Queer Asylum Seekers as a Threat to the State: An Analysis of UK Border Controls

The issue of queer asylum seekers in the UK illustrates the ways in which queer identity is defined and controlled by the state through border controls and the asylum process. I merge together ideas of homonationalism to demonstrate how idealised (white) bodies, following predestined routes of citizenship, are used as the model for queer asylum seekers to enter the UK (Puar, 2007). In light of the 2015 migrant crisis and Brexit, asylum seekers and the process of asylum have become increasingly prominent subjects within Security Studies. Each year there are 29,000 cases made for asylum, of which 63 percent are rejected at the initial stage (Wainwright, 2016). Since 1999 the UK has recognised LGBTQ refugees as 'belonging to a particular social group' under the 1951 Refugee Convention (Briddock, 2017). The plight of queer asylum seekers is important for comprehending the intersections of identity formation, gender performativity and nationhood. For the duration of this article, LGBTQ and queer shall be used to denote both the identity group of anyone not self-identifying as heterosexual or cis-gendered, and the more political definition of 'a deviation from what is normal or expected' (Cho, 2016). The case study in this analysis draws the majority of its testimonials from a joint 2016 report by Stonewall and the UK Lesbian and Gay Immigration Group (UKLGIG), entitled 'No Safe Refuge.' Stonewall and UKLGIG conducted 22 in-depth interviews with lesbian, gay, bi and trans (LGBT) asylum seekers, detailing the lives of those in detention and their experiences of the UK Home Office (Bachmann, 2016, p. 2).

Theoretical Framework & Key Concepts

Queer theory is an extension of post-structuralism born in the 1990s; it rejects binary structures of gender and sexuality, whilst critiquing the power structures of sexuality. Put simply, queer theory is 'rooted in the political struggles for recognition, rights and the basic survival of queer people' (Wilcox, 2014). This allows for the exploration of embodiment and power through a post-positivist epistemological stance that centers bodies as the discursive focus. Applying feminist, post-structuralist, and post-colonial security theories, this essay analyses the manifestation of gender and identity in world politics.

A large amount of LGBTQ asylum seekers are non-white and come from previously colonised states. As such it is imperative to understand the ways in which UK citizenship is based on western ideals of whiteness, gender binarism, and heterosexuality. To the western state, a person from the Global South is viewed as underdeveloped and so must move along a trajectory of development to have a 'place' in the developed state. Cynthia Weber (2016) describes this trajectory as 'modelled on a specifically classed, racialised, regionalized, ableized, gendered and sexualised understanding of Western-style political development' (p. 81). Those falling outside of 'normalised, consuming, depoliticised constituencies' become a threat to the security of the nation-state and how it operates (Thiel, 2014). Through this lens, asylum processes can be seen as a new type of western colonialism, with international refugee laws working in the interests of western nations (Odhiambo-Abuya, 2006).

The three main theoretical concepts of performativity, embodiment, and homonationalism shall be used as the basis of this work. For queer theorists, the performance of gender and sexuality is not a 'singular or deliberate 'act'… rather [it is] a reiterative and citational practice by which discourse produces the effect that it names' (Butler, 1993, p. xii). Therefore, queer identity cannot be defined by a singular movement or action; it is the continuous amalgamation of

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any and all performative actions considered to be part of that identity. How we view the performance of queerness can be varied; for many, it is based on the people we kiss or the person we end up marrying. For others, queerness and the adjoined connotations are a deeply political act. However, the crux of the argument is that enacted performativities do not lock subjects into those gendered, sexed and sexualised identities. The performance of identity can actually 'hold the possibility of reworking, rewiring and resisting… institutionalized organisations of power' (Weber, 2016, p. 31). This possibility for resistance presents a threat to the state, showing the significance of the radical act of performing queer identity in any form that involuntarily politicises the body.

The next key concept is that of embodiment. Embodiment is used to denote how human identity is 'produced in relationality to others who are similarly produced… [unable] to exist independently of their environment [physically or in social/political terms]' (Wilcox, 2011, p. 599). Bodies are not naturally and independently occurring beings; they are the result of 'boundary producing practices,' which construct a self and an 'other' (White, 2013, p. 39). Following this line of thought, it is natural for an agent to view the body as tied to their own understanding of sexed and gendered beings. All agents, be it the state or the individual, are continually redefining themselves in relation to their environment and they can often use only their environment as a frame of reference for learning about others (Campbell, 1992).

This production of 'self' and 'other' are especially important to consider in the context of the dominant discourses on 'safe identity.' Homonationalism is a term first coined by Jasbir Puar (2007), which emerged as a critique of the 'American empire' and the ascendancy of regulatory white queerness (p. 2). Puar argues that the war on terror 'rehabilitated gays, lesbians and queers to US citizenship,' using narratives rooted in sexual exceptionalism such as Hillary Clinton's 'Gay Rights as Human Rights.' Queer black people subjected to police brutality and people of colour positioned as terrorists by the state often do not get to experience this luxury of human rights for gay people (2007, p. 38). Crucially, this place of privilege in which white queer people reside is often utilised by nationalist ideologies to position migrants and people from non-western backgrounds as inherently anti-queer (Puar, 2007). 'Sexual diversity,' based on normative western perceptions of queerness, is used to sustain 'anti-migrant policy', constructing a binary opposition between the morally good heteronormative queer, and the unknown, undeveloped, and unwanted brown queer asylum seeker or migrant (O'Shaughnessy, 2015, p. 1)

These concepts demonstrate how intersecting identities cannot be read independently of their spatial contexts. The state constructs its identity through the 'othering' of bodies that do not follow naturalised paths of development. For the UK, these routes consist of reproduction, marriage, monogamy and gender binarism. This identity is maintained with the cooperation of 'out-of-place and on-the-move perverse homosexuals (the asylum seeker), the developed citizen within the state (naturalised queer citizens) and agents of 'statecraft' (border control officials and the home office) (Weber, 2017). The following section will examine how these processes manifest in the case of the UK asylum system.

Case Study: The UK Asylum System

'Did you put your penis into x's backside?… When x was penetrating you, did you have an erection?… Why did you use a condom?… What is it about men's backsides that attracts you?… What is it about the way men walk that turns you on?' (Townsend, 2014, p. 2). These are but a few of the questions LGBTQ asylum seekers faced from UK Border Agency (UKBA) officials when attempting to claim asylum in the UK.

Under the 1951 Refugee Convention, individuals can claim asylum 'owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion' (Weis, 1951, p. 9). Since 1999 the UK has recognised LGBTQ refugees as 'belonging to a particular social group' (Briddock, 2017). In many states around the world, LGBTQ people lead 'lives of silence' and are subjected to high levels of violence (Bruce-Jones, 2016, p. 2). The average life expectancy for a trans woman of colour is 31 years old. LGBTQ identity and non-conforming sexual activity can result in corrective rape, torture, and death. Increasingly the people on the receiving end of this violence are seeking asylum in foreign states (Bruce-Jones, 2016, p. 3). The UK receives around 29,000 asylum applications per year, of which 3,000-4,000 are claims made on the grounds of LGBTQ persecution (Kershaw, 2018, p. 3). It is suspected that the actual number of LGBTQ asylum seekers may be far

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higher due to the fact that many people do not report their sexuality and/or gender identity when making claims (Bachmann, 2016, p. 6).

In 2010, it was revealed that up to 99% of Gay & Lesbian asylum seekers have had their claims rejected at the initial stage (Bachmann, 2016, p. 1). The HJ (Iran) and HT (Cameroon) v SSHD 2010 court case outlined that once sexual identity and threat of persecution have been established, there must also be an exploration into 'possible reasons for concealment of sexual identity on return [to country of origin]' (UKLGIG, 2017, p. 3). This case involved two men that had had their original asylum claims rejected due to the 'reasonable tolerability' test whereby a claimant can be returned if they would not face persecution while concealing their sexuality. Before this ruling, LGBTQ claimants were considered 'not to be in need of international protection if it would be 'reasonable' for them to be 'discreet' on return to their home country' (McDowall, 2013, p. 22). After 2010, the number of asylum approvals decreased, which many attribute to the HJ(Iran) case (Duffy, 2018). The largest proportion of LGBTQ asylum seekers come from Iran, Afghanistan, Uganda and Cameroon. These countries have explicitly anti-LGBTQ laws and high levels of police violence against LGBTQ people. Once arrived in the UK, LGBTQ asylum seekers must make a claim that they are fleeing danger or persecution from their country of origin. The detention and asylum processes seek to sort 'legitimate' claims from those that are deemed safe to return back to their country of origin. Some asylum seekers compare this process to 'being treated like criminals… persecuted again for seeking protection' (Bachmann, 2016, p. 15).

This system highlights the ways in which claimants' sexualities are often called into question due to pre-conceived perceptions of queerness. One UKBA caseworker was quoted saying, 'I would look at how they've explored their sexuality in a cultural context, reading [famously homosexual British author] Oscar Wilde perhaps, films and music' (McDowall, 2013, p. 23). This inspection places an unreasonable expectation on queer people to interact with the same cultural material and it assumes that asylum claimants, who may be detained in immigration centres, have access to these materials. Queer expression is also placed under scrutiny during interview processes, with an emphasis being put both on the ways in which people conceal their identity in their country of origin and their identity expression in the UK; for example, if they attend gay clubs or are in gay relationships (ibid. p23). One lesbian asylum seeker's claim was rejected because she had children. A Home Office barrister described her as 'not part of the social group known as lesbians…You can't be a heterosexual one day and a lesbian the next' (Blair, 2015).

The use of gender identification in the asylum system is also problematic. The Home Office often uses gender and name at birth instead of chosen names and correct pronouns. In addition, many transgender and gender non-conforming claimants come from states in which 'gender-affirming surgery, treatment and gender recognition is non-existent' (UKLGIG, 2017, p. 1). Due to this, the majority of claimants present and perform in ways that do not often adhere to UKBA officials' 'preconceived notions' of gender performativity. UKLGIG explains that this selection process perpetuates the same acts of discrimination that might have given cause for asylum in the first place (UKLGIG, 2017). Due to the concerns of not being viewed as 'LGBTQ' enough, asylum seekers have felt 'increasing pressure' to prove their sexuality and gender. This includes filming sexual acts, answering sexually explicit questions about their partners, and collecting testimonials from friends and colleagues. After a leaked Home Office report in 2013 exposed the nature of the questions shown above, official UKBA and Home Office policy has explicitly forbidden 'sexually explicit evidence' and 'detailed questioning in regard to sexual practices' (UK Home Office, 2016, p. 9). Yet this still begs the question asked by Bettcher (2007): 'Why do some people only have to describe themselves in detail while others do not?' (p. 53). Why do border control and immigration forces put queer and, more often than not, brown bodies under such high levels of scrutiny?

This case study demonstrates the multiple ways in which idealised constructions of Queerness tied to UKBA officer practices and international legislation supersede the reality of many LGBTQ asylum seekers' gender and sexual identities. The evidence required by the Home Office all comes down to 'proof' of identity. For example, an LGBTQ person at a specific point in time must have kissed another LGBTQ person or read a westernised Queer staple such as Oscar Wilde (McDowall, 2013). The next section will argue that these dominant westernised discourse on sexuality and gender are representative of homonationalism. In particular, the legislation that provides protections for LGBTQ refugees is at odds with the realities of queer identity.

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Queered Borders and the 'Unknown Other'

Michael Foucault's perception of sexuality is that of power which 'demands obedience through domination, submission and subjugation' (1978, p. 59). In the context of this case study, the actors demanding obedience are the Home Office and, by extension, the UK state. Domination and subjugation of identity are achieved through the utilisation of the asylum process, setting out definitions for acceptable, tangible queerness that can be easily dissected by UKBA officials. Due to this, the UK's position as a former colonial nation 'leading the celebration of LGBT across the world… championing LGBT rights in every forum' places it in a position of power to determine how queer identity presents itself, especially with respect to Commonwealth states (BBC, 2018). The LGBTQ rights that the UK 'champions' are often based on binary definitions of gender and sexuality, most notably, in the case of gay marriage. These conceptions of queerness privilege white, heteronormative bodies with the social capital to marry, while other LGBTQ people from diverse religious and cultural backgrounds are marginalized (O'Shaughnessy, 2015, p. 3). This example of state-endorsed homonationalism sets the basis for how aberrant identities, unexplained by Western perceptions of sexuality and gender, are constituted as a threat to state identity. Wilcox (2017) demonstrates this perfectly in her explanation of trans and genderqueer bodies in securitised migrant regimes, writing that they do not fit with the state's attempt to fix gendered embodiment at birth. As such, they are constructed as unruly and 'perhaps even dangerous bodies' (Wilcox, 2017).

The 1951 Refugee Convention provides protection for LGBTQ people under section A. (1), as LGBTQ people are classed as belonging to a 'particular social group' (Weis, 1951, p. 6). When this has been used in court appeals against Home Office asylum decisions, the term 'particular social group' has been brought up as a site of contention by both asylum advocacy groups and human rights lawyers. Under Home Office guidelines, someone that proves themselves to be LGBTQ must also prove that their identity is 'immutable' (Blair, 2015). In the case of the lesbian whose claim was denied because she was previously married, it was argued that her sexuality was not an 'immutable characteristic' because she could not reasonably prove she has 'always identified as a lesbian' (Blair, 2015). This legislation and its wider implications stand in direct opposition to post-structural perceptions of queerness; that sexuality and gender identity are not fixed and immutable concepts (Foucault, 1978, p. 94). Through a Queer lense, identity is fluid; it cannot be tied to binary narratives of gay/straight or male/female. Judith Butler's theory of performativity explains that identity cannot be defined or restricted by singular acts of identity (1993, p. xii). Nevertheless, that is precisely what the Home Office asks LGBTQ asylum seekers to provide. Through videos of sexual acts, evidence of past relationships and attendance at gay pride rallies, the dominant power provides a framework only for safe, tangible and understandable queer identity to seek refuge in the UK. This exemplifies homonationalist frameworks of queerness, whereby 'unwanted' identities, those of migrants and asylum seekers, are securitised as a threat to hegemonic constructions of Queer identity (Puar, 2007, p. 215).

These dominant discursive practices convince the naturalised UK queer community that black and brown asylum seekers from 'underdeveloped nations' are explicitly anti-LGBTQ. It becomes possible to enact anti-refugee and anti-migrant policy because of the perceived threat that an 'unknown other' or the 'perverse and 'on-the-move homosexual' will enter the state and threaten the culture of the home population (Weber, 2017, p. 12). This occurs in such a way that 'white, Christian, bourgeois, heterosexual, cisgendered, ableized, 'developed' Westerners/Northerners can feel more at ease' (Bigo, 2002). Ultimately, the rigid parameters imposed by the combination of UNHCR legislation and Home Office decisions are constitutive of structural violence towards queer people of colour.

Conclusion

This article has sought to analyse how LGBTQ asylum seekers are constituted as a threat to the homonationalist state identity through the UK security apparatus. Queer asylum seekers and their 'unwanted bodies' are filtered through migration systems designed to sort the needy from the undesirable (Wilcox, 2017, p. 97). This is possible due to the construction of the queer body which does not represent a threat to westernised notions of gender and sexuality. Incorporating both queer theory and post-colonial theory, this analysis has advocated for the need to shift the ways queer identity is constituted within the international system to reflect the realities of queer people. Gender identity and sexual identity cannot be fixed at one point in time. Yet that is exactly how queer identity is expected to

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present to the UK state. For as long as the Home Office asylum procedures and security officials base their understandings of queer identity on models of categorisation, it is not possible for a queer asylum seeker to exist in their own right. The queer asylum seeker shall always be constituted in relation to the actor that is attempting to understand them (Campbell, 1992). From a post-structuralist view, I have argued that the refugee legislation must reflect the fluidity of bodies and their sexual identity. This can be achieved within the refugee system by adjusting the interpretation of the 1951 Refugee Convention. If achieved, it would be possible to drastically decrease the level of discrimination faced by queer asylum seekers. They would no longer be expected to prove their gender and sexuality in ways that are often unrealistic.

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Date written: May 2018