

11

'You Cry Gay, You're In': The Case of Asylum Seekers in the UK

Maria Cristina Nisco

1 Introduction

Gender and sexuality, along with ethnicity, are pivotal categories that immigration law has regularly employed to bolster border control, either 'domesticating' or excluding migrants and asylum seekers who possess identities located outside dominant heteronormative conceptions (Millbank 2003; Berg and Millbank 2009; Jansen and Spijkerboer 2011). This chapter addresses the specific case of homosexual people claiming asylum from persecution in the UK on the basis of their sexual and gender identities. Such cases pose epistemological challenges regarding who is considered a subject in need of rescue (therefore having access to the social resources of the host country as a victim of violence), and who is made invisible, unrecognised, and unintelligible (therefore denied access to freedom from persecution). Fundamental questions are thus raised: what does it take to be a male gay asylum seeker? How 'gay' do you need to be

M.C. Nisco (✉)

Dipartimento di Scienze Motorie e del Benessere, Università degli Studi di Napoli "Parthenope", Napoli, Italy

© The Author(s) 2018

P. Baker, G. Balirano (eds.), *Queering Masculinities in Language and Culture*, Palgrave Studies in Language, Gender and Sexuality, https://doi.org/10.1057/978-1-349-95327-1_11

225

to satisfy immigration officials?¹ And what if some gay people do not appear to be gay? In order to gain entrance, homosexual asylum seekers must demonstrate codified and ‘queering’ versions of their masculinity so as to be recognisable and, thus, admissible to immigration and court officials.

The ways in which the cases of gay asylum seekers are interpreted and reported in both the institutional and media contexts offer important insights into how power and control are exercised to regulate those who are or are not to be incorporated into the nation-state through semiotic practices that first label subjects and then include them within or exclude them from national boundaries. Since the thematic areas linked to asylum, sexuality, and gender appear to be still profoundly under-researched (EUFRA 2009: 129), the present study takes the cue from the institutional background in which the policies and practices related to homosexual asylum seekers are conceived, to then move to how such issues are *mediated*, specifically by the British press, to the mainstream readership. Therefore, after the following section, which presents some of the most debatable provisions in asylum law at the international level, the chapter concentrates on the policies adopted to assess homosexuality within the European Union (EU) and, in particular, the UK. The central sections then examine how the British press reported the news concerning homosexual asylum seekers as emerging from the analysis and findings of the collection of articles under investigation. The concluding remarks discuss the semiotic production of narratives of gender identities that is enacted by the newspapers, and the epistemological challenges involved in news discourse when gender and ethnic diversity is at stake.

2 The International Institutional Landscape

Gay asylum seekers and their definition as refugees have long posed a difficult question for governments. Generally speaking, according to the Universal Declaration of Human Rights (1948, Art. 14), ‘everyone has the right to seek and enjoy, in other countries, asylum from persecution’; in an attempt to be more precise, the UN Convention relating to the

Status of Refugees (1951, Art. 1)—also known as Geneva Convention—clarifies who a 'refugee' is:

a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.

The fact that both documents do not specifically and explicitly include sexual orientation and gender identity among the reasons to seek protection from persecution has led governments in potential host countries to consider gay claimants' rights as debatable. Indeed, even acknowledging the encouraging recommendations set forth by the Universal Declaration of Human Rights and the Geneva Convention, sexuality and gender were not, in themselves, one of the grounds upon which an applicant could claim asylum.²

Indeed, this is a highly charged discursive field, where the main controversy surrounds one of the most contested provisions in refugee law: the provision for persecution on account of membership of a particular social group. According to McGhee (2003: 145), claims by homosexual (both male and female) applicants for refugee status involve some basic problems, among them the extent to which prosecution for 'sexual offences' can be considered a form of persecution, and whether groups whose associations are those of choice—rather than familial, tribal, or ethnic bonds—can be included in the wider label 'social group'. In fact, social groups (as minority groups) are mostly conceived as communities with the capacity of affiliating succeeding generations, so consanguinity and procreation are presented as their core biological characteristics. On the contrary, membership of a homosexual group is deemed, in itself, merely as a voluntary association—and such a voluntary nature is seen as a luxury other minority groups do not enjoy. As McGhee (2003: 146) aptly points out, '[t]he implication here is that not only are lesbians and gays an 'invisible' social group, they are also a purely voluntary social

group, who should and could alter their behaviour in order to avoid their alleged persecution' (see also McGhee 2000, 2001).

Therefore, deeply embedded homophobic attitudes, combined with a lack of adequate legal protection against discrimination on grounds of sexual orientation and gender identity, expose gay people to constant violations of their human rights: they are harassed, stigmatised, beaten, sexually assaulted, tortured, and killed, heterosexuality being the only acceptable orientation.

At the time of writing, 80 countries around the world criminalise consensual sexual activities between same-sex adults. In most of them, homosexual contacts are a criminal act, and in seven of these countries, homosexual relations are punishable by death penalty—namely Iran, Mauritania, northern parts of Nigeria, Saudi Arabia, southern parts of Somalia, Sudan, and Yemen. In some of the remaining countries, homosexuality is not criminalised officially or explicitly, but it is nonetheless regarded as 'unnatural' or 'indecent' behaviour, and therefore persecuted. However, it is worth noting that while persecution may not be state-sponsored, it is often, nonetheless, socially accepted and enacted by non-state actors (relatives, neighbours, etc.), so that persecuted people see no choice other than fleeing their home countries.³

Each year, thousands of lesbian, gay, bisexual, transgender, and intersex (LGBTI) asylum seekers apply for international protection in the EU. The EU Member States have taken some concrete and positive steps—such as recognising sexual orientation as a persecution ground in Article 10 of the Qualification Directive (2004). Some States have also formally added gender identity as a persecution ground in their national legislation (which is the case in Portugal and Spain) or in their policy documents (as in Austria and the UK) (Jansen and Spijkerboer 2011: 7). Despite these improvements, there are considerable differences in the ways in which European States examine homosexual asylum applications. The creation of a Common European Asylum System, which is one of the EU's most urgent aims, is highly problematic. Indeed, the assumption according to which one common standard should be adopted in the application of refugee law (as prescribed by the Dublin Regulation 2003) is sadly illusory. Moreover, despite the work of the European Asylum Support Office which is meant to coordinate and identify good practices

in the examination of LGBTI asylum applications, the European practice still appears below the standards required by international and European human rights and refugee law (Jansen and Spijkerboer 2011: 7). In fact, evidence worryingly shows that national authorities often rely on stereotypes when examining LGBTI asylum applications—which results in the exclusion of a series of ‘non-conforming’ applicants, such as lesbians who do not behave in a masculine way, non-effeminate gay men, or applicants who have been married or have children.⁴ In this context, Judith Butler’s theories, according to which certain gendered behaviours appear more ‘natural’ and are therefore more easily associated with femininity and masculinity, seem particularly relevant (Butler 1990a, b). While positing identity as a compelling illusion, an object of belief that is compelled by social sanctions and taboos, Butler purposely employs the term ‘subject’ (rather than ‘person’ or ‘individual’) to underline the linguistic nature of our position within what the famous psychoanalyst Jacques Lacan calls the symbolic order, namely the system of signs and conventions determining our perception of reality (1977).⁵ The subject positions that people occupy in society are forged by a complex web of discursive practices which construe identities. Subjects negotiate their very existence through the norms of dominant discourses, the same norms that allow them to be intelligible. It is such intelligibility that enables individuals to become subjects. Similarly, gay asylum seekers are required to constitute themselves and their identity, by performing—literally, theatrically acting—artificial, but socially prescribed and acceptable versions of homosexuality, namely queer versions of masculinity, forcing them to conform to hegemonic, heterosexual formulations of identity.

Generally speaking, LGBTI asylum issues began to receive attention worldwide in the aftermath of some legislative developments. In 2006, 54 Member States presented a joint statement to the Human Rights Council (HRC), addressing the issue of violence based on sexual orientation and gender identity. Then, the Yogyakarta Principles—concerning the application of existing international human rights standards to issues of sexual orientation and gender identity—were drafted in 2007. One year later, in 2008, France and the Netherlands proposed a joint statement at the UN General Assembly, with the support of 66 additional States, and the UNHCR Guidance Note on Refugee Claims Relating to

Sexual Orientation and Gender Identity was also published. In 2011, South Africa successfully proposed a resolution in the HRC, requesting a study on discrimination and sexual orientation (see HRC 2011).

Nonetheless, since LGBTI asylum cases have only relatively recently become an object of debate, it is not surprising that divergent practices exist within the EU, which constitutes a problem for the implementation and harmonisation of European law and policy. In fact, if the standards in one or more States are below the minimum level set by the European Convention on Human Rights, this divergence may constitute a violation of the Convention itself. Unfortunately, the great majority of the EU Member States do not collect statistical data about the number of LGBTI asylum claimants; hence, it is not possible to give precise information. Since there are no reliable statistics, the provenance of LGBTI asylum claimants cannot be ascertained, although experts have identified 104 countries in the world in particular, which are involved in this phenomenon (Jansen and Spijkerboer 2011: 16).⁶

3 Assessing Homosexuality in Asylum Claims in the EU

Overall, there seems to be considerable incongruity between the EU Member States on how to deal with gay asylum applications; indeed, some of the practices that they have adopted in the last few decades appear rather problematic (to use an understatement) from the point of view of international human rights.

In the Netherlands, for instance, there was a tendency to label persecution by non-state actors simply as discrimination. When the test for discrimination was applied, in the attempt to determine whether someone's life was unbearable in his/her country of origin, all focus was on three factors in particular: access to work, health care, and housing. So even if people were raped or suffered other human rights violations, but they did not lose their job or house and still had access to health care, then their asylum application could be rejected.⁷ To make things worse, research carried out by the Dutch gay rights organisation Cultuur en Ontspanningcentrum (COC) and the

Free University of Amsterdam (Jansen and Spijkerboer 2011) concluded that, even without applying the test for discrimination, asylum applications were regularly rejected when the applicant did not appear 'camp' enough. In fact, no later than 2012, the Dutch Immigration Minister, Geerd Leers, exhorted homosexual people facing problems of acceptance in their own countries to hide their homosexuality to avoid homophobic violence.⁸

In this context, credibility issues—involving the assessment of the genuineness of the narrative of the applicant's claim—are at the core of most asylum cases. Credibility has become a major topic in several refugee status determinations, despite their being notoriously difficult, since the applicants' statements are the main (and unique) source of evidence. Based on this, decision-makers have faced the onus of deciding whether the claim was truthful, i.e. credible. However, in the process of credibility assessment, some factors have played a worryingly central role. In various European States, remnants of the assumption that homosexual people are deviant in a medical, psychiatric, or psychological sense are still alive, although such notions have been formally abolished (and, therefore, the use of medical, psychiatric, or psychological expert opinions to prove the genuineness of an applicant's claims is not appropriate or legitimate). Medical examinations have been a common practice to establish whether or not the applicant is gay. Despite the fact that homosexuality has ceased to be considered as a medical or psychiatric condition since 1990—when the World Health Organisation (WHO) dropped it as a medical category—examinations performed by psychologists, psychiatrists, and sexologists were often reported in a number of EU Member States (namely Austria, Bulgaria, the Czech Republic, Germany, Hungary, Poland, Romania, and Slovakia). Whether or not sexual orientation and gender identity are regarded as medical issues is pivotal, because medical, psychiatric, and psychological examinations can be extremely intrusive, and even constitute a violation of a person's privacy. As Article 18 of the Yogyakarta Principles (2007) states:

No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation and gender identity. Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in

and of themselves, medical conditions and are not to be treated, cured or suppressed.⁹

Especially some of these measures are also held as violations of Articles 3 and 8 of the European Convention on Human Rights (ECHR 1953), according to which treatments considered as a therapeutic necessity cannot be viewed as degrading, but the therapeutic aim is absent in the asylum context; therefore the infringement of an individual's privacy cannot be justified.

Phallometric testing, a very controversial method, was applied in the Czech Republic (and introduced for the first time by the legal representative of an asylum seeker). In order to assess the applicants' credibility, authorities required additional proof to determine sexual and gender orientation in asylum processes, including an interview with a 'sexodiagnostic examination' and the so-called phallometric test.¹⁰ This test was meant to measure sexual arousal by checking changes in genital blood flow in response to sexually explicit visual and audio stimuli (namely watching straight porn), using electrodes attached to the genitalia. If any of the applicants got aroused at the sight of men and women having heterosexual contact, they were automatically denied asylum rights. Such a practice—that was employed from 2007 to 2011—was harshly criticised as a breach of the ECHR and a degrading treatment of asylum seekers, interfering with the person's human dignity.

I will now consider another country within the EU at the time of writing, the United Kingdom. It is one of the 145 signatories of the UN Convention Relating to the Status of Refugees, and it adheres to the ECHR, which prevents the UK Border Agency (UKBA) from sending anyone to a country where there is a real risk that they will be exposed to torture, punishment, or inhuman or degrading treatment. However, Britain's approach to refugee claims by LGBTI people has been rather hostile and, as Millbank (2003) has noted, the UK has lagged behind other Western receiving countries—like Germany, the USA, Canada, and Australia—which extended eligibility to LGBTI claimants in the 1980s. The British immigration authorities often refused the idea that LGBTI people fleeing persecution could be regarded as refugees under the terms of the UN Convention. In fact, it is only since 1999 that the

label 'particular social group' has included LGBTI people. An extremely high number of asylum claims were refused because the UKBA held that applicants would not be in danger if, once they returned to their countries of origin, they hid their homosexuality by being 'discreet'—but, of course, no 'discretion' requirement was imposed on other asylum claimants on the basis of religious or political persecution.¹¹

Overall, in the UK, claims by homosexual applicants were invariably described as easy to make and impossible to disprove, and therefore addressed with suspicion by the legal system as much as the media. Credibility assessment appeared crucial (Millbank 2009a, b; Berg and Millbank 2009) because the claim to group membership rested entirely on the claimant's testimony rather than on an external proof. So credibility was a major battleground in determining positive or negative outcomes in asylum applications. UKBA officers were severely criticised for making unreasonable assumptions casting doubts on the applicants' credibility. Indeed, the process of determining asylum claims and credibility seemed totally arbitrary. Refugees had to submit themselves to cruel and protracted processes of judgement on whether or not they were genuine refugees, whose sufferings and experiences not only occurred but met the narrow criteria laid down by institutional documents. Explicitly or not, the main function of immigration officials was not to make clear and informed judgements, but rather to find reasons why a particular person should not be given refugee status and be deported. In other words, officials tended to seek out inconsistencies in the accounts given by applicants to undermine their credibility. A culture of disbelief seemed to affect all decisions concerning gay claimants' cases: significantly, the criteria behind acceptance or denial of such asylum applications appeared to shift from discretion to disbelief, where all emphasis was on the extent to which claimants could prove their homosexual identities.

What kinds of traits were UKBA officers searching for in order to 'probe' homosexuality? Or put another way, what types of gendered 'performances' were homosexual asylum seekers required to carry out in order to win their case? Surprisingly (and ridiculously), gay asylum seekers were asked some of the following questions, among others:

- Have you ever read any Oscar Wilde?
- Do you like the music of Kylie Minogue?
- Have you ever attended Heaven nightclub on Villiers Street?
- Can you name some famous gay people?¹²

What such questions reveal is a double set of assumptions. First is the generalising implication that all gay people are likely to have similar socio-cultural tastes in terms of literature, music, and attending a particular nightclub in London, and second, that people who identify as gay but are not from the UK will have adopted these supposed general interests of Western gay culture. The experience of gay people is thus ‘re-semiotised’, it is recast and transformed into a stereotyped and clichéd semiotic form (where homosexual people are invariably expected to ‘exhibit’ certain traits and behaviours), which then provides the lens to trace and frame homosexuality according to hegemonic paradigms of masculinity.

Unfortunately, however, it is no laughing matter for those who find themselves facing an asylum interview when the questions they were asked featured a completely different tone, as shown by a UK Home Office document leaked in 2013:

- Did you put your penis into X’s backside?
- When X was penetrating you, did you have an erection?
- Did X ejaculate inside you?
- What is it about men’s backsides that attracts you?
- What is it about the way men walk that turns you on?
- Where is the medical evidence to prove penetrative sex?
- What kinds of sex toys do you use?¹³

Such questions epitomise the degrading treatment that gay asylum seekers have experienced in the UK in very recent times, with humiliating and offensive interviews ‘inspired’ by a toxic mix of homophobia and ignorance. Clearly, UKBA officers were not adequately prepared for the complexities of gender-based claims. In fact, they tried to assess ‘genuine’ homosexuality resorting to questions that almost exclusively revolved around the ideas of penis and the act of penetration—which, interestingly, bring to the fore a physical and symbolic representation of the

phallus (in the words of Lacan).¹⁴ Indeed, penetration has long been conceived as a male priority within the context of heterosexual hegemony (Butler 1993: 51). When it is linked to a gay male identity, it becomes the referent for a 'submissive' gay male identity, which seems to be the only admissible conceptualisation of homosexuality allowed by the UKBA. Gay asylum seekers are, therefore, required to construe their gender identity in compliance with the forms of queer masculinity recognised by a phallic order in which homosexuality is exclusively about being penetrated and using sex toys.

4 Gay Asylum Seekers and the British Press

July 2010 stands as a watershed, a major breakthrough in the UK asylum policy, due to the specific case of HT (from Cameroon) and HJ (from Iran), two gay men who had been denied asylum in the UK on the grounds that they could return to their home countries and avoid persecution if they concealed their sexuality, in line with the Home Office's most common policy, the so-called discretion test. Surprisingly, in 2010, the UK Supreme Court issued a judgment according to which the two men could not be expected to hide their sexuality; therefore, the application of the discretion test by the UKBA was declared unlawful. The decision quashed a key plank of asylum policy and it had a huge bearing on the way gay asylum seekers' applications were dealt with. Above all, two pivotal points were clarified by the ruling: firstly, it highlighted the importance that homosexual people were provided with the protection that was being denied to them by the state in their countries of origins and that they were entitled to under the terms of the Geneva Convention; secondly, it urged a more progressive understanding able to bring in wider issues of identity other than sexuality, thus stressing that, far from a sole focus on sexual behaviours and sex toys, homosexuality implied crucial issues of gender identity.

This critical ruling attracted extensive media coverage, which makes it particularly interesting for this investigation.

The key problem that needs to be faced when asylum issues and gay issues are combined is that the potential for misrepresentation grows

exponentially. Of course, public misconceptions about gay asylum seekers are fuelled by media and press reporting, which heavily affects how societies construct what is normal or accepted behaviour—especially in relation to sexuality and gender. Questions of visibility and invisibility mostly relate to the fact that gay asylum seekers are a very vulnerable group within an already vulnerable group: they represent the ‘Other’ not only because of their ethnic identity but also because of their gender identity (Connelly 2014). Therefore, those who are the victims of state-sanctioned violence end up becoming victims of a different kind of violence enacted by legal authorities in the countries where they seek protection (Morgan 2000): they are exposed not only to the normative gaze of the law but also to the judgemental and condemning gaze of mainstream media and audience.

Drawing on such assumptions as much as on the tricky nature of the topic (both in the institutional and media domains), the following analysis particularly concentrates on the British press reporting on the UK Supreme Court ruling. In particular, emphasis is given to the newspapers’ responses to the legal decision and the implications in terms of how to assess ‘genuine’ homosexuality.

A collection of newspaper articles was therefore gathered from the most widely circulating British newspapers: *Daily Mail*, *Daily Mirror*, *Daily Record*, *Daily Star*, *The Express*, *The Sun*, *The Daily Telegraph*, *The Guardian*, *The Independent*, *The Times* (and their Sunday editions). The collection is balanced—since it comprised quality and popular papers, both left- and right-leaning in their political orientation—so it could be deemed as representative of the British press as a whole (Baker et al. 2008, 2013). The articles included in the set were selected searching for the keywords ‘gay*’, ‘seeker*’, and ‘homosexual*’,¹⁵ over a time span ranging from 7 July to 15 July 2010, namely a whole week after the ruling was issued. The collection thus obtained comprises 30 news reports (see Tables 11.1 and 11.2).

Table 11.1 The popular press

Newspaper	<i>Daily Mail</i>	<i>Daily Mirror</i>	<i>Daily Record</i>	<i>Daily Star</i>	<i>The Express</i>	<i>The Sun</i>
No. of news reports	2	2	2	2	4	1

Table 11.2 The quality press

Newspaper	<i>The Daily Telegraph</i>	<i>The Guardian</i>	<i>The Independent</i>	<i>The Times</i>
No. of news reports	2	5	2	8

For the analysis of the collection, special attention is paid to how the main participants in the news reports are sketched by the press—especially in the headlines—with a positive or negative presentation (Fairclough 1995: 106).

More specifically, an investigation on participants can shed light on the representation of roles and on the discursive categories on which the construals of the 'self' and 'other' are based. What kinds of identities emerge from news reports and why they are conceptualised in a specific way can be interesting points to access a societal value-system and explain it. Starting from this assumption, van Leeuwen (1996) has suggested an analytical framework to account for the socio-semantic inventory of how participants can be represented in English. He has adopted the term 'social actors', highlighting that in any discourse people are evaluated through the way they are linguistically construed, and such construals depend upon culture. His taxonomy examines a wide range of linguistic devices and patterns that can be employed to represent social actors—just to mention a few: functionalisation, identification (which can be further developed into classification, relational identification, physical identification), nomination, appraisal, assimilation, individualisation, and so on (van Leeuwen 2008: 23–54). It therefore proved useful in the identification of the main discursive features through which asylum seekers were construed by the British press after the 2010 groundbreaking ruling.

5 Analysis

A qualitative reading of the news reports revealed that the judge, Lord Rodger, was the participant the press mostly concentrated on, especially on the days after the ruling was issued (07 July 2010). Harsh criticism

could be noted in the great majority of the articles. What should have been heralded as a victory for human rights and fairness was generally greeted, instead, with warnings that gay asylum seekers had been given a ‘get into Britain free card’ (*Times*, 08 July 2010). Headlines clearly voiced the newspapers’ stances on the question, as examples 1–3 show:

1. What planet is he on? (*Daily Mail*, 08 July 2010)
2. Gay asylum ruling is supreme stupidity (*Sunday Express*, 11 July 2010)
3. Absurd judgment on gay asylum seekers (*Express*, 14 July 2010)

The judge’s sentence is humorously described as not practical or sensible (the judge being from another planet), since ‘[i]t sets the precedent that no gay man should be returned to a country which treats homosexuality harshly on the expectation they will ‘act straight’’ (*Daily Mail*, 08 July 2010). One newspaper interprets the decision by reworking a popular saying as ‘You don’t have to be gay to settle here, but it helps’ (*Sunday Express*, 11 July 2010).¹⁶ The critical issue that slowly but steadily surfaces is a conceptual opposition: acting straight is not admissible in the claimants’ countries of origins but acting gay is acceptable in the UK to win protection. The Supreme Court ruling, therefore, sets itself as a pivotal turning point in the process to define the parameters on the basis of which homosexuality is defined and assessed.

Above all, a specific excerpt of the ruling was repeatedly quoted by the press. In Lord Rodger’s words:

To illustrate the point with trivial examples from British society: just as male heterosexuals are free to enjoy themselves playing rugby, drinking beer and talking about girls with their mates, so male homosexuals are to be free to enjoy going to Kylie concerts, enjoying exotically-coloured cock-tails and talking about boys with their straight female mates.¹⁷

Although this statement was obviously meant to claim that the applicants’ right to live freely and openly as gay men had to be protected, it reinforced stereotypes about gay masculinity, indicating how the judge’s sentence reflected somewhat oppositional discourses. Despite ruling in

favour of the two applicants, Lord Rodger still drew on the stereotyping discourses of homosexuality. In fact, he provided society with a legal formula of what gay masculinity should be expected to be; so the law itself, with its binding power, conflated such a queer description of homosexual asylum seekers.

Not surprisingly, the judgment was oversimplified and foregrounded by the great majority of the British newspapers (at the expense of more progressive arguments on asylum policy) with countless ironic comments which had the effect of misrepresenting not only the explanatory intentions of the judge, but also—and most importantly—gay asylum seekers themselves. In fact, as the other major participant in the news reports, asylum seekers were described, extremely frequently, solely in connection to their right to stay in the UK so that they could enjoy going to Kylie Minogue's concerts or drinking multi-coloured cocktails (see examples 4–5 below).

4. Gay refugees have the right to cocktails and Kylie, says judge (*Telegraph*, 08 July 2010).
5. Now being a fan of Kylie wins you the right to asylum (*Express*, 09 July 2010).

Despite the judge's attempt to somehow hedge his statement by clarifying that he was only illustrating his point with trivial examples, his claim was taken up by most of the press and even amplified, thus becoming the only suggested reading and interpretation of the issue. Indeed, strangely enough, this is the most recurrent discursive portrayal of gay masculinity emerging from the news reports following the Supreme Court ruling. While certainly being an effective way to catch the readers' attention and curiosity, it nonetheless conveyed an extremely narrow view not only of the homosexuality of asylum seekers, but also of the British (and, for that matter, Western) gay people.¹⁸ Leaving aside the widespread worries about the huge number of asylum applications that might stem from the judgment, some concern is then aptly expressed in relation to the criteria to probe that claimants are actually gay: 'Does attendance to Kylie concerts guarantee a proof of homosexuality?' (*Express*, 14 July 2010). This question, that appears central for the purposes of the present case study,

effectively sheds light on the complexities embedded in the process of codification that homosexuality seems to be put through: gay asylum seekers are expected to embody certain clichéd traits which are meant to 'queer' their masculinity. In other words, some criticism and disagreement clearly emerge in relation to the idea that access in the UK is only allowed after a stereotypical evidence of their overt queerness is assessed.

Moving further with the analysis of the construals of gay asylum seekers as a social actor, overall a widespread trend could be noted. When the newspapers report the specific case of HT and HJ—or some other cases they incidentally refer to—they tend to provide readers with full details concerning their stories and tragic experiences of homophobia in their countries of origins. In this regard, they mostly resort to a strategy that van Leeuwen defines as identification through classification: they are identified (and classified) through references to their gender, age, ethnicity, provenance, religion, and so on, as evident from examples 6–8.

6. One of them, known as T., aged 36, challenged a Court of Appeal ruling that he could return to Cameroon even though he said that he had been attacked by a mob after he was seen kissing a male partner. [...] The mob had stripped T. of his clothes and attempted to cut off his penis with a knife. [...] The other man, known as J., 40, from Iran, arrived in Britain in 2001. (*Times*, 08 July 2010)
7. One of the men involved, known as "T", appealed against a decision that he could return to his native Cameroon, despite the fact that he was attacked by a mob after he was seen kissing a male partner. The other, 'J' from Iran, was told he could be expected to tolerate conditions arising from his homosexual relationship in his home country. (*Daily Mail*, 08 July 2010)
8. Punishments for homosexual acts in Cameroon range from six months to five years in jail. In Iran, home to the other man, known as J, homosexuals can be punished with flogging or execution. (*Daily Mirror*, 08 July 2010)

In such instances, the press provides readers with descriptions of what it is like to be homosexual in Cameroon and Iran, where people could be flogged, executed, or have their penis cut off in case of homosexual

conduct, therefore acknowledging the circumstances of being gay in these countries.

However, several unfavourable generalisations are also made in relation to gay asylum seekers as a cohesive group through assimilation (using van Leeuwen's term). Some newspapers tend to follow a recurrent pattern labelling them as economic migrants making false claims to exploit the British welfare system, and thus avoid deportation. Indeed, these descriptions are usually 'loaded' with a negative connotation—something which is theorised as 'appraisement' in van Leeuwen's model: far from negatively evaluating straight claimants pretending to be gay, the majority of newspapers often depicts gay asylum seekers collectively in terms which evaluate them as bad, liars, bogus, and so forth, due to the fact that their claims are easy to make and impossible to disprove.

9. Opening the floodgates to gay asylum seekers is absolute madness. The idea is bound to be abused. Every illegal desperate to get into Britain will try claiming they're gay to ensure they stay here. Some people will do whatever it takes if it means a cushy life in Britain. (*Daily Star*, 08 July 2010)
10. The lure of British life is strong. It is not our liberal hearts migrants love but our stuffed wallets. [...] If you're from one of the evil 80, and you cry gay, you are in. (*Times*, 08 July 2010)
11. Already universally regarded as the softest of touches, Britain will now be seen as the ideal destination for homosexuals from around the world. Moreover, the judges' decision will have the effect of encouraging bogus refugees to make false claims about their sexuality in order to avoid deportation. (*Express*, 09 July 2010)

A quick look at the above-mentioned instances revealed that asylum seekers seem to be conceptualised mostly in association to the exploitation of British social welfare to gain access to an attractive lifestyle.

While additional discursive features also emerged from analysis but will not be discussed here since they are beyond the scope of this volume, the issue of passing (Sanchez and Schlossberg 2001; Alexander 2006) is certainly noteworthy. Gender attribution appears to be a difficult process in the context of asylum claims based on sexual orientation and gender

identity. Applicants await officers to 'read' them, trying to exhibit gender cues which can be easily recognised in order to pass as 'queer' enough and have their application accepted. Passing thus seems to work on multiple levels: in the claimants' countries of origins, where queer identities are in danger, passing as straight can be the only way to save one's life; in a receiving country like Great Britain, passing as gay is the necessary requirement to achieve refugee status. In both cases, however, passing can be viewed as a form of self-protection and self-preservation enacted by societies to frame homosexuality, fitting it into narrow, heteronormative definitions.

Amid burning indignation concerning a 'piece of judicial arrogance' (*Express*, 09 July 2010) encouraging people to make false claims about their sexuality and the plea for Britain to 'open its liberal arms and give men [...] persecuted for their sexuality a great big gay hug' (*Times*, 08 July 2010), very little space was actually devoted to how to establish the very criteria to assess such asylum claims. Apart from the sarcastic suggestions and punchlines proposing 'attendance at Kylie concert' or 'talking loudly about boys', the British press could have offered a critical lens to more openly reflect on gender identities and the potential types of masculinities to be envisaged when assessing homosexuality. Instead, the position taken by most of the newspapers can be summarised as follows: 'Whereas the Home Office used to urge gays to pretend they were straight, now, thanks to our politically correct judges, straight asylum seekers will have every incentive to pretend they are gay' (*Express*, 09 July 2010). Leaving aside the implications of the heavily negative connotative value embedded in a lexical item like 'pretend'—which, in its modern use, has taken up the meaning of 'feign, put forward a false claim'¹⁹—the term closely recalls the concept of 'performativity' theorised by Judith Butler in relation to gender, which appears pivotal in this case study. In fact, applying the notion of 'performativity' to the asylum context, it could be argued that since the UKBA officers need to be sufficiently convinced of the claimants' sexuality and gender identity, asylum seekers find themselves in the position to *pretend* homosexuality even if they are truly gay. They must simulate the types of queer masculinity which are stereotypically conceptualised as gay; they have no choice but to act a *mise-en-scène* of the identity they are expected to have. They must play a

masquerade in front of the officers in the attempt to prove something that cannot be actually assessed by resorting to whatever rigorous standard of proof the Home Office might adopt. What should be solely relied on is the oral testimony at the UKBA interview—which, of course, is affected by other relevant factors such as lack of words related to sexual issues (whether in English or their own language), reluctance to speak publicly about their sexuality, their trauma of violence and persecution, and so on. Still, such argumentations are often overtly and incisively addressed in most of the news reports.

6 Concluding Remarks

The European constructions of the 'refugee problem' on its doorstep and of the 'bogus' gay asylum seeker are far more telling of the European sense of self than of the reality of the migrants' experience. The EU seems to hold a crystallised vision of itself, of the kind of alterity it can cope with—provided it displays some 'manageable' traits—and of what is perceived as unacceptable since it does not fit the norm and must be expelled. As both foreigners and homosexuals, gay asylum seekers are the 'Other' par excellence; they are the subjects where ethnic and gender diversities combine. The need to acknowledge the demands placed upon them in the asylum process results in a forced semiotic production conceiving narratives of identities that are meant to be perfectly understandable and intelligible to decision-makers. The way asylum claims on the basis of sexual orientation and gender identity are interpreted and dealt with in asylum law as much as in the media context is fraught with epistemological challenges. Indeed, hegemonic discourses can be said to obscure certain subjectivities while creating the very labels that produce acceptable individuals: who is made visible as a subject and who is made invisible, unrecognised, and unintelligible? Authenticating refugees and their stories of persecution relies on culturally coded procedures (operating both in the legal and administrative context as well as in the media context) which actualise ethnocentric legal tropes of homosexual asylum seekers. This kind of imagery can be said to actively work within the European and, in this case, the British society to define the parameters

fixing and discursively constructing gender identities which are not reducible to forms of non-mainstream or queer masculinities, sex toys, and genital penetration—not to mention the fact that a heteronormative Western knowledge is employed to recognise and normalise gay asylum seekers from a variety of different cultural contexts.

Despite the fact that this study is in an initial phase and it only constitutes a part of a wider research project,²⁰ some significant conclusions can be drawn from the data and findings resulting from analysis.

In the aftermath of the 2010 UK Supreme Court ruling, the most striking element emerging from investigation was a rather widespread sarcastic acceptance of the sentence, which was heralded as an absurd opening to abuse and false claims. While acknowledging the end of the Home Office's controversial policy of refusing asylum to gay claimants on the grounds that they could avoid persecution by pretending to be heterosexual, most of the British press promptly explicitated and anticipated the beginning of a new trend in asylum claims based on the pretence of being gay. While some newspapers expressed critical views, voicing their stances more or less straightforwardly, the references to Kylie Minogue's music, Oscar Wilde's works, and multi-coloured cocktails re-codify and re-semiotise homosexuality. As a matter of fact (and with the exception of *The Guardian* and *The Independent*), homosexuality was not only construed as camouflage and disguise, but, above all, it was turned into a clichéd semiotic form expecting gay people to feature the stereotyped traits of a 'queer' masculinity dictated by hegemonic paradigms. If we take a view that there should be a robust and fair asylum system, and that granting refugee status to those whose lives are at risk in homophobic regimes is morally justifiable, then implementation of the procedures would be advised not to rely on stereotypes based on cultural tropes linking homosexuality to effeminacy.

At the time of writing, potential scenarios for migrants and asylum seekers appear even more distressing in the UK. Indeed, given how contentious the issue of immigration has become, it is likely to be the most politically fraught area of policy post-Brexit. In a recent statement (March 2017) the Immigration Minister, Robert Goodwill, claimed that the UK may return tortured asylum seekers to the countries they fled, since the

government—in its new anti-Europe surge—does not consider a person having been tortured reason enough alone to accept a claim of asylum.²¹

Within or without Europe, the asylum system might be improved, focusing on the identification of the abuses perpetrated on claimants, and the press could endorse a more complex discussion around stereotyping in the attempt to foster more progressive views.

Notes

1. 'How gay do you need to be to satisfy the Home Office?' was an ironic but effective test launched in 2015 by the *Daily Mirror* in relation to one particular case that provoked a storm of controversy: the case of a Nigerian asylum seeker, stating she feared imprisonment and death in her country because of her sexuality, who was accused by the Home Office's barrister of lying because she had children and 'you can't be heterosexual one day and a lesbian the next day. Just as you can't change your race' (see <http://www.mirror.co.uk/news/ampp3d/home-office-think-youre-gay-5280895>—unless otherwise specified, all websites were last accessed in December 2015).
2. The term 'asylum seeker' has become the established term of reference for those not yet accorded the official status of refugees. Unfortunately, this term is laden with connotations of a bogus status which the individual claiming asylum must seek to disprove through the legal process of having his/her claim assessed (see Hyland 2001).
3. Such cases are even trickier because effective protection should be granted by national authorities. However, persecution by non-state actors has been recognised as a relevant factor for asylum, if the State or de facto authorities are unable or unwilling to provide protection against harm. For further information on the criminalisation of homosexuality, see <http://www.humandignitytrust.org/>
4. For a discussion on the production of the dominant tropes on masculinity and the manifold processes of representation and semiotic re-configuration of male identities, see Balirano 2014.
5. In Lacan's view, once a child enters language and accepts the rules of society, she/he is able to deal with others, creating bonds which give him/her some recognition within the community.

6. These countries include the following: Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Bangladesh, Barbados, Belarus, Bolivia, Bosnia-Herzegovina, Brazil, Burundi, Cameroon, Central African Republic, Chile, China, Colombia, Congo (DRC), Costa Rica, Croatia, Cuba, Dominica, Ecuador, Egypt, Eritrea, Estonia*, Ethiopia, Gambia, Georgia, Ghana, Guatemala, Guinea-Conakry, Guyana, Honduras, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Jamaica, Jordan, Kazakhstan, Kenya, Kosovo, Lebanon, Liberia, Libya, Lithuania*, Macedonia, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Moldova, Mongolia, Morocco, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Palestine, Panama, Paraguay, Peru, Philippines, Qatar, Romania*, Russia, Rwanda, Saudi Arabia, Senegal, Serbia, Sierra Leone, Slovakia*, Somalia, South Africa, Sri Lanka, St. Vincent & the Grenadines, Sudan, Syria, Tajikistan, Tanzania, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United States, Uzbekistan, Venezuela, Vietnam, Yemen, Yugoslavia (FRY), Zambia, Zimbabwe. Countries that are now the EU Member States have been marked with an asterisk.
7. <http://www.migrazine.at/artikel/dutch-lgbt-asylum-policy-english>
8. <http://76crimes.com/2012/04/19/dutch-official-to-lgbt-asylum-seekers-stay-home-in-closet/>
9. See www.yogyakartaprinciples.org
10. In medical terminology, phallometric testing of men is called penile plethysmography (PPG) while its counterpart for women is called vaginal photoplethysmography (VPG). Both PPG and VPG were used in the Czech Republic until 2011. They were also used in Slovakia in 2005.
11. A research report by the UK Lesbian and Gay Immigration Group (2010), a charity committed to assisting those seeking asylum on the basis of sexual and gender identity, found that, from 1999 to 2009, 98% to 99% of asylum claims made by lesbians and gay men were rejected compared to 73% of general asylum applications.
12. <http://www.theguardian.com/uk-news/2014/feb/08/gay-asylum-seekers-humiliation-home-office>
13. <http://www.theguardian.com/uk-news/2014/feb/08/gay-asylum-seekers-humiliation-home-office>. Not to mention the request to submit personal sex footage and photographic evidence in support of asylum applications.
14. Unlike Freud, Lacan distinguishes between the penis (the actual bodily organ) and the phallus (a signifier of sexual difference), the latter being

central in his theories on subjectivity and sexual difference. Lacan prefers to employ the term 'phallus' rather than 'penis' to emphasise the fact that what concerns psychoanalytic theory is not the male genital organ in its biological reality but the role it plays on the imaginary and symbolic level.

15. Such keywords were searched for when they occurred in headlines and leading paragraphs, through the online database LexisNexis (www.lexis-nexis.com).
16. The original saying reads: 'You don't have to be mad to work here, but it helps.'
17. <http://www.bailii.org/uk/cases/UKSC/2010/31.html>
18. It might be argued that newspapers used the judge's comments on Kylie Minogue and the multi-coloured cocktails to criticise the decision strategically. However, most of the news reports did not follow up the headlines with additional analysis on the stereotyping of gay men; they mainly tended to warn against the potential immigration surge. At the same time, it is worth noting that despite the overall trend, *The Guardian* (a left-leaning broadsheet) differentiated itself from the other newspapers by stressing other elements as shown in the following headlines: 'Milestone victory for gay refugees' (07 July 2010), 'Gay asylum seekers win protection from deportation' (07 July 2010), 'Gay refugees entitled to asylum, judge claims' (08 July 2010), among the others. Such instances highlight that a completely different focus was given to the issue in the news by this newspaper: while all references to cocktails and music are absent, the relevance of the ruling within the context of asylum law is aptly foregrounded.
19. See http://www.etymonline.com/index.php?allowed_in_frame=0&search=pretend
20. The study is part of a wider research project on the linguistic construals of gender and ethnic diversity in media and legal discourses.
21. <http://www.independent.co.uk/news/uk/politics/asylum-seeker-torture-uk-refugee-immigration-minister-a7608206.html>

References

- Alexander, B. K. (2006). *Performing Black Masculinity: Race, Culture and Queer Identity*. Lanham and New York: Altamira Press.
- Baker, P., Gabrielatos, C., Khosravini, M., Krzyzanowski, M., McEnery, T., & Wodak, R. (2008). A Useful Synergy? Combining Critical Discourse Analysis

- and Corpus Linguistics to Examine Discourses of Refugees and Asylum Seekers in the UK Press. *Discourse and Society*, 19(3), 273–306.
- Baker, P., Gabrielatos, C., & McEnery, T. (2013). *Discourse Analysis and Media Attitudes*. Cambridge: Cambridge University Press.
- Balirano, G. (2014). *Masculinity and Representation: A Multimodal Critical Approach to Male Identity Constructions*. Napoli: Loffredo.
- Berg, L., & Millbank, J. (2009). Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants. *Journal of Refugee Studies*, 22(1), 1–17.
- Butler, J. (1990a). *Gender Trouble*. London and New York: Routledge.
- Butler, J. (1990b). Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory. In S. E. Case (Ed.), *Performing Feminist Critical Theory and Theatre* (pp. 519–531). Baltimore: John Hopkins UP.
- Butler, J. (1993). *Bodies That Matter. On the Discursive Limits of 'Sex'*. London and New York: Routledge.
- Connelly, E. (2014). *Queer, Beyond a Reasonable Doubt: Refugee Experiences of 'Passing' into 'Membership of a Particular Social Group'*. Research dissertation, University College London, UK.
- Council of Europe. (1953). European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.
- Dublin Regulation. (2003). European Union: Council of the European Union, Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 18 February 2003, OJ L. 50/1-50/10; 25.2.2003, (EC)No 343/2003.
- European Union Agency for Fundamental Rights (EUFRA). (2009). *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States – Part II – The Social Situation*.
- European Union: Council of the European Union. (2004). Council Directive 2004/83/EC of 29 April 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, 30 September 2004, OJ L. 304/12-304/23; 30.9.2004, 2004/83/EC.
- Human Rights Council (HRC). (2011). *Human Rights, Sexual Orientation and Gender Identity*. A/HRC/17/L9/Rev.1, UN Human Rights Office of the High Commissioner.

- Hyland, M. (2001). Refugee Subjectivity: 'Bare Life' and the Geographical Division of Labour. *The Physics Room* [Issue 13: *The Revolution Issue*]. Retrieved from <http://physicsroom.org.nz/archive/log/archive/13/refugeesubjectivity/>
- International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity. (2007). *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*. Retrieved from www.yogyakartaprinciples.org
- Jansen, S., & Spijkerboer, T. (2011). *Fleeing Homophobia*. COC Nederland: Vrije Universiteit Amsterdam.
- Lacan J. (1977). *Écrits* (A. Sheridan, Trans.). New York: Norton.
- McGhee, D. (2000). Accessing Homosexuality: Truth, Evidence and the Legal Practices for Determining Refugee Status. *Body & Society*, 6(1), 29–52.
- McGhee, D. (2001). Persecution and Social Group Status: Homosexual Refugees. *Journal of Refugee Studies*, 14(1), 1–23.
- McGhee, D. (2003). Queer Strangers: Lesbian and Gay Refugees. *Feminist Review*, 73, 145–147.
- Millbank, J. (2003). Gender, Sex and Visibility in Refugee Claims on the Basis of Sexual Orientation. *Georgetown Immigration Law Journal*, 18, 71–110.
- Millbank, J. (2009a). From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and in the United Kingdom. *The International Journal of Human Rights*, 13(2), 391–414.
- Millbank, J. (2009b). The Ring of Truth: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations. *International Journal of Refugee Law*, 21(1), 1–33.
- Morgan, W. (2000). Queering International Human Rights Law. In C. Stychin & D. Herman (Eds.), *Sexuality in the Legal Arena* (pp. 208–225). London: Athlone.
- Sánchez, M. C., & Schlossberg, M. (Eds.). (2001). *Passing. Identity and Interpretation in Sexuality, Race and Religion*. New York and London: New York University Press.
- UN General Assembly. (1948). Universal Declaration of Human rights (217 [III] A). Paris.
- UN General Assembly. (1951). Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.
- UK Lesbian and Gay Immigration Group. (2010). *Failing the Grade. Home Office Initial Decisions on Lesbian and Gay Claims for Asylum*. London: UKLGI.

Van Leeuwen, T. (1996). The Representation of Social Actors. In C. R. Caldas-Coulthard & M. Coulthard (Eds.), *Texts and Practices* (pp. 32–70). London and New York: Routledge.

Van Leeuwen, T. (2008). *Discourse and Practice: New Tools for Critical Discourse Analysis*. Oxford: OUP.