# Opening Eyes and Saving Lives:

## A New, Justice and Peace Studies Perspective on Gender-Based Political Asylum

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## Chapter 1: Introduction

In 2008, the United States of America granted 22,930 persons political asylum, giving them a legal place in the United States, due to the persecution they had faced in their countries of origin (Martin, Daniel C. and Hoefer, Michael). Be it victims of ethnic cleansing or tortured political dissidents, these persons are accepted into the U.S. temporarily; after one year, they apply for permanent resident status and often achieve it. Unfortunately, many other potential asylees are not so lucky, as the U.S. system habitually fails to offer them refuge within its borders, sending them back to their countries or holding them in detention centers for months on end. Countless women worldwide fulfill this description, denied entrance into the United States despite the often life-threatening persecution that they have endured because of their gender. It is for these women—women who have no home in their own country and no home upon arrival in the United States—that I have chosen to write a thesis in Justice and Peace Studies.

The status of persecuted women in terms of political asylum has fluctuated throughout the years since the United Nations first established the international precedent for accepting refugees in 1951, which states that countries should accept those who have a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" ("Convention and Protocol Relating to the Status of Refugees"). Currently, the arguments that asylum lawyers have made and continue to use involve adapting each woman's unique situation to fit the qualifications of the refugee laws and guidelines already in place, such as framing a crime like female genital mutilation as persecution "for reason of" membership in a particular social group(Kassindja). While this at times provides women with beneficial results, too often it leaves the status of persecuted women up to the whim of a particular politician's stance on immigration, placing the lives of women in the hands of party

policy. Today a woman who has been a victim of domestic violence may be eligible for political asylum, but four years from now this could not be the case.

The path of my research deviated in two directions, first presenting me with countless examples of women who were not permitted into the United States under the current law. The White House changes its interpretation of the refugee law with every change in administration, and immigration judges and Board of Immigration Appeals (BIA) officials continually reject severely tortured applicants. All parties involved approach political asylum as an immigration issue, rather than a human rights one, and their subsequent goal is often to keep immigrants out, rather than welcome victims in. At the same time, I discovered that the interpretations of these leaders in asylum are not in any way consistent with the United Nations precedent or United States refugee law. I make it evident in my thesis that almost all persecuted women are eligible for asylum under the current United States asylum law due to the nature of crimes against women and their relation to a political opinion. The American judges and immigration officials are unequivocally interpreting refugee law incorrectly.

In order to alleviate the inconsistency between practice and law, I conclude that the only way to safeguard persecuted women is to add persecution for reason of gender as its own category to the definition of a refugee. The law is interpretable in a way that would grant persecuted women asylum, but because the majority of those responsible have failed to understand this construction, changing the law is the only way to truly safeguard women. Granting political asylum to women is an issue of *human rights*, and thus amending the law is a necessary step in the frame of Justice and Peace Studies. It is time to guarantee that any persecuted woman will be able to find safety in the United States, no matter the political party of the president or the attitude of any BIA official.

***Thesis Composition***

While the intention of this thesis is to argue for said change, and not a simple summation of fact and historical background, it is necessary to understand where the United States policy originates and the changes it has undergone in order to better understand the ways in which this policy operates now and, furthermore, how it can be altered. Thus, I begin in Chapter 2 by presenting the history of political asylum and refugee policies, starting with the establishment of the United Nations High Commissioner for Refugees (UNHCR). I directly quote the United States Refugee Act and explain what this law signifies for women seeking asylum. This chapter also details the changes that political asylum has undergone in the field of gender, with a focus on recent cataclysmic events.

In Chapter 3, I thoroughly explain the findings of the first path that my research took me in, presenting both the current legal strategy for granting women asylum and the history of influential court cases where these strategies have either succeeded or failed. The focus of many lawyers has been to categorize the persecution of women as on account of their membership in a particular social group, and thus as eligible for political asylum in this way. I also present another argumentation strategy of lawyers, that persecution against women sometimes has an overt political opinion attached to it. Working backwards from the recent change described in Chapter 2, I go through examples of past cases in which both of these argumentation strategies have been used in order to defend clients, though unsuccessfully so in the majority of cases.

Chapter 4 contains my argument for why the immigration judges and officials described in Chapter 3 have failed to interpret immigration law correctly. I argue that the persecution against women is political in nature, and thus women should be eligible for asylum on account of persecution due to a political opinion. Though many judges dismiss the abuse of women as

merely personal and thus deny asylum claims, they fail to see that this abuse has a political impetus as well; it may not take the form of the crimes against men, but it is political nonetheless. In this chapter, I explain this claim thoroughly, arguing that when a woman is abused and her government will do nothing to stop it, her escape represents a political opinion against a male-dominated society. I explain how the political expression of women is simply different from that of men, and that unfortunately, the current refugee law was designed with men in mind. I also detail the political impetus behind many of the most common crimes against women more in-depth, such as rape, domestic violence, bride burning, honor killing, and female genital mutilation, presenting the ways that these crimes can be construed as a form of a political weapon.

In Chapter 5, I summate all of the reasons why persecution based on gender must be added as grounds for asylum to United States law. I begin by briefly reflecting on Chapter 3, reiterating the failure and unwillingness of American judges and officials to interpret asylum law as it should be interpreted, in addition to explaining why a change in the attitude of a few judges would still do little to help all women. I also present some of the harshest opposition to changing asylum law, and then highlight the fallacies in these xenophobic views. I further prove the need for change by presenting a variety of other challenges that women in particular must overcome in order to achieve political asylum.

Finally, I conclude my thesis by explaining the negative attitude that many Americans have in regards to immigration, and then countering these perspectives by explaining why the issue of asylum is different. I show that changing asylum law becomes a necessity when analyzed through a Justice and Peace Studies framework. For, protecting women from persecution by allowing them refuge elsewhere is not an issue of immigration, but one of basic

human rights. Ultimately, because the Board of Immigration Appeals, certain presidential administrations, and judges alike continue to see this issue as one of immigration and national security, rather than human rights, adding persecution on account of gender is an absolutely necessary change for protecting women worldwide. I conclude my thesis with an addendum, providing a series of recommendations for how to achieve this change.

***General Definitions***

Before the case for political asylum on account of gender-based persecution can be made, this concept must be dismantled and general definitions have to be established. The simple dictionary definition of a refugee is “a person who flees to a foreign country or power to escape danger or persecution” ("refugee"). The legal definition of what constitutes a refugee who is eligible for asylum is much more extensive, and due to its extreme importance to this thesis, it will be discussed more thoroughly in the following chapter. Briefly, the only legal difference between a refugee and an asylum seeker is that someone seeking asylum does so once he/she is in the United States, while a refugee applies from outside the United States ("Political Asylum & Refugee Status").

While the legal difference is technically small, the practical usage of these terms reflects a very discrete history for each. Persons usually achieve refugee status before coming to the United States because they are in large, persecuted groups, often living together in refugee camps outside of their home countries. The entire group applies for refugee status together, with the help of the workers at the refugee camps, and members of successful applicant groups do not need to prove persecution individually before being granted admittance to the United States. Asylum seekers, on the other hand, are individuals who come to the United States still having to prove their case. In fact, the United States only accepted refugees prior to the Refugee Act of

1980, when they first allowed persons to apply for asylum after arrival on U.S. shores (Bohmer, Carol and Shuman, Amy 24-25).

While it is important that women who are abused achieve asylum status whether they apply for it from outside the country as a refugee or once they have arrived, I discuss asylum seekers in this thesis. Individual women have very separate problems from large groups of refugees, and thus it is necessary to only focus on the issues of one of these two categories.

The next key term is the concept of 'gender,' which proves to be a more appropriate term than "sex" once the nature of crimes against women is understood. Sex refers to the biological differences between men and women, while gender encompasses the aspects of this that extend beyond physiology into culture and politics. Gender is a social construction, one that encompasses what a man or a woman "should" be according to particular societies ("What is The Difference Between Sex and Gender"). In the current discourse on political asylum, gender is almost always the term that is suggested to be added as another category for the definition of a refugee. This word choice may have resulted simply because "sex-based political asylum" is rather ambiguous and could mislead others in to thinking this alludes to crimes based on sexual violence alone. Yet, many times in political asylum cases, women are persecuted because they violate their society's standard role for women; they are not persecuted purely because of their physical sex but also because of their gender roles—their status as women within their society. This is a discourse based on more than just biological differences between men and women, and thus gender is truly the more appropriate term.

Finally, and perhaps most importantly, comes the question of what constitutes persecution in the first place. According to the dictionary, to persecute is "to harass or punish in a manner designed to injure, grieve, or afflict; specifically, to cause to suffer because of belief"

("persecuting"). Yet, the practical implications of this are debated frequently from courtroom to courtroom, from judge to judge. Before proving that her persecution is "on account of" membership in a social group or a political opinion, as discussed in this thesis, women must first prove that what they face is in fact persecution. In the landmark case of Fauziya Kassindja, the original presiding judge, Honorable Donald Ferlise, failed to understand that female genital mutilation was a form of persecution and thus denied Kassindja asylum. While the ultimate obstacle for Fauziya's lawyers was establishing that her experience with female genital mutilation was on account of her membership in a particular social group, even making judges in the case understand that this crime was a form of persecution proved to be a challenge (Kassindja 358-378).

According to the 2007 case *Matter of T.Z.*, "persecution is understood in asylum law as the infliction of suffering or harm on those who differ in a way regarded as offensive by the persecutor. Persecution goes beyond mere discrimination or harassment; it is harm of a deliberate and severe nature…such that it is condemned by civilized governments" (*Precarious Protection: Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution*). The High Commissioner for Refugee's Handbook on Procedures and Criteria for Determining Refugees gives four components, any of which qualify an act as persecution. They are a threat to life, a threat to physical freedom, the infliction of suffering or harm upon those who differ in a way regarded as offensive, and other serious violations of human rights (Patel 932-935). In looking at either definition, crimes such as rape, female genital mutilation, and domestic violence can hold up as a form of persecution in the right circumstances. These crimes represent a threat to a woman's "physical freedom," and are often carried out in a "severe and deliberate" effort to hurt the woman involved.

For this thesis' purposes, the understanding that female genital mutilation—amongst the many other crimes that target women specifically—constitutes persecution will be accepted as fact. Though Honorable Ferlise did not understand that female genital mutilation is a form of persecution, the majority of cases discussed in this thesis had judges who at least respected this much; it was only on the "for reasons of" clause where women were denied asylum. Thus, the fact that many of the crimes against women constitute persecution in the first place will be taken as a given. Any serious social or physical violence against women is persecution, plain and simple.

***Author Purpose and Method***

As a senior in the School of Foreign Service (SFS) at Georgetown University, I was given the opportunity to write a thesis in order to receive a Certificate in the Justice and Peace Studies Program. As a culture and politics major with an emphasis on religion and politics, I wanted to choose a topic that I had a bit of background on, but not one that I had already exhausted. I knew of the horrors of some of the crimes against women, particularly cultural practices such as female genital mutilation and honor killing, and thus wanted to investigate these topics more thoroughly. As an active member of the on-campus pro-choice organization, H*yas for Choice, and former intern at Choice USA, I have also had a strong interest in the rights of women throughout my college experience. I chose to combine my passion for women's rights and my background on religious practices to write a thesis on gender-based asylum.

In deciding how to best approach this topic, it soon became clear that judicial precedent and an understanding of past court rulings on asylum was one of the keys to this topic. With plans to attend law school in the fall, looking at court rulings will soon be part of everyday life, and thus I also utilized this thesis as a way to acclimate myself with this unfamiliar task. Trying

to understand the power of the United States Circuit Courts, the Board of Immigration, the Department of Homeland Security, and other groups had in making asylum law proved to be quite a task of its own.

More importantly, I approached this topic with a Justice and Peace Studies bias. I came in to this project, even before my research began, knowing that my previous knowledge of asylum and Justice and Peace Studies made me believe in the need to defend women who sought refuge in the United States, no matter what the details of this were. Though I came at my research with this bias, I remained open-minded to what the best solution to this might have been. While those scholars who I researched have made similar arguments in their work to those in my thesis, no one had ever approached the issue from this angle before.

Scholars have looked at cases and written about the judges' denial of asylum claims, and they have also made arguments attributing persecution of women as political. Yet, no author answered these questions in addition to proving why it is imperative that these women be protected in the first place. The goal of my thesis is to explain gender-based political asylum vis-à-vis Justice and Peace Studies, showing the failure of those involved to understand this issue as it should understood, a human rights one, from the very start. Proving that the current law does not protect women is only one part of the argument, but it is not complete without explaining why this matters. Ultimately, I crafted a thesis I believe in, one that I hope can in someway be used to help women in the future.

## Chapter 2: Background

### *History of Refugee Status*

With the sixtieth anniversary of the Office of the United Nations High Commissioner for Refugees (UNHCR) less than a year away, a reflection on this influential organization provides background for an understanding of United States policy on political asylum. Following the end of World War II (WWII), there was a sudden augmentation of refugees who required a homeland or simply a roof over their head, prompting the need for a serious commitment on behalf of the international community to find these people such assistance ("History of UNHCR"). Furthermore, after the horrors of the Holocaust were unveiled, the civilized world felt guilty; there were countless examples of countries safe from Nazism denying the entry of Jews and others fleeing persecution (Bohmer, Carol and Shuman, Amy 16-17). Although this was certainly not the first time the world had experienced a refugee crisis, it was the first time that an established global institution felt responsible for finding a solution.

By December 14, 1950, the UNHCR had been officially created. However, the charter only gave a three-year mandate for the High Commissioner, as leaders in the United Nations confidently hoped the post-war refugee crisis could be solved in this time period. Of course, the existence of refugees in the years since then has been unwavering, and the UNHCR remains the preeminent organization responding to their plight. In July of 1951, the United Nations Convention relating to the Status of Refugees was accepted by the General Assembly as the legal basis for the UNHCR and all countries who participated ("Convention and Protocol Relating to the Status of Refugees"). Specifically, this extraordinarily important document is entitled the Convention and Protocol Relating to the Status of Refugees. There are actually two discrete documents within this one: the original Convention from 1951 and an updated Protocol added in

1967, as well as a new introduction added in 2007 ("Convention and Protocol Relating to the Status of Refugees"). While countries may only technically be signatories to one or the other, most have elected to sign onto both the Convention and Protocol.

The first document, the 1951 Convention, contains perhaps the single most important part of the document in its definition of a refugee and asylum seeker. This definition remains in use by the United Nations (with a few modifications) and is the basis of the defining policy of many countries. It states that a refugee is a person 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*."

The document also outlines the conditions which will make a potential refugee ineligible for asylum, such as a change in home conditions that have stopped the threat of persecution ("Convention and Protocol Relating to the Status of Refugees").While the 1967 Protocol annulled the provision for the events to have occurred before 1951, it left the other aspects of the document intact ("Convention and Protocol Relating to the Status of Refugees").

Furthermore, the document provides many rules about the treatment of the refugees once inside the "Contracting States" or signing nations, as they are known, mostly stating that these refugees will have rights akin to the citizens of the country they are now in. These rights include, but are not limited to, the freedom of association, the right to fair access to courts in the Contracting State, the ability to work for money, and the right to elementary education. Additionally, aspects of personal status that the refugee obtained in his domicile will be upheld

in the new country, such as marital status, as long as they comply with the laws of the Contracting State ("Convention and Protocol Relating to the Status of Refugees").

Essentially, persons must fulfill certain qualifications in order to receive political asylum. First of all, they must prove that they have a well-founded fear of persecution in their home country. This persecution could have occurred in the past or could simply be imminent in the future. In either case, they need to prove that there is a reasonable possibility that this abuse would persist should they return to their home county (McLaughlin 220-221).

As mentioned in Chapter 1, proving that one is a victim of persecution is not an easy task. However, my thesis focuses on the additional caveat that persons need to fulfill in order to be granted asylum. Asylees must prove that they possess a well-founded fear of persecution *for reasons of* race, religion, membership in a particular social group, or political opinion. It is at this final step where women often face the most difficulty proving that they are eligible for political asylum. Many courts view the persecution against women as personal, rather than political, failing to see the way that this abuse fits into one of these five categories.

***The Refugee Law of the United States***

The UNHCR is extremely significant in the precedent it sets for asylum law worldwide, though their documents on not binding on any nation. More specifically, the UNHCR's Convention extrapolates on the role of the Contracting States, noting:

> *"By its Statue, the United Nations High Commissioner is entrusted,* inter alia*, with the task of promoting international instruments for the protection of refugees, and supervising their application. Under the Convention and Protocol, Contracting States undertake to cooperate with the Office of the UNHCR in exercise of its functions and, in particular, to facilitate its specific duty of supervising the applications of the provisions of these instruments."*

Though signatories to the Convention and Protocol are supposed to follow the guidelines of the United Nations, each state has adapted it to its own policy desires and needs. The refugee law of the United States has undergone a variety of changes since the first issuing of the UN Convention. While the current version of the law is quite similar in words, in practice, the law of the United States is quite different than those of other signatories ("Convention and Protocol Relating to the Status of Refugees").

In 1948, the United States issued its first policy for admitting persons who were fleeing persecution, putting a cap on the number of refugees a year at 205,000 (later extended to 415,000 in 1953.) In 1952, the United States Congress passed the Immigration and Nationality Act. This statute was the first cohesion of the many scattered immigration laws the United States had issued in the past. This law established a thorough quota system, wherein only a certain number of immigrants from the Eastern Hemisphere could enter the United States every year (restrictions were added to immigrants from the Western Hemisphere until 1976.) Though this law was very influential in overall immigration policies, it did little to affect the status of refugees, who were usually granted citizenship under special laws, rather than through the quota system ("The History of US Immigration Laws").

In the years to follow, these special laws permitting refugees changed as the world political system and needs of the United States fluctuated. In 1953, the Refugee Relief Act allowed for the admittance of many refugees from countries still affected by World War II or those under communism. In 1957, Congress passed the Refugee-Escapee Act, which favored entrance to refugees from Communist countries. President Eisenhower said of the Refugee Relief Act

> "*These refugees, escapees, and distressed peoples now constitute an economic and political threat of constantly growing magnitude. They look to traditional American humanitarian concern*

*for the oppressed. International political considerations are also factors which are involved. We should take reasonable steps to help these people to the extent that we share the obligation of the free world.*"("The History of US Immigration Laws").

In other words, this was not simply a humanitarian effort on the part of Congress, but also part of a larger political effort. In the midst of the Cold War with the USSR, the United States manipulated refugee law in order to call out the practices of their enemies as persecution, as well as to appear as the "good guys," on the world stage.

It was not until March 17, 1980, almost thirty years after the issuing of the UNHCR Convention Relating to the Status of Refugees, that the United States finally defined refugees in the terms that this Convention had established. A 1975 ad hoc resettlement program entitled the Refugee Task Force permitted over 100,000 Southeast Asian immigrants into the country, who suffered from the communist regimes and the violent manifestations of the late Cold War("Refugee 101."). Frustrated with the current array of scattered laws on refugees and unable to handle this new and ever-increasing influx of Southeast Asians despite the new task force, Congress decided it was time to establish a more complete refugee law, one that welcomed persecuted persons from all countries ("The History of US Immigration Laws").

Under the Refugee Act, the definition of a refugee was now altered to a person *"unable or unwilling to return 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,"* in accordance with the UNHCR's definition. The Act also created the status of asylum for the first time, now allowing those who have been persecuted to apply for asylum even after they had arrived on US soil. It was no longer necessary to apply from asylum from outside the country (usually in large groups of refugees); however, there is a one year filing deadline for applying for asylum after arriving in the United States. The Refugee Act establishes that should one meet the

grounds for asylum, he/she will be allowed to work and live in the United States for a period of time unless United States Citizen and Immigration Services (USCIS) proves that conditions within the home country have now changed. Following temporary asylum status for a year, one applies to become a permanent resident of the United States, with a 10,000 maximum of such applicants allowed to achieve full citizenship every year ("Political Asylum and Refugee Status in America").

The number of refugees permitted in total is actually a political decision, wherein the President, in consultation with Congress, chooses the refugee limit anew every year ("Frequently Asked Questions About Refugees and Immigrants."). In 2009, this number was 80,000, an increase of 10,000 from two years prior ("Resettling in the US.").The 1980 Refugee Act also required the Immigration and Naturalization Services (INS) to consult with the State Department before granting anyone asylum, adding another clear political dimension to asylum claims (Bohmer, Carol and Shuman, Amy 19).

While government departments are still essential in adjudicating asylum claims, the structure of the system is different than it was in 1980, altered due to the failure of previous agencies to fulfill all their duties completely. The INS was dismantled in 2003, following a variety of missteps Congress believe it took leading up to the events of September 11, 2001("End Comes for Much-Maligned Immigration and Naturalization Service"). The majority of its duties were divided among three separate agencies within Department of Homeland Security, established in November 2002. These three agencies were U.S. Citizenship and Immigration Services(USCIS)—which now handled asylum claims—the U.S. Immigration and Customs Enforcement, and U.S. Customs and Border protection ("Department of Homeland Security: History"). Thus, today, the DHS is responsible for issuing its opinions on asylum claims.

Following 1980, there have been a series of important laws affecting overall immigration in the United States, including the 1986 Immigration Reform and Control Act (IRCA), the Immigration Act of 1990, and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). These laws have had important effects on the number of immigrants allowed to enter the country and the procedures and qualifications for entry; the IIRIRA, for example, makes achieving asylum for women even more difficult, as discussed in Chapter 5 ("Political Asylum and Refugee Status in America"). Yet, the definition of a refugee has not been altered in the law since 1980.

***Recent Events: The Case of L.R. and Rody Alvarado***

The American courts and Board of Immigration Appeals have interpreted the Refugee Act in a series of influential asylum cases since its inception. While the details of these cases will be outlined in the next chapter, a presentation of the most recent events surrounding political asylum is the perfect framework for detailing the implications and significance of the Refugee Act. In July of 2009, the situation of a woman referred to only as "L.R." by the media began receiving national attention, as President Obama and the Department of Homeland Security made it known that her case would be of particular importance. Explaining the case of L.R. vis-à-vis the main pillars of the Refugee Act presents an understanding of both the refugee law and the current debate surrounding its repercussions.

L.R., a Mexican woman, escaped to America because she feared death at the hands of her husband, a man who she says frequently raped her at gunpoint and once tried to burn her alive after discovering she was pregnant. Furthermore, the Mexican police did nothing for L.R. when she contacted them about her abuse, telling her that her situation was a "private matter," and thus

they were unable to help her. She notes that one judge even attempted to seduce her when she asked him for help (Preston 1).

In order to remain free of her abusive husband or an American jail, L.R. now needs to prove to an immigration judge that her case fits the United States' qualifications for political asylum. As Karen Musalo, a political asylum lawyer who also defended Fauziya Kassindja, notes, L.R. has to show

> *"that in Mexico violence against women is pervasive and that there is a societal perception that this is acceptable. Then she has to prove that the Mexican government is unable or unwilling to protect her, and on top of that she has to show that there is nowhere in Mexico where she can be safe from her abusers"* (McGreal).

In other words, L.R. has the burden of fulfilling all aspects of the refugee definition; she must show that she is a victim of persecution, that her government will do nothing to stop it, and that her persecution is "on account of" one of the five given categories. In this case, her lawyers have chosen to argue that L.R. is a victim of persecution based on her membership in a particular social group—Mexican women who are victims of domestic violence.

L.R.'s prospects for success in her asylum claim are highly dependent on the current presidential administration of the United States, as the stance that each administration takes on the situation has an effect on who is able to earn political asylum. The inauguration of President Obama in 2009 presented an opportunity for gender-based political asylum to receive a new perspective after eight years of President George W. Bush, whose administration gave "outright resistance to recognize claims filed by such women[as L.R.]" (Harris).As many women's rights activists hoped, while Barack Obama has not physically altered asylum law, the actions of his administration have enabled a potentially more open interpretation of the current one.

Under President Obama's guidance, the Department of Homeland Security informed the court responsible for L.R.'s case that she may qualify for political asylum (McGreal). Thus, while not outright granting L.R. admittance to the United States, they at least made it known that she and her counterparts *could* qualify for asylum. In other words, the Department of Homeland Security under the Obama administration will not state that victims of domestic violence will be allowed entry into the United States without difficulty, but that every court will be open to the idea that a woman's gender and other parts of her identity *together* constitute a social group. Thus, if her case is strong enough, she could get asylum in the United States on these grounds. Matt Chandler, a Department of Homeland Security spokesperson, articulated this change in clear terms, noting that "although each case is highly fact-dependent and requires scrutiny of the specific threat an applicant faces, the department continues to view domestic violence as a possible basis for asylum in the United States" (Preston 1).

In October 2009, this decision was taken one step further by applying it to another infamous case, one that began over a decade ago. Rody Alvarado is a Guatemalan woman who was repeatedly subjected to an extreme amount of violence by her husband. Rody Alvarado was initially denied asylum by the Board of Immigration Appeals despite the blatant political nature of her crime. The police in Guatemala would do nothing to protect her, making the claim that it was a "domestic dispute" in which they should not get involved. Like the Guatemalan government, the U.S. government ruled that the violence Ms. Alvarado faced was only a private matter and thus denied her asylum claim. There were those who disagreed with this interpretation however, and the case has been appealed on countess occasions; former Attorney Janet Reno even appealed on behalf of Rody that her case be reviewed again. (*Precarious Protection: Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution*).

In October 2009, The Department of Homeland Security finally gave Rody the help she needed, letting the court know that she is now "eligible for asylum and merits a grant of asylum as a matter of discretion." Yet again, even though her grant of asylum was celebrated as another leap forward for domestic violence asylum cases, the DHS was cautious about the extent of its decision. Chandler noted that the Department continues to view domestic violence as a possible basis for asylum, but that such cases continue to depend on the specific abuse; currently, "the department is writing regulations to govern claims based on domestic violence" (Preston 14).

*  *  *

Though this recent interpretation is a victory for advocates of gender-based political asylum, it also proves that even liberal administrations are not being pressured to go far enough. Obama's actions will do little to keep the changes in place if a conservative president takes office any time soon. As political asylum is determined by each administration's interpretation of refugee law and by inconsistent court precedents, women in the system face different responses during different presidencies. Furthermore, as detailed in the next chapter, immigration judges and officials have consistently failed to grant women political asylum in the three decades after the passage of the Refugee Act, no matter who was sitting in the Oval Office at the time.

## Chapter 3: The Construction of Gender-Based Asylum Claims from 1980

Though there exist people who oppose changing the Refugee Act because they are against allowing women greater access to asylum—or even the Refugee Act altogether for that matter—another type of opposition comes from quite an unexpected source, from within the gender-based political asylum movement. Certain scholars argue, correctly, that altering any law is a difficult process that makes many uncomfortable, and thus, that advocating to simply change the interpretation of the law is the better path to take, as it is more likely to succeed. They say that women should be allowed to enter the United States under the social group category of asylum, or even the political opinion category, and that the campaign for gender-based political asylum should consequently focus on this modification (Smoot).

The purpose of this chapter is two-fold. I do in fact present the ways in which this oppositional argument is at least partially correct. I demonstrate that many women in fact should be allowed into the United States due to their membership in a particular social group. I also extrapolate on another framing of the argument within the confines of the current law, but through relation to political opinion, rather than social group. Both these arguments have merit, and have been tried countless times by American lawyers fighting for the rights of their clients. There are various cases, such as that of Fauziya Kassindja, where this argumentation strategy has been successful.

However, the second purpose of this chapter is to demonstrate that, despite these few victories, the legal history demonstrates that these interpretations are not the ones that American immigration judges and officials have been using with frequency. By going through the case history and the many times this argument has been tried, I inadvertently also prove that those who are against changing the law are wrong, even despite the recent changes of the Obama

administration. While these scholars may be right in their understanding of the law, they are wrong in their failure to see that the judges simply do not interpret it in this way, making the addition of gender as a category of asylum-protected persecution to the Refugee Act necessary.

***The Social Group Construction***

The most common way that women achieve political asylum for gender-based crimes against them is through what is known as the "social group" argument. In order to fit the current definition of a refugee, women have to prove that they are being politically persecuted on account of either their race, religion, nationality, political opinion or their membership in a social group. While the other categories are also used at times, defining the specific persecutions against women as persecution based on membership in a social group is one of the two most prominent scenarios.

The question of what exactly constitutes a social group in the first place is one that runs through many court decisions on whether a woman should achieve political asylum. Though there is no definition of a social group as written into the Refugee Act itself, a 1985 case continues to provide the legal framework for this definition. The defendant in this case was actually a male, a Salvadoran taxi driver whose taxi cooperative (COTAXI) was harassed by guerillas in his country, which included threats on his life and the murder of several of his co-workers. He applied for asylum on the grounds that his persecution was based on his membership in a particular social group; he defined this group as COTAXI drivers and other persons in the transportation system of El Salvador (Bahl 45-47).

In deliberation of this case, the Board of Immigration Appeals spelled out a very specific definition of a social group, writing that:

> *"persecution on account of a membership in a particular social group encompasses a persecution that is directed toward an individual who is a member of a group of persons all of*

*whom share a common immutable characteristic. The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as military leadership or land ownership. The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis. However, whatever the common characteristic that defines the group, it must be one that members of the group cannot change or should not be required to change because it is fundamental to their individual identities or consciences."*

Acosta was ultimately denied asylum because the court used this definition in the most conservative sense possible. They noted that Acosta's decision to be a member of COTAXI was not an immutable characteristic, as his job was something that he could have altered, even though founding this cooperative was his life's work (Bahl 45-47).

Furthermore, in conjunction with the definition, the court utilized the principle of *ejusdum generic*, which states that when general words (such as particular social group) are used in the same way as more specific words (religion, race, nationality, political opinion), it should be interpreted in line with the more specific words—thus, more strictly (Bahl 45-47).

What's most confusing about the definition presented in *Matter of Acosta*, is that it appears to interpret social group loosely and allow for sex to be a social group. Yet, with the actual decision in *Matter of Acosta* as precedent, social group has continued to be understood in the narrowest sense of this definition possible. Every court since then has interpreted the definition to mean that a person needs another variable in addition to sex or gender in order to separate the social group from women separately. By adding subtleties such as the word "might" and the importance of looking at a case-by-case basis, the definition leaves a space for the possibility that the category of gender alone may not necessarily be enough to achieve political asylum. Rather than interpreting the definition in a way that it clearly allows for, the courts have

used these subtleties to understand the definition in the strictest way possible. The courts have required a women applying for political asylum to categorize her social group as her gender in addition to at least one other immutable characteristic; there has yet to be a case where a woman achieved asylum because being a women was enough to be a social group alone. (Thiele 229).

A case a year later*, Sanchez v. Trujillo*, provided an even narrower definition of a social group. The Ninth Circuit ruled that in order for something to constitute a social group, they must comply with four parts. There must be "a close affiliation between members of the group, a common impulse or interest upon which the affiliation is based, a voluntary association, and the existence of a common trait by which group members are distinguishable from the general population" (Setareh 126). This definition makes it even harder for an asylum seeker to argue that being a woman alone accounted for all four parts of this test.

The principles of *Acosta* and *Trujillo,* in which gender and sex are not enough to be a social group on their own, have been used by judges ever since. In *Gomez v. INS,* deliberated in the Second Circuit Court in 1991, another woman from El Salvador was beaten brutally and raped with other women at the hands of guerillas. Her lawyers constructed her argument on the basis that she and the other women were a part of specific social group: El Salvadoran women who were persecuted by guerillas in their country. The court denied the claims of Carmen Gomez stating that

> *"the attributes of a particular social group must be recognizable and discrete. Possession of broadly-based characteristics such as youth and gender will not itself endow individuals with membership in a particular group…[furthermore] no evidence that women who have been previously abused by guerillas posses commons characteristics—other than gender and youth—such that would be persecutors could identify them as members of a social group."*

Thus, the Second Circuit again made it explicitly clear that they did not find persecution based on gender or sex to be enough to warrant political asylum (McLaughlin 237-238).

In *Fatin vs. INS,* a young Iranian woman stood up to the government and refused to engage in many of their religious practices. Her lawyer attempted to make her asylum claim on the social group theory. She was a member of a social group of "women in Iran who did not adhere to the country's dress and conduct rules for women." The United States Court of Appeals for the Third Circuit, however, felt that this was too broad of a construction for qualifying for the social group category. They articulated that Fatin was not receiving persecution different than faced by the population of Iranian women as a whole, and thus this was too large of a social group to grant asylum too (Thiele 225-226).

In 1994, the same interpretation occurred in the case of *Safie v. Immigration and Naturalization Services*, wherein the Eighth Circuit Court denied the Iranian women Azar Safaie asylum, rejecting her argument that Iranian women constituted a particular social group. The court stated that they felt "this category is overbroad, because no fact-finder could reasonably conclude that all Iranian women had a well-founded fear of persecution based solely on their gender (Bahl 60-62)

Despite these denials of asylums, there is at least one bright spot in the examples of female political asylum cases; the 1996 story of Fauziya Kassindja not only highlights the "social group" argument, but also serves as one of the most influential victory for women seeking political asylum ever. Her case is brought up on countless occasions, because it contains many of the important dimensions of achieving political asylum within the United States. Fauziya Kassindja is a member of a small African tribe in Togo who, after being scheduled to receive

female genital mutilation (FGM), fled to Germany and then ultimately, the United States where she hoped to find asylum (Kassindja).

In addition to having to prove that FGM constituted persecution and that it was "at the hands of the state or by a force that the state cannot or will not control," Layli Bashir and Karen Musalo (Fauziya's lawyers) had to show that Fauziya's persecution was due to her membership in a particular social group. In order to due so, they looked again to the aforementioned *Matter of Acosta* in order to be sure to definde Fauziya's social group in a way that emphasized a "shared common immutable characteristic that the members of the group either cannot or should not be required to change" (Kassindja 372-373). Fauziya's social group was defined very specifically, as "Women of the Tchamb-Kuntsuntu Tribe of Northern Togo, who oppose the practice of FGM," and thus put in terms of both her gender **and** something else—her nationality in this case (Bohmer, Carol and Shuman, Amy 204). The immutable characteristics of this group were their gender, their resistance to female genital mutilation, as well as their forced submission to it and their religion and tribe-affiliation (Kassindja 373).

In Fauziya's case, as in many others, the social group construction was utilized in an effort to mold the terms of the UNHCR definition of a refugee to fit a particular case. However, it is important to note once again that Fauziya's gender is not considered a social group of its own. According to the record of cases in the United States, a woman must prove that her persecution is on account of her membership in a social group vis-à-vis her gender *and another category*; women are not considered their own social group in the eyes of the United States immigration system. The court was also careful to define Fauziya's social group in very explicit terms, in order to ensure that few other women would be able to use this precedent to achieve asylum themselves. Even in a case where the woman was victorious and achieved asylum, the

fact remains that it was a unique one that did not create a precedent of women being their own social group.

Furthermore, despite this victory, in the new millennium the courts have created even more obstacles to constructing women as their own social group. Though introduced in non-gender-based asylum cases, the principles of "social visibility" and "particularity" as necessary to fulfill the social group requirement has impinged further difficulties on women seeking asylum. In 2002, the BIA revealed that visibility of the crime was an important aspect in being a member of a social group. Not only is this difficult for women to achieve, as their abuse is often reserved for the public sector, it also makes no logical sense. "If you are a member of a group that has been targeted for assassination or torture or some other mode of persecution, you will take pains to avoid being socially visible."

As recently as the 2008 case *Matter of S-E-G,* examples of judges interpreting asylum law in the strictest way possible persist. The judges established the test was whether a social group was particular enough or if it was "too amorphous…to create a benchmark for group membership." Yet, the BIA has said in the past that particularity simply means whether or not the group could be rendered a separate group of people within society. The judges once again chose to extend a principle in order to deny a claim of asylum (*Precarious Protection: Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution*).

Overall, at the start of a new decade this year, progress in asylum law is continually met with equal steps backwards. Some have succeeded in receiving political asylum under the social group construction, such as Fauziya Kassindja, and the recent announcement of the Department of Homeland Security that certain domestic violence victims may be eligible for political asylum on account of their membership in a social group is an extremely positive change. Yet, even this

announcement did not make gender a social group in its own right, still demanding that domestic violence victims prove that they are persecuted due their gender and another factor. The fact remains that no one has been permitted to enter the United States on account of a social group of gender alone, proving the unwillingness of judges to interpret the law in way that guarantees all persecuted women will be eligible for political asylum.

***The Political Opinion Construction***

A woman's persecution is also directly correlated to a political belief on many occasions, and thus another common strategy for asylum lawyers is to argue that their clients persecution is on account of a political opinion. Whether women are raped on account of family political leanings or tortured by their own government for refusal to comply with their discriminatory practices, there is often a connection between the political landscape of a country and persecution of women. However, despite the validity of this construction of asylum law, judge after judge view these cases with blinders on, observing only the personal dimension of gender-based crimes.

In *Campos-Guardado v. INS ,* an El Salvadoran woman was the frequent victim of rape and beatings at the hands of a guerilla organization, as the agricultural group her uncle supervised was a member of the political opposition. Yet, the BIA and then later the Fifth Circuit Court determined that this was not enough to qualify Campos-Guardado for asylum, ruling that her rape was merely a form a personal persecution (McLaughlin 227-228). In reality, they failed to understand the political dimension of this crime, as rape was used as a weapon to persecute her uncle vicariously on account of his political opinions. Even though Campos did not express a political opinion herself, her persecution was still due to a political opinion, and thus the court should indubitably have granted her asylum.

In the 1990 case *Klawitter v. INS,* a young Polish woman asked for asylum on the grounds that she had been repeatedly harassed by Polish police for her failure to join the Communist Party. She was blacklisted and harassed, but the abuse took an even more horrific turn when one particular colonel in the Communist Party blackmailed her into having a sexual relationship with him. Once again the federal court, this time the Sixth Circuit Court, made the erroneous decision that Klawitter was not eligible for political asylum because the persecution she faced was not on account of the five categories. Though Klawitter's lawyers argued that the rape was used as a political tool to repress her for her stance against the Communist Party, the court ruled that her abuse was personal and merely the result of her failure to respond to the colonel's advances (McLaughlin 229).

Occasionally, immigration officials not only misinterpret asylum law, but misunderstand the political and cultural dynamics of a country. In *Khaefyadani v. INS,* the court viewed Farzin Khaefyadani's refusal to wear a headscarf as a personal attire decision, rather than an act of rebellion against the regime of the Islamic Republic of Iran. Thus, the court denied her asylum claim on the grounds that the abuse she faced following her act of defiance was personal and not on account of a political opinion (or any of the other four categories). In actuality, the headscarf is a religious symbol that has been forced on all women of Iran by the government, violating their religious freedom (religion theoretically could have been a category for asylum, but the court failed to see this as well). Farzin's refusal to wear it is not merely a matter of personal attire, but an explicit example of political expression against a government imposition on her basic human rights (McLaughlin 229).

The 1985 case of *Lazo-Majano v. INS* is an example not only of the failure of an American immigration judge to grant a persecuted woman asylum, but also of the hypocrisy that

has existed in cases from the very beginning. In this decision, the judges acknowledged that sexism is grounds for asylum; and yet, they also added to the decision a way of ensuring that this understanding could only be applied to this particular case. It displays the lengths that asylum judges will go to in order to placate the fear that too broad a decision would allow an unwelcome amount of women to enter the United States.

Olimpia Lazo-Majano is a young El Salvadoran woman who was forced to raise her children alone after her husband left the country for his political views in the early 1980's. A local sergeant, Rene Zungia, took Olimpia in as a domestic servant in order to help her support her family, but quickly began raping her and beating her. On one occasion—which ultimately became the key to the case—he paraded her around a local restaurant, pulling her by her hair as he announced to the diners that she was a political subversive. Zungia further threatened her about the consequences of turning him in, noting that he had political power and that any attempt by her to contact the authorities would result in more torture. He informed her that he could easily have her killed if she attempted to turn him in, as it was his duty to find, label, and kill "political subversives." Forced with no other option than escape or continued rape and mortification, Olimpia fled to the United States in hopes to find safety and begin a new life (McLaughlin 231-232).

At first, the Board of Immigration Appeals found that the unimaginable mistreatment of Lazo-Majano did not constitute persecution because "the evidence attests to mistreatment of an individual, not persecution… and that such strictly personal actions do not constitute persecution within the meaning of the [Refugee] Act." Fortunately for Olimpia, the Ninth Circuit ultimately overturned this ruling, deciding that "Zungia is asserting the political opinion that a man has a right to dominate and he has persecuted Olimpia to force her to accept this opinion without

rebellion." In other words, they deemed that sexism was in fact a form of political oppression, seemingly representing a victory for woman. They acknowledged that abuse of women is a form of political persecution, and thus granted Olimpia asylum (McLaughlin 231-232).

Though at first glance this decision appeared to have been a glorious victory for women, the Ninth Circuit offered a second part of the explanation of why Olimpia was eligible for political asylum, thus nullifying the precedent they had set as sexism as grounds for political asylum alone. They also ruled that Olimpia was granted asylum because she was given a political opinion by Sergeant Zungia when he announced to the restaurant that she was a political enemy. Even though Olimpia possessed no such opinions of her own, the fact that a military agent had placed a political opinion on her gave her a well-founded fear of persecution based on political opinion. She was persecuted and would be further persecuted because of the political opinion that was imbued on her publicly in the restaurant.

Furthermore, they made this part of the decision essential by highlighting the difference between the *Matter of Lazo-Majano* and the *Matter of Pierre.* Pierre experienced a situation very similar to that of Lazo-Majano, she was a victim of sexism and abuse in a country where her government would do nothing to protect her. In the decision of *Lazo-Majano,* the Ninth Circuit found that the denial of asylum for Pierre was in fact consistent with their grant of asylum to Olimpia. They stated that Pierre was not eligible for asylum because her abuser did not also bestow a political opinion on her as Olimpia's abuser did, thus negating the fact that sexism alone was grounds enough to achieve asylum in the same decision that it had created such a standard (McLaughlin 233-234).

In a further example of the failure of *Lazo-Majano* to establish the precedent that opposition to sexism in a country is a form of a political opinion and thus grounds for asylum,

the case of *Alcantara v. INS* in 1988 made no mention of sexism as grounds for asylum, despite taking place three years after the *Lazo-Majano* verdict. Teresita Alcantara is Phillipino woman who was raped and abused consistently by a man who she was ultimately forced to marry. Though she managed to escape to the United States after over twenty years of abuse, the BIA and subsequently the Ninth Circuit found that Alcantara's claims of persecution were personal with her husband and thus did not represent a valid claim for political asylum.

The BIA and the immigration judges in these cases become preoccupied by the sexual abuse aspects of these crimes, and thus automatically label them as personal, ignoring the often blatant connections that the cases have to politics. Fearing the ramifications should all women who are victims of sexual abuse receive political asylum, they end up persecuting those who truly are victims of political abuse, though this manifests itself in a way that reflects their gender.

* * *

Unfortunately, the record of judges in the three decades since the Refugee Act was passed does not bode promisingly. Overall, the case law reviewed in this chapter clearly demonstrates that the federal courts do not interpret the Refugee Act to grant asylum to victims of gender-based persecution under any of the five categories given. No court has been willing to accept Judge Nonna's interpretation of sexism as a form of persecution on account of political opinion. The federal courts have also clearly made it known that woman are not a discrete social group under the Refugee Act and thus will not be granted asylum in this manner; even the announcement that Rody Alvarado would finally receive asylum did not take the changes far enough (McLaughlin 239-241). No matter the construction, women still remain unprotected under the current law.

## Chapter 4: Gender-Based Persecution is Political

Rody Alcantara's husband left her with bruises and broken bones on a daily basis. With every act of violence, he not only was personally damaging Alcantara's physical and mental well-being, but also was asserting the political opinion that a man had the right to dominate a woman. Without refuge from her government, Alcantara was expected to accept this belief and continue to be abused at the hands of her spouse. Unfortunately, the Ninth Circuit of the United States saw this abuse simply as personal, as many courts have done in domestic violence cases, rather than political. In reality, her stance against such persecution and subsequent flight represented a political opinion on the part of Alcantara that such abuse should not be tolerated and that men should not be permitted to dominate women. Returning to the Philippines would mean the consequences of such an opinion, and most likely, death (McLaughlin 235).

The crimes against women—and women alone—are innumerable. Like Rody, one in every three women worldwide will be beaten, raped, or otherwise abused at some point during her lifetime (Heise, L., Ellsberg, M. and Gottemoeller, M.). While it cannot be forgotten that men are victims of sexual violence as well, 95% of domestic violence is directed at women and girls ("Violence Against Women"). There are so many crimes that are specifically against women for the sole reason that they are women. Women are not being persecuted exclusively due to their membership of a particular race, nationality, religion, political opinion, or social group, but also because of their relationship with one of these categories to their inferior position as women.

More specifically, I argue in this chapter that, as in Rody's case, persecution against women is especially unique because it is inherently political in nature, and that all forms of persecution against women have the potential to be on account of a political opinion.

Unfortunately, asylum law was created with an understanding of male political expression and persecution, failing to understand the ways in which female rebellion is different, but often political nonetheless. I also explain how gender-based abuses such as rape, domestic violence, bride burning, honor killing, and female genital mutilation extend beyond the personal realm and into the political one, in addition to providing insight on specific challenges that women who are victims of these crimes may face in achieving asylum. All women who are victims of such crimes express a political opinion when they flee a country where the government will do nothing to stop such persecution.

The previous chapter detailed many examples of women who actively took a stance against a policy of the government or a group with more power than themselves. Whether it was having an uncle associated with a rebel group or refusing to join the Communist Party, some of these cases have a very explicit political dimension. Yet, even when a connection to a tangible political party is not present, a political dimension can still be found in the forms of persecution against women specifically. Just as Rody took a stance that male-dominated societies are not acceptable, all victims of rape, domestic violence, bride-burning, honor killing, or female genital mutilation take this stance when they actively reject their persecution. When a government refuses to protect a woman from such crimes, her unwillingness to stand for institutionalized violent treatment is an expression of a political opinion, and thus, *should* be grounds for asylum.

***The Difference of Female Political Expression***

The failure to understand persecution against women as political is nothing new; the law itself was created in reference to men. The original UN document was created vis-à-vis the male refugee experience and was aimed at political expression and subsequent persecution in a male

sense (Mason 96-97). The political expression of women and the subsequent persecution they face is quite different.

Men often communicate politically in the public sphere; women, however, often lack the rights or the means that men possess to express themselves in this way, and thus are unable to express political opinions in traditional means. Instead, their political rebellion often occurs in what judges deem the "personal realm." This relegation of female political expression to the political realm is a complete misunderstanding of the nature of women's rebellion, and a masculine interpretation of asylum law. Refusal to wear a headscarf or to remain a victim of domestic abuse is the silent way in which women rebel. Though it is not as present in the public sphere as the expression of men, it is political expression nonetheless, and often the only means available to women for such action.

The current law was also designed to understand the manifestation of political expression—persecution—in a way that benefits men. Domestic violence and rape are viewed as part of the personal sphere and isolated matters, while FGM, honor killing, and bride burning are seen as cultural practices; judges view all of these crimes as without larger political implications. Per contra, these crimes are used not only to respond to women's political expression, but to repress such expression in the first place. "While men are often killed or tortured in other ways, women are often raped or tortured sexually" (Bahl 39-40).

Furthermore, judges fail to see that those engaging in the persecution are often different for women than men. Men's political expression is in the public sphere, and thus the government is often directly responsible for their persecution. While this happens with women as well, there are also times when women's expression is in the private sphere and thus the persecutors are not members of the government. However, when a government does not criminalize such violence,

or take any measures to enforce laws that do prohibit such violence, it is implicitly condoning it and thus assumes responsibility for these crimes (Bahl 41-42). The UNHCR itself recognizes this, stating that countries should consider acts of violence persecution should they be "knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer protection" (Annitto 794).

***A Specific Look at the Crimes against Women***

For many years, rape was construed simply as a personal attack, until recent scholarship began to understand rape as a weapon of politics, and even one of warfare. Rape has been used in countless countries in order to terrorize the daughters and mothers of political dissidents; militias from Bosnia to Venezuela come to households of the opposition and kill the men and rape (and often enslave) the women. In this sense, rape is utilized to punish a women for either her political opinion or the politics of a family member (Bohmer, Carol and Shuman, Amy 229-231).

For example, during the Bosnian-Serb War in the early 1990's, rape was frequently used as a weapon of the Serbs against the Bosnians, with an overwhelming numbers of female victims. These women were targeted specifically because they were female and Bosnian, making the rape far more than a personal act of sexual violence. Serbs in power used these rapes as a way to weaken the morale of their Bosnian enemy through systematically destroying the normalcy of the lives of soldiers at home (Patel 956).

73% of rape victims know their rapist on some level, and thus the majority of rape occurring in the world is not of the character of the Bosnian-Serb War ("Statistics."). Yet, even when there is no direct political connection between the victim (or her family) and the abuser, a political dimension still exists in the case of rape. This is not merely a crime of sex, but a crime of power; when a woman is raped, it is a man's way of expressing his dominance over her. In

other words, a rape of a female that goes without prosecution does not have to be on account of the victim's political dissidence to be considered a political act. Rape is also a way to demonstrate a belief in a society powered by males, and thus a woman who refuses to live in this manner is actively disagreeing with this belief. Furthermore, rape can also damage a woman's social status, respectability, and be a cause for humiliation. In these situations, it is quite clear that the rape leaves the realm of personal abuse and enters the public sphere (Bohmer, Carol and Shuman, Amy 229-231).

The case of domestic violence can be considered political by the same line of thinking. Domestic abuse is a matter that takes place within the home, and consequently judges often overlook the political implications of domestic abuse and see it as merely personal. Yet, domestic violence is another type of weapon that men utilize in expressing their belief in a dominant male society.

> *"As awareness of women and their place in society has grown worldwide, the struggle has been waged to consider freedom from domestic violence treated as a fundamental human right. Writers studying domestic violence have seen it as a mechanism of patriarchal control of women that is built on male superiority and female inferiority, sex-stereo-typed roles and expectations, and economic, social, and political predominance of men and dependency of women. The battering is more than an expression of physical violence or anger; it means to control, intimidate, and subjugate one's intimate partner through the use or threat of physical aggression. Violence is often used as a means to maintain the system, by devaluing and dehumanizing women. In most cases, the batterer chooses battering as his weapon of choice"* (Blanck).

In the case Rody Alvarado's, at least one of judges involved respected the above understanding of domestic violence as a weapon of male chauvinism, even though her claim was later denied.

He wrote that her husband was making the statement that women were inferior to men, and that her resistance represented a challenge to his political opinion (Annitto 802-808).

The issue often decomposes into a debate of what the motivation of domestic violence is. One dissenting member to the denial of asylum to Rody argued that the purpose of domestic violence is to "punish, humiliate, and exercise power over the victim on account of her gender." In other words, it is a method of control over a female member of society. The Report of the Committee on the elimination of Discrimination against Women says that domestic violence "not only derives from but also sustains the dominant gender stereotypes and is used to control women." The problem is that lawyers often have a difficult time proving this motivation behind the violence and connecting it politically, despite the research indicating that this is the underlying cause of domestic violence. They are often expected to explicitly prove that a political belief in male domination is the reason behind the domestic violence, which is quite difficult to do without them available to testify (Annitto 802-808). Courts should understand that male dominance is an implicit motivation of all domestic violence, even when the male does not actually express such a belief in a way that is tangible for a court of law.

Though they are less prevalent than rape and domestic violence on a global level, bride burning and honor killing are acts of murder that are common in specific regions. These acts are cultural practices that are directed against mostly women. Bride-burning, occurring mostly India, but also in Pakistan and Bangladesh, is the practice of killing a future bride for her inability to pay expected dowry (and occasionally for other wrong-doing such as expected infidelity). These murders usually are committed without any punishment; they are reported as a suicide or a "stove explosion" to the authorities who accept these claims without further investigation. Due to the failure of this crime to be reported, estimates vary from 600 to 6,000 deaths every year

(Kumar and Kanth 18-19). Because women are the sole victims of bride burning, their pre-murder escape represents a refusal to conform to their society's rule that women who transgress norms can be murdered without punishment.

Honor killing is the murder of a family member who has dishonored the family in some way and thus is murdered by a fellow member or members. Though men have been victims of honor killing, including men who have been persecuted for their homosexuality, the majority of honor killings are directed against women ("Cultural Practices that Cross the Line"). A traditionally Islamic practice, honor killings are most prevalent in the Middle East. A full quarter of murders in Jordan were honor killings in 2009, despite the fact that they are one of the most liberal countries in the region in terms of Islamic law (*Precarious Protection: Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution*). The political dimension of honor killing is quite explicit. Women are victims of this killing when they "dishonor" the family by transgressing the norms of the society they inhabit, from dress regulations to refusal to participate in arranged marriages to infidelity. Women who refuse to engage in these legal practices are portraying their belief in a different value system, and are subsequently persecuted for it (Bohmer, Carol and Shuman, Amy 231-232).

Furthermore, the fact that this is a crime of murder makes it difficult for any judge to argue that this is not a form of persecution. At the same time, the cultural and religious character of honor killing and bride burning may make countries hesitant to call out these crimes for the horrors that they are, as they are reluctant to place value judgments on the cultural practices of other countries. Former Canadian Immigration Minster Bernard Valcourt once commented on refusal to grant a Saudi woman refugee status in Canada by saying that granting her such asylum would be imposing Canadian values on other countries. "This is a legitimate issue that we should

discuss, but I don't think Canada should unilaterally try to impose its values on other countries regarding laws of general application" (Blanck). In this era of political correctness, Western countries can be uncomfortable engaging in an activity that makes it look like they are attempting to force their cultural norms on other societies.

Female genital mutilation (FGM) is an appalling crime against women, one that has inflicted damage on over 100 million living women to date. Though the exact degree of cutting differs between cultural groups, FGM is partial or total removal of a woman's external labia. While its intention is not death, women can become very ill and even die on account of the poor conditions under which this surgery takes place; there is no anesthesia or antiseptic, and women can bleed to death if the surgery is not finished properly. Furthermore, the practice is usually done on minors, even girls as young as nine or ten, without their full understanding of what is being done to them ("Female Genital Mutilation."). The political dimension of this crime is similar to that in the aforementioned cases of bride burning and honor killing. It too is a cultural practice that violates the physical liberty of women. Because few African governments will do anything to stop FGM or even make it illegal, women who refuse to let this occur are expressing their belief that such a violent action is actually a crime.

* * *

No matter the crime, be it rape, domestic violence, bride burning, honor killing, female genital mutilation, or even one left unmentioned, the courageous refusal of women around the world to succumb to such acts of torture are an expression of a political opinion on their part. Rather than being further persecuted for their bravery, women should be rewarded for their absolute rejection of laws and practices that they do not believe in—laws and practices that violate their rights as women and human beings. Unfortunately, as long as judges interpret the

law on the grounds in which it was designed after—a way which leaves women out—women will continue to face injustice in receiving political asylum.

## Chapter 5: Why Change is Necessary

### *Failure of Case Law to Safeguard Women in the Past and in the Future*

The United States justice system, while often celebrated for its fairness and impartiality, unfortunately lacks these positive characteristics in the political asylum arena. The history of cases since 1980, as illustrated in Chapter 3, demonstrates that asylum law has been adjudicated without any sort of consistency; the disparities in asylum decisions are incredulous (*Precarious Protection: Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution*). Rulings on asylum cases are given from different units, from discrete federal Circuit Courts to the USCIS and the BIA, all of whom use their own guidelines when deciding cases. Even within an organization, officials and judges enact rulings that prove to have no effect on later cases.

Numerous studies throughout the years have also been done on individual judges who grant asylum. Rather than hovering around the national average of a denial rate slightly above fifty percent, judges range greatly in their grants of asylum. Some judges grant asylum well over half of the time, while others accept claims in as little as two percent of cases. While it would be impossible to detail the prejudices of every judge, it is important to note that the discrepancies also follow patterns at times. Some judges repeatedly deny or accept claims on certain grounds or by persons from certain regions of the world. The law is not explicit enough to prevent asylum judges from letting their personal politics and beliefs influence their adjudication of asylum claims (Susser Bland).

The record further demonstrates that judicial precedent would not solve the discrepancies in gender-based asylum law. Judicial precedent is a slow process, and one Circuit Court's interpretation of gender-based law is not necessarily going to be adapted by other courts, especially not overnight. If a federal court or a federal agency such as the INS issues a new

guideline or statute, it is not binding amongst other federal jurisdictions, and even if other organizations accept the new document, they may interpret it in an entirely different manner. Thus, one court's decision that a woman can achieve political asylum on the basis of sexism in no way ensures that judges in the future must also interpret the law in such a way, as the *Lazo-Majano* case illustrates (McLaughlin 239-241).

Truth be told, discussing what a judicial precedent would signify is a bit forthcoming, as the most important problem facing women seeking gender-based political asylum is that judges refuse to interpret the law in the correct manner in the first place. Though persecution against women represents persecution due to a political opinion, judges have continually ignored this interpretation. For, judges are anxious about setting a precedent of any kind, never mind one that universally helps most women seeking asylum. On the rare occasion that they do grant asylum, they are careful to write a very narrow decision, fearful that too many women would take advantage of a broader one (McLaughlin 237-238). In fact, between 2004 and 2009, 57.3 percent of asylum cases were denied ("Immigration Judge Reports- Asylum"). As I present in the remainder of the chapter, these fears are inaccurate ones, sadly rooted in an anti-immigration attitude of the American public. It is time that this xenophobic perspective is laid to rest and that this issue is seen for what it really is—an essential matter of human rights.

***Opposition & Rebuttal: Asylum Law Will Not "Open the Floodgates"***

The fear that these judges possess that altering asylum law would "open the floodgates" of America and cause an overwhelming influx of female immigrants is not an uncommon one. Looking at the incredible amount of women who are victims of rape, domestic abuse, and other gender-based violence on a daily basis, they argue that there is simply no way America could take in all of these women. In refuting this fear, one only need to look at the actual facts and

statistics of gender-based asylum, which prove beyond a reasonable doubt that the floodgates would not open up should asylum law be altered. The evidence demonstrates that this is nothing but the irrational fear of an ignorant few, rather than one founded in factual information.

Many opponents to making gender grounds for political asylum fear that the sheer amount of women in the world who sadly are victims of abuse make it impossible to alter the policy. These opponents are at least accurate about the number of women who face abuse. Yet, these critics fail to see the second half of this argument. While millions of women are victims of abuse, the large majority of them are without the means or sometimes even the desire to flee their persecution. While these numbers are heartbreaking in their own right, this is a fact that actually enhances the argument for gender-based asylum. Fleeing to the United States is not an easy or safe process, and many women lack the money, assistance, and information to be able to escape their persecutors and arrive in America.

The case of Fauziya Kassindja highlights many of the reasons why despite the number of women who face abuse, only a tiny percentage ever make it to the United States. First of all, the overwhelming number of women in Fauziya's tribe do not oppose the practice of female genital mutilation. More accurately, these women are often merely girls who do not have a grasp on what is actually being done to them. Even grown women have been socialized into believing that this practice is benevolent, and it was Fauziya's own aunt who forced her to receive FGM (Kassindja). There are only a few women who see their persecution for what it is and, furthermore, believe that their persecution is so great that it is worth leaving their family and country behind in order to escape it. For, even those women who recognize that their abuse is a problem may not believe that their freedom is worth sacrificing their friends, family, and homeland.

Still yet, those women who would be willing to forgo their lives in order to end their torture are unaware of political asylum and their options for escape. The only thing that Fauziya knew for certain was that she needed to leave Togo, and she fled to Germany first, living there illegally for a few months before someone else informed her that she could achieve political asylum in the United States. Fauziya chose to apply for asylum in the U.S., rather than Germany, as she had family there and spoke better English than German (Kassindja). Resources, information, and desire all prevent most women who would be eligible for gender-based asylum from getting close to, or even thinking about, fleeing to the United States. Thus, it is especially doubtful that women in such dire situations would have any knowledge of a change in U.S. policy that would allow them to achieve asylum more readily.

In further proving the inaccuracy of the floodgates fear, those countries who have already adapted their laws to allow women easier access to asylum have not seen their borders overrun with female immigrants. While Canada, Australia, Great Britain, and the United States all base their refugee laws off of the UNHCR Convention, only the United States has not thoroughly accepted crimes such as domestic violence as grounds for asylum (Annitto). Canada was the first nation to legally make gender a category of its own for political asylum in 1993. The next year, only one percent of all asylum petitions in Canada were gender-based claims (McLaughlin 242). Over fifteen years later, Canada has not been overrun by refugee women. In the last UNHCR Statistical Report completed, Canada accepted 5,885 applicants for asylum and rejected 5,423, signifying that Canada still rejects a little less than half of its applicants (*UNHCR Statistical Yearbook 2007*). Collectively, the accepted applicants account for only about two percent of Canada's total immigration, which equaled 236,754 in 2007 ("Facts and Figures 2008 - Immigration Overview: Permanent and Temporary Residents").

Ultimately, changing refugee law does not signify that all women who live in an oppressive country will automatically be granted entrance to the United States. She will still need to prove that she has a reasonable fear of being directly persecuted by the practices in her country. She might even need to name a specific example of who would be harming her, and she must still prove that she would not be safe anywhere else in her country (Bahl 70-71) An addition of gender as a category for which persecution could be on account of would not nullify the need for a trial or the burden of proof that a woman has in proving she fulfills all components of the definition of a refugee. Instead, it means that if a woman can prove she has well-founded fear of persecution in a country where her government will do nothing to protect her, she will not be denied asylum because her persecution is viewed as not on account of race, religion, nationality, a particular social group, or political opinion.

***Further Obstacles in Achieving Political Asylum for Women***

In addition to the failure of judges to understand that persecution against women is in fact political as well as personal, there are still more challenges that women in particular face in achieving asylum. Similar to the former problem, these obstacles also represent a misunderstanding—or a lack of effort in understanding—the differences between men and women and the manifestation of this in persecution. These obstacles make it even more essential that the law is changed to at least eliminate one of the difficulties present.

There are often linguistic problems in asylum cases, as judges and asylum workers do not understand the asylum speaker, both literally and figuratively. Language barriers make communication between an asylum officer and an immigrant very difficult (Bohmer, Carol and Shuman, Amy 1-2). Even when translators are readily available, women from other cultures may be hesitant to share their experiences with a judge or lawyer. Many women feel cultural or

religious shame for their refusal to accept the violent norms of their country, and they feel uncomfortable expressing their fear of return. Judges, USCIS workers, or BIA officials dismiss their claims to asylum without ever receiving the full story of persecution.

Judges may also misinterpret women on a more figurative level, understanding the words they say, but not understanding what they may mean. In Fauziya Kassindja's case, Honorable Donald Ferlise did not accurately comprehend the practice of female genital mutilation. Due to Fauziya's shyness and personal embarrassment about the situation, she did not accurately communicate the horrors of this practice. This judge ruled against her, failing to truly understand what FGM was and thus how it constituted persecution (Kassindja). Women can also interpret questions they are asked in a way different than the intended meaning. For example, a question as simple as "how many children do you have" may receive multiple interpretations. While a woman may include all the children she looks after (say a family member passed away and gave her custodial duties), judges are looking for only the actual number of children she biologically has (Bohmer, Carol and Shuman, Amy 1-2).

In American court, credibility comes from evidence. Due to the tendency of crimes against women to occur in the private sphere, evidence tends to be one of the most difficult obstacles women seeking asylum face. Without physical evidence of the crimes against them, they often must rely on their testimony alone. High-profile cases of violence against large groups of political refugees receive media attention and are much easier to prove because of their visibility. Meanwhile, proving that one's husband frequently raped her long after the fact is a great deal more challenging (Love 6).

Changes in immigration legislation in the past two decades have imposed further detrimental burdens to political asylum cases of women. The negative changes actually began

before 9/11, with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) in 1996. As discussed in Chapter 2, this Act placed many restrictions on immigrants. It established the "expedited removal" precedent, leaving immigrants without their previous right to due process upon arrival on American shores. Rather than becoming detained and guaranteed a right to trial, immigrants without proper travel documentation who do not explicitly "mention a fear of return, ask for asylum, or claim citizenship, permanent residence, asylee, or refugee status" during secondary screening by Customs and Border Protection officials can be immediately expelled from the United States (*Precarious Protection: Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution*).

The problems already listed with granting persecuted women already mentioned become exacerbated by this policy, in which they have to tell their stories immediately upon entry into the United States. If a woman has a hard time expressing the violence she experienced to a judge or even her own lawyer, it is highly unlikely she will be comfortable explaining it to strangers after a few hours in a brand new country. Open areas and multiple officers also contribute to a lack of privacy, increasing a woman's reluctance to tell her story. As discussed above, language barriers increase misunderstanding on many occasions. With a lack of proper translators at many customs sites, and unwillingness to wait for them, receiving "expedited return" is great probability for women who cannot properly explain their stories immediately upon arrival (*Precarious Protection: Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution*).

***The Greatest Problem: The Attitude of the American Public***

In the aforementioned example of questioning a woman about her offspring, the implications of such a misunderstanding may not be self-evident because this appears to be a

trivial matter. Yet, such minute misunderstandings only become a large problem because of the attitude of those involved in adjudicating and handling asylum claims. Lawyers for the USCIS are looking for any opportunity to prove that these people should be returned to their country. They look to any discrepancy in a person's testimony, such as the number of children a woman biologically has versus how many she claims to have, as a sign that she is not credible and thus that her whole story must be fictional.

For, the attitude of the United States remains one of the biggest obstacles to women who desire to achieve political asylum. Following the terrorist attacks of September 11, 2001, the attitude of many in a understandably frightened America was "to keep borders secure" (Bohmer, Carol and Shuman, Amy, 67-69). With this perspective in mind, immigration workers have continually failed to give the attention to individual cases that they deserve; the goal is to find those who are misusing the system and do not actually need to seek asylum, rather than finding those who do. The American motto of "innocent until proven guilty" does not extend to those who are not yet U.S. citizens.

Almost a decade after the September 11th attacks, Americans are as wary as ever of the "melting pot" phenomenon. The upsurge in xenophobia began as a response to these attacks, and targets were made of Muslims immigrants and even Muslims who were already citizens of the country. The recent recession served only to increase anti-immigrant fervor. Workers became terrified by a new potential enemy from abroad, the Mexican worker poised and ready to takeover their job.

More specifically, there are tangible examples of post-9/11 changes to immigration that have made it that much more difficult to become a US citizen from inside or outside of the country. Though those most affected were not necessarily asylum victims, the new regulations

serve to exemplify the attitude of the United States toward immigration and the entrance of foreigners in the past decade. In July of 2007, the fees necessary to file an application for immigration were all increased, with maximum raises of over two thousand dollars (Madison). As recently as January of 2009, changes were being made to make even travel to the United States more difficult. Now even citizens who are members of countries who have Visa Waivers (about forty mostly European countries) and do not need a Visa to visit America, still must supply electronic biographical information before traveling to the United States ("Visa Waiver Program").

The United States also tried several times in the new millennium to give citizenship to the over 12 million illegal immigrants in the Comprehensive Immigration Reform Act of 2006 and then 2007. Despite the attempt to package the bill with measures for more secure American borders, the bill failed to pass in both its 2006 and 2007 versions, leaving the status of illegal immigrants as illegal (Terry-Cobo). Though all these changes and even lack of action seem miniscule, almost all make immigration more difficult and/or more expensive, mirroring the anti-immigration attitude of the United States government and population.

***Justice and Peace Studies: Gender-Based Political Asylum as a Human Rights Issue***

In responding to these xenophobic fears of Americans, I look to the heart of political asylum and explain why the United States absolutely must welcome persecuted women around the world. Those seeking asylum and refugee status in no way embody the type of immigrant that American xenophobes fear. While those immigrants coming to America for other reasons also have strong arguments in their favor, there are many discrete reasons that apply only to asylum seekers. **Ultimately, political asylum is not an issue of immigration, but one of**

**human rights,** and for this reason, it is necessary that the United States add gender to its definition of a refugee in law.

Statistics prove that those seeking asylum are unique immigration applicants, persons who make up a tiny minority of overall immigrants. While only 22,930 were granted asylum in 2008, a total of 1,107,126 persons became legal permanent citizens in that same year. Of those granted asylum, a little less than half were women (*2008 Yearbook of Immigration Statistics*) Thus, as women asylum seekers constitute less than one percent of total immigrants annually, it is almost absurd to think that a more lenient policy on gender-based asylum would make a noticeable difference in overall immigration levels.

Instead, asylum seekers are looking for a place where they can exercise their basic human rights, something they cannot do in their countries of origin. Allowing women who are victims of domestic violence, rape, and other gender-based violence is a necessary change to the law from a human rights perspective. This human rights argument can be made in many ways, including through the lens of Justice and Peace Studies, a multi-disciplinary field of study that discusses what constitutes a just society, as well what peace is and how it can be achieved. It draws on a wide range of fields, including, but not limited to Theology, Political Science, History, Linguistics, Philosophy, and Sociology ("Center for Social Justice: Program on Justice and Peace Studies"). Consequently, it utilizes a variety of authors and traditions, though its framework is heavy with UN documents, international norms, and leading scholars and NGOs in peace and justice.

First of all, women have the right to be free from persecution, as made evident by the single most important document in the realm of human rights—the 1948 United Nations Universal Declaration on Human Rights. This document makes many references to the basic

rights that women (and men) have to be free of persecution. Article 3 states that "everyone has the right to life, liberty and security of person," and Article 5 states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." ("The Universal Declaration of Human Rights"). A victim of domestic abuse, rape, female genital mutilation, and worse yet—murder—has had her human rights violated under all of the Articles listed, and many more left unstated. Article 14 even states that "everyone has the right to seek and to enjoy in other countries asylum from persecution."

Furthermore, Justice and Peace Studies provides the framework for the responsibility that nations have to protect these rights. It looks at the "Responsibility to Protect" (R2P), a norm of the international community. R2P is the effort of the global community to determine when and how they should respond to international crises of human rights (Wisler). As former United Nations Secretary General Kofi Annan asked at the beginning of the new millennium, when does the international community have a responsibility to respond to the plight of those in danger? The concept first appeared in 2001 in the International Commission on Intervention and State Sovereignty (ICISS), drawing on Francis Deng's notion of "Sovereignty as Responsibility," which analyzes when a situation would be severe enough that a sovereign nation would have the right to intervene in the affairs of another sovereign ("An Introduction to the Responsibility to Protect").

In 2005, the African Union further articulated R2P, concluding that it would focus on "protection of human and peoples rights," and that the global community had the responsibility "to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity"("The Common African Position on the Proposed Reform of the United Nations : Ezulwini Consensus"). Finally,

in 2005, the Outcome Document from the UN World Summit gave official credence to the Responsibility to Protect, noting

> *138: "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability."*
>
> *139. "The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity..."* ("2005 World Summit Outcome").

Both of these examples illustrate the international norm that women have basic human rights against violence and that those countries that can help them have the responsibility to do so. Thus, the responsibility of the United States to protect women who have been violently abused is quite evident. Still yet though, the United Nations has issued or discussed quite a deal of information relating directly to the status of female refugees that make blatant the duty of the United States to change their asylum law in order to match international standards.

In 1991, the United Nations High Commissioner for Refugees issued Guidelines for the Protection of Refugee Women, a document that discusses in detail the unique nature of crimes against women, the many difficulties they face in achieving protection and asylum, and the responsibility of other nations to welcome and protect them. For example, Point 59 discusses the ways in which persecution against women can take the form of sexual assault, something that many American judges have failed to understand. In the next point, it warns governments of the

difficulties women may have in expressing their experiences so that they are aware of this and more sensitive and patient in their handling of women asylum seekers ("UNHCR's Guidelines on the Protection of Refugee Women") Most explicitly, Point 71 notes that States must

> *"Promote acceptance in the asylum adjudication process of the principle that women fearing persecution or severe discrimination on the basis of their gender should be considered a member of a social group for the purposes of determining refugee status. Others may be seen as having made a religious or political statement in transgressing the social norms of their society*"("UNHCR's Guidelines on the Protection of Refugee Women").

This is explicitly what the United States needs to do and has not done, thus making it completely at odds with UN recommendations.

Finally, Amnesty International, one of the leading non-governmental organizations in human rights work, also spells out explicit norms for gender-based violence and subsequent asylum claims. It released a report called *Refugees: Human Rights Have NO Borders* in which it provided a variety of recommendations about countries and refugee women. They noted that

> *"States should, at a minimum, adopt and implement the recommendations of the UNHCR Guidelines on the Protection of Refugee Women …Governments should ensure that asylum decision-makers understand that sexual violence and other gender-related abuse can constitute persecution under the UN Refugee convention definition of a refugee…Governments should offer protection to women who fear persecution because they will not conform to, or have transgressed, gender-discriminating religious or customary laws or practices of their society. Governments should recognize that asylum claims on these grounds fall within the ambit of the UN Refugee Convention and international human rights instruments"*(Thiele 236-238).

Indeed, if the United States is going to align itself with international human rights norms as determined by organizations such as the United Nations, then it needs to amend its gender-based asylum policy; Justice and Peace Studies requests this much.

***Conclusion***

A1980 Senate report defending the Refugee Act describes this bill as "reflecting one of the oldest themes in America's history—welcoming homeless refuges to our shores. It gives statutory meaning to our national commitment to human rights and humanitarian concerns..." (Love 3). Unfortunately, somewhere between 1980 and 2010, those responsible for political asylum—and many American citizens—lost sight of this understanding. The American founding principle engraved on the Statue of Liberty to welcome "your poor, your tired, your huddled masses longing to be free," was replaced with a xenophobic fear that outsiders would take American jobs and even lives. Immigration officials go above and beyond to prevent immigrants from coming in, rather than looking to help those who need assistance most.

Today, judges and Board of Immigration Appeals officials alike do not interpret asylum law as it should be interpreted. In the cases in the last three decades, they have consistently viewed persecution against women as personal, failing to see that it is in fact on account of a political opinion. The political expression of women is simply different than that of men, but it is grounds for asylum nonetheless. Despite the recent change by the Obama administration that domestic violence victims such as Rody Alvarado could be eligible for political asylum, there is still no guarantee that women in the future will be safeguarded. As early as two and a half years from now, a more conservative president could retract this interpretation of asylum law.

Combining anti-immigration attitudes with the record of asylum decisions since 1980, I end my research believing that this failed system must somehow serve American interests.

Perhaps the strict rulings of judges, the inconsistencies between U.S. departments on this policy, and the years of indecision that persist as women wait in inhumane detention centers, is what keeps the American system functioning. The citizens of the United States can rest assured that the American fundamentals are preserved with the basic admittance of immigrants to the country, when they know that the red tape will prevent too many foreigners from actually entering the country. It is fine that the immigration system is long, complicated, and ultimately a failure, as long as this inefficiency works to keep more aliens out than to permit too many in.

It is time that Americans understand this issue as one essential to human rights, and thus correct this broken system. As long as the law stands without gender-based persecution as a category for asylum, the basic rights of women across the world will not be safeguarded by the United States. Existing free from violence and persecution should not digress into an issue of petty immigration disputes, when it is the lives and rights of so many women at stake. The rights of women can no longer be up to the whims' of particular judges and officials, and thus must without a doubt become enshrined in the refugee laws of the United States.

Finally, making this change is also one step in working towards the ultimate women's rights goal—ending all gender-based persecution. Though achieving political asylum represents a victory for an individual woman, millions of women who were not able to escape still face severe persecution on a daily basis. Currently, the International Violence Against Women Act (I-VAWA) is pending in Congress; it is a bill that, if passed, would promise the commitment of the United States to ending abuse against women across the world ("International Violence Against Women Act"). Yet, granting asylum to one woman also contributes to this larger cause. When the United States grants a woman asylum, they are also acknowledging that a human rights violation occurred in her country of origin. Thus, this act sends a signal to this country and the

world that the US stands in opposition to its policies, as it did in the days of the Cold War. Granting asylum is a subtle, but very real way, of pressuring another country to either end abuses by the government or better punish citizens committing such abuses (Bahl 71). As the world waits for persecution against women to end, changing asylum law both guarantees women who do manage to escape their horrors the promise of a future in America and makes a better future possible for those left behind.

## Addendum: Recommendations for the Future

According to a Gallup Poll, following September 11th, almost 60% of Americans believed that the amount of overall immigration should be lowered; by the end 2008, the number reached a new low for the decade, at 39% ("Immigration Polls"). While this number remains high, it does indicate that anti-immigration attitudes are declining, and that they no longer exist in a majority of Americans. Furthermore, the recent recommendations by the Department of Homeland Security have allowed Rody Alvarado and potentially other victims of domestic violence to achieve asylum in the United States. American should also expect a comprehensive immigration reform bill to once again be introduced to Congress, after the failure of a bill of this effect to pass in 2006 or 2007. President Obama repeatedly promised on the campaign trail that he would reform immigration, and remarked in 2009 that he would begin presenting the bill to Congress once healthcare had been resolved ("Reform, on Ice."). Within the next year or so then, Congress will be revising and creating new immigration law.

What this reform act will encompass, however, is still very much up for debate, making the time as ripe as ever to push for an addition of gender to US asylum law. Throughout my research process, two themes have presented themselves repeatedly as the manners in which change in policy such as this can actually be achieved. I've been involved in campaigning since I was teenager, and vividly recall doors slamming in my face as I canvassed for local candidates. More recently, I have worked for organizations that work for change in the world, such as The Center for American Progress and Choice USA, where I participated in campaigns on a variety of progressive issues. At Choice USA, I even lobbied Congress after attending various workshops on lobbying, giving me further knowledge on what is necessary to actually make policies change in the United States.

After combining the lessons I have learned from my research with those from my past experiences, I have found that the best possible way to affect change, of any kind, is through advanced education and awareness campaigns. Raising interest and expanding participation have been the key components of any battle for change for decades, with patience and persistence representing the most important factors for success. Today, the difference is merely that the mechanisms by which these campaigns run have changed, with technology adding endless possibilities to the way awareness spreads.

More specifically, change can only come by pressing Congress about the importance of taking action. The Tahirih Justice Center urges citizens to reach out to their Senators in order to pass laws such as the International Violence Against Women Act ("Advocate"). Similarly, individual advocates need to contact their Senators, be it by phone call, letter, or petitions in order to let them know where they stand on the issue of asylum. Senators want to be re-elected, and listening to input from constituents is an important aspect of this. Lobbying for Choice USA with other pro-choice advocates, I realized that even "regular" people have the power to meet with their Representatives and/or Senators, or at least their assistants, in order to promote the policies that they stand for. Lobbying is not about having a lot of money; it is about coming in with clear goals and expansive support for a cause.

In 1996, Fauziya Kassindja's case took off the ground only after her lawyers created a media campaign to make the American public aware of her plight. For example, Fauziya's story was featured in the *New York Times*, and it was only after this widespread attention that her case was moved forward in court. Following Fauziya's release, the campaign did not end, and a subsequent book helped to bring the horrors of female genital mutilation and the problems of the asylum process in to the public forum (Kassindja). Like Fauziya, in order to change American

attitudes about asylum, the general public needs to become aware and even aroused by the issue. Most of my peers knew little of the challenges women faced in receiving political asylum, and I admit that I had no knowledge of gender-based asylum law at all before stumbling upon the spark for my thesis. People will only be motivated to take action once they feel passionate about an issue. The problems women face must be brought further into the national spotlight*, and speak louder than the voices protesting immigration*, if there is any hope that change will come.

New technology also helps to make such campaigns even more powerful. Facebook, Twitter and similar websites have done wonders to make spreading awareness about a cause that much easier. Websites like Facebook can be used to mobilize members that are already involved in the cause, by organizing them into local chapters or presenting them with opportunities to advocate; it can also be used to attract new members (Boothe). When utilized to its maximum potential, the internet is perhaps the greatest tangible tool advocates have for raising interest in their cause.

Thus, for my part, I plan to participate in this campaign along as many channels available to me. On April 10, 2010, I will be presenting my thesis at the Capital Area Association for Peace Studies' 23rd annual Student Conference in front of an array of professors and students from the area who share my interest in Justice and Peace Studies, and hopefully, in creating a fairer political asylum system. I am also passing this thesis along to the Tahirih Justice Center and hope to plan a fundraising event with them at some point in the near future. The Tahirih Justice Center is an organization that works on behalf of persecuted women worldwide, and it was actually founded by Fauziya's Kassindja's lawyer, Layli Miller-Muro (formerly Layli Miller -Bashir). Working with an already established organization such as Tahirih is another great way

to get involved in the issue, as non-profit organizations are always looking for help, from time to financial, no matter how small.

I wish I could guarantee that these measures would add gender to U.S. asylum law as a category for which persecution could be on account of. As it is, all I can hope for is that other people will find this cause as worthwhile as I do, and push the United States government to make the changes necessary. President Obama has shown that he is ready to look at immigration from a different perspective than the previous administrations, but he needs those Americans who have not given in to xenophobic fears to show him just how far he needs to take these changes, in order to be certain that women are protected long after he exits the Oval Office.

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