and Asia, it has a global history. Until the 1960s, doctors in the United States conducted clitoridectomies as a treatment for “deviant” female sexuality; clitoridectomies are still performed on intersex newborns.\textsuperscript{127} Additionally, genital plastic surgery is rising in popularity in the United States, Latin America, Asia, and Europe.\textsuperscript{128} Similarly, FGC is increasingly performed by doctors in some countries, thereby reducing health risks and impeding efforts to eliminate the procedure.\textsuperscript{129} Interestingly, intersex medical interventions and cosmetic procedures are generally not labelled as FGC despite their similarities to it.

When FGC is performed outside a clinical environment, girls may suffer immediate complications such as hemorrhage, extreme pain, urethral damage, tetanus, and shock.\textsuperscript{130} Over the long term, FGC may cause chronic vulvar pain, cysts, damage to the urethra, recurrent urinary tract infections, intense menstrual cramps, complications during pregnancy and birth, pain during sexual intercourse, infections and sepsis, spread of bloodborne disease, and psychological trauma.\textsuperscript{131} Additionally, women who have undergone FGC have an increased risk of post-traumatic stress, depression, and anxiety.\textsuperscript{132}

Both the WHO and the UN have identified FGC as “a manifestation of gender inequality” and a method of asserting control over women.\textsuperscript{133} This may be the underlying explanation, but the reasons why individual communities engage in FGC vary. Social pressure, concerns about marriageability and female sexuality, beliefs about cleanliness and beauty, and desire for cultural
belonging all factor in to why FGC persists. Some communities, FGC is a celebrated rite of passage; girls themselves may see the procedure as key to their cultural identity and sense of womanhood. Some believe FGC curbs sexual desire, preserves virginity, and is necessary for a “proper” wife. Religion plays an unclear role in FGC. Though the holy texts of Christianity, Judaism, and Islam do not demand FGC, some argue for FGC on religious grounds; however, others use religion to argue against it. Most countries with high FGC rates are majority-Muslim, but Christian, Jewish, and animist communities in these countries also engage in FGC.

Women’s attitudes towards FGC vary by country and age. In Mali, Sierra Leone, Guinea, the Gambia, Somalia, and Egypt, more than half of women support continuing FGC; however, in most countries, the majority of women favor eliminating FGC. Older women tend to be more likely to support FGC and view it as essential to their culture and identity as women.

FGC in International and National Law

The United Nations, the WHO, and US courts have condemned FGC as a human rights violation. The UN first formally identified FGC as a form of violence against women in its 1993 Declaration on the Elimination of Violence against Women, characterizing it as “a violation of the rights and fundamental freedoms of women.” Feminist activists have pushed for the elimination of FGC due to its perpetuation of restrictive notions about “marriageability” and

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134 WHO et al., *Eliminating Female Genital Mutilation.*
135 WHO et al.
136 WHO et al.
137 WHO et al.
138 Andro and Lesclingand, “Female Genital Mutilation around the World.”
139 UNICEF, “Female Genital Mutilation.”
140 WHO et al., *Eliminating Female Genital Mutilation.*
female sexuality, its negative physical and psychological consequences, and the lack of choice involved.  In a joint 1997 statement, the WHO and the UN adopted this rhetoric:

The arguments against female genital mutilation [FGM] are based on universally recognized human rights, including the rights to integrity of the person and the highest attainable level of physical and mental health….female genital mutilation is universally unacceptable because it is an infringement on the physical and psychosexual integrity of women and girls and is a form of violence against them.

Since the 1990s, the UN has issued multiple reports and resolutions condemning FGC. Most recently, in July 2018, the UN Secretary-General issued a report on member states’ progress in eliminating FGC in which it reiterated that “female genital mutilation was a harmful practice [and] a form of violence against women and girls” and recommended that states focus on deep-rooted gender inequality as FGC’s root cause.

The US asylum system first formally recognized FGC as grounds for asylum in Matter of Kasinga. The Kasinga decision marked a significant change in US asylum law. It was the first time US asylum adjudicators recognized a cultural practice perpetrated by non-governmental actors as persecution and accepted a social group defined by gender. The BIA thoroughly rejected the argument that cultural practices should only be considered grounds for asylum if they surpass the standard definition of persecution in extremity and “shock the conscience.”

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143 See UN General Assembly resolutions 53/117, 56/128, 67/146, and 71/168, among others.
“The Board decision...was a milestone in the struggle for recognition that women fleeing gender-based harms at the hands of non-state agents could meet the refugee definition,” writes Karen Musalo, Kassindja’s lawyer. However, despite this initial acceptance of FGC claims, gender-based asylum remains an unsettled area of US law.

Case Analysis

Of the 38 cases in my dataset, all except one involved applicants from Africa. The most common countries of origin were Kenya (12 cases), Mali (five cases), and Senegal (four cases). In most cases, the court denied the applicant’s appeal; my set of cases included 28 denials (74 percent of cases) and 10 grants (26 percent of cases). Courts most commonly focused their analysis on one or more of these four factors: applicant credibility (10 cases), the likelihood of the applicant undergoing FGC (11 cases), the question of whether parents can gain asylum through their daughters (12 cases), and the existence of state protection against FGC (14 cases).

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147 Musalo, “A Tale of Two Women: The Claims for Asylum of Fauziya Kassindja, Who Fled FGC, and Rody Alvarado, a Survivor of Partner (Domestic) Violence,” 73.
148 The single non-African case was from Indonesia.
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<th>Court</th>
<th>Applicant Country of Origin</th>
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<th>Child or self?</th>
<th>Attorney?</th>
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<td>2009</td>
<td>Eighth Circuit</td>
<td>Senegal</td>
<td>Future</td>
<td>Child</td>
<td>Yes</td>
<td>Likelihood of FGC, state protection</td>
<td>Denied</td>
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<tr>
<td>Kipkembei v. Holder</td>
<td>2009</td>
<td>Eighth Circuit</td>
<td>Kenya</td>
<td>Future</td>
<td>Both</td>
<td>Yes</td>
<td>Likelihood of FGC, relocation</td>
<td>Denied</td>
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<td>Kourouma v. Holder</td>
<td>2009</td>
<td>Fourth Circuit</td>
<td>Guinea</td>
<td>Both</td>
<td>Self</td>
<td>Yes</td>
<td>Credibility</td>
<td>Granted</td>
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<tr>
<td>Kone v. Holder</td>
<td>2010</td>
<td>Second Circuit</td>
<td>Cote d'Ivoire</td>
<td>Both</td>
<td>Both</td>
<td>Yes</td>
<td>Likelihood of FGC, credibility</td>
<td>Granted</td>
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<td>Fesahaye v. Holder</td>
<td>2010</td>
<td>Eighth Circuit</td>
<td>Ethiopia</td>
<td>Past</td>
<td>Self</td>
<td>Yes</td>
<td>Credibility, nexus</td>
<td>Denied</td>
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<td>Kone v. Holder</td>
<td>2010</td>
<td>Seventh Circuit</td>
<td>Mali</td>
<td>Future</td>
<td>Child</td>
<td>Yes</td>
<td>Derivative asylum</td>
<td>Granted</td>
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<td>Lhongo v. United States AG</td>
<td>2010</td>
<td>Eleventh Circuit</td>
<td>Cameroon</td>
<td>Future</td>
<td>Self</td>
<td>Yes</td>
<td>Likelihood of FGC</td>
<td>Denied</td>
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<td>Telegzhi v. Holder</td>
<td>2011</td>
<td>Ninth Circuit</td>
<td>Eritrea</td>
<td>Past</td>
<td>Self</td>
<td>Yes</td>
<td>Efficacy of legal counsel</td>
<td>Denied</td>
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<td>Oomayomi Omosalewa</td>
<td>2011</td>
<td>Ninth Circuit</td>
<td>Nigeria</td>
<td>Future</td>
<td>Self</td>
<td>Yes</td>
<td>Relocation, state protection</td>
<td>Granted</td>
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<td>Odesany v. Holder</td>
<td>2011</td>
<td>Eleventh Circuit</td>
<td>Senegal</td>
<td>Future</td>
<td>Child</td>
<td>Yes</td>
<td>Derivative asylum, relocation</td>
<td>Granted</td>
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<td>Senayoke v. Holder</td>
<td>2012</td>
<td>Second Circuit</td>
<td>Mali</td>
<td>Future</td>
<td>Child</td>
<td>Yes</td>
<td>Derivative asylum</td>
<td>Denied</td>
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<td>Diembera v. Holder</td>
<td>2012</td>
<td>Second Circuit</td>
<td>Mali</td>
<td>Past</td>
<td>Wife</td>
<td>Yes</td>
<td>Derivative asylum</td>
<td>Denied</td>
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<td>Hounemou v. Holder</td>
<td>2012</td>
<td>Eighth Circuit</td>
<td>Benin</td>
<td>Future</td>
<td>Child</td>
<td>Yes</td>
<td>Derivative asylum, likelihood of FGC</td>
<td>Denied</td>
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<td>Dieng v. Holder</td>
<td>2012</td>
<td>Sixth Circuit</td>
<td>Senegal</td>
<td>Future</td>
<td>Both</td>
<td>Yes</td>
<td>Relocation, likelihood of FGC, state protection, derivative asylum</td>
<td>Denied</td>
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<tr>
<td>Mantim v. Holder</td>
<td>2012</td>
<td>Sixth Circuit</td>
<td>Kenya</td>
<td>Future</td>
<td>Self</td>
<td>Yes</td>
<td>State protection, relocation</td>
<td>Denied</td>
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<tr>
<td>Kaba v. Holder</td>
<td>2012</td>
<td>Sixth Circuit</td>
<td>Guinea</td>
<td>Past</td>
<td>Self</td>
<td>Yes</td>
<td>Credibility</td>
<td>Denied</td>
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<td>Jawara v. Holder</td>
<td>2013</td>
<td>Fourth Circuit</td>
<td>Gambia</td>
<td>Past</td>
<td>Self</td>
<td>Yes</td>
<td>Credibility</td>
<td>Denied</td>
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<td>Cisse v. AG of the United States</td>
<td>2013</td>
<td>Third Circuit</td>
<td>Mali</td>
<td>Future</td>
<td>Both</td>
<td>Yes</td>
<td>Credibility</td>
<td>Granted</td>
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<td>Osei v. Holder</td>
<td>2014</td>
<td>Second Circuit</td>
<td>Ghana</td>
<td>Future</td>
<td>Child</td>
<td>Yes</td>
<td>Changed country conditions, derivative asylum</td>
<td>Denied</td>
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<tr>
<td>Case name</td>
<td>Year decided</td>
<td>Court</td>
<td>Country of Origin</td>
<td>Future or past FGC?</td>
<td>Child or self?</td>
<td>Attorney?</td>
<td>Key factor(s) in decision</td>
<td>Outcome</td>
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<tr>
<td>Camara v. Holder</td>
<td>2014</td>
<td>Second Circuit</td>
<td>Guinea</td>
<td>Future</td>
<td>Child</td>
<td>Yes</td>
<td>Derivative asylum</td>
<td>Denied</td>
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<td>Njoroge v. Holder</td>
<td>2014</td>
<td>Eighth Circuit</td>
<td>Kenya</td>
<td>Future</td>
<td>Both</td>
<td>Yes</td>
<td>State protection</td>
<td>Denied</td>
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<td>Abdramane v. Holder</td>
<td>2014</td>
<td>Sixth Circuit</td>
<td>Niger</td>
<td>Future</td>
<td>Both</td>
<td>Yes</td>
<td>State protection, credibility</td>
<td>Denied</td>
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<td>Harmon v. Holder</td>
<td>2014</td>
<td>Sixth Circuit</td>
<td>Liberia</td>
<td>Future</td>
<td>Self</td>
<td>Yes</td>
<td>Social group, nexus, state protection</td>
<td>Denied</td>
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<tr>
<td>Njie v. Lynch</td>
<td>2015</td>
<td>Eighth Circuit</td>
<td>Gambia</td>
<td>Both</td>
<td>Self</td>
<td>Yes</td>
<td>Credibility</td>
<td>Denied</td>
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<td>Diarra v. Sessions</td>
<td>2018</td>
<td>Second Circuit</td>
<td>Mali</td>
<td>Future</td>
<td>Child</td>
<td>Yes</td>
<td>Derivative asylum</td>
<td>Denied</td>
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<td>Wane v. Sessions</td>
<td>2018</td>
<td>Sixth Circuit</td>
<td>Mauritania</td>
<td>Both</td>
<td>Both</td>
<td>Yes</td>
<td>Credibility</td>
<td>Denied</td>
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<td>Odhiambo v. Sessions</td>
<td>2018</td>
<td>Fifth Circuit</td>
<td>Kenya</td>
<td>Future</td>
<td>Self</td>
<td>No</td>
<td>Credibility</td>
<td>Denied</td>
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Taken together, these asylum cases demonstrate how US circuit courts continue to place FGC in a foreign/familiar dichotomy, framing FGC as an exotic, primitive ritual which represents African backwardness. These decisions contribute to a homogenizing, othering view of Africa and African people which buttresses beliefs about American superiority and freedom. This framing also precludes a deeper, more global examination of gender-based violence in favor of condemning particular cultural practices which can be assigned to “other” cultures. US courts frame asylum applicants as fleeing African culture rather than GBV. Thus, forms of GBV which manifest in the US are not implicated in the asylum system’s critique of FGC.

FGC is Presumed to be Persecution

As demonstrated through judges’ word choice and reasoning, US circuit courts approach FGC cases already convinced FGC is grounds for asylum. Rather than establishing anew that FGC is persecution, almost all decisions in my dataset briefly referenced other decisions in which the court had recognized FGC as persecution. Judges instead focused their analysis on the applicant’s credibility (10 cases), their likelihood of undergoing FGC (11 cases), and the possibility of internal relocation as a viable alternative to asylum (6 cases). Applicants did not have to argue the nexus issue—the question of whether they faced persecution based on social group membership or some other protected ground. They only had to prove they were likely to undergo FGC and that internal relocation was not a sufficient solution.

In addition to explicit statements that FGC is persecution, judges’ word choice made it clear that they consider FGC asylum-worthy. For example, in *Benyamin v. Holder*, the Ninth Circuit stated, “Our circuit has wisely recognized the abhorrence of the practice of female genital
mutilation,” and in *Teclezghi v. Holder*, the Ninth Circuit referred to FGC as a “brutal procedure.” In the Seventh Circuit case *Kone v. Holder*, the court noted that Kone’s testimony about the high prevalence of FGC in Mali was “regrettably…backed up by State Department statistics.” The immigration judge who first processed the applicant in the Fourth Circuit case *Gomis v. Holder* referred to FGC as “this horrible practice.” These statements demonstrate courts’ preconceived perception of FGC as persecution.

This view also implicitly appears in the terminology courts use in their decisions. In my set of cases, the courts almost exclusively refer to FGC as female genital mutilation (FGM). Occasionally a court used “circumcision,” but always in combination with FGM. None used FGC. These terminology choices are significant. FGC, circumcision, and mutilation have different connotations which can be strategically used to signify the speaker’s position on FGC. International organizations such as the UN and WHO and advocacy groups use the term mutilation as a reminder that FGC is a human rights violation and form of violence against women. Activists have popularized FGM through their critique of "terms like circumcision and cutting as 'prettified' and 'benign.'" Using mutilation rather than circumcision exotifies FGC by distancing it from the more familiar practice of male circumcision and frames it as a destructive, invasive human rights violation.

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152 Eg. *Gomis v. Holder, Kipkemboi v. Holder*, and *Kourouma v. Holder*. In these cases, the court uses both circumcision and FGM to refer to FGC.
Scholars argue that the term circumcision is less popular in the US due to its religious connotation and its familiarity—male circumcision is common and accepted.\textsuperscript{154} In contrast, mutilation “is destructive: invasive and sexual on the one hand, and distant on the other.”\textsuperscript{155} However, referring to FGC as circumcision may draw a misleading connection with male circumcision; FGC causes physical and psychological harm on a far more extreme level. However, there are some similarities between the two—they are both medically unnecessary surgical procedures performed on children without their consent. Thus, some of the American reluctance to refer to FGC as circumcision despite many asylum applicants’ use of the term may come from the discomfort of condemning FGC while supporting male circumcision.

While FGM is the popular terminology in US courts and international politics, it is not as commonly used by those who practice or experience FGC, including some asylum applicants. When petitioners use the term circumcision to describe their experience, the court stills uses FGM. In the landmark FGC case \textit{Matter of Kasinga}, Kassindja used circumcision while the BIA used mutilation. This pattern appeared in my set of cases as well, such as in \textit{Seck v. United States AG}, and \textit{Dieng v. Holder}. Dieng, for example, testified that “My two girls are little, and they [Dieng’s relatives] can circumcise them,” but the court went on to use both FGM and circumcision interchangeably.\textsuperscript{156} These discrepancies indicate a disconnect between how applicants view their own experiences and US courts see them. Even though an applicant may present FGC as persecution to a court, they may not personally see it as such, or at least not as extreme as “mutilation.”

\textsuperscript{155} McKinnon, 186.
Courts also frequently describe the process and effects of FGC in detail to emphasize its wrongness. Other scholars have pointed to the “prurient detail” of these descriptions as evidence of adjudicators’ morbid fascination, condemnation, and exotification of FGC. Courts strategically use descriptions of FGC to evoke sympathy, shock, and outrage. In the Second Circuit case *Kone v. Holder*, for example, the court extensively quotes Kone’s testimony in their decision to grant her asylum:

Kone recalls that when she was eight years old, “[t]wo . . . old ladies and my grandmother pushed me on the ground. They held my hands and opened my feet widely while [a] third old lady cut my private parts with an old and dirty knife. She cut my clitoris at the base. The pain was so unbearable that I passed out. I was bleeding heavily. There was no anesthesia to calm the pain. When I woke up, I was covered with sheets. I was still bleeding and the pain was too much for me. No one ever took me to the hospital or even call[ed] a doctor. Those old ladies have no medical experience. My grandmother put herbs on the wound. They cleaned it and made a potion made of boiled herbs hoping to stop the bleeding. I suffered a lot. I felt my private parts burning every time I urinated.” Kone continues to suffer from this procedure, physically and emotionally, with “painful and disorganized periods” and a “very painful pregnancy and delivery.”

The court’s inclusion of Kone’s graphic testimony is meant to evoke sympathy for her and horror directed toward FGC. *Kone* is also notable because it is one of six cases in which the applicant was applying for asylum on the basis of FGC, but had already undergone the procedure, typically a one-time occurrence.

*Past vs. Future FGC*

According to federal regulations, when an applicant successfully proves they have faced persecution in the past, the burden shifts to the US government to prove that they will not face further persecution if returned to their home country. In *Kone*, the Second Circuit interpreted


this requirement to mean that the government must disprove the likelihood of *any kind* of future persecution, not just future FGC:

We found significant error in the BIA's conclusion that the fact that the women had already undergone mutilation in and of itself rebutted the presumption of future persecution...nothing in the regulation suggests that the future threats to life or freedom must come in the same form or be the same act as the past persecution...the record 'provide[s] ample evidence that [Ivorian] and/or [Dioula] women are routinely subjected to various forms of persecution and harm beyond genital mutilation.' Indeed...the 2005 State Department Country Report on Human Rights Practices for Cote d'Ivoire, included as part of Kone's asylum application, indicates that ‘the law does not prohibit domestic violence, and it [is] a problem,’ ‘rape [is] a problem’ and ‘women who reported rape or domestic violence to the police were often ignored.’...the government ‘did not even attempt to argue that [Kone] would not be subject to forms of persecution other than genital mutilation on account of [her] membership in [a] particular social group[] upon return’ to Cote d'Ivoire.160

In *Muriuki v Holder*, the Ninth Circuit took an even stronger stance, finding FGC to be “a ‘permanent and continuing act of persecution’” due to its “stigma and lasting physical and psychological impacts” and stating “that women who suffered FGM in the past are entitled to an irrebuttable [sic] presumption that they will be subjected to future persecution.”161

In these two cases, the court used FGC to frame African countries as spaces of universal danger for women. The courts seem to ask, “if they will do *this* to women, what else might they do?” Women who have undergone FGC are framed as perpetually helpless and vulnerable victims, and their home countries are homogeneous spaces of barbarism and violence against women.

*FGC Focus and Self-Exotification*

Courts exhibit a myopic fascination with FGC. In cases involving multiple forms of persecution, courts tend to neglect examining non-FGC violence in favor of mainly discussing

FGC in their decisions. My research supports Oxford’s finding that in cases in which applicants presented FGC as a minor part of the persecution they experienced, asylum was still granted primarily on the basis of FGC. This fixation with FGC has led asylum lawyers to encourage clients to emphasize FGC in their claims regardless of whether they are actually fleeing FGC or if they even consider FGC to be persecution.

For example, in *Benyamin v. Holder*, though the applicant’s claim for asylum included both the FGC forced upon his daughter and religion-based persecution of his wife, the Ninth Circuit focused almost entirely on the FGC:

> While Benyamin described the mistreatment of Rodriguez at the hands of his family, alienation and humiliation from friends, societal restrictions on his wife's activities, and discrimination on the basis of religion perpetrated by the Indonesian government against Rodriguez, the crucial allegation [emphasis added] in his application was that his daughter, Annisa, endured forced female genital mutilation ordered by Benyamin's stepmother when Annisa was a newborn.163

The court dismissed his wife Rodriguez’s claim in just one sentence: “The indignities and religious denigration suffered by Rodriguez at the hands of her in-laws and others did not rise to the level of persecution.” Similarly, in *Kone v. Holder*, the Second Circuit ignored the applicant’s claims of political and ethnic persecution by the Côte d’Ivoire government in favor focusing exclusively on FGC. The court summarized Kone’s testimony while providing background for the case:

> the government arrested many members of the RDR political opposition party, including Kone, who had been a rank and file member since 1999. ... Kone was jailed for ten days, during which time she was beaten daily, denied drinking water, and required to walk naked in front of the guards, one of whom attempted to rape her. Upon her release, the guards warned Kone that they would catch and kill her if she continued to support the RDR. ... the government bombed Dioula towns, killing more than 250 people. Because of the situation for the Dioula people, combined with the pressure Kone faced from her

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family to subject her daughter -- who was nearing the age at which young girls in Cote d'Ivoire are subjected to genital mutilation -- to that procedure, Kone resolved to leave the country for good.164

However, they neglect to mention any of these events aside from the FGC anywhere else in their decision. Numerous elements of Kone’s testimony could qualify as persecution meriting asylum, but the court only examines the potential FGC of Kone’s daughter and Kone’s own past FGC. Their decision to grant her asylum is based only on FGC; the totality of her experience is ignored in favor of focusing on the most “exotic” part of her claim.

In Teclezghi v. Holder, the dissent, Judge Harry Pregerson, argued that the applicant’s attorneys had been ineffective because they did not ask whether she had undergone FGC.165 Although Teclezghi did not bring up FGC in her claim for asylum, Pregerson argues that this is to be expected. Most women who have been sexually traumatized (because of sexual violence, forced abortions, or female genital mutilation) “find it extremely difficult to talk about [their experiences].”...Had Teclezghi's prior attorneys told her that female genital mutilation is a ground for asylum in the United States and asked her whether she had suffered this brutal experience, she undoubtedly would have told them that she had.

Here, Pregerson suggests that Teclezghi did not bring up FGC in her asylum claim due to trauma. While this is certainly possible and is the experience of many women, it is also possible that she did not mention FGC because she did not see it as a harm or form of persecution. Pregerson’s statement precludes the possibility of viewing FGC in a more complex way and assigns a narrative to Teclezghi. He recognizes FGC only as traumatic violence, not entertaining the possibility that women who have undergone FGC might have other feelings about it.

Decisions such as Teclezghi suggest that judges view FGC one-dimensionally, thus increasing pressure on applicants to match that understanding of FGC in their testimony.

Research has found that asylum lawyers encourage applicants to present their experiences in ways which appeal to American judges but may not match how the applicants themselves feel about what they have experienced.\textsuperscript{166} Applicants must present themselves as “‘helpless’ victims of their cultures.”\textsuperscript{167} They have to frame themselves as victims of exotic cultures in order to appeal to judges’ preconceived notions of what a victim of persecution looks like. Additionally, applicants must meet certain stereotypical expectations in order to be understood as credible. For example, in a study of the experiences of LGBT asylum seekers, Berger found that applicants must conform to stereotypes and homogenize their experiences to avoid American judges doubting their credibility.\textsuperscript{168} Lawyers encourage applicants “to appear ‘gay enough’ (read stereotypically effeminate and campy) to convince immigration judges of their sexual orientation and that the public harm they experienced was due to that orientation.”\textsuperscript{169} To achieve an asylum grant, applicants must erase individual difference in favor of matching American expectations about how they should behave and what kind of experiences they may have had.

This pressure to conform to certain narratives extends to asylum lawyers. To win grants of asylum, lawyers are pushed to portray their clients’ countries of origin as uncivilized places which either fail to protect or actively oppress women, unlike the supposedly civilized and egalitarian United States. Oxford found that asylum attorneys encourage applicants fleeing various other kinds of persecution to discuss FGC in their claims, even if the applicants did not

\textsuperscript{167} Nayak, \textit{Who Is Worthy of Protection?}, 22.
\textsuperscript{168} Berger, “Production and Reproduction of Gender and Sexuality.”
\textsuperscript{169} Berger, 675.
consider their FGC to be a harm, because courts are more likely to be receptive to FGC claims. Following the advice of attorneys, women fleeing imprisonment, torture, and politically motivated attacks instead presented narratives centered around FGC to boost their chances of gaining asylum. Oxford argues that this strengthens the image of African women as victims of exotic harm and bolsters assumptions that “other” cultures are responsible for women’s oppression by highlighting a form of GBV which can be tied to culture.

My research supports these findings. In my set of circuit court cases, applicants tend to frame FGC as a manifestation of oppressive cultural norms in their testimony. By emphasizing culture as a motivating factor in FGC, applicants drew on American stereotypes about African countries. Through their testimony, Africa becomes a space of backwards culture and universal danger to women. Because they are asking for US protection, the US implicitly represents the opposite: a space of modernity and freedom from oppressive, primitive cultural norms. Thus, the asylum system reinforces a hierarchy of states with the US at the top and African countries at the bottom.

Several applicants referred to the cultural roots of FGC in their testimony. In Dieng v Holder, the applicant testified that her sister underwent forced FGC because it was “part of the culture,” and her husband stated that the Senegalese police would not be able to prevent the couple’s daughter from being cut: “they won't be able to do anything about it, because it’s a cultural thing.” Similarly, in Cisse v. AG of the United States, the applicant testified that her family would force her to undergo FGC prior to marriage "in keeping with the custom." Condemnations of FGC thus become condemnations of African culture. By presenting FGC as a

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170 Oxford, “Protectors and Victims.”
product of oppressive African culture, asylum applicants bolster the dichotomies of US versus Africa and freedom versus tradition, through which the US emerges as a culturally superior space of freedom, equality, modernity, and civilization.

Beyond strategically framing FGC in certain ways, some applicants potentially fabricated information to construct a narrative that US courts would be receptive to. In *Abdramane v. Holder*, the Sixth Circuit found the applicant incredible after examining her claim that at age 18, her parents wanted to circumcise her “because of ‘tradition and custom,’ and a belief that she would otherwise bring shame on the family and be unable to get married.”

Abdramane presented “a document from the ‘Great Priestess of the Village of Moussadeye,’ summoning Abdramane to appear before the ‘council of the Elders’...to ‘go under the Mandatory female genital Excision before Marriage,’” which the court found questionable. The court concluded that her testimony was inconsistent and lacked detail, thus suggesting that it was partially fabricated, or at least exaggerated. Abdramane presented a narrative which she believed would appeal to US courts. The focus on FGC in American asylum adjudication thus may be motivating applicants to present false narratives of persecution which in turn support American presumptions about FGC and Africa.

*Africa as Stuck in Time*

The ways US courts discuss FGC frames asylum applicants, their home countries, and gender-based violence itself as part of a primitive, exotic past. Africa becomes a monolith stuck in time, ruled by backwards, irrational cultural norms rather than American liberal values. GBV

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is implicitly framed as something the US has moved past and that only exists in those “other” places.

Courts tend to describe FGC as a “practice,” and in some cases, as a “ritual.”¹⁷⁴ Ritual implies backwards superstition and antiquity; practice has less of a negative connotation but suggests ubiquity. Both suggest that the ultimate cause of FGC is “African culture.” In Gomis v. Holder, the Fourth Circuit notes that “the Senegalese government is against the practice [of FGC]. Yet, families continue the practice of performing FGM because of tradition.”¹⁷⁵ Here, the court frames FGC as a remnant of the past which persists despite modernizing efforts of the state. It suggests that FGC continues due to the familial push of backwards culture. FGC is framed as inherently “African,” thus distancing GBV by attaching it to a cultural explanation and a foreign place. As argued by McKinnon, this framing “figures this form of persecution as born of culture, but culture that manifests elsewhere.”¹⁷⁶ FGC can thus be thoroughly condemned from an American perspective because it is a form of GBV which is only a problem “over there.” Tying FGC to “African culture” elides a deeper critique which would examine FGC in the context of global patriarchal systems and thus connect it to forms of GBV which do occur in the United States.

Courts also characterize Africa as primitive through the use of the word “tribe.” In my set of cases, courts used both "tribe" and "ethnic group" to refer to the communities applicants come from, suggesting a shift from more exotifying language to the more neutral. US courts appear to be in a transitional period between "tribal" and "ethnic," with some courts using both terms in the same decision. Ethnic group appeared more frequently than tribe in my dataset, and three

¹⁷⁴ Eg. Benyamin v. Holder refers to FGC as a “ritual,” while Dieng v. Holder uses “practice.”
¹⁷⁶ McKinnon, Gendered Asylum, 58.
decisions used both.\textsuperscript{177} In one of these decisions, \textit{Seck v. United States AG}, the court refers to the applicant’s "father's ethnic or tribal group, the Toucouleur" but goes on to exclusively use tribe.\textsuperscript{178} “Tribe” has been critiqued for its negative connotations—primitive, warlike, premodern—and the tendency to apply the term almost exclusively to Africa. Ngũgĩ, for example, criticizes the deployment of the term tribe in discussions of African conflicts as colonialist; it presents these conflicts as products of primordial, tradition-fueled blood feuds rather than complex conflicts with various social, political, and economic factors, just like those elsewhere in the world.\textsuperscript{179} “Tribe” thus precludes nuanced exploration of the actual dynamics at play in modern African politics. Ngũgĩ contrasts tribe with nation, a term signifying modernity and civilization, arguing that while Western societies have the privilege of being termed nations, “Every African community is a tribe, and every African a tribesman...And yet, what’s commonly described as a tribe, when looked at through objective lenses, fulfills all the criteria of shared history, geography, economic life, language, and culture that are used to define a nation.”\textsuperscript{180} When conflicts are reduced to “tribal,” the historical and social aspects are ignored and a biological explanation emerges as dominant; tribe presents African conflicts as biologically determined and irrational.\textsuperscript{181} Tribe implies inherent biological difference from “us” in the West and supremacy of irrational communalism in Africa.

In a similar vein, Ibelema compares the use of “tribal” and “ethnic” in American press coverage of Africa, arguing that the word “tribal” has pejorative connotations and is almost

\textsuperscript{177} Eg. \textit{Dieng v. Holder}: "the Toucouleur (Halpularen) tribe and the Fulani ethnic group, which commonly practices FGM"
\textsuperscript{180} Ngũgĩ wa Thiong’o, 17.
\textsuperscript{181} Ngũgĩ wa Thiong’o, “The Myth of Tribe in African Politics.”
exclusively used to refer to Africans, while the American media uses the more neutral term "ethnic" to refer to groups everywhere else in the world. 182 The application of “tribal” to African events and "ethnic" to those everywhere else suggests an African otherness and distance from the West which requires its own unique vocabulary. 183 Ibelema found that American press has begun to use ethnic more than tribe, marking “a movement from the ‘special vocabulary’ in the coverage of African affairs.” 184

However, a transition from tribal to ethnic does not mean notions of African primitivity and otherness have vanished from asylum adjudication. These views manifest in other language as well. For example, in Abdramane v Holder, the Sixth Circuit noted that “Uneducated village ancestors, not a doctor or medical personnel, perform the circumcisions,” and in Kone v. Holder, the Seventh Circuit described how “a relative snatched Kamissa away while Kone was not home and performed the procedure under primitive conditions without anesthesia.” 185 The phrasing in these two cases—“uneducated village ancestors” and “primitive conditions”—draw on preconceptions about Africa as backwards and uncivilized.

Parents and Children: The Question of Derivative Asylum

Though the majority of cases in my dataset involved applicants making claims based upon their own threatened or past FGC, in 11 cases, the applicant was arguing for asylum on the basis of their daughter’s threatened FGC. Though FGC seems to be a largely accepted grounds for asylum, FGC of a petitioner's child is not. Asylum law allows relatives of applicants to gain

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183 Ibelema.
184 Ibelema, 174.
asylum through a derivative asylum application, but this path only works from parent to child, not child to parent. Courts thus tend to reject claims made entirely based on the threatened FGC of the applicant’s daughter.\textsuperscript{186}

Some courts have suggested that a parent can gain asylum through their child if they can prove that their child was harmed as a method of persecuting the parent. In Diarra v. Sessions, the court noted that “‘harm to a child can amount to persecution of [the] parent,’ only when it is ‘directed against the parent on account of or because of the parent's’ protected characteristic” and concluded that Diarra was ineligible for asylum because “his daughters were in danger of FGM because of societal custom in Mali, not because anyone sought to target him based on a protected characteristic.”\textsuperscript{187}

Other courts have sidestepped the derivative asylum restrictions by interpreting harm to children as persecution of the parent due to the emotional or psychological toll. For example, in Kone v. Holder, the Second Circuit suggested that “the mental anguish of a mother who was herself a victim of genital mutilation who faces the choice of seeing her daughter suffer the same fate, or avoiding that outcome by separation from her child, may qualify as such ‘other serious harm.’ The argument is distinct from a claim of derivative asylum.”\textsuperscript{188} However, this is not a settled area of law. As noted by the Eleventh Circuit in Seck v. United States AG, while the Fourth Circuit found that a parent’s psychological pain due to watching a daughter undergo FGC does not constitute persecution, “the Sixth Circuit reached the opposite conclusion.”\textsuperscript{189} Parents

\textsuperscript{186} For example, see Camara v. Holder, 559 Fed. Appx. 10, 2014 U.S. App. LEXIS 1885.
\textsuperscript{188} Kone v. Holder, 596 F.3d 141, 2010 U.S. App. LEXIS 3924.
may try to frame psychological harm as persecution, but this argument’s success will vary depending on the court hearing the case.

Courts also attend to the child’s citizenship status in these cases. They appear to treat cases dealing with US-citizen children differently from those involving non-citizen children; courts are less willing to grant asylum to parents of US-citizen children because those children could, in theory, remain in the US without their parents.\textsuperscript{190} For example, in \textit{Dieng v. Holder}, the court noted that the applicant’s daughter could avoid FGC by staying in the US:

\begin{quote}
 as a U.S. citizen, Mame is legally entitled to remain in the United States, thereby completely avoiding any risk of FGM in Senegal and effectively quelling Dieng's fear that Mame will be persecuted. Although this admittedly presents [petitioners] with a difficult and painful decision, we see no reversible error in the BIA's determination.\textsuperscript{191}
\end{quote}

Though the applicant’s daughter \textit{technically} has the option to avoid FGC by living in the US, she would have to do so without her parents, thus forcing the family to make an incredibly painful choice. It seems unlikely that many parents would choose to leave their children in another country even to avoid FGC. The court’s decision here effectively sends the child back into danger and disregards the psychological impact of forcing a parent to leave their child. Overall, the US asylum system seems ill-suited to handle cases of persecution of children. Because courts reject claims made by parents on behalf of their children, this means that these children would have to present their own asylum claims. This is especially problematic for children at risk of FGC; FGC is often performed on infants or very young girls. The structure of the derivative

\textsuperscript{190} For examples, see Osei v. Holder, 551 Fed. Appx. 599, 2014 U.S. App. LEXIS 593 (“The BIA reasonably found, however, that her fear of harm to her U.S. citizen daughter, and not to herself, does not serve as a basis for an asylum claim.”); Njie v. Lynch, 808 F.3d 380, 2015 U.S. App. LEXIS 21426 (“in deciding whether to grant the applications for waiver, the IJ mentioned that Njie and Jallow had not shown that their removal would cause their children to suffer hardship.”); and Sinayoke v. Holder, 474 Fed. Appx. 34, 2012 U.S. App. LEXIS 6942 (“Sinayoke testified that he would not take his daughter back to Mali if he was removed, and the record does not indicate that she, as a U.S. citizen, would be forced to return to Mali.”)

asylum process and the lack of weight given to psychological harm make it difficult for a parent to successfully gain asylum on behalf of their daughter. It requires parents to decide whether to sacrifice their child’s safety in order to stay with them.

Courts seem resistant to accepting asylum claims made by parents due to floodgates fears. Accepting claims based on persecution of an individual’s children would broaden derivative asylum to allow parents to gain asylum through their children rather than only the other way around. In Dieng, the court explicitly articulates this concern:

In [a traditional derivative asylum claim], the child's derivative claim flows from the parent's—a result that is expressly contemplated, through statute, by the initial grant of asylum. Under the latter framework, however, which is not contemplated by the INA, an illegal immigrant from a country that practices FGM could “create” a right to remain in the United States via asylum or withholding of removal simply by having a female child at any time during the immigrant’s presence here.192

This statement is an oversimplification of what it takes to win a grant of asylum; an applicant always have to prove that persecution is likely, not just possible. It also reflects racially tinged views of non-white immigrants as dishonest criminals who use their children to get government benefits, including citizenship. It is reminiscent of discourse around “anchor babies,” a derogatory term used by anti-immigration activists to promote the unfounded claim that undocumented immigrants strategically have children on US soil to prevent their own deportation and to instantly provide those children with the benefits of American citizenship.193

The court’s concern about allowing parents to gain asylum through their daughters furthers a racist portrait of immigrants, especially non-white immigrants, as those who “cheated the system” and do not deserve to be part of the US body politic.

Conclusion

I do not argue that the courts’ condemnation of FGC is bad, but rather that the particular way in which they approach FGC cases is problematic. FGC has rightly been widely recognized as a human rights violation, and in some ways, US circuit courts' condemnation of it makes it easier for women fleeing FGC to gain asylum—they do not have to establish that FGC merits asylum, only that they are at high risk of undergoing FGC. However, the courts’ framing of FGC as culturally motivated, exotic violence bolsters views of Africa as primitive and African women as victims of barbaric tradition. Furthermore, while FGC has been firmly accepted as persecution by US courts, other types of GBV, such as rape and domestic abuse, remain contested in asylum law. The focus on exotic cultural elements of FGC cases may thus inhibit a more expansive understanding of GBV as asylum-worthy persecution. Rather than a condemnation of gender-based violence, FGC asylum cases represent a condemnation of specifically “African” gender-based violence. Gender-based persecution becomes restrictively defined as forms of violence which occur elsewhere and are unfamiliar to the American experience.
Chapter 4

Domestic Violence

It is not possible to review this record without having great sympathy for the respondent and extreme contempt for the actions of her husband. The questions before us, however, are not whether some equitable or prosecutorial authority ought to be invoked to prevent the respondent’s deportation to Guatemala....Rather, the questions before us concern the respondent’s eligibility for relief under our refugee and asylum laws. And, as explained below, we do not agree with the Immigration Judge that the respondent was harmed on account of either actual or imputed political opinion or membership in a particular social group.

He harmed her, when he was drunk and when he was sober, for not getting an abortion, for his belief that she was seeing other men, for not having her family get money for him, for not being able to find something in the house, for leaving a cantina before him, for leaving him, for reasons related to his mistreatment in the army, and “for no reason at all.” Of all these apparent reasons for abuse, none was “on account of” a protected ground, and the arbitrary nature of the attacks further suggests it was not the respondent’s claimed social group characteristics that he sought to overcome.¹⁹⁴

Board of Immigration Appeals,

In December 2009, the decade-long fight over Matter of R-A- came to an end when an immigration judge (IJ) issued Rody Alvarado a grant of asylum after a lengthy appeals process. Alvarado had fled ten years of severe spousal abuse in Guatemala to seek asylum in the United States.¹⁹⁵ Though the case’s original immigration judge granted Alvarado asylum, the government's appeal of the decision led to a lengthy series of appeals, remands, and stays involving multiple AGs.¹⁹⁶ Activists heralded the outcome of this highly publicized case as a pathway for other women seeking asylum on the basis of domestic violence (DV), but the final

¹⁹⁵ Bullard, “Insufficient Government Protection.”
¹⁹⁶ Musalo, “A Tale of Two Women: The Claims for Asylum of Fauziya Kassindja, Who Fled FGC, and Rody Alvarado, a Survivor of Partner (Domestic) Violence.”
grant of asylum did not come in a precedent-setting decision; an IJ made the final grant in an unpublished decision.\textsuperscript{197} Though the case propelled DV-based asylum into the public eye and pressured officials to clarify the legal landscape, \textit{R-A} left DV-based asylum an open question.

In the ten years following the final 2009 decision in \textit{R-A}, circuit courts remained resistant to DV-based asylum claims. As shown by the cases in my dataset, courts tend to frame DV as private and isolated rather than political violence connected to broad patriarchal norms. They tend to reject portrayals of DV as a manifestation of patriarchal beliefs supported by state inaction, instead viewing it as an interpersonal conflict which the state has minimal responsibility for. This depoliticization of DV prevents the implication of the US government in the perpetuation of DV in the US. Courts’ reluctance to accept DV as grounds for asylum also stems from floodgates fears. Courts create restrictive requirements for the types of “particular social group” applicants can claim was the motivating factor of their persecution to limit the potential number of asylees who could enter the US. The post-\textit{R-A} legal landscape has not made it easy for survivors of DV to gain protection in the US.

\textbf{Background}

All 49 of the DV asylum cases in my selected time period were cases with male abusers and female victims. People of any gender can be victims or perpetrators of domestic violence, but women with male partners are more likely to suffer from domestic violence than other demographic groups. According to the World Health Organization (WHO), 30\% of women worldwide have been subjected to physical or sexual violence by an intimate partner.\textsuperscript{198} Domestic


\textsuperscript{198} WHO, “Violence against Women.”
violence can result in a wide range of serious health issues, including physical injuries, unwanted pregnancies, gynecological problems, sexually transmitted infections, miscarriage, pregnancy complications, mental illness, substance abuse, suicide, and homicide.\textsuperscript{199}

Feminists and human rights activists have worked to reframe DV as a political issue and public health concern, thereby prevent the dismissal of DV as a “private” issue and highlighting “state responsibility for preventing and addressing” it.\textsuperscript{200} The UN, along with other international human rights organizations, recognizes DV as a human rights violation which upholds women's inferior social, economic, and political status.\textsuperscript{201} Although a variety of factors can contribute to domestic violence, such as substance abuse, the WHO has identified “gender inequality and norms on the acceptability of violence against women” as “a root cause of violence against women.”\textsuperscript{202} Domestic violence against women is not an individualized, isolated occurrence; it is a societal problem produced by globally prevalent patriarchal attitudes. Although 144 countries have laws against domestic violence, not all of these laws are enforced or meet international standards.\textsuperscript{203} Additionally, less than 10 percent of women worldwide who have experienced violence went to the police for help, reflecting feelings of shame among victims and lack of faith in police.\textsuperscript{204}

DV is a form of violence implicitly condoned by the state through inaction in enforcement which is supported by and supports patriarchal systems of power. Thus, it should

\textsuperscript{199} WHO.  
\textsuperscript{200} Nayak, \textit{Who Is Worthy of Protection?}, 71.  
\textsuperscript{201} See 1979 CEDAW, 1993 DEVAW, and 2004 GA Resolution 58/147, among others.  
\textsuperscript{202} WHO, “Violence against Women.”  
\textsuperscript{203} UN Women, “Facts and Figures.”  
\textsuperscript{204} UN Women.
fall within the realm of asylum law. If the state fails or refuses to protect DV victims or prosecute perpetrators, DV is not a private act but rather one enabled by the state.

*Domestic Violence in US Asylum Law*

While *Matter of R-A-* was awaiting a final decision before an IJ in 2009, the Obama administration’s DHS filed a brief in *Matter of L-R-* describing how DV victims could qualify for asylum under the BIA's "particular social group" requirements. In this brief, DHS proposed “Mexican women in domestic relationships who are unable to leave” and “Mexican women who are viewed as property by virtue of their position in a domestic relationship” as cognizable social groups. This brief was an explicit acknowledgement on the part of DHS that DV should be understood as gender-based persecution, but *L-R-* was resolved in a non-precedential decision and the brief thus remained non-binding. As my case analysis demonstrates, though applicants frequently model their proposed social groups on the brief’s suggestions, circuit courts have largely ignored the brief’s assertion that social groups defined by relationship status meet asylum laws requirements for cognizable social group constructions.

*Case Analysis*

Among the 49 DV-based asylum cases decided in US circuit courts from January 2009 to December 2018, there are certain patterns in the aspects of asylum law that courts focused on. Courts tended to decide cases based one or more of these six factors: state protection, social group membership, nexus between harm and social group, severity of the alleged DV, possibility of relocation in the applicant’s home country, and applicant credibility. Almost all applicants

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205 Musalo, “A Tale of Two Women: The Claims for Asylum of Fauziya Kassindja, Who Fled FGC, and Rody Alvarado, a Survivor of Partner (Domestic) Violence.”


207 Bookey, “Domestic Violence as a Basis for Asylum.”
came from Latin America (40 of 49 cases), and 69 percent of applicants came from just three countries: El Salvador (14 cases), Guatemala (10 cases), and Honduras (10 cases). Nine cases (18 percent) received grants of asylum, and 40 (82%) were denied. This is a lower grant rate than in my set of FGC cases, though in both sets of cases, a majority were denied.
**Full set of DV cases, organized by year**

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State Protection

Because DV involves non-state actors, asylum applicants must demonstrate that the state was unwilling or unable to protect them from those private actors. Bullard suggested that in the post L-R- and R-A- era, asylum adjudicators' focus in domestic violence cases would shift away from social group construction to the question of government protection because in these two cases, the DHS established that domestic violence can be grounds for asylum. I found some evidence confirming this hypothesis. Courts discussed the question of state protection in over half the cases in my dataset: 27 out of 49. In 21 cases, supposedly adequate state protection was at least part of the reason why the court denied the applicant's asylum claim. Courts found state protection for DV victims to be insufficient in only 6 cases.

Despite this focus on state protection, the US asylum system lacks a uniform standard for judging a state's capability or willingness to protect DV victims; asylum adjudicators have discretion in making this evaluation. In 2000, the DOJ proposed a two-part rule for judging state protection: the adjudicator should first examine whether the state took “reasonable steps” to address the harm and second evaluate the applicant’s access to state protection. But even this fairly vague rule was never enacted, and courts thus retain discretionary power in this area.

However, there are some general patterns in circuit courts' approach to the question of state protection. Most courts required that an applicant have contacted authorities to try to get help; they do not tend to accept the argument that requesting state protection would have been futile or have put the applicant at further risk. For example, in Fuentes-Erazo v. Sessions, the

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209 Bullard, “Insufficient Government Protection.”
210 Bullard.
211 Bullard, 1887.
Eight Circuit found that an applicant had not proved a failure of state protection because she had never given “the government the opportunity to protect her” despite Honduras’ questionable track record in protecting victims of abuse:

The basis of her fear is the domestic abuse inflicted upon her by Santos—a private actor. She claims that, because of the Honduran government's complacency and ineffectiveness in the face of a long-standing, widespread, and ongoing domestic-violence problem, the government will not protect her if she is returned to Honduras. But she did not establish that the Honduran government was aware of Santos's conduct, much less that it consented to or acquiesced in that conduct. Fuentes testified that she never reported Santos to the police or to other government officials—and thus she never gave the government the opportunity to protect her from Santos's conduct.212

The court goes on to note that “it is evident that the Honduran government has not eliminated the problem of domestic violence and that it has fallen short in providing the necessary resources to address the issue. But as we have observed, ‘[i]nability to control private actors is an imprecise concept that leaves room for discretion by the [BIA].’”

Similarly, in Jeronimo v. United States AG, the Eleventh Circuit found that the applicant had not demonstrated a failure of government protection because “she had made no attempt to report her abuse to police. Although there were still problems in Guatemala, attitudes were slowly changing and had changed sufficiently.”213 According to this account, despite dismal prosecution rates in cases of violence against women—Guatemala has an estimated 98 percent impunity rate in femicide cases—the chance of receiving adequate protection from the Guatemalan government is high enough that the applicant should have sought help from authorities, even if trying to report the abuse may have put her in further danger.214

214 UN Women, “Guatemala.”
This expectation of requested state protection can be a problem for survivors of DV, who often do not report abuse due to fear of retaliation, embarrassment or shame, societal norms around keeping familial violence private, and assumptions that “a report would be futile.”\textsuperscript{215} Some applicants articulated these barriers to reporting DV in their testimonies, but courts were not receptive to these arguments. In \textit{Faye v. Holder}, though the applicant repeatedly tried to get a divorce from her abusive husband, she did not report the abuse because he was “of [her] family” and she “feared consequences.”\textsuperscript{216} The court refused to take these claims into account, instead concluding that the Senegalese country report’s “cursory observation that the government is reluctant to intervene in domestic disputes is not a sufficient link to the Senegalese government.” Similarly, in \textit{Ferman-Martinez v. Sessions}, the court refused to waive the expectation of filing an official police report: “Although Ferman testified that the police do not care about reports of abuse, that was not the reason she gave for failing to report Elias's actions. During her testimony, she stated that she did not report Elias because she was afraid of his reprisal, not because it would have been futile.” In both these cases, the courts myopically focus on the applicants’ failure to seek government intervention without any regard to the barriers to filing police reports they articulated in their testimonies.

In addition to a failure to recognize the barriers to reporting DV, courts’ expectation of requested state protection comes from the framing of DV as a “private” rather than “public” concern. As argued by Bullard, proving a government’s inability to control an individual is more difficult than proving their inability to control a group. In addition to country condition reports, which can demonstrate government failure to control a group, an applicant fleeing DV must

\textsuperscript{215} Bullard, “Insufficient Government Protection,” 1884.
\textsuperscript{216} Faye v. Holder, 580 F.3d 37, 2009 U.S. App. LEXIS 19704.
include as evidence “her own personal experience where it will be difficult to demonstrate law enforcement inability if she has not reported her abuse.”217 Because DV is framed as an individualized problem—the applicant versus her abusive partner—rather than a societal problem—women versus state-sponsored patriarchy—she must go beyond general country conditions and demonstrate through her own personal experience that the government has failed to control her persecutor. This is problematic for DV victims because proving a failure of government protection at the individual level requires some direct interaction with the state.

Courts’ discretionary powers in evaluating state protection led to very different determinations of what constitutes adequate state protection for DV victims in my set of cases. Some courts take any police action at all as proof that the government is neither unwilling nor incapable of protecting DV victims. In Yara v. Holder, for example, the Ninth Circuit concluded that because "the police took some action in response to her reports against her husband, and on at least one occasion scheduled a court date based on a report she filed, the record does not compel the conclusion that 'the [Fijian] government was unable or unwilling to control' her husband."218

Additionally, some courts judged relatively weak legal and enforcement measures as adequate. In Maciene v. United States AG, the Eleventh Circuit rejected a Lithuanian applicant’s claim of inadequate state protection by arguing that "Lithuania passed its first law on protection against domestic violence in 2011, which required police to investigate reports of domestic violence even if the victim did not press charges, and that after passage of this law, police investigations of domestic violence increased substantially."219 The court here suggests that a law

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passed just four years prior to this decision somehow drastically altered social norms around DV and is already well-enforced. In *Jeronimo v. United States AG*, the court argues that the applicant should have sought state protection because "Although there were still problems in Guatemala, attitudes were slowly changing and had changed sufficiently."\(^{220}\) In *Turcios v. Sessions*, the Sixth Circuit states, "The country reports in the record indicate that violence against women remains a serious problem in Honduras and that impunity for perpetrators remains high. These reports also indicate, however, that the Honduran government is making efforts to combat violence against women."\(^{221}\) Here, the success of those efforts is irrelevant; all that matters is whether the state is at least trying to remedy the DV issue. The court thus treats the applicant’s actual ability to receive protection as irrelevant; her state is doing something, so it is no longer the US’s responsibility to help her. In both *Vigil-Lazo v. Holder* and *Santacruz v. Lynch*, the court acknowledged that DV was a problem in El Salvador, but minimized its extent and stated that the government did not condone DV and was making an effort to reduce DV rates.\(^{222}\) In one case, the court accepted police action for a charge unrelated to DV as evidence that the state was making an effort to protect the applicant from her abusive boyfriend:

> Vega-Ayala presented no evidence that the Salvadoran government was unable or unwilling to control Hernandez's conduct, and thus failed to meet the statutory definition of persecution. Acknowledging that there was domestic violence in El Salvador and that the country’s laws against it were not well enforced, the IJ pointed out that nonetheless Hernandez had been prosecuted and incarcerated for a different criminal offense.\(^{223}\)

In all of these cases, the court gives more weight to the appearance of anti-DV efforts than applicants’ actual access to protection.

Particular Social Group

In 19 cases, social group was a key element in the court’s decision. Current case law lays out four requirements for a cognizable “particular social group”: immutability, non-circularity, social distinction, and particularity. As my case analysis demonstrates, each of these requirements can be problematic in domestic violence cases.

Immutability

The BIA first articulated the immutability requirement in 1985 in the seminal case Matter of Acosta:

we interpret the phrase “persecution on account of membership in a particular social group” to mean persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic….whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.\(^\text{224}\)

In this decision, the BIA explicitly named “sex” as an example of an immutable characteristic, but courts have remained resistant to social groups which rely on gender as their defining characteristic.\(^\text{225}\)

This resistance to social groups defined by gender has forced applicants to find another immutable characteristic. Most applicants in my dataset used relationship status as this immutable characteristic. Of the 24 cases which explicitly stated the applicant's proposed social group, 20 used a variation of their nationality combined with “women unable to leave their relationship.” Examples include “Salvadoran women in a domestic relationship which they cannot leave,” “Dominican women in relationships they cannot leave,” and “formerly married


\(^{225}\) Marsden, “Domestic Violence Asylum,” 2526.
Honduran women who are unable to leave their relationship.”226 The inclusion of nationality in these social groups adds an immutable characteristic, more narrowly defines the group, and subtly distances DV from the US by assigning it to a foreign country.

Though relationship status was a common choice for an immutable characteristic among asylum applicants, courts rarely agreed that these relationships were immutable. Though courts generally agreed that the social groups defined by inability to leave a domestic relationship met the requirements for a cognizable social group under US asylum law, they frequently concluded that the applicant could have in fact left the abusive relationship, and thus was not actually a member of the social group they presented. The evidence they used to come to this conclusion was sometimes shockingly weak, such as the applicant's visits to an aunt's house in Ferman-Martinez v. Sessions and the applicant's ability to run errands in Guzman-Alvarez v. Sessions.227 According to courts, these short trips outside the home proved ability to leave an abusive relationship.

In Perez-De Vigil v. Sessions, the Fifth Circuit rejected the applicant's proposed social group, “Salvadoran women in domestic relationship[s] who are unable to leave the relationship,” because “she was able to leave her relationship with Vigil by moving out of the home they had shared.”228 The applicant argued “that while she physically moved out of the home she and Vigil had shared, the relationship continued because Vigil continued to stalk her and threaten to have her killed,” but the court was not persuaded. US circuit courts have a very narrow understanding

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of what constitutes a relationship and what demonstrates a woman's ability to leave an abusive partner.

**Circularity**

In addition to immutability, a social group must have non-circularity; persecution cannot be the defining characteristic of a social group. Because an applicant must show that they were persecuted on account of their membership in a social group, that persecution cannot be the defining characteristic of the group. Circular social groups only appeared in two of the 49 cases in my dataset: in *Menjivar-Sibrian v. United States AG*, the Eleventh Circuit noted that “the defining attribute of Petitioner’s proposed group—‘women abused by her partner she cannot control’—is that the members suffer domestic abuse. But persecution alone is not enough to establish a particular social group.”

Similarly, in *Reyes v. Sessions*, the Tenth Circuit found that “Castillo Reyes’s proposed social group of female victims of domestic violence is circularly defined by the harm suffered by its members and therefore isn't a valid particular social group under the INA.” Though a social group defined by being a victim of domestic abuse meets asylum law's immutability requirement, it fails according to the non-circularity requirement.

**Social distinction**

The BIA has required that social groups be distinct or “visible” since 2006. The BIA clarified that they did not mean literal “ocular visibility” but rather that “society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.”

However, this social distinction/social visibility requirement has not been universally adopted by

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231 Marsden, “Domestic Violence Asylum.”
232 Marsden, 2532.
circuit courts or DHS; see, for example, the social groups proposed by DHS in Matter of R-A- and Matter of L-R- discussed previously.

The social distinction requirement is problematic in DV cases for several reasons. First, DV may be so normalized that “society may not distinguish victims of abuse from the general population of married women.” Second, victims and perpetrators of DV often do not publicize the abuse; thus, DV victims remain a hidden group. For example, in Faye v. Holder, the First Circuit rejected the applicant’s proposed social group, “women who had a child out of wedlock/are considered adulterers because they gave birth to a child allegedly not their husband’s/have been abused by their husbands,” because “she did not explain how Senegalese society generally would perceive her and women in a similar position. She did not describe experiences being persecuted or shunned by anyone in Senegal other than her family; indeed, Faye admitted she told no one that her family and Seck were abusing her.” The court fails to consider the role of patriarchal social norms which push women to stay silent about abuse. Similarly, in Vega-Ayala v. Lynch, the First Circuit asserted that “Vega-Ayala’s general reference to the prevalence of domestic violence in El Salvador does little to explain how ‘Salvadoran women in intimate relationships with partners who view them as property’ are meaningfully distinguished from others within Salvadoran society.”

In these cases, the court reaffirms the public/private dichotomy by dismissing applicants’ claims as private issues not related to society at large. By demanding public visibility, adjudicators leave no room for persecution which occurs in the “private sphere.” This narrow interpretation of how private acts relate to broader social structures and institutions ignores the

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233 Marsden, 2532.
widely accepted understanding of DV as the product of patriarchal norms and weak enforcement of laws against violence against women.  

*Sufficient particularity*

Since 2008, the BIA has interpreted the "particular" in "particular social group" to mean that the group would be considered distinct within the applicant’s country of origin and that its boundaries are clear. Adjudicators require the divide between group members and non-members to be clear and the group to be narrowly defined. As demonstrated by this set of cases, courts cite particularity concerns in their resistance to groups defined by gender even when other characteristics, such as nationality and relationship status, are included in the social group construction.

In seven cases, the court rejected the applicant's proposed social group because it lacked particularity. Courts found these groups too broad, suggesting concerns that accepting such a group would mean opening a floodgate of asylum applicants. For example, in *Faye v. Holder*, the First Circuit found that “the group of ‘women who had a child out of wedlock/are considered adulterers because they gave birth to a child allegedly not their husband’s/have been abused by their husbands’ did not provide well-defined boundaries for determining the group’s membership;” the group “was too ‘amorphous.’” Likewise, in *Cardona v. Sessions*, the First Circuit found that the applicant’s proposed social groups, “Guatemalan women who have been involved intimately with Guatemalan male companions who believe that women are to live under male domination” and “women in domestic relationships who are unable to leave,” “were not cognizable” because groups must “be sufficiently particular to permit an accurate separation

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of members from non-members.”239 In Menjivar-Sibrian v. United States AG, the Eleventh Circuit agreed with the BIA’s conclusion that “the proposed particular social group of ‘women abused by her partner that she cannot control’ lacked sufficient defined boundaries or characteristics to qualify for protection.”240

These statements reflect concerns about expanding the pool of potential asylees. Courts tend to conflate social group membership with eligibility for asylum; they assume that accepting a gender-based social group would make all women eligible for asylum.241 However, asylum applicants would still have to prove that they have been or will be persecuted and that the persecution occurred on account of their gender. Accepting gender-based social groups would not require the US to accept all female asylum applicants.

This resistance to gender-based social groups is not purely about numbers; the concern about opening the “floodgates” to women in DV cases reflects racist attitudes towards Latin American immigrants. Most women seeking asylum on the ground of DV come from Latin America; in my case set, 40 out of 49 applicants were from this region. Latino immigrants have been framed as criminal, unwanted “others” in US political discourse; 2016 saw a spike in anti-Latino sentiments due to Donald Trump’s racist anti-immigration rhetoric during the presidential campaign which portrayed Latin American immigrants as a threat to national security and the American economy.242 In 2017 and 2018, former Attorney General Jeff Sessions claimed that the US was facing an immigration “crisis” and that Latin American asylum-seekers were “caravanning”, “stampeding” and “flooding” across the border.243

241 Marsden, “Domestic Violence Asylum.”
242 Gonzalez, “Stereotypical Depictions of Latino Criminality.”
This racist alarmism directed at Latino immigrants motivates attempts to narrow asylum requirements, seen in courts’ rejection of social groups proposed by Latin American women fleeing DV. Courts demand that social groups have clear boundaries and be sufficiently narrowly defined as to be “distinct” from society at large, and they generally reject groups based solely on gender. Courts’ reluctance to accept gender-based social groups is founded on concerns that such groups are too large and thus threaten state control over the flow of people into the US.244

Granting asylum in DV cases is thus read not as offering deserved protection to women fleeing severe violence but rather as opening the “floodgates” to unwanted Latin American migrants who threaten to “take over” the US.

**Nexus**

In addition to absence of state protection and particular social group membership, asylum applicants must prove that the persecution was motivated by their membership in that social group. In 8 of the 49 cases in my dataset, the court found no nexus between DV and the applicant's social group because they concluded that the abuse was motivated by some factor other than gender. These courts thus treated DV as an apolitical crime or a “personal dispute” outside the realm of state responsibility and asylum law.

Feminist legal scholars have argued that because asylum adjudicators view DV as an individualized crime rather than persecution of a group, they frame DV as the actions of one criminal individual rather than a manifestation of patriarchal system in which the state is implicated. Sinha, for example, points out how in the landmark DV case *Matter of R-A-*, the court rejected Alvarado's asylum claim because she did not demonstrate that her abusive husband

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244 Gorman, “Defined by the Flood.”
would harm anyone else and because she did not provide sufficient evidence of his motivation for the abuse. Sinha argues that this approach mischaracterizes DV as tragic but apolitical violence:

The majority's insistence on specific evidence of what motivated the persecutor blatantly ignores widely accepted understandings of what motivates domestic battering….Far from being individual, random acts, violence against women at the hands of their partners is a pervasive and systemic exercise of patriarchal power. The record in In re R-A- contained facts that vividly illustrate how state action and inaction perpetuates this subordination-facts that should have been given serious weight in deciding the applicant's asylum claim.

The court’s focus on Alvarado’s husband’s motives and the question of whether he posed a threat to society at large transforms DV into an interpersonal, isolated conflict rather than asylum-worthy persecution.

Other scholars have argued that DV should be considered persecution on account of political opinion rather than membership in a particular social group. Cianciarulo, for example, argues that seeking asylum from DV is a political act in opposition to state-supported patriarchy because state refusal to adequately protect DV victims demonstrates support of male dominance:

intimate partner violence, when it occurs in countries that fail or refuse to protect women from it, is a form of state action. A state that fails or refuses to protect certain citizens from actions of other citizens encourages the persecution of such groups….The goal of that state is to oppress women in order to maintain the legal and societal dominance of men. The dominant members of society have articulated that goal by legislating female subordination and/or failing to legislate against female subordination.

This line of reasoning seeks to break down the public/private divide by exposing how state inaction in “private” matters like DV is actually a form of state action.

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Some asylum applicants have attempted to apply this feminist argument in their asylum claims. A few women in my dataset proposed social groups which included their partner's supposed motivations for the abuse; examples include “Salvadoran women in domestic relationships who are unable to leave or Salvadoran women who are viewed as property by virtue of their domestic relationships” in Santacruz v. Lynch and “Honduran women who are viewed as property by virtue of their positions within a domestic relationship and who are unable to leave the relationship” in Rodriguez-Mercado v. Lynch. In these cases, the applicants hoped to boost their chances by mirroring the social group construction proposed in DHS's 2009 Matter of L-R- brief: “Mexican women who are viewed as property by virtue of their position in a domestic relationship.” Applicants in these cases argue that the abuse they suffered was not random criminal activity but rather that it was inherently tied to patriarchal social norms—men’s view of their female partners as property. These proposed social groups present a feminist argument about the power dynamics and underlying patriarchal beliefs which structure abusive relationships, thus attempting to challenge the depoliticization of DV.

However, courts were not persuaded by these arguments. Adjudicators tended to find other explanations for the DV. In Rodriguez-Mercado, the Eighth Circuit suggested that the abuse Rodriguez-Mercado suffered was in fact only motivated by her partner's “controlled substance addictions” rather than his view of her “as property.” In Vega-Ayala v. Lynch, the court agreed with the IJ and BIA’s determination that Vega-Ayala’s partner abused her not “on account of her membership in a particular social group” but rather due to “financial motives.”

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which “are ‘not connected to a statutorily protected ground for refugee purposes’ under this circuit's case law.” In *Martinez-Martinez v. Sessions*, the court “noted that Martinez-Martinez testified that her husband beat her because he did not want her to reveal that he was in the drug business,” and thus dismissed her framing of DV as persecution. In *Reyes v. Sessions*, the court concurred with the IJ’s conclusion that Castillo Reyes wasn't harmed by her uncle, Barahona Gomez, and Mestizo 'because of her gender, but because she was unfortunately vulnerable to their mistreatment during the times that she lived alone or was dependent on the men for providing for her and her children.' As a result, the IJ found, Castillo Reyes's gender was 'tangential and even subordinate to another reason for harm: vulnerability.'....In each instance, Castillo Reyes was harmed when she lived alone or, as she testified, had nowhere else to go when she was mistreated.

In this case, the court fails to consider how gender shapes Castillo Reyes’ so-called “vulnerability.”

In contrast, when an applicant could clearly link DV to traditional, public displays of political opinion, courts were more receptive. In *Hakobyan v. Holder*, the applicant based her DV asylum claim on political opinion rather than social group membership, claiming that “she was beaten by her father-in-law and husband because of her political activities.” In contrast to other DV cases, the court understood Hakobyan’s expressions of political opinion as such because they fit the traditional model of public political speech: “Exposing government corruption, whistle-blowing, and participating in politically active student organizations are all expressions of political opinion,” the court stated. In cases without this clear connection to traditional political activity, circuit courts tend to characterize DV as personal, not political

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violence, thus moving it outside the arena of the state and excusing the state from any responsibility.

Several cases failed because courts did not recognize the nexus between gender and domestic violence. Courts rejected the presentation of DV as a patriarchal tool of oppression, instead treating DV as isolated incidents of personal conflict. This framing presents “an image of patriarchal values and violence as beyond the margins of state control and, consequently, state participation.” 252 It absolves the state of any responsibility for perpetuating or countering violence against women. This absolution works to the advantage of the US, a state in which DV is relatively common; one in four American women suffer severe violence by an intimate partner in their lifetime. 253 By removing state responsibility for DV in asylum cases, courts implicitly suggest the US cannot be implicated in the violence which occurs within its own borders.

_Credibility_

Questions about the applicant’s credibility were common in my dataset, appearing in 11 cases. Though it is, of course, the responsibility of adjudicators to ensure that they are granting asylum only to those making authentic claims of persecution, these credibility judgements leave significant room for error, particularly in DV cases. Trauma, cultural differences in behavioral norms, and unfamiliarity with the US asylum process can contribute to behavior which may be interpreted as an indication of dishonesty. Courts often interpret “reluctance to share stories and changes in the timeline of abuse” as evidence of “dishonesty” but “this tentativeness may be a bi-product of the applicant’s abuse or their lack of familiarity with asylum law and U.S. customs or norms.” 254

252 McKinnon, “Positioned in/by the State,” 190.
253 NCADV, “National Statistics.”
DV survivors, like other survivors of trauma, may be reluctant to share all the details of their experiences, as recounting traumatic events can be incredibly painful and trigger flashbacks, panic attacks, or other PTSD symptoms.\textsuperscript{255} Thus, applicants may present incomplete, vague, or varying testimony; the narrative they present to an adjudicator may differ from the one they share with an attorney or a therapist.\textsuperscript{256} Trauma can also produce memory problems, causing applicants to “unintentionally omit key aspects of the story.”\textsuperscript{257} Additionally, applicants may not respond emotionally to their experiences in the expected way; they may appear numb rather than break out into tears when discussing traumatic events.\textsuperscript{258} Because adjudicators can make credibility determinations based on the applicant’s demeanor, the interpretation of their emotional presentation is significant. Inconsistencies and gaps in applicants’ stories which may be taken as signs of incredibility may actually be products of trauma.

In \textit{Rodriguez-Mercado v. Lynch}, the applicant tried to counter adjudicators’ adverse credibility determination by explaining these effects of trauma and arguing that the IJ who heard her case should have taken them into account when evaluating her testimony.\textsuperscript{259} She cited a 1995 DOJ memo addressed to asylum officers which described how it can be difficult for survivors of trauma, specifically sexual abuse, to discuss their experiences and recommended interview techniques for asylum applicants who have faced gender-based violence. The court, however, dismissed Rodriguez-Mercado’s argument and the memo, stating that “immigration judges are not required to follow the Memorandum's recommended interviewing techniques” and that inconsistencies in her testimony “suggested a willingness to overstate alleged abuse to support

\textsuperscript{255} Lustig, “Symptoms of Trauma Among Political Asylum Applicants: Don’t Be Fooled.”
\textsuperscript{256} Lustig.
\textsuperscript{257} Lustig, 729.
\textsuperscript{258} Lustig, “Symptoms of Trauma Among Political Asylum Applicants: Don’t Be Fooled.”
her claim for asylum relief.” In this case, the court brushed aside well-established information about the relationship between trauma and consistency in testimony in favor of dismissing Rodriguez-Mercado as someone duplicitously trying to take advantage of the US asylum system by exaggerating the abuse she suffered.

Evidential and credibility requirements can be a hurdle for DV cases. Adjudicators should be more sensitive to the ways in which victims of sexual violence or domestic abuse may respond to their trauma. The federal government should establish binding regulations to improve interview and adjudication techniques for asylees who have fled GBV.
**Conclusion**

US circuit court decisions in DV-based asylum cases are structured by both floodgate fears and the persisting belief that DV is a private issue and thus beyond the scope of asylum law. Adjudicators repeatedly found that applicants either claimed membership in a social group which was not cognizable under asylum law or that the abuse they suffered was not motivated by their membership in that group. Courts have largely failed to recognize how DV relates to “the political and social structures that serve to perpetuate the subjugation of women.” This depoliticization of DV precludes implicating the state in the perpetuation of DV, thereby absolving the US of responsibility for the DV which occurs within its borders. The depoliticization of DV also plays into anti-Latino floodgate fears by enabling the dismissal of women making these asylum claims as simply migrants trying to cheat their way into the US rather than refugees fleeing persecution. Despite the advances made in landmark cases like *Matter of R-A-*, domestic violence remains an site of controversy in circuit courts.

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Chapter 5

FGC vs. Domestic Violence

The respondent in this case has not demonstrated that domestic violence is as pervasive in Guatemala as FGM is among the Tchamba-Kunsuntu Tribe, or, more importantly, that domestic violence is a practice encouraged and viewed as societally important in Guatemala. She has not shown that women are expected to undergo abuse from their husbands, or that husbands who do not abuse their wives, or the nonabused wives themselves, face social ostracization or other threats to make them conform to a societal expectation of abuse. While the respondent here found no source of official protection in Guatemala, the young woman in Kasinga testified that the police in Togo were looking for her and would return her to her family to undergo FGM.261


My findings support existing research indicating that FGC and DV cases receive vastly different treatment in US courts. Courts implicitly, unquestioningly accepted FGC as persecution in most cases in my dataset but set a higher bar for DV cases. The condemnation of FGC through the asylum system is part of the process of hierarchically organizing states within international relations. The othering of FGC allows the US to prop itself up as an example of evolved civilization and freedom. Courts do not other DV in the same way, instead exhibiting more reluctance to accepting DV as grounds for asylum. DV cannot be othered in the same way as FGC because it cannot be deemed a foreign practice. Additionally, recognizing DV as gender-based persecution which involves the state would implicate the United States. Thus, rather than other DV and the places applicants come from, courts resist accepting DV claims.

Gender-Based Violence and the Hierarchy of States

Since refugee law’s post-World War II origins, the US has politicized the asylum apparatus in the international sphere. Asylum implicitly condemns the government which the asylee is fleeing for failing to protect or actively persecuting them and bolsters the image of the US as a land of freedom and safety. The asylum-seeker is “perceived as valuing the United States as being a ‘more enlightened’ place (whether they believe it or not) than their country of origin, which automatically reinforces older notions of America as a strong and powerful colonial empire.”\textsuperscript{262} Because of these implications, the US has strategically used asylum as a political tool, most obviously during the Cold War: during the 1950s, the American asylum system prioritized those fleeing communist regimes in order to censure communist states and encourage opposition within them.\textsuperscript{263}

What Nayak terms “gender-correct behavior” has become increasingly important in international politics: “Gender-correct behavior means acting in ways that take seriously norms that emphasize the appropriate treatment of women and sexual minorities, and that challenge an eradicate norms that reinforce unfair and unequal gendered expectations.”\textsuperscript{264} In other words, gender-correct behavior is that which gives a state the appearance of caring about the rights of women and LGBT individuals, regardless of how seriously the state in question actually takes the realization of those rights. Activists’ efforts have made the treatment of women and sexual minorities increasingly a factor in a country’s ranking in the international community. LGBT and women's rights activists framed gender equality and LGBT rights as human rights issues and

\textsuperscript{262} Takagi, “Orientals Need Apply,” 75.
\textsuperscript{263} Takagi, “Orientals Need Apply.”
\textsuperscript{264} Nayak, \textit{Who Is Worthy of Protection?}, 56.
markers of a “civilized and superior state.” Gender-correct behavior, or at least the appearance of gender-correctness, now signifies adherence to human rights norms, and thus informs a state’s position in the international hierarchy. The rise in importance of gender-correct behavior has made the appearance of support of women’s rights increasingly important in asylum policy, but as my research shows, this has only opened the US asylum system to “foreign” forms of gender-based violence.

US circuit courts’ condemnation of “exotic,” “traditional” foreign practices like FGC and resistance to DV claims supports a dichotomy of “uncivilized” (i.e. non-Western) and “civilized” (i.e. Western) countries. Asylum policy divides states into “a primary dichotomy…between those states which produce refugees and those that accept refugees.” Western states are assumed to only receive refugees rather than produce them due to the supposed incorporation of human rights into their legal regimes; countries which produce refugees are assumed to have failed to reach this bar of human rights enforcement or to actively reject human rights standards. Thus, refugee-producing states are framed as weak, underdeveloped, backwards Others. By focusing on exoticized “cultural” traditions like FGC in its fight for women's equality, the US asylum system relegates women's oppression exclusively to cultural characteristics of those “other,” refugee-producing states, thereby erasing oppression and inequality within the US. The attribution of certain forms of gender-based violence to culture allows the root of causes of the violence against women which occurs everywhere, including in the US, to go unexamined.

265 Nayak, 58.
266 Nayak, Who Is Worthy of Protection?
268 Freedman, “Protecting Women Asylum Seekers and Refugees.”
269 Freedman.
270 Freedman.
The narrative which emerges in asylum adjudication is thus one of the conflict between civilized and uncivilized states rather than a critique of “the ways in which women are still institutionally discriminated against in the United States because of gender or sexual orientation.”

Attributing FGC to “African culture” separates it from forms of gender-based violence which occur in the US. When the focus is on cultural explanations, accepting FGC-based asylum claims does not require condemnation of the broader patriarchal norms which produce gender-based violence in the US as well. Courts did not tie DV to culture in the same way, instead framing it as private, individualized violence. Blaming DV on culture would implicate American culture in the critique, but a non-culture based critique would politicize DV in a way which would suggest the US state contributes to the violence which occurs within its borders. Thus, DV must be depoliticized entirely and framed as unfortunate but random violence.

**Distancing Patriarchal Violence**

In Sinha’s 2001 comparison of the BIA decisions in the landmark cases *Matter of R-A* and *Matter of Kasinga*, she argues that adjudicators are more receptive to FGC claims than DV claims because FGC “can be ascribed to African tribal ritual” while DV cannot be assigned to some non-white “culture” because it is common in the United States. Thus, granting asylum in FGC cases both avoids a critique of gender-based violence within the US and “is consistent with the colonialist feminist agenda of ‘saving women from primitive cultures.’” My set of cases confirms that this is still a trend in adjudication.

Through FGC cases, US courts engage with patriarchy, but they frame that patriarchy as inherently foreign and of the past. When patriarchy is aligned with tradition and “other” places,

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the US becomes a space of modernity free from the “backwards” patriarchal institutions and norms that manifest “over there.” Framing a country in which FGC occurs “as ‘then and there’ in its treatment of its women citizens functions to legitimatize US modernity as one that is both absent of patriarchy and hospitable to women.” The othering of African countries which occurs in FGC cases makes gender-based violence “spatially and temporally distant.” This othering and distancing does not occur to the same extent in DV cases; courts tend to frame DV as the actions of one criminal actor rather than a cultural problem.

**Cultural Framing**

Circuit courts rarely portrayed DV as the product of culture. In a small number of cases, applicants and courts referenced a “culture of machismo” in their home country, suggesting that DV was a cultural problem, but that the culture was specifically non-American. Rather than more universal patriarchal norms, DV is framed as the result of Central American "machismo." For example, in *Alonzo-Rivera v. United States AG*, the court heavily drew on the expert testimony of a lawyer specializing in gender-based asylum, accepting her framing of DV as a societal problem in Honduras stemming from “the culture of 'machismo' that pervades the country.” This argument successfully persuaded the court that it would have been futile for Alonzo-Rivera to report her husband’s abuse, but it framed DV as a problem unique to Honduran culture. This framing homogenizes, others, and condemns Honduran culture as oppressive for women and distances DV from the US by attaching it to this “other” culture.

Though the court in this case was receptive to this exotifying framing of DV, it was the only case in which this argument succeeded. In general, circuit courts were reluctant to recognize

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274 McKinnon, 186.
275 McKinnon, “Positioned in/by the State,” 185.
DV as a societal problem, regardless of whether it could be tied to a foreign culture of "machismo." This cultural framing of DV has not caught on in the same way that it has in FGC cases. US courts' rejection of cultural framing of DV played out most clearly in *S.E.R.L. v. AG United States.*\(^\text{277}\) In this case, the applicant drew on the precedential BIA decision in *Matter of A-R-C-G.* In *A-R-C-G,* the BIA ruled in favor of the applicant due to "unrebutted evidence that Guatemala has a culture of 'machismo and family violence.'" The circuit court in *S.E.R.L.* rejected the BIA's framing of DV as cultural. They instead chose to individualize DV as an isolated criminal incident, asserting that “one bad actor's twisted views should not be attributed to a whole society.” The court also noted the Attorney General’s recent abrogation of *A-R-C-G:* "And, as earlier noted...A-R-C-G- has recently been abrogated by the Attorney General, who stated that it ‘caused confusion because it recognized an expansive new category of particular social groups based on private violence.’” With the exception of a few mentions of a culture of “machismo,” courts tend to individualize DV rather than frame it as a widespread “cultural” problem as they do with FGC.

In DV cases, the desire to exotify and distance gender-based violence can be overpowered by courts’ floodgate fears. In *Faye v. Holder,* the court implied that "Islamic and traditional customs" were the root cause of women's oppression in Senegal, but still refused to grant Faye asylum on the basis of DV.\(^\text{278}\) The court stated that Faye's proposed social group of “women who had a child out of wedlock/are considered adulterers because they gave birth to a child allegedly not their husband's/have been abused by their husbands” was too “amorphous” and lacked “well-defined boundaries.” They also determined that Faye had failed to prove a lack


\(^{278}\) Faye v. Holder, 580 F.3d 37, 2009 U.S. App. LEXIS 19704.
of government protection because she “did not report her abuse to authorities.” Here, the framing of GBV as caused by “tradition” and non-Christian religion failed to have the same effect as it does in FGC cases. The court’s attribution of DV to foreign culture failed to gain the applicant a grant of asylum; floodgate fears won out.

*Interventionism and the White Savior*

The asylum system bolsters a colonialist savior mentality. The US offers protection to oppressed non-Western women when applicants reject their own “backwards” culture and express a desire to be part of the US’s “advanced” society. Courts are eager to accept FGC victims in comparison to DV victims because this fits into the narrative of the powerful, free United States rescuing helpless women from “other,” backwards cultures and weak governments. Courts did not attribute DV to foreign cultural norms in the way which they did so in FGC cases, and they tended to set the bar lower for adequate state protection in DV cases. While they were eager to rescue women from “African culture” in FGC cases, courts were more reluctant to blame culture or the state for DV.

The hierarchy of “gender-correctness” justifies interventionist policies. US efforts to make other countries more “gender-correct” is based both on the paternalist idea that the US has the responsibility to "protect" foreign women and the desire to prevent migration to the US. For example, shifts in international politics pressured five African countries to outlaw FGC by the late 1990s. Though these countries were forced to adopt the appearance of gender-correctness, there had not been “dramatic shifts in local sentiments and/or practices.”

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280 Coffman, “Producing FGM in U.S. Courts.”
281 Coffman, 68.
imposed from the top down, neglecting to take into account the position of those who actually engage in and are affected by FGC.

*State Protection*

In cases with non-state actors as persecutors, asylum applicants must prove their government was unwilling or unable to control them. Thus, a condemnation of foreign states as weak or bad is built into FGC and DV asylum cases. However, US circuit courts seem to judge states more harshly in FGC cases than in DV cases. Acknowledging failure of the state to adequately address DV would implicate the US. Condemning states for failing to eradicate FGC does not involve that same self-incrimination and furthers a colonialist agenda.

Courts exhibit a higher standard for proving inadequate state protection in DV cases than in FGC cases. While courts frequently accepted country condition reports as indicators of likely persecution and level of state protection in FGC cases, they tended to reject them in DV cases, requiring applicants to submit medical reports, police reports, or other evidence related to their individual circumstances. For example, in *Mendez-Garcia v. Holder*, the court rejected country condition reports as evidence of lack of state protection for DV victims:

> the reports that Mendez-Garcia submitted reflect only indirectly on the government's likely response to the situation she will face if returned to Guatemala. They speak broadly about high rates of rape and murder, low conviction numbers, and especially the police's reluctance to enforce restraining orders against some men who abuse their spouses, but shed little light on the question whether a divorcee, now remarried to another man, can obtain enforcement of a restraining order against her ex-husband.  

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The court required that Mendez-Garcia have already sought and been denied police protection in order to prove that the state would not be able to protect her from her abusive ex-husband; country reports demonstrating patterns of inadequate police response to DV were not enough.

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In contrast, in *Gatimi v. Holder*, the court drew on newspaper articles about FGC and a Kenyan country condition report to conclude that the Gatimi would likely be forced to undergo FGC if returned to Kenya: “The Board said there was no evidence that Mrs. Gatimi will be subjected to female genital mutilation if she is returned to Kenya. In fact the only evidence in the record is to the contrary; it is that the Mungiki will track her down and subject her to the procedure and the Kenyan police will not interfere.”283 There was no discussion in the decision of whether she had already attempted to get police protection or not. In none of the cases in my dataset did the court expect that applicants had sought state protection before applying for asylum; in contrast, this expectation was common in DV cases.

Courts set a higher bar for proving inadequate state protection in DV cases than in FGC cases; they are more reluctant to identify the state as a guilty party in DV cases than in FGC cases. Identifying DV as persecution would challenge American exceptionalism because DV commonly occurs in the US; condemning other states for failing to counter DV would require recognition of the American state's own role in enabling DV in the US.

**What Counts as Persecution?**

While courts readily accepted FGC as persecution, they tended to be more critical of DV claims, frequently questioning whether the violence the applicant fled was severe enough to qualify as persecution or whether the harm was on account of a protected ground. Applicants in FGC cases did not have to convince the court that FGC constituted persecution on account of a protected ground; they only had to prove that they had already or were highly likely to undergo it

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if they returned to their home country. In contrast, applicants in DV cases struggled to convince courts that the abuse they suffered constituted asylum-worthy persecution.

The lack of openness to DV claims reflects a hesitance to recognize violence which occurs in the US as asylum-worthy. Equating DV and FGC by grouping them together as gender-based persecution which the state has some responsibility for would threaten notions of American exceptionalism. Takagi, writing on orientalism, defines American exceptionalism as “the notion of a U.S. that is civilized, powerful, and has the ‘God-given’ right to govern the East.” The US is figured as uniquely free and civilized in comparison to the rest of the world; this belief justifies American international democratizing efforts, foreign interventions, and the war on terror. If US courts condemned DV as patriarchal oppression upheld by state inaction or “culture and tradition” as they do in FGC cases, they would also be exposing the patriarchal systems at work within the US. Thus, circuit courts tend to frame DV as apolitical violence and minimize applicants’ experiences as not worthy of asylum.

FGC as a Threat to Women’s Rights

FGC does not fall into the same trap of being dismissed as “private” violence despite its similarities to DV: the persecutors in FGC cases are non-governmental actors, often family members, and gendered social norms contribute to FGC’s perpetuation. But rather than dismissing the harm’s connection to patriarchal structures as in DV cases, some courts explicitly connected FGC to women’s oppression in general within the applicants’ home countries. In *Kone v. Holder*, the Second Circuit linked FGC to other types of gender-based violence in Cote d’Ivoire in their decision to grant Kone asylum on the basis of past FGC:

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285 Takagi, “Orientals Need Apply.”
the record “provide[s] ample evidence that [Ivorian] and/or [Dioula] women are routinely subjected to various forms of persecution and harm beyond genital mutilation.”...the 2005 State Department Country Report on Human Rights Practices for Cote d’Ivoire, included as part of Kone's asylum application, indicates that “the law does not prohibit domestic violence, and it [is] a problem,” “rape [is] a problem” and “women who reported rape or domestic violence to the police were often ignored.”...the government “did not even attempt to argue that [Kone] would not be subject to forms of persecution other than genital mutilation on account of [her] membership in [a] particular social group upon return” to Cote d’Ivoire.\textsuperscript{286}

The court recognizes FGC as gender-based persecution and argues that past experience of gender-based violence suggests future vulnerability to other forms of GBV.

In a few cases, courts emphatically stated that FGC is always persecution. The Sixth Circuit in \textit{Dieng v. Holder} noted that “Unquestionably, ‘[FGM] involves the infliction of grave harm constituting persecution on account of membership in a particular social group that can form the basis of a successful claim for asylum.’”\textsuperscript{287} In \textit{Kourouma v. Holder}, the Fourth Circuit wrote, “Once a petitioner has satisfactorily proven that she has been or will be subject to female genital mutilation, she has made a prima facie case that she is entitled to asylum and the burden shifts to the government.”\textsuperscript{288} In \textit{Benyamin v. Holder}, the Ninth Circuit condemned acceptance of any form of FGC as “a threat to the rights of women in a civilized society” and advocated for a zero-tolerance policy, stating that all FGC “threaten[s] the health and violat[es] the human rights of women.”\textsuperscript{289} No court made such grand statements about DV.

Furthermore, courts only examined the nexus issue—whether the persecution occurred on account of a protected ground such as race or religion—in one case. In \textit{Fesehaye v. Holder}, the Eight Circuit found no nexus between the FGC the applicant had undergone and her proposed

\textsuperscript{286} Kone v. Holder, 596 F.3d 141, 2010 U.S. App. LEXIS 3924.
\textsuperscript{288} Kourouma v. Holder, 588 F.3d 234, 2009 U.S. App. LEXIS 25739.
\textsuperscript{289} Benyamin v. Holder, 579 F.3d 970, 2009 U.S. App. LEXIS 18960.
social group of Ethiopian women only because the applicant failed to prove she was actually Ethiopian and thus a member of that group.\textsuperscript{290} Otherwise, every court accepted without discussion that FGC is persecution on account of some protected ground. Courts did not afford DV cases the same privilege; nexus issues came up in ten of the 49 DV cases.

\textit{Minimization of Domestic Violence}

Courts tended to minimize the severity of the DV applicants had undergone. Applicants frequently had trouble proving that the abuse they suffered met the court’s bar for persecution. As discussed in the introduction, US law does not define persecution, leaving it up to the courts to set their own standards. The standards which have emerged are not conducive to grants in DV cases, as “most courts reserve the concept of persecution for the most extreme forms of bodily harm” and tend to reject claims of repeated minor incidents of violence or psychological harm.\textsuperscript{291} Courts tended to minimize applicants’ experiences in DV cases, not recognizing DV as rising to the level of persecution.

The question of whether the harm was severe enough to constitute persecution only came up in one FGC case, and it was only because the court wanted to condemn the BIA’s suggestion that some forms of FGC were too mild to rise to the level of persecution. In \textit{Benyamin v. Holder}, the Ninth Circuit wrote,

\textquote[Reasoning that female circumcision practices in Indonesia “appear to be of a less extreme variety” than those described in a case involving Ethiopia, the BIA affirmed the Immigration Judge’s (“IJ”) decision that Benyamin had not established that he suffered persecution or that he had a well-founded fear of future persecution...‘we have no doubt that the range of procedures collectively known as female genital mutilation rises to the level of persecution within the meaning of our asylum law.’ Thus, the BIA’s attempt to parse the distinction between differing forms of female genital mutilation is not only a]

\textsuperscript{291} Llewellyn, “Deciding What Counts as Persecution,” 40.
threat to the rights of women in a civilized society, but also runs counter to our circuit precedent.292

The court rejected differentiation among forms of FGC, arguing that it is always persecution regardless of how “mild” it may seem.

No court adopted this view in DV cases. Rather, courts repeatedly failed to account for the cumulative and psychological effects of repeated “minor” incidents of violence or threats. For example, in Marikasi v. Lynch, the Sixth Circuit focused solely on physical harm, stating that “this medical record, which reported a ‘scuffle at home with her husband,’ does little to corroborate domestic abuse rising to the level of persecution, which requires evidence of physical punishment, infliction of harm, or significant deprivation of liberty.”293 In Santacruz v. Lynch, the Eight Circuit referred to the abuse the applicant suffered as “mistreatment” and “low-level intimidation and harassment.”294 In Mendez-Garcia v. Holder, the Seventh Circuit agreed with the BIA’s conclusion “that Diaz’s conduct was not severe enough to constitute past persecution, that Mendez-Garcia's fear of future persecution was unreasonable because Diaz had consistently failed to follow through on threats over the years,” rejecting Mendez-Garcia’s argument that the court should consider “the subjective impact on the victim.”295 The court brushed aside the psychological and physical abuse Mendez-Garcia underwent, instead suggesting that only an immediate risk of death would be severe enough to merit asylum: “Diaz's past violence includes shoving, a slap, and swinging a belt without making contact, none of which shows a propensity for murder....Diaz presents Mendez-Garcia with no real chance of death, violence, or the kidnaping [sic] of her daughter.”

But murder should not be the standard for determining whether persecution has occurred; courts never required that applicants demonstrate an immediate risk of death in FGC cases. Additionally, past incidents of abuse do indicate the likelihood of future violence; US criminal law \(^ {296}\) "recognizes that threats are themselves acts of psychological violence, that often turn into instances of physical violence and that previous abuse is a likely predictor of future abuse." \(^ {297}\) Furthermore, US Refugee, Asylum, and International Operations (RAIO) \(^ {298}\) officer training materials indicate that “repeated threats should constitute psychological torture.” \(^ {299}\) The Seventh Circuit thus ignored long-accepted understandings of how DV affects its victims and how it progresses. Furthermore, by minimizing applicants’ experiences and brushing aside instances of abuse, courts imply “a tolerance for a certain amount of foul play in a marriage.” \(^ {300}\) They normalize abuse within domestic relationships.

**Conclusion**

Exoticizing harms in the context of asylum supports the narrative of American exceptionalism by positioning the US as a safe haven from the violent, backwards traditions of other places. Condemning FGC as culture-based persecution thus puts the US at the top of the international hierarchy of states and African countries at the bottom. However, DV cases cannot be used to condemn foreign cultures in the same way because DV also occurs within the US; neither can it be recognized as state-supported patriarchal oppression because this would implicate the American state. Thus, courts apply a high standard for inadequate state protection.

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\(^ {296}\) See the Violence Against Women Act of 1994 (VAWA).
\(^ {297}\) Llewellyn, “Deciding What Counts as Persecution,” 43.
\(^ {298}\) The RAIO Directorate is the office within US Citizenship and Immigration Services which handles asylum and refugee policies and activities.
\(^ {299}\) Llewellyn, “Deciding What Counts as Persecution,” 43.
\(^ {300}\) Llewellyn, 41.
in DV cases while minimizing the violence applicants have faced. Condemning FGC while brushing aside DV thus upholds the US’s appearance of “gender-correctness” and side-steps a critique of American patriarchal structures.
Chapter 6

Conclusion

An alien may suffer threats and violence in a foreign country for any number of reasons relating to her social, economic, family, or other personal circumstances. Yet the asylum statute does not provide redress for all misfortune.

I do not believe A-R-C-G- correctly applied the Board’s precedents, and I now overrule it. The opinion has caused confusion because it recognized an expansive new category of particular social groups based on private violence.

Generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum....The mere fact that a country may have problems effectively policing certain crimes—such as domestic violence or gang violence—or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim.

The fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime, any more than it would in the United States.

I understand that many victims of domestic violence may seek to flee from their home countries to extricate themselves from a dire situation or to give themselves the opportunity for a better life. But the “asylum statute is not a general hardship statute.”

US Attorney General Jeff Sessions

Matter of A-B-, 2018

In June 2018, Attorney General Jeff Sessions issued a ruling in Matter of A-B- which threatened to dramatically restrict asylum grants in domestic violence cases. In his ruling, Sessions overturned the 2014 BIA decision in Matter of A-R-C-G-, in which the Board accepted the social group “married women in Guatemala who are unable to leave their relationship,” and narrowed the definition of a social group under asylum law. Sessions argued that asylum law was not meant to apply to cases of “private violence” such as gang violence or domestic

302 Lind, “Jeff Sessions Just All but Slam the Door on Survivors of Domestic Violence and Gang Violence.”
violence, and asserted that persecution by non-governmental actors should only be considered grounds for asylum in rare cases. Session’s A-N- ruling explicitly articulates the trend my research identified in DV circuit court decisions: domestic violence is not political and not the US’s responsibility.

Though FGC could also be dismissed as “private” violence, Sessions left it out of his decision, choosing only to mention gang violence and domestic violence. This exclusion supports this thesis’ overall argument: condemnation of FGC and minimization of DV via the asylum system allows the US to maintain its “gender-correct” appearance and its position in the hierarchy of “civilized” (i.e. white and Western) and “uncivilized” (i.e. non-white and non-Western) states without being threatened by a “flood” of unwanted asylees from Latin America.

**Limitations and Directions for Future Research**

Though my research uncovered some fascinating revelations about US asylum adjudication, these findings are inherently limited in application. My dataset only included circuit court cases; thus, my conclusions are only applicable to circuit court adjudication. This leaves open the question of whether these trends replicate at the lower levels of the asylum system. It would also be valuable to interview lawyers and asylees to examine how they craft their testimonies in gender-based cases. An examination of other levels of the asylum system and the inclusion of other voices involved in asylum adjudication would provide an interesting confirmation of or counterpoint to my findings.

Additionally, my research focused on only looked at two types of gender-based claims. People seek asylum in the US on the basis of a wide variety of gender-based harms; FGC and
DV claims only provide a snapshot of gender-related adjudication. Other scholars have done interesting work on sexuality-based asylum claims and gender-based claims made by men; it would be fascinating to put this research in conversation with my own.

**Final Thoughts**

The circuit court decisions of the last ten years confirm that homogenizing, othering frameworks are still at play in FGC cases, and DV applicants still struggle to achieve recognition as victims of asylum-worthy persecution. These trends in asylum adjudication reveal how the US continues to employ certain racialized and gendered narratives to maintain control over immigration flows. Until adjudicators acknowledge and challenge these frameworks, the asylum system will remain an inadequate solution for those fleeing gender-based violence.
Bibliography


