

**SECRECY, SUBORDINATION & THE
INCONSISTENT IMPLEMENTATION OF
INTERNATIONAL HUMAN
RIGHTS OBLIGATIONS:
UNPACKING THE UNKNOWABILITY OF LGBTI ASYLUM
CLAIMS IN ‘MODERN’ IRELAND**



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DECLARATION

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I have also been informed of the completion and assessment rules of the MISOCO Program.

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*Dedicated to all LGBTI asylum seekers and refugees,
whether in reality or in mind.*

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ABBREVIATIONS

CDA	Critical Discourse Analysis
COI	Country of Origin Information
FOI	Freedom of Information
GLEN	Gay and Lesbian Equality Network
HREC	Human Research Ethics Committee
ICI	Immigrant Council of Ireland
ICSC	Irish Civil Society Coalition
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
IRC	Irish Refugee Council
IRP	Immigration, Residence and Protection Bill
LGBT	Lesbian, Gay, Bisexual and Transgender
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MISOCO	Master in International Migration and Social Cohesion
MJELR	Minister of Justice, Equality and Law Reform
NGO	Non-Governmental Organization
ORAC	Office of the Refugee Applications Commissioner
PSG	Particular Social Group
QA	Quality Assurance
QT	Queer Theory
QLT	Queer Legal Theory
RAT	Refugee Appeals Tribunal
RSD	Refugee Status Determination

TENI	Transgender Equality Network Ireland
UCD	University College Dublin
UNHCR	United Nations High Commissioner for Refugees

1. INTRODUCTION

1.1 Research Context

Today, I want to talk about the work we have left to do to protect one group of people whose human rights are still denied in too many parts of the world today. In many ways, they are an invisible minority. They are arrested, beaten, terrorized, even executed. Many are treated with contempt and violence by their fellow citizens while authorities empowered to protect them look the other way or, too often, even join in the abuse. They are denied opportunities to work and learn, driven from their homes and countries, and forced to suppress or deny who they are to protect themselves from harm...

Now, raising this issue, I know, is sensitive for many people and that the obstacles standing in the way of protecting the human rights of LGBT people rest on deeply held personal, political, cultural, and religious beliefs. So I come here before you with respect, understanding, and humility. Even though progress on this front is not easy, we cannot delay acting. So in that spirit, I want to talk about the difficult and important issues we must address together to reach a global consensus that recognizes the human rights of LGBT citizens everywhere. (Hillary Clinton, December 6, 2011)

On December 6, 2011, Hillary Clinton, the United States' Secretary of State, delivered an historic (and overdue) speech to the United Nations in Geneva, Switzerland calling on all nations to recognize the human rights of Lesbian, Gay, Bisexual and Transgender (LGBT) people. While Clinton's speech was not without its shortcomings, this seminal speech illustrates the dire need of protection of millions of sexual minorities worldwide. According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), same-sex sexual acts between consenting adults continue to be persecuted today in 76 countries around the world (see Appendix A1), including the death penalty in 7 of the following countries: Mauritania, Sudan, Saudi Arabia, Yemen, Iran, 12 northern states in Nigeria and southern parts of Somalia (ILGA, 2011).

The irony in Clinton's words, however, was that in the United States alone, the LGBT community is far from equal before the law, nor are sexual minorities free from harassment, discrimination, violence or even the threat of death. This illustrates the bitter reality that while a growing number of sexual minority asylum claims made to signatory countries of the 1951 Geneva Convention relating to the Status of Refugees and the 1967

Protocol Relating to the Status of Refugees (herein, the 1951 Geneva Convention and the 1967 Protocol) have been granted, these states must not be confused as safe havens – only safer. Unfortunately, the grim reality is that “[t]here is no country where a gay man or lesbian [and by extension, any sexual minority] can grow up free of discrimination, persecution or repression.” (LaViolette, 2004: 5). In addition, the Geneva Convention in itself, was intended to act as interpretive guidance of the law for signatory states, which has left the interpretation and implementation of new developments, such as the recognition of asylum claims based on sexual orientation or gender identity, to the discretion of individual states. This is, in part, the reason why there remains a lack of consistency in countries around the world that recognize Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) asylum claims.¹

While the above excerpt highlights the bitter realities faced by thousands of sexual minorities worldwide and their subsequent rationale for fleeing their homelands - which Carillo (2004) would describe as a process of ‘sexual migration’² - it also eludes to the reasons why LGBTI asylum seekers are still met with, what could be described as, immense resistance and skepticism within countries who claim to recognize these grounds for asylum, including the Republic of Ireland (herein Ireland). With that said, it is helpful to

¹ Throughout this work, I will be using the terms ‘LGBTI,’ ‘sexual minorities’ and ‘Queer’ interchangeably. While the use of the terms LGBTI and sexual minorities are useful in their pluralistic connotations, the use of the term Queer, in the words of Manalansan (2006: 225), is used both as an ‘anti-normative signifier’ and perhaps most importantly, “as a social category produced through the ‘intersectionality’ of identities, practices, and institutions.” For more information on its significance, see Chapter 2 and for definitions, see Appendix A2.

² Sexuality, sexual/gender identity, practices, desires and fears all play a key role behind one’s decision, or more often necessity, to seek asylum on these grounds. Sexual migration refers to “international migration that is motivated, fully or partially, by the sexuality of those who migrate, including motivations connected to sexual desires and pleasures, the pursuit of romantic relations with foreign partners, the exploration of new self-definitions of sexual identity, the need to distance oneself from experiences of discrimination or oppression caused by sexual difference, or the search for greater sexual equality and rights” (Cantú, 2004: 59).

locate state practice concerning LGBTI asylum claims in what Didier Fassin (2005) describes as the ‘moral economy’³ of immigration.’⁴ For Fassin (2005: 365), the realities of France’s immigration policies are “paradigmatic of tensions between the discourses and practices of compassion and repression in the policies of immigration and more specifically of asylum in Europe” – or more broadly, between ‘politics’ and ‘humanitarianism.’ The overarching context then, most relevant to this research, is the state’s determination process of legitimate and illegitimate asylum seekers and refugees. According to Watters (2007: 396), “the parameters of legitimacy are here not reflective so much of traditional norms and values [i.e. of humanitarianism], as of widely held social attitudes towards asylum seekers and refugees influenced by generally hostile media representations...” [i.e. politics] which has resulted in a prominent “...‘culture of mistrust’ towards refugees in which they are regarded as making illegitimate and attempts to pursue claims and gain access to a wide range of welfare benefits.” For instance, in May 2005, the Irish Minister for Justice, Equality and Law Reform (MJELR), Michael McDowell, commented that asylum seekers often tell ‘cock and bull stories’ and went on to say ‘I would rather interview these people at the airport, but the UN insists that I go through due process’ (Luibhéid, 2010: 187).

Following this logic, according to Andrijasevic (2009: 390), “[n]orms about morality and sexuality are deeply entrenched within immigration procedures.” As such, “sexual regimes also importantly shape where and how the line gets drawn between legal and illegal immigrant status” (Luibhéid, 2011: 185) and thus, are “mediated through

³ According to James Scott (1976), a “moral economy” is defined as a “notion of economic justice and working definition of exploitation” which provided, at the time, for a “move toward a fuller appreciation of the normative roots of peasant politics” (Fassin, 2005: 365).

⁴ Fassin explored the ‘moral economy of immigration,’ in his 2005 analysis of France’s immigration regime through the case study of the Sangatte Center – often referred to as a transit camp for migrants in transit to the United Kingdom.

implicit sexualized ideas in law and immigration proceedings” (Manalansan, 2006: 235). This research will illustrate that these arguments are demonstrative of the realities experienced by many Queer asylum seekers and refugees in Ireland today.

While Ireland’s Office of the Refugee Applications Commissioner (ORAC) does not publicly share its asylum statistics, it is known that a number of asylum claims have been filed on the basis of sexual orientation and/or gender identity. Though full statistics are not available, it is important to conceptualize a conceivable volume of sexual minority applicants. Currently, the number of LGBTI asylum seekers filing claims within the European Union has been estimated to be approximately 8,450 annually⁵ (Jansen & Spijkerboer, 2011: 15). According to GLEN (2007: 3), the UK Government estimates the number of lesbian, gay and bisexual people to be between 5% and 7% of the population. If this estimation was applied to the number of asylum applications that Ireland received in 2010, for example, which was 1,939 according to ORAC’s Annual Report (2010), then there could have potentially been between an estimated 97 to 136 applications filed for asylum by sexual minorities – whether filed directly on the grounds of their sexual orientation or gender identity or indirectly through other grounds.⁶

1.2 Research Question & Organization

Sexual minorities seek ‘asylum,’ or an escape through an array of non-conventional means, including: formal (and informal) employment; studying abroad; language courses; illegal migration, etc. A much smaller number of these men and women enter into the

⁵ This figure is based upon estimates from the number of asylum applicants in the EU in 2010, which was 235,900.

⁶ Interestingly, of the top five applicant countries (ORAC, 2010: 13), Nigeria, Pakistan and Afghanistan each criminalize homosexuality, and though it is not overtly illegal in China and the Democratic Republic of the Congo, it is conceivable that sexual ‘deviance’ is highly stigmatized in those states as well.

vacuum of vulnerability characteristic of the asylum system and *publicly* seek state protection based on their sexual orientation or gender identity – often the result of a dire necessity and a lack of social, human and/or economic capital. It is this particularly invisible and persecuted group of individuals that this research seeks to address.

Though not unique to Ireland (but rather characteristic of all states), this study will discuss such inherently structural factors as heteronormativity, homophobia, racism, gender inequality and the culture of disbelief that influences the outcome of Queer asylum applications. Preliminary evidence demonstrates that while Ireland does recognize LGBTI asylum claims in the *Refugee Act, 1996*, the application of this recognition is inadequate and problematic in a number of ways. The question this body of research seeks to address, therefore, is to what extent is Ireland fulfilling its international human rights obligations in the context of effectively assessing LGBTI asylum claims within its heteronormative legal system, and thus, seeking to ameliorate the dynamics of subordination of sexual minority migrants?

This socio-legal interrogation seeks to address a key gap within sexual migration scholarship – a topic that is nearly non-existent, publicly and academically, within the Irish context. More broadly, according to Luibhéid (2006: 61), “[a]nalysis of how re-bounding of the nation-state frequently operates by subordinating women’s sexualities [*and by extension, sexual minorities*] to masculinized, racialized, capitalist nation-states seems to fall outside of the purview of much migration (and transnationalism) scholarship.” As such, this analysis aims to construct a narrative of the unknown – of state assessment procedures, practices and institutional barriers concerning LGBTI asylum claims in Ireland – primarily through the socio-legal lens of Queer theory (QT) and Queer legal theory (QLT). The latter theoretical framework also appears to have not been applied, or at least not to a great

extent, to the analysis of LGBTI asylum claims, providing for an opportunity to not only address a clear scholarly gap, but to create an original foundation upon which to do so.

Overall, this paper attempts to make visible and critically assess the socio-legal barriers that have been historically embedded within state structures of control and to begin to formulate a broader argument of the Irish state's subordination of LGBTI asylum seekers through the state's seemingly sporadic, or inconsistent, implementation of its broader human rights obligations. The remainder of this chapter will provide a brief overview of three foundational pillars, which will help this research achieve stronger outcomes and understanding. Chapter two will provide a literature review, followed by chapter three which outlines this study's research methodologies. The fourth chapter will report this study's key findings and analysis, followed by the fifth, and final chapter of conclusions which also seeks to provide a number of key recommendations that have emerged throughout this investigation.

1.3 Background

Due to the immensely limited understanding of this topic area in the Irish context, it is first essential to contextualize this study by briefly introducing three key components that this research is built upon: Irish power structures, the country's LGBTI movement and the existence of LGBTI asylum in Ireland. An overview of these three foundational pillars helps to begin to construct an overall illustration of the national context of this complex, relatively unknown issue.

1.3.1 Diversity, Migration & State Control

In order to adequately deconstruct any interrogation at the state level, one must first locate and examine the dynamics of power structures (and their demographics) within the political and legal decision-making apparatus of the state. In the case of Ireland, white, middle-aged, Irish men dominate political life and the political system remains closed in many ways to women, Travellers,⁷ ethnic and sexual minorities with “few formal mechanisms to encourage individuals and civil society groups to engage in policy or legislative developments” (ICSC, 2011: 4). According to the Irish Civil Society Coalition (2011: 38-39), although the last President was female, as was her predecessor, “the current Parliament (elected 25 February 2011) is only 15.1 per cent female, with the total number of women candidates decreasing from 17 per cent in 2007, making Ireland 79th in world rankings for female political representation. Furthermore, Irish women, even today, “make up less than 7 per cent of those at senior management level in the Civil Service and an even smaller proportion of those at senior levels in structures such as the Local Authorities and the Health Boards” (O’Connor, 2000: 92). At the same time, there are very few publicly ‘out’ LGBTI Irish politicians, though that number has grown in recent years. These statistics demonstrate the near ‘purity’ of Irish decision makers - nearly devoid of women, Travellers, ethnic and sexual minorities – characterized by middle-aged, upper/middle class, white, heterosexual men. Broadly put, “[a]cceptance of the patriarchal dividend is implicit in assumptions as regards to the prioritizing of men’s needs or interests through the bureaucratic processes of the state” (O’Connor, 2000: 92). In other words, it can be argued that the Irish state is run by white, heterosexual men, largely in their own self interests. This

⁷ Section 2 of Ireland’s Equal Status Act, 2000, defines the Traveller community as “the community of people commonly so called who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.”

near uniformity of Irish decision-makers highlights the challenge of representing the diversity of ‘modern’ Irish society when such diversity is not represented within elite circles. While this diversity takes many forms, it is valuable to note that out of 536 civil partnerships registered in 2011, 58 different nationalities were represented spanning every county in Ireland (GLEN, 2012). As will be demonstrated below, these above-outlined heteropatriarchal interests can be seen in the state’s approach to Queer asylum seekers.

An analysis of the connections between nation-building (i.e. through immigration controls), the law and female (and, by extension, LGBTI) sexual subordination “certainly applies in Ireland where...control of women's sexuality and reproduction has been high on the Irish political agenda since the foundation of the State” (Luibhéid, 2006: 62). The control of Irish women’s sexuality can, and should, be extended to the control and subordination of Irish men’s sexuality, in terms of homosexuality, through the state’s postcolonial experience.⁸ According to Mulhall (2011: 102), “as a threat to the hetero-reproductive imperative of the fetal nation, the homosexual ‘reveals a profound anxiety not only about sexual identity but also about the stability of the nation-state and security at its borders.’” Not surprisingly, according to Sheehan (Personal Interview, 2012), Ireland has lost countless generations of lesbian and gay people abroad, because “if they wanted to be openly gay, they had to, at best, migrate to the nearest big city but more than likely emigrate”⁹ in order to gain some semblance of social acceptance not provided at home.

⁸ A few pertinent examples of the control of the sexuality of Irish citizens include the continued prohibition of abortion under the colonially-imposed *Offences Against the Person Act, 1861*, male same-sex acts were a crime prior to 1993, couples were unable to divorce until 1996 with the passage of the *Family Law (Divorce) Act, 1996*, and primary and secondary schools continue to be predominately run by the Catholic Church.

⁹ Although these numbers are likely to have changed, Rose (1994: 31) believed that while no official statistics are known, “it seems that about half of the Irish lesbians and gay men who are ‘out’ are living outside the country.”

Therefore, this reality dictates that Ireland's historically heteronormative, patriarchal state system figuratively deported those who did not coincide with prevailing gender and sexual norms – a process that is argued to continue even today (Lacey, 2008; Luibhéid, 2006; Rose, 1994).

1.3.2 Seeking State Acceptance: Ireland's LGBTI Movement

Ireland has a rich and ongoing history of activism and rights campaigning, unique to the social, economic and political climate of the country. While it is beyond the scope of this research to do justice to Ireland's LGBTI Movement, it is imperative to highlight a number of key factors relevant to the discussion and understanding of the development and proficiency at which the state presently engages with LGBTI asylum claims.

The overview outlined in section 1.3.1 is telling of the Irish Queer community's long and ongoing struggle with social and legal subordination. While 'homosexual acts' were decriminalized in Northern Ireland in 1983 (along with the rest of the United Kingdom), it wasn't for another eleven years that the Irish government finally conceded, after a hard fought law reform campaign championed by activists, academics and allies alike, and decriminalized same-sex consensual acts between men¹⁰ on June 30, 1993.¹¹ At the time of decriminalization, however, there was near unanimous support by government

¹⁰ It is important to note that same-sex acts between females were never criminalized in Ireland – rendering lesbians invisible and in effect, women “were denied recognition in law of a sexuality independent of that of the male” (Ryan, 1997: 1).

¹¹ Proceedings for decriminalization were originally filed in 1977 (16 years earlier) by Mary Robson (later to become President of Ireland) on behalf of her client, David Norris (now Senator in the Irish Senate) but were rejected in the High Court in 1980 and again, in 1983 in the Supreme Court. Following the 1983 ruling, Robson and Norris appealed the decision to the European Commission on Human Rights and in 1988, the European Court of Human Rights voted in favour of the appeal, noting the contravention of the law with the Convention on Human Rights. Nonetheless, it wasn't for another 5 years until the Irish government conceded and repealed the discriminatory law (Lacey, 2008: 252-255).

leaders and “[f]or a country that was thought to be irremediably reactionary on sexual-related issues, this was astonishing progress” (Rose, 1994: 2).

For Rose (1994: 9), “what may have seemed like a rapid change in the status of gay people in Irish society was in fact the result of a twenty-year campaign on many fronts.” It has been said to be particularly the feminist and lesbian movement, “in combination with these changes in Irish socio-political culture, that created the space in which a gay [and more broadly, LGBTI] movement could form” (Rose, 1994: 11; O’Donnell, 2008). According to O’Donnell (2008: 13), one event that had a particularly direct impact on the position of lesbians and gay men “was the astonishingly quick collapse in the dominant influence of the Catholic Church on Southern Irish social policy and cultural expression.” For instance, coinciding with the revulsion towards the Catholic Church was an influx of legislated protections that were enforced over the following decade.¹² While these legislative protections have afforded sexual minorities certain rights and equality with their heterosexual counterparts on some legal fronts and can also be said to have assisted in the greater social visibility and recognition of this marginalized community, it remains an ongoing struggle for sexual minorities to reach full equality. For instance, while the community has been afforded civil partnership rights beginning in 2011, under the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* it does not legally equate to full, civil marriage, including equal rights to adopted children. Another area that the country lags behind in is the protection of transgender people, as “[t]rans people are not expressly protected under any equality or hate crime legislation in Ireland” (McIlroy, 2009: 10). In fact, Ireland is one of the last EU countries to legally recognize these immensely

¹² Some of these included providing protections through either new legislation or legislative amendments to existing legislation, including the following: *Prohibition of Incitement to Hatred Act, 1989*; *Unfair Dismissals (Amendment) Act, 1993*; *Employment Equality Act, 1998*; and, *the Equal Status Act, 2000*.

marginalized individuals. While much has been achieved over the past 23 years of the LGBTI movement in Ireland, this marginalized group continues to obtain only partial citizenship, when compared to their heterosexual counterparts. It is clear that there remains much to be gained within both the social and legal fabrics of this country for sexual minorities, and, as will be discussed below, for (LGBTI) asylum seekers and refugees.

1.3.3 (LGBTI) Asylum in the Emerald Isle

In 1992, thirty-nine people claimed asylum in Ireland, rising to a peak of 11,634 claimants ten years later (Fraser & Harvey, 2003: 1). Such a substantial increase, within a relatively short timeframe has presented the country with many challenges. This period created both a challenge and an opportunity for the previously homogenous Irish society, as it had next to no experience with, and exposure to, racial and cultural diversity. As Ireland's asylum process developed later than most, "it had the potential to develop a stronger dialogue with international human rights norms and expanding refugee law practice" (Arnold, *Forthcoming*2: 6) – an opportunity that proved to be missed.

Ireland's immigration regime has been described as consisting predominately of asylum seekers (to align with its humanitarian responsibilities) and migrants who were deemed desirable for the Irish nation (i.e. economic, racial, or other grounds) (Luibhéid, 2006: 69). It wasn't until 1996, when the *Refugee Act* entered into force, explicitly characterizing who the state would legally consider to be a refugee. Interestingly, the Act actively included sexual orientation as a means for seeking asylum under the grounds of

holding “membership of a particular social group” (*Refugee Act, 1996: s1*)¹³ while the state had only decriminalized homosexuality a mere three years earlier, in June 1993, as highlighted earlier. This inclusion of the reference to sexual orientation within the membership of a particular social group (PSG) category explicitly recognized the most popular (and continues to be) grounds under which these claims had been granted asylum in other signatory states. While the Irish state has historically been recognized as traditional, highly influenced by the Catholic Church, and built upon the structure of the heterosexual family, it appeared to be loosening its grip on its conservative past, or at a minimum, rearranging its priorities.

O'Connor (2000: 84), would describe such developments as causing “tensions arising from the state’s need for inclusiveness as a basis for its own legitimacy and the patriarchal nature of Irish public life where the ‘normal’ situation is for men to represent women” and other marginalized Others. These tensions came in the form of panic concerning the influx of asylum seekers within the country and an increasingly piercing disbelief of asylum claims, including those seeking refuge from persecution based on their sexual orientation due to its murky and less explicit nature. For instance, “[a]sylum in many ways has dominated the political and social discourse on multicultural changes that have occurred in Ireland” ranging in notions of a “‘flood’ of asylum seekers...inundating Ireland” to breeding a ‘culture of disbelief’ in viewing the majority of asylum seekers as ‘fraudsters’ (Fraser & Harvey, 2003: 121). Once on Irish soil, much of the public discourse on the issue implied that asylum seekers “were living in the lap of luxury at the expense of the state and, by corollary, elbowing out Irish citizens from receiving entitlements” (ibid:

¹³ According to Section 1 of the Refugee Act, 1996, “*membership of a particular social group*” includes membership of a trade union and also includes membership of a group of persons whose defining characteristic is their belonging to the female or the male sex or having a particular sexual orientation.

137). With that said, one can imagine the sort of social and institutional barriers that LGBTI asylum seekers would experience in proving both their well-founded fear of persecution and their sexual orientation or gender identity.

While it is difficult to determine due to the complete silence of the country's asylum system and privacy of asylum case law, evidence indicates that one of the first successful LGBTI asylum claims was reached in Ireland in 1997 (McDonald, 2003), with others following closely behind. This staunch secrecy and iron veil over the state's asylum regime has been largely criticized during recent years and causes research within this area to be a very challenging process. According to Patricia Brazil (Personal Interview, 2012), the designated national expert for an EU-wide research project, *Fleeing Homophobia*,

There are particular challenges with engaging with the area at the academic level [in Ireland] because of the lack of transparency, the lack of access... what I know on an anecdotal level is very difficult for me to translate into academic writing because I don't have the evidence base...its hugely difficult. There are definitely limitations in the literature here and... even at the international level there is still relatively little...

Nonetheless, while it is difficult to adequately determine, evidence suggests that a sizeable number of LGBTI asylum claims launched in Ireland were assessed in a highly discriminatory, insensitive and inappropriately heteronormative manner (*Fleeing Homophobia Report*, 2011). As such, the next chapter will endeavor to convey that Irish LGBTI asylum events illuminate the significance of bringing Queer and immigration scholarship into critical engagement, in order to better understand heteronormativity's role in shaping distinctions between migrant legality and illegality in not only Irish society, but around the world.

2. LITERATURE REVIEW

While scholars such as Hug (2001) and Mulhall (2011) frame Ireland as a ‘progressive,’ modern state that has (or at least begun to) replace its colonial and post-independent moral order with increasingly progressive minority rights’ policies, this discourse is simultaneously challenged through such discriminatory realities as its’ very troubled and highly secretive asylum system. More specifically, this study is seeking to interrogate this confrontation within the broader socio-legal landscape through the dynamics of the subordination of LGBTI migrants in Ireland, particularly in the context of credibility assessment policies and practices concerning LGBTI asylum claims. This research will be fittingly grounded in Queer theory (QT) and Queer legal theory (QLT). The use of these two theoretical social justice approaches seek to complicate and challenge dominant assumptions and popular practices that reinforce normative notions of sexuality and gender. While a number of scholars have applied Queer theory to analyses of LGBTI asylum in the past, the theoretical approach of Queer legal theory has yet to be, or at least not to a large extent, applied to the study of these particular asylum claims. The following chapter seeks to locate and address this scholarly gap while also highlighting other relevant empirical findings in order to illustrate the dynamics of subordination at play.

As such, the first section of this chapter will analyze both QT and QLT as well as explore how these theories relate to the intersections of state migration and sexual regimes. The second section will contextualize legal subordination through analyzing an historic case within Irish asylum case law, followed by a review of the limited scholarly material on the topic in Ireland and supported alongside a non-exhaustive jurisdictional review of pertinent scholarly research concerning LGBTI asylum claims. The latter part of this

section will pay particular attention to two key concepts – credibility assessment and discretionary/internal relocation requirements.

2.1 Theoretical Foundations: Queering Migration/Asylum Trajectories

2.1.1 Queer Theory

As Adrienne Rich (1980: 637) famously observed in her pivotal study concerning compulsory heterosexuality and lesbian existence, the phenomenon of compulsory (and therefore, assumed) heterosexuality needs to be “recognized and studied as a [violent] political institution.” Rich (1980: 648) argued that heterosexuality has been “imposed, managed, organized, propagandized, and maintained by society” and as such, we “receive messages every day that promote heteronormativity in the form of myths and norms perpetuated by society.” As a result, according to Sedgwick (1990: 1),

An understanding of virtually any aspect of modern Western culture must be, not merely incomplete, but damaged in its central substance to the degree that it does not incorporate a critical analysis of modern homo/heterosexual definition.

Within the context of understanding the intersections between migration controls and sexual regimes, it can be argued that the most useful theoretical tool with which to undertake such an imperative critical analysis is Queer theory. The term ‘queer’ often “signifies the denigration of homosexuals generally and of (white) gay men in particular” (Valdes, 1995: 347), however, ‘Queer’ – with a capital Q – has been reclaimed, though not without contestation, by academics and activists alike to “combine and signify the advances, short-comings, opportunities, and dangers that trail, surround, and confront today’s sexual minorities” (ibid: 349). According to Kepros (1999/2000: 284),

“Queer theory focuses on the manner in which heterosexuality has, silently but saliently, maintained itself as a hidden yet powerfully privileged norm; and an implicit, if not explicit, questioning of the goals of formal equality that, on their face simply reify the very categories that have generated heterosexual privilege and Queer oppression.”

Moreover, QT seeks to catalyse social change by rejecting the binary structure of gendered and sexual identities and embrace the notion of fluidity and “indeterminacy, making it more broadly inclusive” (ibid: 283) across historically embedded patriarchal lines. For Roseneil (2002: 30), Queer theorists have particularly been concerned with deconstructing “the cultural texts and processes through which the hetero/homosexual binary is produced and reproduced and how heteronormativity operates as a mode of regulation of identities and cultural and social possibilities.”

Queer theorists have been criticized for such shortcomings as failing to provide adequate attention to the resistance and creative agency of human actors in the area of sexuality and for failing to directly engage with contemporary social change (ibid). However, key to this discussion is QT’s historical gaze on structural and discursive regulation – namely through the structural concept of heteronormativity. For Luibhéid (2011: 181), Queer theorists typecast dominant sexual regimes in the global North as heteronormative, which refers to “a system that normalizes sexuality channeled into childbearing within patriarchal marriage, especially among members of the dominant racial/ethnic and class groups.” Such heteronormative sexual regimes are ever-present in all aspects of one’s life, including state migration systems.

2.1.2 Migration, Control and Heteronormativity

According to Seuffert (2010: 182), “[i]mmigration law and policy has historically both literally and figuratively shaped empire and modern nations” involving “the

production of subjects at the boundary of the nation through regulation” which can be argued to include the regulation/enforcement of heterosexual subjects. Therefore, it can be said that “immigration and citizenship law are crucially involved in the production of heteronormativity” (Luibhéid, 2011: 182) which, for Cantú (2009: 57), “regulate[s] and discipline sexuality and legitimize[s] discrimination of non-citizens.” While Western states no typically no longer outright refuse LGBTI migrants, “their presence nonetheless challenges and disrupts practices that remain normed around racialized heterosexuality” (Luibhéid, 2008: 174). In this sense, “[h]eterosexuality is at once necessary to the state’s ability to constitute and imagine itself, while simultaneously marking a site of its own instability” (Alexander, 1997: 65). This imagining, however, is reinforced and strengthened through the heteronormativity within state constructs, which acts as a firmly intact filter for immigration laws and policies (Cantú, 2009: 52).

According to Luibhéid (2008: 175), “[t]he anxious, ongoing (re)production of national heteronormativity – including through border controls and immigrant management – is connected with wider neocolonial and neo-imperialist processes, historically and at present” and in the case of Ireland, post-independence processes. In other words, the majority of states’ migration regimes are constructed in a heteronormative manner and when LGBTI migrants ‘penetrate,’ or seek to penetrate, the state they are simultaneously threatening the state’s sexual regime and its conception of itself. For example, if we turn to the United States, it was not until 1990 when the overt exclusion of homosexuals from U.S. immigration law was repealed (Cantú, 2009: 57). Historically, as mentioned earlier, it can also be said that this happened internally within the Irish state. For instance, “people with alternative sexualities of any kind were not spoken of (and were to be exported through emigration or locked away in institutions)” (Luibhéid, 2011: 188; Lacey, 2008). Further,

according to Luibhéid (2006: 64), emigration from Ireland “emerged as a crucial mechanism for negotiating strict sexual codes, including for women pregnant outside of marriage, or engaged in same-sex relationships, or fleeing incest.” As identified earlier, this historical reality illustrates that Ireland’s heteropatriarchal state system deported sexual outliers. This reality highlights the fact that while migration controls seek to protect and reinforce heteronormativity, they are not isolated along the border and are ever-present in maintaining the subordination of Irish nationals.

These connections between nation-building (i.e. through immigration controls and domestic policies) and sexual subordination clearly apply to Ireland where “control of women’s [and by extension, sexual minorities] sexuality and reproduction has been high on the Irish political agenda since the foundation of the State” (Luibhéid, 2006: 62). The institutionalization of Ireland’s normative sexual regime is clearly outlined within the Irish Constitution. For example, Articles 41.2.1 and 41.2.2 state (to this day):

1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home (Constitution of Ireland, 1937).

Such excerpts reflect an historical reality about “how dominant Irish nationalism, like most nationalisms, operates through gendered, heterosexualized, and racialized metaphors of family that came to shape the state’s social and legal structures in profound ways” (Luibhéid, 2011: 188). An essential aspect that requires briefly unpacking in this study then, is the dynamics of those at the helm of the state (e.g. politicians, lawmakers, high-ranking bureaucrats) who can be argued to implement and perpetuate subordination of sexual minority migrants. As illustrated in chapter 1, there is clear evidence that gender

hierarchies and inequalities exist within Irish decision-making circles. From a more theoretical perspective, according to Collier (2010: 11), “the ‘big picture’ of gender hierarchies in the public sphere...reveals that men have historically dominated not just the institutions of law but also government, business and the ‘world of work’ generally.” As such, “[m]en’s practices, taken together and cumulatively, that is, have been understood to reproduce distinctive cultural forms and belief structures that have deleterious consequences for women in law” and, by extension, subordinate groups of men (ibid: 12). The ‘man of law’ can be described as having “a particular kind of masculinity, one culturally associated, broadly, with white, middle- and upper-middle-class and able-bodied men” (ibid: 13). Furthermore, according to Ferguson (2002: 123), the ‘man of law’ is built upon “[a]n assumption of compulsory heterosexuality.” Such normativity has penetrated, dominated and embedded itself into state law, government and business structures, throughout history. In other words, law reproduces, asserts or privileges “a distinctive hegemonic¹⁴ masculine form” (Collier, 2010: 37). For instance, Rose (1994: 26) notes that underlying Irish law and society is a heterosexism which is typically defined as “the usually unquestioned consensus that lesbian/gay sexuality is unnatural and/or inferior to heterosexuality.” Even today, some would argue that “culturally, extreme ambivalence continues to surround homosexuality and Irish identity, which is seen as an undesirable legacy of colonialism, an imported sexuality” (Ferguson, 2002: 126; Mulhall, 2011: 101). This sort of discourse demonstrates a lack of understanding of the lived experiences of LGBTI Irish nationals, let alone the diversity of experiences and identities of those seeking asylum and highlights the degree to which heteronormativity can be said to be embedded

¹⁴ Connell’s (1995) four-pronged typology of masculinities gives shape to ‘hegemonic,’ ‘complicit,’ ‘subordinate,’ and ‘marginalized’ masculinities.

within the Irish state. While not unique to LGBTI migrants, all migrants must negotiate the national heteronormative regime of power,

“making them differentially vulnerable to exclusion at the border or deportation after entry while also racializing, (re)gendering, (de)nationalizing, and unequally positioning them within the symbolic economy, the public sphere, and the labor market” (Luibhéid, 2008: 174).

As such, QT scholarship and its critical analysis of heteronormative regimes of power, in the context of the governance of migrants, helps to position this research within the broader landscape of such socio-legal inquiry.

As demonstrated above, QT’s notion of embedded heteronormativity helps to inform an understanding of the socio-legal landscape in which this study is located and, for a number of scholars, has “proven particularly useful in untangling connections among power, knowledge, and queer migrant identities” (Luibhéid, 2008: 170; Manalansan, 2006). This essential theoretical approach provides an important foundation upon which to examine the dynamics of subordination of LGBTI asylum claims in Ireland as its analysis positions this particular study within a broader, historically embedded system of power relations within Irish law and the state’s migration trajectory.

2.1.3 Queer Legal Theory

According to Queer legal theory’s leading theorist, Francisco Valdes (1998: 1413), we live in a ‘legalistic society’¹⁵ and as such,

law and the rule of law, especially as formal matters, articulate dominant societal values, even if sometimes sloppily and inconsistently. Law tends to approximate, implement, and reinforce dominant societal norms, rules, ideologies, and aspirations (Romero, 2009:191).

¹⁵ A ‘legalistic society’ can be defined as “a society that is highly devoted to ‘the rule of law’ and that highly touts ‘equal justice under law’” (Valdes, 1998: 1413).

In order to fully appreciate the entrenchment of the “conflationary, patriarchal status quo” (Valdes, 1995: 344) within state migration regimes, an engagement with critical legal discourse is necessary. According to Valdes (1995: 345), Queer legal theory, “at the most basic level, is critical to meeting the need for responsibility and accountability in the law regarding sexual minorities” and more broadly signifies “a self-conscious, self-defined, and self-sustaining body of liberational legal scholarship that voices and pursues the interests of sexual minorities as its particular contribution toward the end of sex/gender subordination” (ibid: 349).

Emerging in the mid-1990s, Queer legal theory has been described as being part of a larger movement concerned with social justice issues (Valdes, 1995, 1998, 2009; Kepros, 1999/2000, Lugg, 2003). QLT is a nuanced scholarly reaction to both the strengths and shortcomings of the wider socio/critical legal scholarship, including Feminist Legal Theory, Critical Race Theory, Critical Legal Studies and Gay and Lesbian Legal Theory. Such scholarship, including QLT, focuses on how law requires its various marginalized subjects to ‘account’ for themselves and the immense obstacles involved in attempting to tell one’s story within the subordinating constraints of the legal system. Thus, such socio/critical legal scholarship seeks to capitalize on the transformative capacity of law and use the very system that subordinates its subjects in a subversive, empowering way. Queer legal theorists’ are well-equipped to do so as QLT has been established upon

...Feminist Legal Theory’s commitment to disestablishing patriarchy, Critical Race Theory’s dedication to unmasking the deep racist structures within ... society and life, Critical Legal Theory’s examination of how class structures are perpetuated and reinforced, and Gay and Lesbian Legal Theory’s understanding of how heteronormativity...is reproduced (Lugg, 2003: 102; Hutchison, 1997, 2001; Valdes, 1995, 1998).

At the same time, QLT also builds upon the above-mentioned theories' shortcomings in important and productive ways. These specific categories that QLT is premised upon are often criticized as being essentialist responses to oppression in that they persistently adhere to unidimensional analyses of law and society and thus, demonstrate the "inability of any identity category to be an exhaustive expression of the individual and the failure of categories of identity to stand for the fullness or totality of that person" (Moran, 2002: 301; Valdes, 1995). In comparison, Queer legal theorists acknowledge that there are many ways of being that are not exclusively linked to the above categories and understand that sexual orientation, identity, sex and gender are highly variable - positioning QLT as an anti-essentialist theoretical approach. According to Valdes (2005: 354), QLT can be described as a race-, class-, sex-, gender-, and a sexual orientation-inclusive enterprise. The multilayered inclusivity of this body of theory is therefore highly relevant to the examination of LGBTI asylum claims that intersect with each of these particularities in consistently unique and culturally-specific ways.

Two noteworthy anti-essentialist analytical tools key to understanding the scope and validity of QLT include 'intersectionality' and 'multidimensionality.' (Valdes, 1995; 1998; 2009; Hutchison, 1997; 2001; Kepros, 1999/2000; Luibhéid, 2007; 2011). For Lugg (2003: 103; Delgado & Stefancic, 2000), intersectionality is the result of the work of Critical Race Theorists who examine, for example, the unique lives of women of colour experiencing discrimination and violence. For instance, if such women were to experience discrimination based on their race/ethnicity and because of their sex, "the courts tend to recognize only the racism or the sexism...negating that the women involved experience discrimination and violence at the intersection of race and sex" (ibid.). This, of course, is directly transferrable to not only LGBTI asylum claims' assessments but for all asylum claimants.

Multidimensionality goes beyond intersectionality acknowledging that to be Queer can carry a multiplicity of meanings and is a uniquely individual experience while also recognizing “the inherent complexity of systems of oppression...and the social identity categories around which social power and disempowerment are distributed” (Hutchison, 2011: 309). More specifically, we need to read LGBTI asylum “as being not merely about the protection of people from persecution due to their sexual predilections but more broadly in the context of the intersection of marginalized, racialized and classed sexualities” before the law (Manalansan, 2006: 232). Unfortunately this does not appear to be how the Office for the Refugee Application Commissioner (ORAC), the Refugee Appeals Tribunal (RAT), or the High and Supreme Courts seem to approach LGBTI asylum claimants in Ireland: “courts often require plaintiffs to formulate their claims of discrimination in an ‘either/or’ fashion, alleging one form of discrimination or another” (Hutchison, 2001: 302) demonstrating that the state’s asylum regime has “not even begun to address the problem of essentialism in the context of race/sexuality/gender cases (see section 2.3)(ibid: 303).

Finally, QLT is also concerned with “the cultural and legal demands that individual members of a given minority group, or members of multiple minority groups, assimilate, covert, cover, or pass – or otherwise hide to distort one’s identity – particularly queers” (Lugg, 2003: 104). Throughout history, ‘passing’¹⁶ has become a survival strategy of the marginalized which Queer legal theorists view as “inherently discriminatory, undermining personal integrity and autonomy while eroding and denying an individual’s legal and political rights” (Lugg, 2003: 104; Hutchison, 1999; Valdes, 1995). Interestingly, this

¹⁶ For Ahmed (2000: 126), “[p]assing may function at the level of the intentional subject (the subject who seeks to pass in order to secure something otherwise unavailable to them), or it may function as a misrecognition on the part of others (one may pass for something other than one’s self-identification but not seek to, or know it)” – i.e. actual or perceived sexual orientation or gender identity.

notion of ‘passing’ is completely reversed in the case of LGBTI asylum seekers’ credibility assessment process in that these individuals are required to pass as a sexual minority – which empirical evidence reveals is often characterized by stereotypically ‘Western’ characterizations of what qualifies as Queer appearance and behaviour (see section 2.3.1). At the same time, evidence demonstrates that, in some cases, if the applicant does not meet the adjudicator’s threshold for visibly belonging to the LGBTI community, then they are forced to return home and continue to ‘pass’ as heterosexual within their home state (see section 2.3.2).

At the core of this monumental work is what Valdes (1995: 12-32) describes as the

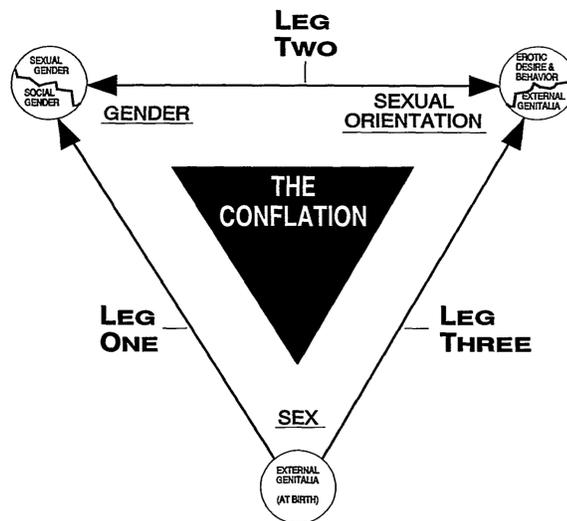


Figure 1. Valdes’ (1995: 13) “conflation triangle” upon which QLT is based upon.

exposition of the “conflation triangle”¹⁷ that has caused the historically embedded confusion, distortion and stereotyping of sex, gender, and sexual orientation. Valdes (1995:

¹⁷ The “conflation triangle” consists of the following three ‘legs’:
Leg one: Conflates sex and gender, leading to the equation of every person’s sex determines his or her gender.
Leg two: Conflates gender and sexual orientation, linking notions of masculinity and femininity with sexual attraction.

10) believes that challenging this conflationary approach taken by popular society will lead to greater legal resistance to bias and make antidiscrimination laws more fair and effective. For Valdes (1995: 364-372), in order to challenge subordination, QLT must pursue a strategy that can be characterized by eight non-exhaustive ‘tactics’ for Queer legal theorists to employ: fighting conflationary stereotypes; bridging social science knowledge and legal knowledge; using narratives; developing constructionist sensibilities; conceptualizing ‘sexual orientation’; defending desire as such; transcending ‘privacy’; and promoting positionality, relationality and (inter)connectivity. This proposed tactical framework of deconstructing heteronormative regimes of power can also be applied as an invaluable analytical tool when analyzing state law, policies and practices regarding LGBTI asylum claims – one, that to my knowledge has yet to be applied to these complex claims.

As such, Queer legal theorists see this theoretical approach as a workable solution as it “introduces Queer cultural consciousness into jurisprudence – which has not yet recognized meaningful legal identities for sexual minorities” (Kepros, 1999/2000: 294). Further,

“the legal system simply cannot fulfill the nation's existing, formal anti-discrimination mandate regarding sex and gender unless and until we recognize how sex, gender, and sexual orientation are mutually-related constructs that animate mutually-reinforcing strains of conflationary biases” (Valdes, 1995: 10).

This necessity to understand and unravel this conflationary reality also holds true in the case of countries, such as Ireland, who continue to grapple domestically with LGBTI rights and simultaneously at their borders, for example, with how to adequately assess LGBTI asylum claims. Similar to Valdes’ concept of the ‘conflation triangle,’ Southam (2011: 1380) claims that an analysis and understanding of the same three binaries (sex,

Leg three: Conflates sex and sexual orientation. For instance, if one engages in a same-sex couple, he or she must be of homosexual orientation.

gender, and sexual orientation) are essential in the consideration of LGBTI asylum claims before the law. Until state laws, policies and every day practice are confronted and challenged with the realities of this conflationary epidemic, those members of the LGBTI community who are most vulnerable will be silenced, categorized and forced to fit within this mistakenly conflationary falsehood that QLT seeks to address.

Queer legal theory is a relatively “young and still-evolving scholarly enterprise” (Valdes, 2009: 91) and as such, has seemingly paid little attention to LGBTI asylum claims. However, Kepros (1999/2000: 309) eludes to the challenges faced by the courts, legislatures and lawyers when dealing with socially-based and inherently non-descriptive identity categories (e.g. PSG claims), such as the case with LGBTI asylum seekers. For Kepros (ibid.), “this definitional problem is exactly the kind of dilemma Queer legal theory is eager to address” and, by extension, in part what this research seeks to explore. This analysis of QLT and its relationship with migration controls has sought to further ground this research’s broader analysis within sociological theory to critically examine the legal barriers faced by LGBTI asylum seekers and other marginalized groups.

2.2 Contextualizing Legal Subordination

In order to further explore and illustrate the dynamics of subordination experienced by LGBTI asylum seekers under the law it is imperative that this study review empirical evidence relevant to Queer legal theory. While this study’s originality provides particular challenges in comprehensively surveying QLT-rooted research addressing asylum in Ireland directly, there are other related areas of research that warrant analysis and contribute to this conversation by delineating how the state functions and what vehicles it

employs (e.g. law, policy, or lack thereof, and every day practice) to subordinate minority migrants within a structure of racialized heteronormativity.

2.2.1 Childbearing & Normative Sexuality

As briefly indicated above, according to Luibhéid (2004: 227),

...[h]eteronormative policies and practices—which subordinate immigrants not just on grounds of sexual orientation but also on grounds of gender, racial, class, and cultural identities that may result in “undesirable” sexual acts or outcomes (such as “too many” poor children)—are deployed by the state to select who may legally enter [the United States] and to incorporate immigrants into hegemonic nationalist identities and projects.

Further, “[m]igration controls, as much as sexual regimes, significantly construct the ideological and material boundaries of the nation-state... [and is] an uncontested expression of national sovereignty” (Luibhéid, 2006: 64; Tormey, 2007) and a component of nation-building. The expression of nation-building through the negotiation of what bodies would be deemed admissible by the Irish state is perhaps most clearly noticeable, and highly debated, in a 2002 ‘gendered’ asylum claim. In January 2002, Ms. I.A.O (herein ‘Ms. O’),¹⁸ a 32-year-old Nigerian citizen, appealed her rejected asylum claim based on gender persecution to the High Court (found to be ‘manifestly unfounded’) to prevent her deportation to Nigeria on the ground that she was pregnant. Ms. O’s solicitor “deploying pro-life rhetoric, claimed that her deportation contravened Article 40.3.3 of the Irish Constitution which guarantees that the Irish State will ‘defend and vindicate’ the ‘right to life of the unborn’” (Luibhéid, 2006: 61). The Supreme Court, however, affirmed that Ms. O would be deported, despite the Irish Constitution's pledge to protect the ‘right to life of

¹⁸ The case of ‘Ms. O’ (also referred to as Osayande) was packaged alongside a similar case, filed by the Lobe family from the Czech Republic, and both experienced the same fallout (L. & O. v. MJELR). The predecessor to these appeals took place in 1990 under the case of Fajujonu (F. v. MJELR), but in this case, the appellant was successful due to their deemed residence and family rights under the Irish Constitution. This decision set the precedent of not deporting non-national parents of Irish-born children, up until the L. & O. Supreme Court decision (Fraser & Harvey, 2003: 230).

the unborn' because she was deemed to be seeking asylum on fraudulent grounds. In doing so,

...[b]y framing Ms. O not as a woman deserving of state protection for her unborn child, but as an economic migrant who engaged in falsehoods and attempted to manipulate the asylum system to secure residency in Ireland, the state and courts re-stabilized the state's distinction between a 'genuine' refugee and a 'bogus' asylum seeker who was merely an economic migrant (ibid: 71).

Not surprisingly, the Supreme Court's decision was followed by the 2004 Citizenship Referendum - passed by an overwhelming majority of 78.9% in favour (Mulhall, 2011: 100) - that put an end to birthright citizenship, and in essence was an effort towards the racial and sexual management of the state.

Interestingly, the children and grandchildren of the Irish diaspora continued to be able to be eligible to apply for citizenship through descent, following this outcome. This is characteristic of what Mulhall (2011: 100) describes as the alignment of Ireland with the racialized, European norm. This reconstruction of the legitimate or 'legal' migrant was thus clearly premised on racial and heteronormative lines. The amended state law effectively further subordinated female asylum seekers through the popular image of Eastern European, and/or more specifically upon black African pregnant bodies. Luibhéid (2006: 74) argues that in doing so, "the state turned women's sexualities into a tool for racialized strategies of immigration control." In contrast, others viewed the Supreme Court ruling in a positive light. For instance, Fraser and Harvey (2003: 243) argue that this decision will prevent abuse of the state's asylum system through removing the caveat of birthright citizenship. They also broadly contend that refugee status "must be preserved as a status-conferring protection for those in genuine need..." and that a "right of residence is neither status-conferring nor a form of protection" under the Geneva Convention (ibid.). While premised upon a purely refugee law perspective, this approach overlooks the broader

racialized and sexualized inferences and ramifications of this ruling for an already vulnerable group seeking protection. In alignment with Fassin's earlier outlined notion of the moral economy of immigration, Tormey (2007: 71, 77) contends that the state was able to persuade its citizens through constructing Irish citizenship as a moral regime and foreign-nationals' newborns as 'suspect patriots' – all prefaced upon the notion of loyalty and fidelity to the nation, both of which, according to the Minister, these new mothers lacked. This notion of the 'suspect patriot,' in this case and in the case of LGBTI asylum seekers is sewn along the seams of racialized heteronormativity. For Fassin (2005: 381), though masked by cultural description, this legal shift can be characterized as the result of 'racial security' – concerning the "protection of a European, Christian, and white civilization against Third World, Muslim or black populations."

2.3 (LGBTI) Asylum & Vehicles of Subordination

While it is a relatively well-established practice to recognize asylum claims based on sexual orientation (even dating back to the mid-1980s in select state contexts) in the 'West,' filing these claims remains immensely difficult for individual LGBTI asylum applicants. As mentioned, there is an immensely limited amount of scholarly research on this topic in Ireland; however, there is a continuously growing body of research¹⁹ primarily

¹⁹ Within available scholarly research, gay men clearly represent the majority of asylum claims filed on the basis of their actual, or perceived, sexual orientation or gender identity. Lesbians, Bisexuals, Transgender and Intersex individuals are much less visible which highlights some of the additional oppressive factors experienced by these groups. For Rehaag (2008: 61-62), bisexual claimants are further marginalized in this process because adjudicators often rule that they can return without fearing harm if they can have a relationship with someone of the opposite sex – thus reinforcing the hetero/homo binary upon these applicants. The limited visibility of these groups within these claims also eludes to a lack of access and recognition. In the case of lesbian applicants, LaViolette (2007: 188) notes that barriers for lesbian women include economic and political subordination, and the control of their sexuality and reproductive freedom, based in gender norms in their country of origin.

focused on the legal process of refugee status determination (RSD) in the United States, Canada, the United Kingdom and Australia which can assist this study in its understanding of the situation in Ireland. For example, factors involving the refusal of LGBTI claims in these countries, according to Millbank (2009: 4), include

the reluctance of decision-makers to recognize criminal sanctions on homosexual sex as persecutory, the expectation in some receiving countries that applicants avoid the possibility of persecution by concealing their sexuality in their country of origin (the 'discretion requirement'), the particular difficulty of obtaining country information on sexuality, and – in common with gender claims – the role of non-state actors and persecution arising from the 'private' realm of social and family contacts.

According to a 2011 report on sexual minority discrimination, published by the Commissioner for Human Rights of the Council of Europe, both credibility and the discretionary principle were identified as being at the crux of barriers for LGBTI individuals seeking asylum in the EU (Hammarberg, 2011: 62-69). As such, the following two sections will highlight these two key interrelated areas in which some of the most problematic issues persist.

2.3.1 Credibility Assessment & Stereotyping

While common to many asylum seekers, LGBTI applicants must often rely solely on their testimony.²⁰ Millbank (2009) contends that a claimant's credibility during the RSD process is typically determined by decision-makers through three primary tools of assessment: consistency, plausibility and demeanor. While it is out of the scope of this research to adequately interrogate each of these analytical tools, they are highly relevant to

²⁰ In these cases, sexual minority applicants are often not able to provide any supporting documentation to *prove* their sexual orientation, such as involvement within the Queer community in their country of origin, due to both the oppressive nature of their home states and often times these claimants flee for their safety and what little proof they may have been able to provide, is left behind.

the analysis of LGBTI claims due to such factors as their highly divergent experiences and identification as a sexual minority, their ability to disclose this information with ease after years of suppression while at the same time presenting a consistent narrative during this highly emotive experience. For LGBTI applicants, their personal narratives must typically satisfy adjudicators that the individual not only has a well-founded fear of persecution (including a lack of home state protection) but that they are, in fact, a sexual minority.²¹ LGBTI applicants face a number of challenges in satisfying these criteria, including issues related to knowledge and sensitivity of decision makers;²² reliance on out-of-date or inaccurate country of origin information; internalized homophobia (which in some cases, results in non-identification or late disclosure of their sexual orientation), and other issues related to cultural norms and expectations (Arnold, *Forthcoming I*: 4). As one can imagine, these unique challenges are also increased with the ‘culture of disbelief’ inherent within immigration authority offices, including ORAC.

According to the *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity* (herein Gender Guidelines)(UNHCR, 2008: 16), “[s]elf-identification as LGBT should be taken as an indication of the individual’s sexual orientation...[and]...they do not need to document activities in the country of origin indicating their different sexual orientation or gender identity.” However, available empirical evidence demonstrates that this is rarely the case in Ireland. According to Arnold (2012: 4), “credibility is becoming an increasingly crucial part in the determinations in Ireland, the United Kingdom and across the industrialized world.” Millbank (2009: 4)

²¹ It is important to note that individuals have also been, and may be, granted asylum if they have a well-founded fear of persecution due to their perceived sexual orientation or gender identity.

²² There have been reports of applicants being required to undergo such degrading and inhumane credibility assessment procedures as anal examinations in the UK and phallometric testing in the Czech Republic, for gay male applicants (Brazil, 2011: 10).

contends that “[c]redibility assessment played an increasingly major role in negative determinations in Canada and Australia on the basis that the applicant was not actually gay.” In a similar vein, Jansen and Spijkerboer (2011) highlight that Irish officials have denied LGBTI asylum claims for a number of highly discriminatory, insensitive and inappropriately heteronormative reasons in their negative rulings based on credibility. For instance, in the case of *E. v. MJELR* (2008: 3), the appellant’s request for judicial review was ruled to lack credibility, for a number of reasons, including that she “never practiced a homosexual lifestyle other than by her long term relationship with her deceased partner,” that she had failed to indicate that she would be an identifiable lesbian in Nigeria and because she “had no knowledge of Nigerian law” concerning homosexuals. In this case, E. was overtly interrogated about her self-identification as a lesbian and denied asylum on this very claim.

In the case of LGBTI asylum seekers it is clear that stereotyping, which is also highly discouraged by the UNHCR,²³ is highly subsumed within each of these three categories. In Ireland, sexual minority applicants have had to endure invasive and intimidating interviews that in some cases have been granted negative rulings based on decision-makers’ own judgments of an applicant’s demeanor – thus, relying on stereotypically Western conceptions of how a member of the LGBTI community would conduct oneself. For instance, in 2009, a gay Ugandan man’s claim was refused because the decision-maker felt the applicant did not have a satisfactory level of knowledge pertaining to ‘homosexual meeting points, websites, clubs or rallies against homosexuality’ (Jansen & Spijkerboer, 2011: 57) while another negative credibility finding was made on the grounds

²³ Section 36 of the UNHCR Gender Guidelines (2008: 16) notes that “stereotypical images of LGBT persons must be avoided, such as expecting a particular ‘flamboyant’ or feminine demeanor in gay men, or ‘butch’ or masculine appearance in lesbian women.”

that the applicant was unfamiliar with ‘a well known gay bar in Dublin’ (ibid: 58). Other scenarios have presented particular challenges to the adjudicators’ credibility rulings (and seemingly often spur negative rulings) where applicants have been married, had children or dressed in conformity with prevailing social codes, for instance. Such rulings are consistent with Millbank’s (2009: 11) findings as she found

...a disturbing number of cases in which decision-makers appeared to have a pre-formed expectation of how gay, lesbian or bisexual identity is understood, experienced and expressed by applicants from a widely diverse range of cultures and backgrounds.

According to Manalansan (2006: 232), sexual orientation and labels such as gay, lesbian, and homosexual have been “uncritically deployed in legal proceedings, thereby creating an East-West dichotomy that was morally and culturally hierarchical,” which at the same time permits assessors to rely on ‘Western’ stereotypes of how sexual minorities should look, act, speak and experience their every day lives. For instance, in Queer asylum proceedings in the United States, Cantú (2009: 63) notes that culturally divergent or more fluid concepts of sexuality “must then be fixed and made in the likeness of a U.S. understanding of ‘gayness’” to succeed. For Valdes (1998: 1423), this would be considered to be representative of Eurocentric biases, “including preferences for attributes associated with white and Anglo cultures or identities, that predominate in the sexual majority as well as among sexual minorities.” This reality highlights the significance, and relevance, of this tactic as it further “facilitates the manufacture and use of socio-sexual identity to devalue and subordinate sexual minorities and women” (Valdes, 1995: 365) in order to justify the heteropatriarchal status quo. The Western rubric of supposed/stereotypical norms for sexual minorities’ appearance, behavior and every day lives does not even adequately transpose itself within the West, let alone other parts of the world.

2.3.2 Discretion & Internal Relocation

Although met with great criticism, many state legal systems continue to reject sexual minority asylum claims under the ‘discretion requirement’²⁴ - requiring individuals to return to their home state and live discreetly. This approach, highly discouraged by the UNHCR,²⁵ “is still being considered as a viable option for sexual minorities expected to return” in the state of Ireland (Arnold, *Forthcoming2*: 13). At the same time, countries such as the United Kingdom have ceased to follow this reasoning, following the 2010 seminal judgment in HJ (Iran) and HT (Cameroon) which indicated that “discretion could no longer be relied on as a guarantee of safety or as a permissible response to LGBT sexuality and relationships” (Johnson, 2011: 61). Interestingly, in a similar situation, Millbank (2009: 404) found that a 2002 High Court of Australia decision to reject the discretionary principle simply led to “a distinct shift in the Australian decisions [from discretion] towards outright disbelief in claimants’ identity as a major basis for negative determinations.” Therefore, this indicates that the abolishment of the discretionary requirement does not necessarily mean that states will approach these applicants from a more intelligible position. In opposition to the discretion requirement, Johnson (2011: 58) argues that “[r]elying on the space of the closet as a site of ‘safety,’ discretion failed to challenge the aggressive

²⁴ According to the *Fleeing Homophobia Report* (2011: 33), the ‘discretion requirement’ can be defined as the “explicit or implicit requirement that a person acts discreetly in order to prevent being persecuted on grounds of his or her sexual orientation or gender identity.”

²⁵ Section 25 of the UNHCR Gender Guidelines states “A person cannot be expected or required by the State to change or conceal his or her identity in order to avoid persecution. As affirmed by numerous jurisdictions, persecution does not cease to be persecution because those persecuted can eliminate the harm by taking avoiding action. Just as a claim based on political opinion or nationality would not be dismissed on grounds that the applicant could avoid the anticipated harm by changing or concealing his or her beliefs or identity, applications based on sexual orientation and gender identity should not be rejected merely on such grounds (UNHCR, 2008: 12).

heteronormativity and homophobia which was, and still is, partially responsible for its construction” but it is clear that in the Australian context, at least, this process continued through other means.

In most cases, discretionary decisions are part of the context of internal relocation alternatives of asylum seekers within their home state as well, which incontestably objects the increasingly accepted notion of immutability of one’s sexual orientation or gender identity. For instance, in a 2009 RAT decision in Ireland, an appeal launched by a gay Nigerian²⁶ man was refused on the basis that “internal relocation to avoid any possible threat would be an option” (Jansen & Spijkerboer, 2011: 43). Throughout the entire RSD process, accurate country of origin information is essential in determining whether or not one may relocate internally, for example. LaViolette (2009: 462) argues that in Canada the availability of this documentation remains a problem as the ability of international human rights organizations and sexual minority rights groups to uncover LGBTI abuses remains limited, as would be expected to be the case in Ireland as well. The ever-present stigma attached to sexual difference “means that homophobic violence is frequently unreported, undocumented, and ultimately unpunished, making it difficult to investigate the problem” (ibid.). This reality demonstrates why studies such as this one are so imperative.

2.4 Summary

Through the exploration of the subordination of LGBTI asylum seekers through the lens of Queer theory and Queer legal theory, I have begun to construct an original point of

²⁶ It is important to note here that 12 northern states in Nigeria are internationally recognized (ILGA, 2011) as sentencing those found to have engaged in same-sex sexual acts to the death penalty and so it is very difficult to imagine that internal relocation and living a discreet life would remedy the situation for this man’s appeal.

analysis for an area of migration scholarship that is lacking within the Irish context. The utility of Valdes' tactics are clear following this scan of LGBTI asylum in Ireland and other similar contexts. Further, the introduction and brief examination of Valdes' strategy of 8 'tactics' for QLT to employ are expected to be highly useful in informing parts of my methodology (i.e. assisting me to target my interview/questionnaire questions). While the analysis of Queer theory was more focused on the broader structural and discursive regulation of sexual minorities, primarily through the notion of heteronormativity, the introduction and critical analysis of Queer legal theory, in the context of the state's approach to LGBTI asylum seekers, has sought to begin to evoke a site for advocacy, action and change. Furthermore, while explicitly laid out in Irish law and international human rights obligations, its implementation of, or every day practice, is where this continually appears to become inconsistently implemented – namely through credibility assessment and discretionary requirements.

3. METHODOLOGY

3.1 Introduction

While sex/gender equality is the primary goal of Queer legal theory and the abolishment of the conflationary exercise is its essential strategy, the ‘tactics’ (see chapter 2) of this action-oriented approach have been argued to be a methodological schema of their own. For instance, Romero (2009: 193) argues that QLT is best understood as solely a methodological framework involving an “oppositional or non-normative inquiry into law and legal things” and “ought not to be defined in connection with substantive agendas and commitments.” It is uncommon for critical theories to proffer methodological or strategic models and it can be said that this strengthens the value of the QLT’s theoretical and methodological approach and its subsequent contribution to socio/critical legal scholarship. Therefore, this research accepts the view that QLT is both a social justice theory and a methodological framework for action-based research. Queer legal theorists can, should, and must endeavor to contribute to an agenda of social change – which is what this study’s approach endeavors to contribute to. With that said, the following chapter will outline the research methodologies employed in the undertaking of this study.

3.2 Research Strategy & Design

The extended case, and therefore deductive, structure of this body of qualitative inquiry will follow a case study design, which is described as the “study of a single entity, often a person, an organization, a situation or a country, wherein the subject is explored in detail and great depth” (Matthews & Ross, 2010: 475). More specifically, Matthews and

Ross (2010: 128) would characterize this research design as a ‘critical case’ as it will allow for the testing of this study’s theory and hypothesis concerning the legal subordination of LGBTI asylum seekers during the Irish state’s RSD procedures. This research has also followed an exploratory and evaluative research strategy. “Evaluatory social research usually relates to an intervention or change that has been made, and whether the intervention has achieved the change or outcomes that were intended” (ibid: 132). Matthews and Ross (2010: 133), explicitly contend that evaluatory research should be employed when evaluating how well a process (e.g. policy implementation, practice) is working and to consider how a process might be improved which directly aligns with the scope of this study.

This ‘critical case study’ design and exploratory/evaluatory research strategy seeks to address Valdes’ eight tactics through a tripartite methodological framework: semi-structured interviews; questionnaires; and (critical) discourse analysis.²⁷

3.3 Semi-Structured Interviews

Due to previous research experience within the topic of LGBTI asylum, this study chose to undertake semi-structured interviews as I had a degree of general knowledge of the topic in advance of the necessary fieldwork. Semi-structured interviews are commonly used within exploratory research and according to Matthews and Ross (2010: 222), “exploratory research of this kind is common in areas where there has been little research,” such as in the case of Queer asylum in Ireland. The nature of the semi-structured interview allows for an

²⁷ This multi-methodological approach using key informant interviews, archival analysis and other research tools aligns with the tactics employed by such essential Queer migration scholars as Cantú (2009) in his valuable study entitled *The Sexuality of Migration*.

open dialogue to take place during the in-depth interview process, allowing for unanticipated explanations to emerge.

3.3.1 Sample

The respondents of the interviews were selected on the basis of the ‘key informant’ technique – a popular ethnographic research procedure. A key informant is considered to be an expert, and therefore credible, source of information, especially in terms of their utility in sensitive and unknown areas of research where written data or published documents are limited, inaccessible or do not exist. Marshall (1996: 92) notes that key informants “as a result of their personal skills, or position within a society, are able to provide more information and a deeper insight into what is going on around them.” As such, the designated sample was the result of ‘purposive sampling’ which is described as “a sample of selected cases that will best enable the researcher to explore the research questions in depth” (Matthews & Ross, 2010: 401). Due primarily to time constraints and accessibility, I conducted eight semi-structured key informant interviews. Each of these key informants was selected in accordance with the five characteristics of an ‘ideal’ key informant: role in the community; knowledge; willingness; communicability; and, impartiality (Marshall, 1996: 92).

When I originally set out to begin gathering data and key informants for this study, I had intended to gain access to at least two LGBTI refugees and/or asylum seekers, however that proved immensely difficult. This is likely attributable to a number of factors, including: inaccessibility; time constraints; privacy issues; and, the highly sensitive nature of the topic for those who have gone through the asylum process. It can also be said to be reflective of the immense marginalization and invisibility of these individuals within society. Johnson

(2011: 63) made note of similar challenges, and ultimate decision not to interview LGBTI refugees, during her research regarding the role of silence in UK asylum cases based on sexual orientation.²⁸ While I was unable to access this critical informant group, it is an essential area of research that must be interrogated as there are very few publications drawing on empirical primary research directly from LGBTI asylum seekers or refugees.

As a result of these challenges, I went through a process of ‘interviewing upwards’ rather than interviewing asylum seekers and refugees themselves. The accumulation of relevant informants proved to be an immensely time consuming and challenging process within a relatively short period of time, as each informant was obtained through divergent means (i.e. networking/referrals, snowball sampling,²⁹ cold calling, etc.). The selected informants (see Table 1) included academics, legal professionals, practitioners, activists, etc. and interviews were held face-to-face in the preferred locations of the respondents around Dublin. This key informant approach is similar to the methodology employed by Johnson (2011) as her empirical research, in part, was constituted of ten interviews with solicitors, barristers and NGO groups who worked (either directly or indirectly) with LGBTI asylum seekers due to their expert knowledge of the area. Upon consent from the respondents, each interview was digitally recorded in order to effectively transcribe each exchange.

²⁸ Johnson’s (2011) research focused on the specific role of *silence* in LGBTI asylum cases in the UK, questioning the impact of silence on these claims and whether it is detrimental to the claim or a ‘productive site of resistance.’

²⁹ According to Richards and Morse (2007: 195), ‘snowball sampling’ (or ‘nominated sampling’) is the sampling technique in which “participants already in the study recommend other persons to be invited to participate.”

Table 1. Key Informants – Interviews

KEY INFORMANT	RATIONALE
1. Brian Sheehan	Director, Gay and Lesbian Equality Network (GLEN)
2. Kieran Rose	Chair of GLEN’s Board, Deputy Director of the Office of International Relations and Research for Dublin City Council and a prominent figure in Ireland’s gay and lesbian movement
3. Samantha Arnold	Children’s and Young Persons’ Officer with the Irish Refugee Council & LLM by Research - Dissertation on LGBTI Asylum in Ireland and the United Kingdom (University College Cork)
4. ‘Mr. S.’	Second-hand experience with LGBTI asylum through past partner who sought asylum
5. Patricia Brazil	Barrister, Lecturer in Law at Trinity College Dublin & the Irish National Expert for the (EU-wide) <i>Fleeing Homophobia</i> Report, 2011
6. Marissa Ryan	Project Coordinator, LGBT Refugee & Asylum Seekers Project, BeLonG To
7. Dr. Fergus Ryan	Lecturer in Law, Dublin Institute of Technology & member of GLEN’s Board
8. John Duffy	Youth Worker, LGBT Refugee & Asylum Seekers Project, BeLonG To

As a result of each informant having a varied relation to the specificity of my research focus, unique and tailored interview guides had to be developed for nearly every informant. However, there were a number of reoccurring themes present throughout each interview guide, which included:

- *LGBTI Status in ‘Modern’ Ireland*
- *Credibility Assessment*
- *Discretion/Internal Relocation Requirements*
- *‘Culture of Disbelief’*

- *Training/Quality Assurance*

3.3.2 Strengths and Weaknesses

This key informant semi-structured interview strategy proved invaluable to the nature of this research process. The primary advantage of utilizing key informants is “the quality of data than can be obtained in a relatively short period of time” (Marshall, 1996: 93) as these individuals are subject experts. This approach is not without its potential weaknesses, however. For instance, Marshall (ibid.) notes that key informants “might only divulge information that is politically acceptable and social rules could discourage the researcher from publishing potentially sensitive data.”

In terms of the semi-structured interview tool, one of its most useful aspects to researchers is that “it is flexible and adaptable to the needs of the participant and can enable people to talk about such [sensitive] issues” (Matthews & Ross, 2010: 226). According to Matthews and Ross (2010: 225), a semi-structured interview is a “conversation” and provides both the researcher and respondent with control during the interview while allowing each informant to elaborate on their own narrative. The structure that is provided within the semi-structured interview “ensures that the same research topic areas [i.e. reoccurring themes] are covered with all participants” and this method can also function in conjunction with other data collection methods (ibid: 232). At the same time, it should also be said that semi-structured interviews possess a number of disadvantages including the generation of large-scale amounts of ‘raw’ data as well as the time consuming nature of the data gathering process (ibid: 233).

3.3.3 Analysis of Data

There are many ways in which researchers undertake coding in qualitative research, however “[a]ll coding techniques have the purpose of allowing the researcher to simplify and focus on some specific characteristics of the data” (Richards & Morse, 2007: 133). In order to reach the coding phase of data analysis, I first organized the large volume of ‘raw’ data that I had accumulated throughout the key informant interviews through a two-step process which Matthews and Ross (2010: 331-334) characterize as consisting of the labeling and indexing of the data. Once this was complete, I was then able to begin to code and chart my analysis.

The primary analytical approach taken in this investigation was thematic analysis, which Matthews and Ross (2010: 373) define as “a process of working with raw data to identify and interpret key ideas of themes.” In qualitative analysis, coding typically consists of two phases – open/line-by-line coding and focused coding. While line-by-line coding assists the researcher “to make decisions about what kinds of data...to collect next,” focused coding takes previous reappearing codes from the initial coding and uses them to narrow the analytical process (Emerson, 2001: 344). The coding process undertaken in this study consisted of both topic and thematic coding. The first coding technique was used in order to “reflect on all the different ways people discuss particular topics [and] to seek patterns in their responses” (Richards & Morse, 2007: 134). Core to this research, thematic coding was next employed to analyze more abstract ideas and general themes within the data. In the line-by-line phase of each coding technique, initial memos were written to track ideas and insights as they developed. Similarly, during the focused coding stage, ‘integrative memos’ were drafted in order to “elaborate ideas and begin to link or tie codes and bits of data together” (Emerson et al., 1995: 162).

3.4 Questionnaires

At the outset of this research, I had originally anticipated interviewing each of my key informants face-to-face, however this was not possible for all respondents. As a result, the use of questionnaires was an instrumentally useful alternative method for obtaining the required data from the remainder of my key informants. A questionnaire is a set of questions to be answered by participants and typically “enables standardized, relatively structured, data to be gathered” (Matthews & Ross, 2010: 479). While many questionnaires provide a set of answers in which the respondents may choose from, others, such as those used within this study, use more open questions to provide more flexibility to the participants and for more in-depth data to be communicated.

3.4.1 Sample

As identified above, the respondents of the questionnaires were selected based on the key informant technique and thus, similar to the interviews, the product of ‘purposive sampling.’ The sample size for this methodological approach consisted of two very essential participants to this research – the Office of the Refugee Applications Commissioner (ORAC) and the United Nations High Commissioner for Refugees’ (UNHCR) Office in Ireland (see Table 2). It is likely that both of these key organizations preferred this method due to timing constraints, accessibility, confidentiality and the sensitive nature of this topic for both. Initial contact with each of these organizations was originally challenging, however this was eventually overcome through prior networking and referrals.

Table 2. *Key Informants – Questionnaires*

KEY INFORMANT	RATIONALE
1. United Nations High Commissioner for Refugees (UNHCR), Ireland	<ul style="list-style-type: none"> • UNHCR plays a supervisory role in the asylum process in Ireland and possesses a number of statutory powers and functions • The Office provides training and guidance on refugee and asylum law and policy to the Irish government, legal practitioners, non-governmental organizations and many others • UNHCR Ireland sits as an observer of the BeLonGTo Steering Committee on its LGBT Refugees and Asylum Seekers Project and provides advice, support and guidance to the project • The Office also circulates UNHCR positions, papers, reports and guidance notes to the Irish authorities, legal practitioners and NGOs as they become available (UNHCR, 2012)
2. Office of the Refugee Applications Commissioner (ORAC)	ORAC is the government authority responsible for refugee status determination

Similar to the interview guide drafting process, due to both of these organizations having a different role to play within LGBTI asylum in Ireland, individualized questionnaires were created and many of the reoccurring themes within the interviews were transferred into the structure of each questionnaire. These questionnaires were designed as self-completion questionnaires and were sent to, and received from, both respondents via email.

3.4.2 Strengths and Weaknesses

Under these circumstances, the primary utility of the open-ended questionnaire technique, similar to the semi-structured interview, was the allowance of flexibility in the answers recorded. At the same time, this simultaneously acted as a weakness, as it allowed respondents to enter information sparingly, in a few instances. Further, according to Matthews and Ross (2010: 217), a key limitation of this method is that it provides the researcher “only limited access to in-depth experience and feelings.” Nonetheless, another benefit of this research instrument was that, upon receipt, the data was ready to be coded for analysis and additionally, the structured format of the questionnaires ensured that each informant was questioned along similar thematic lines.

3.4.3 Analysis of Data

Due to the selected structure of employing open questions within the questionnaires, the data within the responses received from both ORAC and the UNHCR will be analyzed according to the same standards outlined above for the analysis of each interview transcription (See Section 3.3.3).

3.5 (Critical) Discourse Analysis

For Foucault (1992: 41), discourse is in an “active relation to reality, that language signifies reality in the sense of constructing meanings for it, rather than that discourse is in a passive relation to reality, with language merely referring to objects which are taken to be given in reality.” More specifically, Cantú (2009: 27) notes that Queer theorists have:

built upon Foucault's assertion that sexualities and identities can only be understood through discursive strategies and an 'analytics of power'³⁰ that examines the multiple sites where normalization occurs through discourse and knowledge production.

Therefore, taking these Foucaultian notions into account, the analysis of discourse would be an essential component of this study. Cantú (ibid.) rightly notes in his research that “an ‘analytics of power’ restricted purely to an examination of textual discourse, void of a material context, is obviously limited” – which is the reason this approach is the third prong of this study’s methodological framework. While the bulk of my research focus revolves around the data derived from both the interviews and questionnaires, this third method will shed further light on the near unknowability of LGBTI asylum claims in Ireland.

Discourse analysis can be described as “the study of the way versions of the world, of society, events, and inner psychological worlds are produced in discourse” (Silverman, 2005: 377). Further, keeping in line with this study’s research strategy, discourse analysis is both interpretive and explanatory (Titscher et al., 2000: 146). While there are a number of specialist approaches to discourse analysis, the one most fitting to this research is critical discourse analysis (CDA). According to van Dijk (2008: 85), CDA is a type of discourse analytical research “that primarily studies the way social power abuse, dominance and inequality are enacted, reproduced and resisted by text and talk in the social and political context.” CDA is also said to see itself as “politically involved research with an emancipatory” (Titscher et al., 2000: 147) and “socially transformative agenda” (Locke, 2004: 2). Similar to van Dijk’s (2008) research, I have also chosen to focus this CDA method on power, domination and its consequences – subordination, marginalization and social inequality. The emancipatory element of CDA proves to be an invaluable tool to this

³⁰ According to Foucault (1990: 82), the study of an ‘analytics of power’ is to seek out a “definition of the specific domain formed by relations of power, and toward a determination of the instruments that will make possible its analysis.”

social justice-based study as it coincides with Queer legal theory's action-based tactical framework in which this research is embedded.

According to van Dijk (2008: 87), CDA must theoretically bridge the well-known 'gap' between micro and macro approaches due to the fact that "language use, discourse, verbal interaction and communication belong to the micro level of the social order" while power, dominance and inequality typically belong to a macro-level analysis. In the case of laws, policies and every day practices concerning LGBTI asylum claims' assessment I have bridged these levels through what van Dijk (2008) characterizes as 'actions-process.' Accordingly, "social acts of individual actors are thus constituent parts of group actions and social processes, such as legislation, newsmaking, or the reproduction of racism" (ibid: 88). The characterization of the 'actions-process' abridgement has been imperative to arriving at a unified critical analysis, in this case. In addition, van Dijk (2008: 237) notes that it is not adequate to limit oneself to the linguistic structures of discourse or to autonomous interaction structures of conversation "but to look beyond discourse and examine its cognitive, social, political, cultural and historical environments." The significance of understanding context here is, in part, why background research was included in this report and was also sought out during the interview process and perhaps most importantly, to add greater legitimacy/validity to this research.

3.5.1 Sample

The sample of LGBTI asylum appeals' rulings consisted of nine available Irish rulings (see Table 3), primarily consisting of High Court judicial review hearings as well as one ruling of the RAT, which was made available by the Tribunal during an attempt at transparency in 2006. Each case was selected solely on the basis that it was publicly

accessible and that they were appeal cases concerning LGBTI asylum claims. As the majority of scholarly literature on the topic of Queer asylum focuses on the legal process of RSD, it comes as no surprise that most relevant scholars to this specific research, including Millbank (2009a; 2009b), LaViolette (2004; 2007; 2009), and Arnold (2012; *Forthcoming*1&2) employ what I would describe as a discursive analysis of similar decisions.

While there was an immensely limited sampling frame in which to draw from, these cases all took place during the last six years – dating from present day to 2006. Due to these cases’ recency, it was anticipated that undertaking CDA on these rulings may provide an indication of recent trends concerning the state’s assessment practices. It is essential to note here that each known LGBTI asylum case is unique and is filed upon different circumstances and what is interpreted within these decisions is only part of the claim’s entire narrative. Furthermore, due to privacy issues we do not know about the successful cases. As such, this research does not attempt to provide a complete picture, but rather to analyze and interpret what I can within the confines of this study.

Table 3. RAT/High Court Rulings

CASE	RULING
S.A. (Algeria) v MJELR & RAT [2012] I.E.H.C. (# unspecified)	Leave ³¹ granted to apply for judicial review
E. (Nigeria) v RAT & Ors [2011] I.E.H.C. 149	Leave to apply for judicial review rejected
J.K. (Uganda) v MJE [2011] I.E.H.C. 473	Leave granted

³¹ In order to be granted approval for a judicial review, the appellant must first be granted ‘leave’ to be permitted to apply to judicial review. Essentially, this stage is a pre-hearing to a judicial review hearing.

CASE	RULING
M.A. (Nigeria) v MJELR & Ors [2010] I.E.H.C. 519	Court rejected Minister's decision
A. (Nigeria) v MJELR & Anor [2009] I.E.H.C. 281	Leave rejected
E. (Nigeria) v MJELR & Anor [2008] I.E.H.C. 137	Leave rejected
Y. (Cameroon) v RAT & Ors [2008] I.E.H.C. 424	Leave granted
K. (Georgia) v RAT & Anor [2006] I.E.H.C. 132	Leave granted
Applicant (Algeria) v RAT [unknown] IN: Refugee Appeals Tribunal (2006). "Published decisions of Refugee Appeals Tribunal pursuant to section 19(4A)(a) of the Refugee Act 1996 (as amended)."	Appeal rejected

3.5.2 Strengths and Weaknesses

Discourse analysis, and more specifically the use of critical discourse analysis, is both useful and necessary to this research's attempt at establishing all that is known about the unknown and these texts are key to constructing the foundation upon which LGBTI asylum claims are addressed. Moreover, another implicit strength to this approach is that it analyzes accessible data which assists in the reinforcement of this study's legitimacy. Not only is this data publicly accessible but the added utility of appeals and judicial review proceedings provide not only a means of understanding how higher level courts approach these issues while simultaneously proffering a window into the previous ruling as well. Therefore, these documents represent both text and talk in text form. The designated sample also equally reflects both positive and negative rulings which helps to maintain

balance within the research. According to Matthews and Ross (2010: 392), an added benefit of discourse analysis is that “‘hidden’ meanings in the text can be revealed by asking different questions of the text.” Millbank (2009: 3) also notes in her highly informative comparative case study analysis concerning credibility assessment in PSG refugee determinations that

[a] benefit of drawing upon a subset of cases as part of a broader inquiry into credibility determination is that it can provide a ‘complete’ set of cases on a particular issue to offer both comparative perspectives and information on longitudinal studies.

It is important to note that a weakness of this approach, or more specifically, of this sample, is that these nine cases are merely a small, random sample of the assessment of LGBTI asylum claims. While it is out of the scope of this research to fully determine the validity of their findings, and for that matter, any researcher, due to the staunch secrecy of Ireland’s asylum system, only ORAC staff know the ultimate truth of this study. Another purported weakness in this method could be argued to include my cultural positionality as a non-Irish researcher within this research context. More specifically, Matthews and Ross (2010: 393) argue that “the analysis of a text that is interpreted by a researcher from a different cultural background will be of questionable validity.” However, while this could be argued to be the case in some research contexts, it is expected that his critique could be circumvented, or at minimum challenged, by the nature of the three-pronged approach taken in this research as well as the intensive background investigation that took place at the outset of this study. Finally, it is clear that the use of CDA is not a ‘neutral’ practice, but one that commits researchers “to an engagement in favour of dominated groups in society” (van Dijk, 2008: 6). While a critical approach can lead to accusations of bias, according to van Dijk (2008: 7), “[i]t is crucial to emphasize that a critical and socially committed perspective does not imply less rigorous research.”

3.5.3 Analysis of Data

There are numerous ways in which to undertake critical discourse analysis, however for the purposes of this research, I have followed the framework (see Figure 2) promoted by Norman Fairclough (1995), a prominent CDA scholar. Fairclough’s popular method is structured upon three components: *description*, *interpretation* and *explanation*. This method requires that “linguistic properties are described, the relationship between the productive and interpretative processes of discursive practice and the text is interpreted, and the relationship between discursive and social practice is explained” (Fairclough, 1995: 97). This schematic is highly useful to this research as it helps to illuminate the socially and discursively embedded nature of these rulings’ texts.

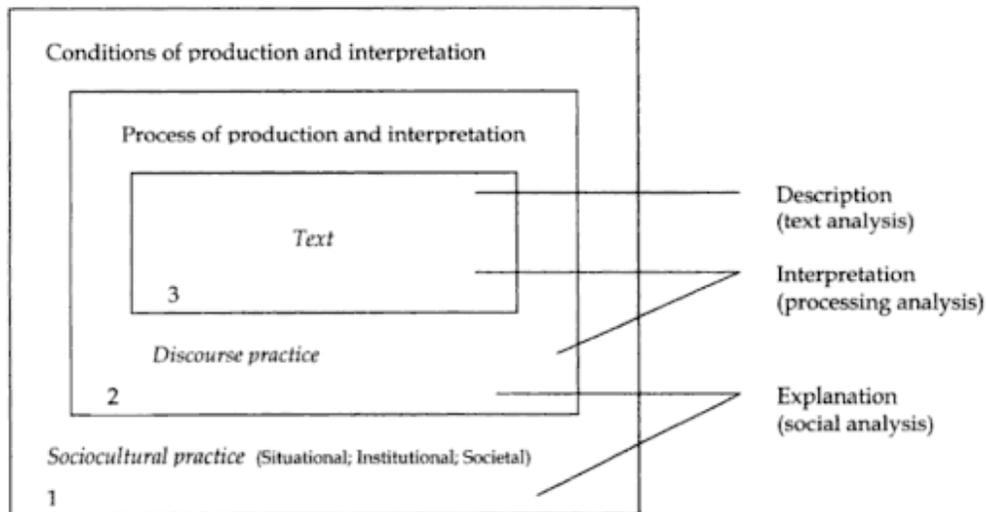


Figure 2. Fairclough’s (1995: 98) dimensions of discourse and discourse analysis

This study’s use of CDA is concerned with the language used (wording) within these nine texts and the way in which patterns of meaning (word meaning) are embedded

within these asylum cases, and thus, within ‘sociocultural practice.’ For Locke (2004: 42), focusing on ‘sociocultural practice’ requires the analysis of “such things as the immediate situation that has given rise to its production and the various sociocultural practices and discursive conditions at both institutional and societal levels that provide a wider contextual relevance.” In addition, overarching the use of these tools of CDA is the necessity of critically engaging with the thematic organization of each of these rulings. Through analyzing the discourse used by these Tribunal members and High Court judges and pairing it with the thematic analyses of each of the ten interview/questionnaire transcriptions, these findings have provided a glimpse into the ‘sociocultural practice’ of the asylum regime in Ireland, concerning asylum claims based on sexual orientation or gender identity.

3.6 Validity & Reliability

An essential concern of social researchers is how closely their studied data is an accurate representation of the social reality in which is being investigated – its *validity*. Validity can be defined as “a measure of research quality, meaning that the data we are planning to gather and work with to address our research questions is a close representation of the aspect of social reality we are studying” (Matthews and Ross, 2010: 53). In the case of this research, I have employed a number of tactics to ensure these findings are as close to an accurate representation of the little known reality of Queer asylum in Ireland. For example, I have included both positive and ‘deviant’ rulings in my data and made note of both instances during the interview process – a process which Silverman (2005: 212) would describe as ‘deviant-case analysis.’ I have also laid out the grounds for including certain instances and not others and, as outlined above, have taken multiple steps to ensuring the

accuracy of both the coding and discourse analysis processes throughout the data analysis process. In order to ensure accuracy of my key informants' responses, I shared the relevant transcriptions (where requested) with them prior to inclusion in my findings, which Silverman (*ibid.*) would define as 'respondent validation.'

Another quality assurance step taken within this study was the practice of 'comprehensive data treatment' in which "all cases of data are incorporated in the analysis" (*ibid.*: 215). This, however, may also be perceived as a puncture in the validity of this study as there was limited data available to draw from in the first place. Finally, the last approach, and perhaps most contentiously debated, was the use of 'triangulation' of my methodological framework. By taking a 'triangulated'³² approach, this investigation has sought to utilize "a measure of research quality, meaning that if different types of data are collected to address the same research question, each set of data can be used to check the findings from the others" (Matthews & Ross, 2010: 145). Accordingly, in order to be considered triangulated, studies "must encounter another in order to challenge it (for clarification), illuminate it (add to it conceptually or theoretically), or verify it (provide the same conclusions)" (Richards & Morse, 2007: 91). Further, according to Emerson (2001: 384), "validity is claimed because replication of the findings by different methods minimizes the possibility that the findings may be the result of particular measurement biases."

Another essential concern for social researchers is the reliability of their data, which can be defined as a measure of research quality where the same results could be expected to be reproduced ('replicability') by either the researcher or another researcher if carried out

³² Although definitions of the term 'triangulation' and its utility are contested amongst researchers, for the purposes of this research, I have followed the approach taken by Richards and Morse (2007: 91), Matthews and Ross (2010: 53) and Silverman (2005: 380).

in the same manner (Matthews & Ross, 2010: 53). The use of triangulation was intended to ensure further reliability. Overall, reliability of this data is ensured through the careful, consistent and transparent process outlined above.

3.7 Ethics

In November 2011, this study received official approval from the University College Dublin's (UCD) Human Research Ethics Committee (HREC). In addition, this research is in compliance with the *UCD Code of Good Practice in Research (2010)* as well as the *UCD HREC Summary of Guidelines and Policy for Ethical Approval of Research involving Human Subjects (2008)*.

In order to ensure ethical engagement with each informant, I designed a well-structured 'informed consent' form (see Appendix B). Prior to requiring each participant to complete this form, I ensured that each individual understood the purpose of the research, research procedures, risks and benefits involved, confidentiality and the voluntary nature of this research. As such, according to the UCD Summary Guidelines (2008: 7), "[t]his process is ongoing, beginning before consent forms are signed and continuing until the subject is no longer involved in the study."

As previously mentioned, this study did not interview asylum seekers and due to the fact that this study 'interviewed upwards,' I did not interview any 'vulnerable groups,'³³ as defined in the UCD Summary Guidelines. All applicants gave permission for the use of their name in this research, however, one informant and I mutually decided to refer to him as 'Mr. S.' due to the personal nature of his narrative. Mr. S., whom I am very grateful to

³³ Vulnerable groups include children, students, people who have a language difficulty, persons who have an intellectual or mental impairment, certain groups of elderly people, persons who are incarcerated, and people in dependent or unequal relationships (UCD, 2008: 8).

for being willing to share his insight, experienced this process during the time in which a previous partner of his had sought asylum based on his sexual orientation in Ireland.

3.8 Summary

Valdes' methodological framework of eight non-exhaustive 'tactics' informed the overall critical case study research design and exploratory/evaluative strategy of this research in its critical approach to the accumulated data. The designated qualitative research methods – semi-structured interviews, questionnaires, and critical discourse analysis – employed with non-state, state and supranational key informants helped to deconstruct the remaining heteronormativity of the state's asylum system, assess the extent to which ORAC effectively assesses LGBTI asylum claims, while also simultaneously ensuring that the validity and reliability of this research was upheld.

4. FINDINGS & ANALYSIS

4.1 Overview

As indicated above, the experience with emigration of sexual minorities is a very closely connected one in the Irish context³⁴ and for that reason, according to the Gay and Lesbian Equality Network's (GLEN) Director, Brian Sheehan (2012), "asylum made sense to us...refugee status made sense to us. You wouldn't have been a refugee in England, for example, but you were a refugee in mind." Responsible for the delivery of equality on a legislative basis, GLEN (at that time, voluntary) was the key organization involved in lobbying the government to include reference to sexual orientation in the *Refugee Act, 1996*. According to Rose (2012), its inclusion was a 'classic Irish case' as it was included through a mere 'conversation' with the responsible Minister at the time, whom Rose knew. However, this conversation was preceded by an immense campaign for decriminalization only a few years prior.

This uniquely rapid shift from repression to 'acceptance' and international protection is awe-inspiring; however, according to Dr. Fergus Ryan (2012), there is a gap between the rhetoric and the reality, meaning that "while on paper [the law], a person who is gay or lesbian, for example, may have a claim, establishing that claim can be problematic." As a result of this disconnect and the unique needs of these invisible and marginalized individuals, BeLonG To, an LGBT youth organization, recently launched a

³⁴ In 2010, a transgender woman from Northern Ireland, by the name of Tanya Bloomfield, filed an asylum claim in Canada on the basis of seeking protection as a transgendered person (CBC News, 2010). Although this claim referred to Northern Ireland, not the Republic of Ireland, and rather uncommon in present day, it highlights the fact that this relationship between sexual minorities and emigration is ever-present even today amongst 'Western' states.

dedicated pilot project to “improve the safety and quality of life of LGBT asylum seekers and refugees” with a two-tiered approach consisting of mainstreaming awareness of LGBT asylum seekers and refugees issues “in the statutory and voluntary services that work with all asylum seekers and refugees or LGBT communities” and one-to-one support to asylum seeking and refugee youth (M. Ryan, 2012). According to both Ms. Ryan (2012) and Brazil, (2012) there is a general disconnect where LGBT organizations know little about asylum and refugee issues while asylum/refugee organizations and legal practitioners know little about LGBT issues, which can be extended to the state level.

With that said, this research’s data analysis processes revealed the following overlapping and highly interconnected themes relevant to the assessment of LGBTI asylum claims in Irish law, policy and every day practice: general issues affecting all asylum claims; credibility assessment, stereotyping and late disclosure; discretion and internal relocation requirements; and, training and quality assurance mechanisms. Valdes’ tactical framework informed the overall research efforts, including, though not limited to: fighting conflationary stereotypes; use of narratives; and transcending privacy.

4.2 General Issues of Sweeping Subordination

It is clear that there are a number of general issues either explicitly enshrined within the state’s refugee law or related to its implementation that affect all asylum seekers in Ireland, and arguably more so in the particularities of Queer asylum claims. These issues include a staggering level of internal skepticism, lack of transparency, cultural insensitivity and systemic structural barriers. Before discussing the specific themes most specific to

LGBTI claims, it is essential to first briefly analyze these broader instruments of subordination.

4.2.1 'Culture of Disbelief'

As mentioned earlier, firmly entrenched within the state's asylum system is a 'culture of disbelief' (F. Ryan, 2012; Arnold, 2012; M. Ryan, 2012) which according to Brazil (2012), has even been described by some as a 'culture of contempt.' While present to some extent across the European Union, this chronic disbelief is "a particular problem in Ireland" (Arnold, 2012) and, as one might expect, has had deleterious effects on LGBTI asylum claims. The immensely skeptical nature of the asylum assessment process is, arguably in part, responsible for the admonishingly high refusal rate of asylum applications in Ireland. With one of the lowest recognition rates across Europe, according to Brazil (2012), until last year, Ireland had a refusal rate of 99% of all claims filed with ORAC. It is immensely difficult to imagine that 99% of all claims filed in Ireland are indeed 'bogus.' Interestingly state officials often publicly profess that the system does not receive the right kind of refugees and thus further demonizing asylum seekers. Yet according to the IRC (2011), it is that "people seeking protection in Ireland simply do not get the 'right' kind of protection system." Therefore, there may be a degree of truth to state discourse concerning false claims as there is simply a clear lack of entry alternatives (see 4.2.4 for further structural barriers)(Brazil, 2012; F. Ryan, 2012; Arnold, 2012), yet not surprisingly, those Ministers decrying 'false' applications continuously fail to identify that such claims are, in part, the result of a troubled and inadequate system. Therefore, while false claims increase disbelief and in turn further weaken valid LGBTI claims.

4.2.2 Lack of Transparency

This challenging reality is only compounded by the state's complete lack of transparency regarding its refugee system, which prevents academics, journalists, NGOs and individual citizens from engaging with the process and highlighting its destructive flaws in efforts to spur government improvement. Interestingly statistics from ORAC are not made publicly available concerning the number of LGBTI asylum claims filed in Ireland. This secrecy can be described as characteristic of Dr. Ryan's notion of a 'discourse of silence' which is illustrative in itself of the state's handling of these claims. It can be argued that this silence contributes to further muting the voice of these claimants even further and fosters their continued subordination at the hands of the state. The state is very careful to preserve this secretive and opaque position and for Brazil (2012), "on a cynical level, I would say that there is a certain level of institutional opposition³⁵ to transparency because of the consequences" for ORAC and the RAT in that they would be held accountable for unjustifiable rulings in some cases. As a result, though unsuccessful, Ireland's Information Commissioner, publicly called for the ORAC to be subject to Freedom of Information (FOI) requests, allowing the public to gain access and ask questions to this secretive body (Anon1, 2011). Interestingly, the state has "never actually justified" (Brazil, 2012) this position of silence and there is no official statement on this troublesome policy. This lack of transparency stands as one of the primary barriers to all

³⁵ The *Refugee Act, 1996* originally prohibited the publication of any information in relation to asylum rulings without the permission of the Minister of Justice; however, this was challenged in a High Court appeal and subsequently overturned in a Supreme Court decision in 2006. As a result, asylum applicants and their legal practitioners gained the right to access previous decisions of the RAT. For Mr. Justice Geoghegan, "it was blindingly obvious that fair procedures required some reasonable mechanism for achieving consistency in both the interpretation and the application of the law" (Bray & O'Loughlin, 2006).

asylum seekers in Ireland and ensures the continued subordination of these already marginalized and vulnerable individuals before the law, while they seek state protection within a theoretically ‘fair’ system. By preventing the release of both the (redacted) narratives of the individual asylum seekers and those of the court proceedings, the state prevents the persuasion of decision-makers and the responsiveness to these individuals lived realities (Valdes, 1995: 366).

4.2.3 Cultural Insensitivity

In addition, another core implication relevant to all claimants is the lack of cultural sensitivity of state assessors, which is also particularly troublesome for LGBTI applicants when trying to prove their sexuality through means that are foreign to the adjudicator. For instance, during the judicial review process of the non-LGBTI case of *Imafu v MJELR* (2005),³⁶ the appellant argued that the RAT made an unreasonable evaluation of her credibility based on her demeanour, as it was “based on presumptions as to how a witness should tell her story, and that it lacked an understanding of cultural diversity” in the way in which people construct their stories about their relevant experiences. More specifically, the Tribunal member’s rejection ruling on the basis of ‘pure credibility’ was in part relied upon the negative interpretation of a repeated mannerism of Imafu’s in which she repeatedly stated “I will tell you” as well as when asked a ‘difficult’ question, she would answer a different question (*ibid.*). As will be demonstrated in the sections to follow, this lack of cultural understanding and sensitivity is particularly at the core of the continued vulnerability of LGBTI asylum claims during the implementation of Irish refugee law.

³⁶ *Imafu v MJELR* (2005) was an asylum case filed by a Nigerian national based primarily on a fear of persecution upon returning home due to her alleged experience as a victim of human trafficking from Nigeria to Italy where she was forced into prostitution for 9 years before eventually escaping to Ireland.

4.2.4 Institutional/Structural Barriers to Emancipation

While the above three factors of disbelief, lack of transparency and cultural insensitivity are more social impediments that can be addressed through greater education, training, and slight internal alterations, the following barriers are deeply embedded within the national, regional and international asylum system itself. The very structure of the state's asylum system (i.e. the ORAC and RAT) established under the *Refugee Act, 1996* has been criticized as being both inefficient and unfair, among other criticisms. According to Rose (2012), the Irish “High Court and Supreme Court have challenged a lot of the [lower-level] decisions³⁷ and have said that they are unacceptable.” These court challenges are the result of judicial reviews launched by failed asylum claims, which according to the IRC could be lowered with the introduction of early legal advice (Anon2, 2011). According to Duffy (2012) in the cases of asylum-seeking youth that he has worked with, in the initial stage of application claimants are advised by ORAC to provide a basic outline of their case, however when these individuals want to later expand on the different issues experienced, they have often been told that it's not necessary. For Brazil (2012), this is a core difficulty in the Irish asylum system that affects all asylum applicants because

...by the time you meet your client, they've already gone through an interview so their narrative has already been framed and the difficulty is that its been framed in the absence of legal advice... often not in a helpful way. So the difficulty at the appeals stage, which is where lawyers come in, is that you're trying to undo a lot of the damage that has been done at that stage.

At the regional level, there are difficulties related to the PSG category itself in that it does not include gender identity (Arnold, 2012) and can be further limiting in the sense that

³⁷ Interestingly, according to Millbank (2009: 6), “numerous commentators contend that in practice there has been consistent neglect of the ‘benefit of the doubt’ principle [as outlined in the UNHCR Handbook] in lower-level decision-making.”

it also infers that sexual minorities are a cohesive group in any society (F. Ryan, 2012). While this notion of cohesion of a singular Queer grouping of individuals helps claims succeed, this formulation is also simultaneously problematic. According to EU law, under the Council Directive 2004/83/EC of April 29, 2004 *on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* (herein Qualification Directive) membership of a PSG is expressly defined to include both an ‘innate characteristic’ and a ‘distinct identity’ (EU, 2004: 17). The latter element of this definition can be argued to insinuate a common identity and as a result, that “social perception element under a PSG is rather limiting for sexual minority claims” (Arnold, 2012) as it almost enshrines the ability of European states to rely on stereotyping. Valdes (1995: 366) notes that in such cases, we must continually remind ourselves of “Queer diversities and realities even as we pursue Queer commonalities and theories,” to avoid the pitfalls of essentialism. The problem is that this idea of a ‘distinct identity’ may evoke crippling ramifications for valid LGBTI claims who do not present themselves in a stereotypically ‘Western,’ Queer identity, while also lubricating an avenue for false LGBTI claims that illicit a ‘pink parade’ throughout the assessment process.

Lastly, at the international level, Brazil (2012) contends that the Geneva Convention is a “potentially hypocritical instrument” in that it effectively admonishes less ‘developed’ states for poor human rights records, when ‘developed’ states have their own national human rights issues. As we will see in the following sections, Ireland is no exception to this double standard.

4.3 Credibility Assessment, Stereotyping & Late Disclosure

While also highly relevant to all claims, the issue of each claim's truth, or credibility, warrants particular attention for claims filed on the grounds of sexual orientation or gender identity largely due to their socially-based and inherently individualized nature. Common to all asylum claims, sexuality claims "rest largely [and sometimes solely] upon personal testimony, involve a major cultural gulf between applicant and decision-maker, difficulties and errors in communication and the challenge of speaking about painful and intensely personal experiences" (Millbank, 2009: 5).

The UNHCR Gender Guidelines (2008: 16) state that applicants should be given the 'benefit of the doubt' and self-identification as LGBT should be accepted as the individual's sexual orientation. Unfortunately, these Guidelines are 'soft law' and according to the interpretation of key informant information and the discourse of available case rulings, are not adhered to by all adjudicators in Ireland. It is important to note that some asylum seekers and refugees have described the assessment process as 'confusing,' 'intimidating,' 'invasive,' and 'hostile,' yet at the same time, other claimants have indicated "relatively positive experiences where it's been taken as a given that their sexual orientation is as they've identified"³⁸ (Duffy, 2012; M. Ryan, 2012; Mr. S, 2012). While taking particular note that numerous claims have indeed been successful, unfortunately one cannot determine by what means approval was achieved due to the system's stark opacity.

These varied experiences elude to the fact that on the one hand there are "some decision-makers who are making good, informed decisions which comply with relevant

³⁸ According to Duffy (2012), positive rulings have often been the result of individuals being able to provide evidence in support of their sexual orientation, including attendance at an LGBT organization such as BeLonG To.

international guidelines...and then you have some Tribunal members, for instance, who are just fundamentally ignorant” (Brazil, 2012) and failing to implement best ‘practices.’ Interestingly, ORAC (2012) describes the asylum interview as “an interactive process where the applicant is helped to explain his or her fear of persecution;” however, this description is clearly in opposition to the account provided by ‘Mr. S.’ (2012) regarding his past partner’s experience as a gay asylum seeker who found the process to be highly impersonal and “he felt that they [ORAC interviewers] were almost answering the questions for him and... asking irrelevant questions.”

According to Mr. Justice Ryan, “[t]here are obvious evidential difficulties in assessing claims of persecution by reason of sexual orientation (M.A. v MJELR, 2010: 7). This study has indicated that such difficulties for state assessors often arise, in such cases, where applicants either do not meet institutionalized stereotypes of sexual minorities or disclose their actual grounds of persecution as being related to their sexual orientation at a later stage in the applicant’s asylum system.

4.3.1 Stereotyping

The inconsistency characteristic of these claims aligns with Millbank’s (2009: 4) contention that credibility assessment has “played an increasingly major role in negative determinations,” in a number of countries, on the basis that the applicant was not actually a sexual minority. Asylum seekers must satisfy the state’s immensely high threshold³⁹ of

³⁹ While a person may be discriminated against or experience harassment on the basis of their sexual orientation or gender identity, this may not necessarily be sufficient to constitute persecution. For instance, according to Lord Hope in HJ (Iran) & HT (Cameroon), the Geneva Convention “is not designated to guarantee for the claimant the same standard of human rights protections in his country of origin” as would exist in the country in which the claim is filed. Evidence indicates that in some cases, regardless of whether or not sexual minorities are jailed, or even sentenced to death (i.e. Nigeria) in their country of origin, as applicant’s claim may still be rejected.

determining persecution, or the fear thereof. The establishment of one's credibility as a Queer applicant is reliant upon meeting what the state deems as acceptable – often based on their appearance, demeanour, LGBTI knowledge and sexual experiences.⁴⁰ As identified earlier in this research, according to Collier (2010: 37), law reproduces and privileges a distinctive masculine form, and in this case, in terms of the gay male asylum seeker, for example, is the stereotypically Western understanding of a recognizable homosexual. To that end, this masculine form, endorsed by the majority, gains greater likelihood of obtaining refugee status (thus, arguably a form of privilege yet simultaneous subordination) while those that do not conform to this distinctive archetype are further marginalized.

The experience of being LGBTI, of course, is a highly individualized experience and as LaViolette (2004: 996) rightly argues, there is no uniform way in which sexual minorities recognize and/or act on their sexual orientation or gender identity. Nonetheless, there are a number of case rulings that highlight that the Irish state seemingly often adheres to a reductive, and stereotypically 'Western,' notion of sexual difference. For instance, Brazil (2012) as a barrister herself, points out that the number one stereotype is physical appearance and notes that "it's not a question...sometimes you will see the person being sized up, just literally up and down" and whether applicants "present to a particular stereotyped ideal." For instance, a 2010 appeal made by an Algerian gay man to the RAT was rejected on the basis that the decision-maker had the view that the applicant failed to present himself as a homosexual. The Tribunal member stated, "from *his demeanour* (at the appeal), I have no doubt that the applicant advanced the claim that he is a homosexual to

⁴⁰ In contrast, according to Chelvan (2011: 2), the best approach of questioning is to address core issues, including: difference, stigma, shame and harm – the 'DSSH' model – which he developed to assist in the analysis of these sensitive narratives.

enhance his application to be declared a refugee” (Jansen & Spijkerboer, 2011: 61). This ruling was clearly flawed as it was reliant on a stereotypical conception of a ‘gay demeanour,’ or the lack thereof, in this claim and failed to take the Gender Guidelines (or possible cultural differences) into account. The deployment of such conflationary stereotypes is sadly common amongst the rulings analyzed, which according to Valdes (1995: 365) “facilitate[s] the manufacture and use of socio-sexual identity to devalue and subordinate sexual minorities.”⁴¹

In *E. (Nigeria) v MJELR* (2008), the appellant was denied asylum on the basis that her application lacked credibility, including her membership of a PSG on the basis of being a lesbian woman in Nigeria. This ruling contended that the applicant “never practiced a homosexual lifestyle other than in her long term relationship with her deceased partner,” that she had not demonstrated that she would be identifiable as a lesbian in Nigerian society and because she was deemed to have “no knowledge of Nigerian law relating to homosexual persons and their rights” (ibid: 3). Further, ORAC’s authorized officer also noted that she lacked involvement in “homosexual groups” and since her long-term partner was deceased (due to their house being burned down by members of the community) her fear of persecution was unfounded. This ruling was problematic for a number of reasons as it suggested that the applicant live discreetly, be open enough to have ‘gay knowledge’ and/or involvement in ‘homosexual groups, not to mention the member’s assertion that now that her partner had died, she would not be targeted as a lesbian. This ruling’s approach demonstrates an immensely reductive notion of sexual difference in effectively reducing it,

⁴¹ Throughout the case rulings analyzed during this study’s data analysis process, a number of reoccurring themes and phraseology were noted, including: the ‘flaunting of one’s homosexuality,’ ‘effeminate men,’ ‘homosexual lifestyle,’ ‘demeanour,’ ‘tolerated,’ ‘run foul of the law,’ etc. In the context in which such references were used, it was clear that there was a distinct lack of understanding of sexual minorities’ experiences and difference while hinting at the notion of the ever-present, heteronormativity.

in this case, to intimate relations with her partner. As such, Brazil (2012) noted that there is often also “a focus on sexual acts as opposed to sexual orientation,” requiring applicants to prove their alleged sexual orientation by detailing their sexual experience.⁴² This approach is highly erroneous and discriminatory as sexuality, of course, it not just about ‘privacy,’ “but about the ability to function in various social, economic, and political settings on equal terms” (Valdes, 1995: 370).

During the recent judicial review proceedings in S.A. (Algeria) v MJELR & RAT (2012), a number of equally troubling issues were revealed. First, the country of origin information (COI) that the Tribunal member relied upon to justify that the appellant was not at risk of persecution stated that “only extremely *effeminate men* are recognized as homosexuals in Nigeria” (ibid: 2).⁴³ Such narrow approaches, framed upon the hetero-homo binary take the view that only ‘effeminate men’ are at risk of persecution and those that do not fit this social perception do not experience radically detrimental harm either psychologically or socially. During the case’s request to leave proceedings, Mr. Justice Hogan highlighted the equally disconcerting revelation that the Tribunal member’s conclusion was based on the notion that the applicant would come to no harm if he adopted a discreet ‘homosexual lifestyle’ (see section 4.4) and not ‘flaunt his homosexuality.’ Though limited in number, the above-outlined LGBTI asylum case rulings present a

⁴² The fact that you can be a sexual minority without sexual experience, especially in the case of LGBTI asylum-seeking youth, is clearly overlooked in such cases and in that sense reduces sexual difference to sexual acts.

⁴³ The applicant, a Cameroonian national, in the case of Y. v RAT & Ors (2008) sought refuge on the grounds of fear that if returned to Cameroon he would be persecuted on account of imposed political opinions and on account of the (incorrect) perception the he is a homosexual. It was demonstrated in the case’s judicial review proceedings that the applicant’s claim was rejected by the RAT solely on credibility grounds and was argued to have, in part, contended that the Tribunal member equated consensual homosexual activity with male rape (ibid: 5).

relatively consistent and astoundingly biased stereotypical approach to ‘measuring’ the validity of LGBTI asylum applications.

4.3.2 Late Disclosure

Another key area that often negatively affects a claim’s credibility is the late disclosure of one’s sexual orientation or gender identity as the basis for one’s claim. According to Jansen & Spijkerboer (2011: 65), “[r]aising the issue of sexual orientation or gender identity at a later stage (i.e. during the appeal stage) often casts doubt on the applicant’s credibility and therefore such late claims can easily be rejected.” For instance, it wasn’t until the appeal proceedings of *J.K. (Uganda) v MJELR* (2011: 1), when the applicant first divulged the fact that she had formed ‘homosexual relationships’ with two other women since arriving in Ireland and feared she would be persecuted against upon return to Uganda. Under the circumstances, J.K.’s solicitors requested that she be permitted to file a fresh application to ORAC; however, the Minister rejected this request on the basis that she “failed to advance a case based on her homosexuality at an appropriate stage in the process, despite numerous opportunities to do so” (ibid: 4). The Minister further noted that “[n]o valid reason has been provided why the applicant failed to disclose her alleged homosexuality on this occasion” despite the fact she emphasized that she suppressed her homosexuality until her arrival in Ireland, and even then, only began to by a gradual extent.⁴⁴ This decision figuratively rejected the challenges experienced by sexual minorities

⁴⁴ In comparison, it is important to note a known positive decision that was reached in a 2005 appeal made by an Egyptian gay man. In its ruling, the RAT overturned ORAC’s original dismissive decision following the applicant’s explanation of his late disclosure – that being the impact of the persecution he suffered in his country of origin, fear of arrest and disclosure of his sexual orientation in Ireland (Jansen & Spijkerboer, 2011: 68).

when coming to terms with their difference as well as varied cultural experiences related to homosexuality.

As evidenced through the engagement with key informants, the discourse used within these asylum cases and their subsequent rulings, even though each assessor is obliged to uphold both hard and soft law requirements concerning (LGBTI) asylum application assessment procedures, it is arguably the hypocritical and heteronormative nature of the Geneva Convention, the Qualification Directive and Ireland's national asylum system which enable (as identified above) inconsistent practice. Essentially the indicated practices bar those seeking asylum based on their sexual orientation or gender identity that do not align with the state's own Western-specific and immensely discriminatory conception of sexual difference, which in turn leads to rulings recommending failed claimants to live discreetly, relocate within their country of origin and/or seek internal protection.

4.4 Discretion & Internal Relocation/Protection

According to the *Fleeing Homophobia* Report and indicated through other available data, Ireland is known to apply the discretion requirement to its LGBTI asylum claims. When directly questioned about this evidence, ORAC (2012) avoided the opportunity to acknowledge or challenge this finding and redirected their response in stating, “[o]ur policy is that each asylum application case is decided on its own individual merits.” Nonetheless, Brazil (2012) was recently notified that the state will no longer impose discretionary reasoning, but as she rightly points out, “of course, we don’t have transparency...and so we

don't have an official policy document" that outlines this supposed change. As identified earlier, such a development often leads back to credibility issues "and the issues still remain in trying to actually succeed in trying to make the claim" (Brazil, 2012; Millbank, 2009: 404). Nonetheless, the UNHCR (2012) does contend that their "understanding is that Ireland does not now follow the discretion requirement." Yet it is important to note that the provided response was only asserted on the basis of the High Court decision in *M.A. v MJELR* (2010), which referred to the 2010 UK ruling in *HJ (Iran) & HT (Cameroon) v Secretary of State*. The *M.A.* (2010) ruling asserted that "[b]eing compelled to forsake or conceal one's sexual orientation and gender identity, where this is instigated or condoned by the State, may amount to persecution." While a seemingly landmark ruling in Ireland's approach to these claims, the state has a reputation of applying inconsistent rulings to LGBTI asylum cases and, though significant, we cannot solely rely on this court decision in our understanding of the state's current engagement with the discretion requirement. More specifically this level of inconsistency, characteristic of the state's asylum system, was clearly illustrated in the judicial review proceedings in *E. (Nigeria) v RAT & Ors* (2011), delivered a mere four and a half months after the *M.A.* ruling. This case indicated that the state continues to implement, at least to some degree, discretionary reasoning. While the *RAT's* decision was largely based on credibility, the Tribunal also held that the applicant could live discreetly and avail himself to internal relocation within southern Nigeria - as its northern states sentence individuals convicted of same-sex sexual acts to death by stoning, under Islamic Sharia law (BBC, 2007). It was suggested that the applicant conceal his sexual orientation and move to Lagos or Abuja, as he failed to demonstrate that he was persecuted by the authorities because of his homosexuality despite that Nigeria's COI

indicated this can be the case. Further, this negative ruling was also supported by COI information that noted

...gay men living in the larger cities of Nigeria may not have reason to fear persecution, as long as they do not present themselves as gay men in public. Gay men that are wealthier or more influential than the ordinary person may be able to bribe the police should they be accused or suspected of homosexual acts.

The use of this sort of information to support the rejection of a claim is none other than deplorable. First off, not only is it difficult to imagine that one may live discreetly where a sizeable part of the country of origin sentences homosexuals to death, it is also immensely problematic to elude to the notion that wealth and status can protect an individual from persecution, or the fear thereof.

In contrast, Dr. Ryan (2012) poignantly notes that “given the fact that *even in* Ireland, sexual minorities still feel compelled to be discreet and behave in a certain way, it’s arguable that somebody who may not present as not being stereotypically gay should not necessarily be written off” and required to return to their country of origin and risk further persecution. Similarly, during the RAT proceedings of *Algeria v RAT* (2006: 14), the applicant’s claim for asylum was rejected on the basis that the available COI indicated that “a *homosexual lifestyle* is possible provided discretion is exercised” and in Algeria’s larger urban centres there are said to be public meeting places “for homosexuals and transvestites which are “*tolerated* by the Authorities.” Further, during this case’s appeal proceedings it was revealed that the applicant had “found the Irish attitude to homosexuality stifling and consequently he does not admit to being a homosexual” (ibid: 13). It was noted that “*even in* Ireland” he felt marginalized and fearful of being ostracized, and therefore, needed “to address deeper more personal issues...” (ibid.). These troubling

excerpts of the discourse used indicate that the assertion that Ireland also repressed its LGBT community was unfounded, as if it could not be viewed as such, and was deflected back on the applicant as his own internal struggle as opposed to a wider issue of the socio-cultural experience of sexual minorities in Ireland. Finally, it must also be noted that the Tribunal member even went so far as to compare the human rights realities of Ireland to Algeria in noting that “*even* in a number of *first world* countries, homosexuality... was only removed from the statute books in Ireland in 1993 even though no prosecutions had occurred for many years” (ibid: 14). However, the assessor failed to simultaneously, and arguably conveniently, recognize that so-called ‘first world’ countries such as Ireland often, at a minimum, have other human rights protections and support mechanisms in place while these are less common in states such as Algeria. As a result, the Tribunal member concluded that the claimant’s “fundamental difficulties relate to the fact that he is homosexual *per se* regardless of whether he resides in Ireland or Algeria” (ibid: 13). What is highly troubling is that this case (Algeria v RAT) was one of the few decisions selected for publication in 2006 by the RAT and if this ruling was selected, it is likely that other rulings are even more discriminatory and reliant upon Western stereotypes and discretionary reasoning. For example, in an appeal made to the RAT in 2009, a Ugandan lesbian woman’s claim was rejected and the Tribunal noted that she had not been discriminated in her native Uganda in any way, “*save*, that she kept her sexuality secret.” This statement indicates that the applicant was solely discriminating herself by keeping it secret – failing to recognize the causes of the suppression of one’s sexual difference. The Tribunal member goes on to argue that “there are gay people throughout the world who keep their sexuality secret, and do not *choose* to declare their sexuality and/or to have their sexuality identify them” (Jansen & Spijkerboer, 2011: 44). These findings represent the

historic failure of the state in its reduction of homosexuality to the privacy of one's home, and by extension, bedroom. The fact that sexual minorities in Ireland must still live with some degree of discretion (though characteristic of all countries) demonstrates that the 'privacy' of the heteronormatively-informed majority is protected by the surveillance and therefore continued subordination of its sexual minorities.

4.5 Training/Quality Assurance

Another key, reoccurring theme present within the coding process and inferred during the engagement with CDA, was that of the significance of training of decision-makers and quality assurance (QA) mechanisms concerning the assessment of LGBTI claims. According to ORAC (2012), the Office provides a "comprehensive program of training" for caseworkers who are responsible for the RSD process, including interviewing techniques for vulnerable applicants such as individuals persecuted on the basis of their sexual orientation. There is no set guidelines of specific questions to ask LGBTI asylum seekers as evidence demonstrates that "[i]t is dependent on the specific case worker" (M. Ryan, 2012). The UNHCR (2012) also "provides guidance on refugee law and policy to the Irish government" as well as the development of training, in conjunction with ORAC, on a range of issues that are "in line with international best practice" (ORAC, 2012). Further, according to Brazil (2012), the decision-making authorities in the asylum process in Ireland "rely on the UNHCR training almost... and say well, we have been trained by the UNHCR. It's, of course, not just the training but it's the application of that training."⁴⁵ ORAC (2012)

⁴⁵ In a similar vein, Arnold (2012) notes that the Department of Justice often uses the *Immigration, Residence and Protection (IRP) Bill*, which has been in a perpetual state of redrafting (first introduced in 2006), as a crutch for its current shortcomings.

also contends that it has QA systems in place but failed to elaborate on what type of mechanisms are employed, however noted that the Office reviews its investigation practices on an ongoing basis.

However, this study's findings suggest that these training and QA systems are either lacking in effectiveness or being applied incorrectly or, at a minimum, inconsistently by individual staff. It is believed that the latter argument holds greater relevance in this case. Nonetheless, due to the evident reliance on LGBTI stereotypes throughout the asylum process, "there's maybe a need for education in relation to what it is to be gay and also what it is to be gay in these different countries because the experience can be very different" (F. Ryan, 2012) from the experience of some Irish national sexual minorities. For Valdes (1995: 372), this would also include "the experiences and interests of all sexual minorities, including the still-marginal treatment of bisexual and trans/bi-gendered persons and communities." On a more positive note, it does appear that ORAC "has become more open to training" and are "opening themselves up to trying to receive expertise from organizations on target groups that they're not particularly familiar working with," including sexual minorities (M. Ryan, 2012).⁴⁶

According to BeLonG To, an "unintended consequence of the project" conveyed by at least one NGO following a recent training, session was that it was also "very good for the organizational culture of that organization, and it created a forum for staff to openly discuss LGBT issues themselves" (M. Ryan, 2012). In a similar vein, BeLonG To's work is indicative of Brazil's (2012) position that "decision-makers need to be very careful to

⁴⁶ It is also encouraging to note that BeLonG To's LGBT Refugee and Asylum Seekers Project was invited by the Resettlement Unit, which is also in the Office for the Promotion of Migrant Integration in the Department of Justice, to train the staff of their whole unit, which is "also useful in terms of promoting the project within the government" (M. Ryan, 2012).

interrogate themselves for their own heteronormativity, which they do not because they're not aware of it." This notion aligns with what Valdes (1997/1998: 1458) describes as the process of internalization and self-critical awareness in anti-subordination projects to further galvanize social justice. Perhaps without undergoing this internal interrogation process, these assessors will never rid themselves of their biases, misunderstandings and in some cases, ignorance. For Valdes (ibid), "[s]ocial justice integrity requires self-awareness and self-critique because anti-subordination scholars [and by extension, in this case asylum claims assessors] must resist social injustice...and avoid deploying existing or new structures of subordination."

4.6 Summary

The effective engagement with, and assessment of, LGBTI asylum claims has been invariably inconsistent with some asylum seekers and refugees noting a 'hostile' and 'invasive' assessment process and others have had rather positive experiences. As a result, the analysis of this research's findings exhibited that there are a number of issues that affect all asylum applications, further impeding Queer claims, including: the Irish system's 'culture of disbelief;' its lack of transparency and cultural sensitivity; and, numerous institutional/structural barriers regarding the broader system itself. More specifically, it was also found that issues of stereotyping, late disclosure, discretion and internal relocation negatively affect LGBTI claims' credibility in the eyes of the heteropatriarchal Irish state. It was also asserted that issues of training and QA mechanisms are essential in adequately assessing how, and by what means, state assessors fulfill their obligations to protect sexual minorities fleeing persecution.

These findings were further developed and strengthened through the employment of Valdes' eight-point tactical framework, with particular attention to the following strategies: fighting conflationary stereotypes; using narratives; and, transcending privacy.

This confrontation illustrated that the Irish state continues to erroneously implement the protection of LGBTI asylum seekers in an inconsistent manner, and thus reinforce the state's heteronormativity. To that end, it was demonstrated that "[y]ou could have two people with identical [or nearly identical] cases who get completely different results not because of the merits of the case but because of who was hearing the cases" (Bray & O'Loughlin, 2006). This demonstrates that the discretionary power of law, delegated to these decision-makers, can be used to interpret and delegitimize valid claims as indicated in the discursive analysis of available RSD rulings. However, this grim reality appears to be improving incrementally. For instance, the creation of BeLonG To's innovative LGBT Refugee and Asylum Seeker Project indicates immense progress and increasing pressure from the NGO sector, ORAC is evidently becoming more open to training from specialized individuals/groups concerning vulnerable individuals, and the 2010 ruling in *M.A. v MJELR* represents a movement towards the elimination of discretionary reasoning in Ireland.

5. CONCLUSIONS

Ireland's legal institution has been an historic enforcer of heteronormativity, homophobia, gender inequality and racism – its immigration and refugee law has been no exception. As demonstrated in the state's approach to implementing its legal (both 'hard' and 'soft') obligations and adhering to effective assessment practices regarding LGBAsylum claims, "[l]egislation alone cannot 'create' tolerance where there is none [or little]" (Ryan, 1997: 7). This research has also illustrated that there is a "real danger that cosmetic changes in the law may mask the still present difficulties that people who are gay, lesbian or bisexual [and by extension, transgender] face in daily life" (Ryan, 1997: 7). While Ireland indeed experienced a rapid transformation in state law concerning sexual minorities in the early to mid-1990s – from decriminalization to international protection in a matter of three years – evidence suggests the state's implementation of these developments concerning LGBTI asylum seekers have not yet effectively caught up to these legal developments, sixteen years after the inception of the *Refugee Act, 1996*, which expressly included reference to sexual orientation. As such, this three-pronged socio-legal interrogation of the assessment practices of LGBTI asylum claims in Ireland revealed that while the state does in fact comply with its formal substantive law requirements, it was found that there remains a cause for concern as the implementation and every day practice of these obligations is persistently applied in an inconsistent manner by decision-makers and thus, maintaining the subordination of sexual minority asylum seekers before the law.

Such findings, as outlined in the previous chapter, were the core purpose behind this socio-legal interrogation, yet due to the sheer unknowability of the assessment practices of LGBTI asylum claims in the Irish context, this research was also a data gathering exercise

of sorts. Irish asylum law can be said to be in its infancy, in comparison to its Western European counterparts, and is still trying to catch up to its reality of being a net importer of migrants compared to its historical experience of being a country of emigration. As a result, similar to the delayed implementation of the effective recognition of LGBTI claims, according to Brazil (2012) “academia follows behind.” This study’s efforts have therefore sought to address a clear scholarly gap and contribute a socio-legal examination from an original theoretical perspective and, in doing so, complement the Irish-specific work of such scholars as Luibhéid (2004; 2006; 2008; 2011), Brazil (2011) and Arnold (2012; *Forthcoming*). While QLT is still said to be a relatively young and evolving body of critical theory, its’ utility, including Valdes’ eight-point tactical framework, proved highly beneficial due to its action-oriented approach to the transformative capacity of law. The reality of Queer asylum in Ireland further highlights the importance of the critical engagement of Queer and immigration scholarship, as it has helped to deconstruct the distinctions between migrant legality and illegality in the Irish context. Furthermore, while many of the findings are particular to the unique circumstances of this country, a number of these findings are transferrable to other countries that recognize LGBTI asylum claims and can be brought into conversation with similar outcomes in other national contexts – particularly within the European Union.

Due to issues of inaccessibility of state practices, the invisibility of asylum seekers and refugees, a limited number of available informants, as well as the immensely limited collection of Irish-specific scholarly research from which to draw from, this limiting reality signifies the inability of this study to make grandiose claims of its findings, however it has provided greater interpretation and depth to a number of key areas of concern regarding the

state's current assessment procedures, practices and institutional barriers associated with asylum claims filed based on sexual orientation or gender identity as well as identify a number of general recommendations (see Figure A-6.) to improve present challenges, and thus contribute to the amelioration of the plight of these invisible and highly vulnerable members of society. Moreover, despite the numerous challenges with undertaking research in this area, it is imperative that this scholarly enterprise continue. Some areas that perhaps warrant greater attention include: undertaking empirical primary research with LGBTI refugees, as there are seemingly very few publications that do; gaining insight from individual assessors themselves; accommodations for, and experiences of, LGBTI asylum claimants under Direct Provision; and, the particular assessment of bisexual and transgender individuals due to their even further marginalization as a result of their nonconformity to the homo/hetero binary inherent of the heteronormative reality in which we live.

The identified gap between state rhetoric and the reality, would be described by Fassin (2005: 365) as the disconnect “between the discourses and practices of compassion and repression.” In effect, this gap between the law and its implementation simply serve to discourage LGBTI claimants through a system plagued by a ‘culture of disbelief.’ For instance, when commenting on the level of badgering and disbelief experienced during the process, one youth sadly noted

I just couldn't understand it because I really love my Mother and I really love my family and I really love my home. I mean, I wouldn't be here out of choice...I'm grateful that I'm in Ireland but I would not choose it. I want to be at home with my family (M. Ryan, 2012).

Similarly, according to ‘Mr. S’ (2012) his then partner also did not particularly want to be living in Ireland and said that ‘it could have been anywhere’ as he fled his country of origin

in fear. It is essential that the state moves past the notion of ‘bogus’ claims and recognize that the majority of these individuals are fleeing in fear, seeking not wealth but their lives. Ireland has the ability to not only address this disconnect but potentially act as an international model for other countries dealing with similar issues. According to Rose (1994: 69), “[i]t seems that Ireland’s status as a post-colonial and Catholic country makes our support for the rights of lesbians and gay men more acceptable” to countries who would be resistant to colonial powers. As a result, “Ireland may have a particular bridging role to play because it is a post-colonial and economically peripheral country which has close links with the lesbian and gay movements in Britain and the US” (ibid: 71). As Ireland continues to come to terms with its multicultural and diverse identity, it needs to act as a model or at a minimum consistently implement its obligations to effectively assess LGBTI asylum claims. As LGBTI rights and homophobia continues to gain greater recognition around the world there will also be a continued backlash against these vulnerable groups, requiring countries that recognize sexual minority claims to effectively apply their international human rights obligations. In moving forward, we must collectively disdain the failures of state practice, challenge the shortcomings and celebrate the successes, while continuing to work together for change and advocate on behalf of these vulnerable individuals.

In closing, in reference to the ongoing persecution of sexual minorities worldwide, Ban Ki-moon, Secretary-General of the United Nations (2012), recently stated that this reality is a “stain on our collective conscience” and poignantly contended to the international community that “[t]he time has come” for change. In fact, that time is well overdue.

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L. (Czech Republic) & O. (Nigeria) v MJELR & Anor [2003] I.E.S.C. 3

FIGURE A-2.

CONSENT FORM

LGBTI Asylum Claims in Ireland

I agree to be interviewed by Richard Webster for his Master's degree research project on LGBTI asylum in Ireland.

The purpose and nature of this study has been explained to me and I am participating voluntarily.

I understand that my involvement in this research project will involve one interview which will last approximately one hour in length.

I understand that I can withdraw from the study at any time, whether before it starts or while I am participating.

This project has been approved by University College Dublin's School of Sociology's Research Ethics Committee on November 1, 2011.

Please check one of the boxes for each of the following statements below:

	<i>YES</i>	<i>NO</i>
I give permission for the use of my name in this research.	<input type="checkbox"/>	<input type="checkbox"/>
I agree to the quotation/publication of extracts from my interview.	<input type="checkbox"/>	<input type="checkbox"/>
I give permission for my interview to be recorded.	<input type="checkbox"/>	<input type="checkbox"/>
I wish to receive an electronic copy of the completed project.	<input type="checkbox"/>	<input type="checkbox"/>

Signed..... Date.....
(Interviewee)

Signed..... Date.....
(Researcher)

FIGURE A-3.

RECOMMENDATIONS

The following is a non-exhaustive, general list of ten recommendations – not all of which are completely my own (see citations) – that have been interpreted to follow the key themes that emerged within this study’s data analysis process. This exercise coincides with the data gathering process that this research undertook, but more importantly aligns with QLT’s action-oriented, social justice-based approach. As such, a number of the core recommendations include:

Legislative Amendments

- *Expand the definition of membership of a PSG in section 1(1) of the Refugee Act, 1996 to include reference to gender identity to diminish the limits that the current definition imposes.*
- *Amend section 18(b) of the Refugee Act, 1996 to expressly recognize same-sex partners as family members.*

Training & Quality Assurance

- *Training must include the requirement of decision-makers/assessors to interrogate themselves, their own beliefs and biases regarding sexual orientation and gender identity (LaViolette, 2004).*
- *Address the continuing ‘culture of disbelief’ amongst assessors and decision-makers through an improved and more rigorous quality assurance system, holding assessors to greater accountability for their decisions.*
- *Strengthen the education and training of ORAC/RAT assessors to include information concerning greater cultural sensitivity and the highly variant and multidimensional experiences of sexual minorities around the world.*

State Assessment Practices

- *Undertake an internal inquiry of ORAC/RAT practices concerning LGBTI asylum claims. For transparency purposes, ORAC should post a summary report of the inquiry to its website.*
- *Improve the interview assessment process by integrating Chelvan's (2011: 2) 'DSSH' model for best practices which addresses core issues, including: difference, stigma, shame and harm.*
- *Improve COI information, to include specific reference to the risks faced by sexual minorities and 'flag' those reports with discriminatory or questionable information.*

Non-Governmental Organizations

- *NGO's such as BeLonG To, GLEN, TENI, and the IRC should continue to strengthen their ties to ensure that, should BeLonG To's Pilot Project not be extended past its initial two-year cycle that a high level of information sharing and engagement amongst each other will continue.*
- *BeLonG To's project should consider being extended to all LGBTI migrants, following its initial pilot phase, as all LGBTI migrants face similar issues (M. Ryan, 2012).*