

UC Irvine

UC Irvine Electronic Theses and Dissertations

Title

Protection at the Margins: European Asylum Law and Vulnerable Refugee Populations

Permalink

<https://escholarship.org/uc/item/5xx1f1bc>

Author

Rodda, Patricia Charlotte

Publication Date

2016

Peer reviewed|Thesis/dissertation

UNIVERSITY OF CALIFORNIA,
IRVINE

Protection at the Margins:
European Asylum Law and Vulnerable Refugee Populations

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Political Science

by

Patricia Charlotte Rodda

Dissertation Committee:
Associate Professor Charles Anthony Smith, Chair
Associate Professor Marek Mikołaj Kamiński
Professor Christopher Alexander Whytock

2016

DEDICATION

To

my grandparents

who are not here to see me finish the race,

but always knew I would

TABLE OF CONTENTS

	Page
LIST OF FIGURES	iv
LIST OF TABLES	v
ACKNOWLEDGMENTS	vi
CURRICULUM VITAE	vii
ABSTRACT OF THE DISSERTATION	viii
CHAPTER 1: Introduction	1
Research Questions	2
Literature Review	6
Research Design	24
CHAPTER 2: Decision-Making Processes and Asylum Claim in Europe: An Empirical Analysis of Refugee Characteristics and Asylum Application Outcomes	32
CHAPTER 3: Setting the Pace for Brussels and Strasbourg: Approaches to Gender-Based Asylum Appeals in the European Union	62
CHAPTER 4: Nowhere to Go and No Place to Call Home: Stateless Refugees in a State Centered World	97
CHAPTER 5: Concluding Observations and Future Research	122
BIBLIOGRAPHY	130
APPENDIX: Appeals Cases	142

LIST OF FIGURES

	Page	
Figure 3.1	Gender-Based Persecution Appeals and Approaches by Year	77
Figure 3.2	Approach Types by Time Period	86
Figure 3.3	Approach Types by Court Type and Time Period	87
Figure 3.4	Approach Types and Relative Rates of Application	89
Figure 3.5	Approach Types and Time in the EU	92

LIST OF TABLES

		Page
Table 2.1	Summary Descriptive Statistics	46
Table 2.2	Results for the Rate of Each Decision Type	55
Table 4.1	States with Statelessness Determination Procedures	112

ACKNOWLEDGMENTS

I would like to express my enormous gratitude and appreciation to my committee chair, Associate Professor Charles Anthony Smith. His constant support and dedication to my improvement as a scholar exemplify all that a mentor can and should be. This dissertation is only possible thanks to his guidance and commitment.

I would also like to sincerely thank my committee members, Associate Professor Marek Kaminski and Professor Christopher Whytock. The work and encouragement of these scholars influenced not only the content of my dissertation, but the dedication and care with which was conducted. I am a better scholar today because of the ways in which my committee challenged and supported me throughout this process.

In addition, a special thank you to the members of my graduate cohort, friends, and family. You provided necessary academic, emotional, and practical support throughout this endeavor. Without each of you, I would not have had the strength to finish this long journey. Special thanks are due to Deborah Thorpe, Benjamin Gunning, Steven Rodda, and Misty Knight-Finley.

I thank *Decyzje* for permission to include Chapter Two of my dissertation, which was originally published in their journal in 2015. I also wish to thank the Department of Political Science at the University of California, Irvine for providing financial support for summer research and methodological training, both of which were instrumental in the completion of this dissertation.

CURRICULUM VITAE

Patricia Charlotte Rodda

- 2007 B.A. in International Studies, Hanover College
- 2008-10 Research Assistant, Political Science Department, Marquette University
- 2010 M.A. in International Affairs, Marquette University
- 2011-16 Teaching Assistant, School of Social Sciences, University of California, Irvine
- 2012-13 Graduate Student Researcher, Political Science Department, University of California, Irvine
- 2016 Graduate Student Researcher, Political Science Department, University of California, Irvine
- 2016 Ph.D. in Political Science, University of California, Irvine

FIELD OF STUDY

International Relations, Comparative Politics, and Methodology

PUBLICATIONS

“Decision-Making Processes and Asylum Claims in Europe: An Empirical Analysis of Refugee Characteristics and Asylum Application Outcomes” *Decyzje* 23, 23-46, 2015.

ABSTRACT OF THE DISSERTATION

Protection at the Margins:
European Asylum Law and Vulnerable Refugee Populations

By

Patricia Charlotte Rodda

Doctor of Philosophy in Political Science

University of California, Irvine, 2016

Associate Professor Charles Anthony Smith, Chair

The purpose of this study was to examine the ways in which the European Union and its member states offer protection to particularly vulnerable refugee populations. The dissertation's three articles focused primarily on the obstacles to securing asylum protection faced by children, women, and stateless persons. While the analysis, overall, shows there is some cause for optimism regarding European protection schemes, there are numerous remaining gaps in protection to be addressed.

The first article examines the possible determinants of asylum claims in Europe. Using statistical data from the European Commission, it explores the impact of variables related to the applicant, the deciding state, and the state of origin. The critical asylum literature argues there is systemic bias against women and children seeking refugee status. However, the results of this article do not support this critique. Instead, the conditions in the state of origin – which can be seen as a proxy for the claim's merit – have the greatest explanatory power in the models.

The second article examines the obstacles faced by refugees seeking protection from gender-based persecution. Unlike other areas of asylum law, there are no definitive EU-level guidelines on how to assess such claims, leaving states to determine their own paths. A comparative legal analysis of 44 appeals decisions demonstrates that although the available European guidelines have some impact on courts' decisions, other factors – including the rates of applications received by the state, the type of court deciding the case, and the length of EU membership – have greater influence on national courts.

The final article explores the gaps in the protections available to stateless persons, including stateless refugees. An examination of policies and documents from IGOs, NGOs, and national government identifies several approaches to addressing protection claims from stateless persons in the EU. Problematically, a lack of supranational leadership has allowed states to use this divergence in approaches to either avoid responsibility for stateless persons or minimize the protection available to them. In particular, the delegation of statelessness determination procedures to asylum authorities has created and institutionalized several obstacles to protection for stateless persons.

CHAPTER ONE

INTRODUCTION

On March 18, 2016, as the Syrian civil war entered its fifth year, the European Union and Turkey reached a deal intended to address the ongoing arrival of new Syrian asylum seekers. Seen as a response to Europe's largest migrant crisis since the Second World War, the new deal would allow the European Union to return to Turkey refugees who entered Europe illegally by travelling through Turkey to Greece. In exchange, Turkey receives several inducements, including the resumption of EU membership negotiations. In addition, the Europeans promised to resettle one refugee living in a Turkish refugee camp for each illegal entrant that Turkey takes back from Greece (Collett 2016; Kanter 2016). The European Union argues that the deal "will deter migrants from trying to make dangerous journeys into Europe" by offering a legal alternative to reaching Europe through the resettlement plan (Kanter 2016).

This agreement brought extensive criticism from human rights groups who view the plan as shortsighted and hypocritical. These groups claim the deal violates Europe's commitments under international law and will increase rather than decrease the insecurity and dangerous conditions faced by refugees. According to this view, the position taken by the European Union in this deal is all the more ironic given it "has spent several decades preaching its own high asylum standards to neighboring countries," often chastising its own members in southern and eastern Europe for not meeting these standards (Collett 2016; De Groot, Swider, and Vonk 2015).

Although the recent European migrant crisis and the ongoing Syrian civil war have brought heightened attention from the public to refugee flows and asylum seekers, scholars

and policy makers have been acutely aware of challenges in anticipating, assisting, and regulating refugee flows for decades. For many states in the Global North, including those in the European Union, refugees in particular and migrants generally have long been considered threats to national economies, identities, and overall stability. However, just as important, these developed countries have grown ever more committed to the rhetoric of the international human rights regime. Politicians regularly recognize the potential tensions that exist between national interests and the implementation of human rights protections. While national interests are generally given precedence in political rhetoric – as has certainly been seen in Europe over the last year – and, at times, even in policy, most leaders fall short of claiming national interests always win over human rights when the two conflict rather than overlap. Instead, national and supranational leaders in Europe are confronted with the Sisyphean task of developing policies that balance their domestic security and their international human rights commitments.

Although extensive research has been done on the various ways in which states can, should, or have dealt with refugee populations, many studies come to an overarching conclusion on how well – or how badly – states approach asylum protection. This is often understandable given the need to focus one’s research given time, space, and audience. However, the tension between national interests and human rights is recognized as a complicated one with which states must contend. Would not, then, the outcomes of their policy choices be much more complex as well?

Research Questions

How well do the European Union and EU member states find a balance between national interests and their international human rights commitments to refugees? Several

scholars note that, while there may be better ways forward, Europe does a fairly decent job, within its limits, ensuring the consistent implementation of human rights protection for refugees and asylum-seekers while maintaining the stability of their own nations and regions. Indeed, Europe is often used as a yardstick by which other developed nations are measured (e.g. Meili 2015; Tolley 2012). By contrast, there is a strong cadre of critics of the European regime. These critics see serious flaws in European human rights policies and in their approach to refugees and asylum protection in particular. According to this critical perspective, there has been a decisive shift in European policy, most notably at the state level, away from the expansion of legal and physical access to protection for refugees and toward restrictive immigration policies and asylum procedures (see e.g. Brekke and Brochman 2014; Brekke and Vevestad 2007; Hailbronner 2007; McAdam 2005; Storey 2008). In light of this potential for tension between national interests and human rights, the overarching research questions directing this inquiry are: Does this tension necessarily lead to either the triumph of national interests or the expansion of human rights protection for refugees? Or does the tension between national interests and human rights result in a variety of policies and procedures that preference each side of the debate to varying degrees of success?

These questions leave me with a rather tall order to fill and to answer them completely would be far beyond any realistic goal for this study. The purpose of this analysis, therefore, is not to close the book on this debate. Rather, I am interested in testing the outcomes of this tension by focusing on what I call vulnerable refugee populations. By focusing on vulnerable populations, I argue, this analysis will test the core of national and supranational beliefs on the competition between national interests and human rights. It

achieves this because these particular groups of individuals are seen as the victims most in need of international protection, thereby giving greater weight to the human rights side of the debate. National interests are often seen as having a stronger pull for policy makers, so this provides a tough test for the claims of those critical of the European asylum regime (Davis 1998; Hafner-Burton 2008; Hafner-Burton and Tsutsui 2005; Smith-Cannoy and Smith 2012).

Of course, all refugees, by virtue of their situation – forced from their homes and without the protection of their home government – are vulnerable individuals. However, the literature highlights sub-groups within the larger refugee population who face particular and unjustifiable bias within the asylum regime and/or whose experiences are inadequately covered by international, supranational, or national law. There are several groups that fall within this vulnerable population category, including children, women, and stateless persons.

The first article of this dissertation includes all three of these groups of vulnerable populations in its analysis. Several studies have been conducted to assess the determinants of asylum claims in Europe. However, the majority of these studies focus exclusively on characteristics of the state in which the application is filed his or her claim and the state from which the applicant has fled. Few studies evaluate the effects of individual applicant characteristics in a systematic way. The research question guiding the first article, therefore, is: What effect do individual applicant characteristics have on the rates of successful asylum claims in Europe? I hypothesize that once individual characteristics are included in the analysis, the effects of the traditional determinants – characteristics of the

application state in particular – will become less influential and individual aspects of the applicant will provide some of the explanatory power.

The particular challenges faced by women refugees, especially when they make asylum claims on the grounds of gender-based persecution, have been the subject of a substantial portion of the refugee and asylum literature. Feminist scholars and critics of asylum procedures argue that women cannot receive the same level of protection at the same rates as male refugees because there are certain types of persecution that are particular to women, including female genital mutilation, rape as a war tool, and domestic violence. In the cases of such persecution, the individual is not simply persecuted as a woman, but *because* she is a woman (Randall 2002). However, gender is not included as one of the grounds for persecution within the 1951 Geneva Convention's definition of a refugee. In light of this contradiction, the second article asks: How does the European Union and its member states evaluate asylum claims made on the basis of gender-based persecution? The European Union has offered some guidelines regarding gender-based persecution, but it is much less clear than other parameters set at the supranational level. I hypothesize, therefore, that member states will be much more conservative in the protection offered to individuals making gender-based claims than they are in claims made on the legally recognized grounds for persecution.

International law, and the human rights regime are all based upon the system of sovereign states. One core foundation of this system is that every individual belongs to a particular state. However, we know that not all individuals have the benefit of citizenship. Stateless persons reside around the world, including in Europe. When stateless persons are forced into refugee situations, their standing in the world becomes even more precarious.

Stateless persons making asylum claims face legal obstacles arising from the original definition of a refugee in the 1951 Convention. This definition requires that the refugee is unable or unwilling to seek protection from their state of origin. However, stateless persons have no state of origin and can rarely count on protection from their state of residence in the best of times. The obstacles to protection for stateless persons only increase when the stateless person in question does not clearly fit the refugee definition or is seeking assistance in a state without clear protections against statelessness. The European Union has offered recommendations but no clear directives on dealing with statelessness as an internal issue, let alone in the refugee context. The research question guiding the analysis in the third article is: In the absence of a clear supranational policy for addressing statelessness, what options do stateless persons have to secure protection in Europe and how effective are these options? I hypothesize that states with statelessness determination procedures will offer clearer and more consistent paths to protection than states who have not incorporated such a procedure.

Literature Review

International Asylum Law

The most important foundational elements of the international asylum legal regime are found in the 1951 Geneva Convention Relating to the Status of Refugees, hereafter called simply the Geneva Convention or the Convention. The Geneva Convention is still widely used to provide the minimum threshold that applicants must meet in order to be considered for asylum. Perhaps the most crucial aspect of this convention is its definition of a refugee; under the current canon of asylum law, only a refugee can apply for asylum. According to Article I(a), a 'refugee' is an individual who

Owing to a well-founded fear of persecution 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. (UNHCR 2010)

Individuals seeking protection under the Geneva Convention are traditionally required to satisfy three conditions based on this definition. First, the applicant must be able to support a claim of persecution under one of the four categories outlined in the Convention's refugee definition. Second, the situation in the applicant's state of origin must be such that the applicant has no reasonable expectation of protection were they to return home; "if meaningful state protection is available, protection under the 1951 convention will not be granted" (Crawley 2000: 90). Finally, in order to be considered a refugee and thus be eligible to claim asylum the individual must have crossed an international border and no longer be inside their state of origin. This distinction is important in that it makes the growing number of internally displaced persons ineligible to apply for asylum (Tee 1996).

While it is relatively easy to highlight these three conditions, the definition of a 'refugee' is hardly straightforward in practice. In particular, the lack of clarity on key points of the definition has bedeviled courts for decades. For example, the Convention does not provide a specific definition of 'persecution,' which is obviously a key component in deciding the merit of an applicant's case (Randall 2002; Aleinikoff 1991). National courts, therefore, have often had to try to address the lack of a 'persecution' definition while considering individual cases, which is complicated by the perennial fear of 'bogus refugees' who would more appropriately be considered economic migrants and are instead using asylum as a back door into developed states (Castles and Loughma 2003; Düvell and Jordan 2002). Unfortunately, critics argue that few courts have dealt with this definitional

ambiguity in a way that is consistent either with the Convention's intentions or with their own legal decisions over time (Aleinikoff 1991).

European Asylum Law

The European Union has put in a great deal of time and effort in recent decades to develop and implement a unified approach toward asylum and refugee law. Much of this harmonization agenda has involved making sure each member state is a party to relevant international human rights treaties, including the Geneva Convention, and has implemented the necessary changes in domestic policy and law to conform to these treaties (Hillion 2004; Pridham 2006). In addition, the European Union has taken harmonization a step further by developing its own set of agreements, policies, and guidelines to bring the national asylum systems of all twenty-eight member states into alignment, reducing the variability of protection – and state responsibility for protection – across the region. The common minimum standards for the European Union in the area of asylum policy were set with the adoption of four key measures: the Reception Conditions Directive, the Dublin II Regulation, the Qualifications Directive, and the Asylum Procedures Directive. The various rights entailed in these measures, as well as the very right to asylum protection itself were collectively enshrined in EU law in the Lisbon Treaty in December 2009, also ensuring the European Union's continued leadership over member states in asylum policy (Blockmans and Wessel 2009; Borrás and Radaelli 2011; Tolley 2012; von Bogdandy and Schill 2011).

The Reception Conditions Directive was originally adopted in 2003 and a new one recently entered into force in July 2015 (Migration and Home Affairs 2015a). The original version of this directive addressed the material reception conditions of asylum seekers, such as access to housing, food, and medical care. The updated version takes further steps

to ensure harmonization in the area of reception conditions and addresses concerns raised after the adoption of the original directive, including the individual assessment of vulnerable persons and specific guidelines for the use of detention without violating the fundamental rights of refugees (Migration and Home Affairs 2015a). However, as with the subsequent legislative measures, problems remain with these guidelines and, according to some scholars, considerable differences still exist among the reception conditions of various member states (Brekke and Brochman 2014; Brekke and Vevestad 2007; Hailbronner 2007)

The Dublin II Regulation, adopted in 2003, was a response to rising concerns over refugee 'forum' or 'venue shopping' (Kaunert and Léonard 2012). Before Dublin II, refugees could travel across Europe to reach an intended state in which to file an asylum claim. In addition, if denied asylum in one country, a refugee could leave the country that denied its claim and travel, thanks to the borderless Schengen Area, to another country in Europe and file for asylum again. The Dublin Regulation, therefore, sets forth the guidelines for determining which member state will be responsible for reviewing an individual's asylum claim (Migration and Home Affairs 2016b). However, disagreement continued over the regulation, particularly because it was seen by states along the external borders of the European Union as a means to deflect responsibility by internal member states. This is a concern that has been shown to be valid by some academic research (e.g. Neumayer 2004). Therefore, the Dublin III Regulation was adopted in 2013 and addresses, among other things, the obligation of states to offer free legal assistance, limitations on reasons for and duration of detention, as well as the right for applicants to appeal the decision to transfer their application back to another member state (Migration and Home Affairs 2016b). The

Dublin regime as a whole has been plagued by controversy and disagreement since its inception. Concerns remain over the latest version of this regulation, which may lead to yet another incarnation of the legislation (Brekke and Brochman 2014)

The Qualification Directive was adopted in 2004 and is, perhaps, the most important piece of supranational legislation for this analysis. This directive establishes the minimum standards by which member states are obligated to grant international protection (Migration and Home Affairs 2015b). Although the guidelines in the Qualification Directive were fundamental in establishing the basis on which protection would be granted – as well as what kinds of protection would be offered beyond refugee status – the guidelines of the original directive were notably vague (Migration and Home Affairs 2015b). This led to the continued divergence of protection standards across member states rather than the intended harmonization. This divergence became greatest in the areas of ‘subsidiary protection,’ a term that includes essentially all other statuses granted by member states to individuals deemed worthy of protection, but who fall short of the requirements of the refugee definition. Instead of harmonizing these subsidiary protection statuses, the directive entrenched them in the EU asylum regime, creating an official hierarchy of protection with refugee status at the top and all others below (McAdam 2005; Storey 2008).

Adopted in 2005, the Asylum Procedures Directive establishes the European Union’s standards for safeguarding and guaranteeing access to asylum procedures that are fair and efficient. The first version of this directive chose as its common standard the “lowest common denominator between Member States at the time” and, like the Qualification Directive used vague language that allowed states to avoid accountability for implementing

its rules (Migration and Home Affairs 2016a). The updated version provides much clearer language with the goal of closing the kinds of loopholes member states used to avoid making changes in the past. In addition, it aims for procedures across the region to be faster and more efficient, while simultaneously providing additional assistance and time to the most vulnerable refugees (Migration and Home Affairs 2016a). The new version of the directive gives some rights back to the state as well, however, including the ability of states to prevent individuals from making repeated asylum claims once they are no longer in need of protection.

Definitions of Relevant Groups

There are several terms used in this literature that deserve clarification before moving forward. Below is a list of the most common terms for individuals used in the literature and their definitions, all of which come from the United Nations High Commissioner for Refugees (UNHCR 2016).

- **Refugee:** someone 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 to, or owing to such fear, is unwilling to avail himself of the protection of that country" (UNHCR 2016).
- **Migrant:** "especially economic migrants[, these are individuals who] choose to move in order to improve the future prospects of themselves and their families" (UNHCR 2016).
- **Asylum Seeker:** "an asylum-seeker is someone who says he or she is a refugee [and is seeking international protection,] but whose claim has not yet been definitively evaluated" (UNHCR 2016). They must be officially recognized as a refugee in order to be considered for asylum. Technically, this recognition should ensure the individual asylum protection.
- **Internally Displaced Person:** an individual who for some reason has fled their home, but have not crossed an international border. Since they are not 'outside their country of nationality,' they are not eligible for international protection even if they fled for the same reason as a refugee.

- **Stateless Person:** an individual without a nationality. They are either not recognized as citizens within their state or they belong to a political entity that is not recognized as a state by the international community.
- **Returnee:** Refugees who voluntarily return home.

In much of the literature on asylum protection, the terms ‘refugee’ and ‘asylum-seeker’ are used interchangeably. Despite the subtle differences in their definitions, this analysis follows the same practice. Asylum-seekers claim to be refugees; therefore, until their claim is denied, we can consider them as such for our purposes here.

Traditional Determinants of Asylum Claims

The asylum literature offers several possible factors that can impact the likelihood that an asylum claim will be successful. I have divided these factors into two general groups. The first are what I call ‘traditional determinants.’ They are traditional because they have received the greatest amount of attention in analyzing changes in asylum success rates. These traditional determinants include characteristics relating to the state in which an application is filed as well as the variables measuring various aspects of the applicant’s state of origin. The second set of determinants relates to individual characteristics and is discussed in the next section.

Destination States

Variables measuring aspects of the state in which an asylum case is decided are among the most common in empirical studies of the determinants of asylum claims. There are three specific areas of research within this area of the literature: politics, economics, and the state’s history of applications. The political characteristics of destination states have been a strong area of research in terms of asylum and immigration policy (Boswell 2007; Fekete 2005). The electoral costs a politician or government might suffer seem a

particular concern, especially in the face of a resurgence of racism and xenophobia as well as the successes of far right parties in Europe in recent elections (Allen 2015; Levy 2005). However, to my knowledge political variables have not had much success in explaining asylum recognition rates (Boswell 2007; Neumayer 2005a), though electoral gains by right-wing parties has been shown to impact the overall number of applications submitted (Neumayer 2004).

By contrast, both economic and historical variables have shown some promise as determinants of asylum claims. When assessing the impact of the economic conditions of a destination state, the state's gross domestic product (GDP) and unemployment are often used within the asylum literature. Neumayer (2005a, 2004), for example, found that higher levels of GDP led to higher recognition rates in European states – perhaps because they can better afford to take on the financial cost of asylum seekers – while the percent of unemployed in the state had no significant effect. However, increasing concerns over the sustainability of welfare states (Vincent 1996) as well as rising unemployment in the wake of the Great Recession (Bell and Blachflower 2011; Cervany and van Ours 2013; Hatton 2012) may have changed or increased the influence of economic factors on asylum rates in recent years. Higher levels of GDP may still contribute to higher recognition rates, but high rates of unemployment may temper them, leading to a reliance on intermediate or temporary forms of protection, or even cause the overall rates of protection to decrease.

In addition to economics, the asylum recognition rates of destination states may be affected by their history of received applications. Specifically, it is argued that higher numbers of applications received by a destination state in previous years leads to lower rates of recognition moving forward. There may be a certain degree of 'crisis fatigue'

affecting the willingness of destination states to continue to accept refugees and asylum seekers (Holzer and Schneider 2001). Both Neumayer (2005a) and Holzer and Schneider (2001) tested this theory and found that higher total numbers of applications corresponds to lower recognition rates.

States of Origin

Another aspect of asylum applications that might be impacting applicants' chances of gaining asylum is from what state or part of the world the applicant originates. Much of the asylum literature has dealt with this feature differently than it does other aspects of asylum cases by focusing particularly on the volume and direction of the migration of refugees from particular states of origin to states of destination (Bocker and Havinga 1998; Castles and Loughma 2003; Hatton 2004; Neumayer 2005b). Another group of scholars has tried to test the impact of specific states of origin or characteristics of states of origin on the outcomes of asylum claims. In this analysis, I aim to contribute to the latter of these two literatures.

The analyses of those who have taken a look at the interaction between asylum applications, the rate of positive decisions, and an applicant's state of origin offer a bleak outlook on the system. In an attempt to stem some of the tides of refugee flows, various European states have implemented legal and legislative measures to deter asylum seekers. States like Switzerland did so by making the interpretations of the international refugee and asylum law in their national law more restrictive and less favorable to the applicant (Holzer, Schneider, and Widmer 2000). Neumayer (2005a) investigated the effects of this phenomenon across Europe. According to his findings, these deterrent policies do have an effect on asylum applications in an indirect way. Specifically, Neumayer (2005a) notes that

as the number of successful asylum claims in a particular destination state decrease, refugees' belief that they would successfully gain asylum in that destination state decreases as well. Thus, refugees become less likely to file an asylum claim in that state in the first place, reducing the overall number of applications received by the destination state in question (Neumayer 2005a). In an earlier analysis, Neumayer (2004) found that this relationship is stronger when you take into account the connections between states of origin and destination – such as former colonial ties, shared language, and geographical proximity.

Perhaps the most important group of variables related to applicants' states of origin deal with the conditions – or the perceived conditions – in the state of origin. Several studies have used common measures of political freedom and state violence to try to explain the rates of successful asylum claims. In a way, measures such as the Freedom House scores of states' level of political rights and civil liberties (Freedom House 2014) and the Political Terror Scale, which measures violations of physical integrity in each state (Gibney, Cornett, Wood, and Haschke 2014), serve as proxies for the merit of individual asylum claims. This is especially true when using aggregate data where individual measures of merit are not available; these scores can mimic the effect of merit because they measure the potential for persecution in a state. Asylum applicants who are citizens of states with poor records on these scales would be expected to be more likely to receive asylum since they are less likely to receive protection in their state or origin.

Other measures of the characteristics of a state of origin are meant to gauge the perceptions of states and the conditions in those states by refugee destination states (Akram 2000; Keith and Holmes 2009). For example, while scholarly research has shown

that there is no clear relationship between becoming a party to an international human rights treaty and greater respect for human rights (Goodman and Jinks 2003; Hathaway 2007; Neumayer 2005c), it is possible that the decision whether or not to sign a treaty still sends a signal to other states about a government's intent to comply with the treaty's terms (Martin 2005). Not signing the Geneva Convention, therefore, may signal to other states a lack of intent to protect individuals who would qualify as refugees outside of their state of origin and, therefore, could lead to higher rates of asylum for individuals from these non-signatory states.

The terrorist attacks in the United States on September 11, 2001 as well as subsequent attacks in Europe, including the July 2, 2005 London attack, have also shaped the ways in which states view refugees from particular parts of the world (Acer 2004-2005; Levy 2005). The perennial fear of 'letting in terrorists' that plagues immigration debates is also likely to have crept into asylum considerations in addition to the attendant fear that too strict a policy might turn away individuals with legitimate claims for asylum (Alink, Boin, and t'Hart 2001; Düvell and Jordan 2002). Similarly, Akram (2000) argues that Western perspectives of Islamic governments, specifically the prevalence of neo-Orientalist views among both Western states and human rights advocates, has proved detrimental to applicants from these states. The stereotyping of Islamic governments as 'warmongering' or as 'terrorists' has only served to [support and promote] the most repressive and extreme versions of Islamic interpretation currently being manipulated by fundamentalist regressive regimes...further [strengthening and entrenching] such regimes' efforts to distance 'Islam' from universal human rights" (Akram 2000: 9). However, rather than contributing to the success of claims made by applicants from Muslim states, these

simplistic characterizations have made it much more difficult for these refugees to seek asylum. Extreme or simplistic characterizations of Islamic governments often obscures the types of persecution that are actually occurring and, more importantly, such grandiose claims about the nature of such states can easily be disproved through the governmental research and expert testimony that are customary in the adjudication of asylum cases (Akram 2000; Polk 1997-1998). In both instances, the case for asylum becomes more difficult for applicants to prove and may lead to lower instances of successful asylum claims.

Individual Characteristics and Vulnerable Populations

Women and Gender-Based Discrimination

One of the earliest and most extensive areas of research to develop as a critique of the dominant asylum law regime is focused on feminist and gender concerns. It should come as no surprise that research on gender dominates much of the asylum and refugee literatures; woman and children are strikingly overrepresented in refugee populations, accounting for as much as 80% of the world's refugees (Randall 2002). Despite the fact that a majority of the world's refugees are women, some scholars have noted that they are seriously underrepresented in the population of successful asylum applicants (Randall 2002; Keith and Holmes 2009). However, other scholars contend that the evidence, in fact, points in the opposite direction and that female refugees actually have an advantage over males in asylum cases (Bhabha 2004a).

The feminist and gender asylum literature largely focuses on aspects of persecution that scholars argue are more common or particular to women, such as rape, domestic abuse, female genital mutilation (FGM), and sexual violence (see e.g. Ankenbrand 2002;

Anker 2000-2001; Anker, Gilbert, and Kelly 1997; Bahl 1997-1998; Bloch, Galvin, and Harrell-Bond 2000; Crawley 2000; Gomez 2003-2004; Heyman 2005; Heyman 2002-2003; Musalo 2002-2003; Randall 2002; Seith 1997; Sinha 2001). Two interrelated obstacles seem to emerge for courts when considering asylum claims made by women or made as a result of the types of persecution listed above. The first obstacle is that many of the instances of persecution considered to be of particular concern for women or that have historically been viewed as belonging to the 'domestic' sphere rather than the public sphere are also less clearly covered by international legal conventions related to asylum or refugees (Anker 2000-2001; Anker, Gilbert, and Kelly 1997; Randall 2002). Cases of refugees who suffered FGM, for example, often fall in this category. Second, the agents of persecution in many of these cases are non-state actors or are declared to be non-state actors by the courts due to what is often seen as aberrant rather than institutionalized conduct (Bahl 1997-1998). Victims of spousal abuse and rape by authority figures often struggle to prove the role of the state in their asylum cases. Within this framework, being a woman puts the individual at a disadvantage in asylum courts and results in fewer instances of full asylum protection.

The majority of this feminist and gender asylum literature focuses on the negative impact of gender on an applicant's likelihood of gaining asylum. However, there are other issues to consider. First, there is a strong victimization narrative in the civil war literature that has traditionally viewed women and children as the primary victims in times of conflict (Alison 2007; Bhabha 2004a; Carpenter 2005). Several scholars have also noted that this overemphasis on women and children as the victims of conflict has two problematic consequences. First, the focus of the victimization narrative on women and

children has disempowered these groups and diminished their potential to be seen as autonomous political actors; this is especially true for adult women (Alison 2007; Carpenter 2005). This viewpoint makes applications from women based on political persecution in civil conflict potentially less compelling in an asylum court. Second, this narrative creates an environment in which adult male victims often do not get the protection they need because it is assumed that either they can take care of themselves if they are truly victims or that they are, by contrast, active and willing participants of the conflict (Alison 2007; Carpenter 2006; Sivakumaran 2007; Zawati 2007). This would indicate that, contrary to the feminist viewpoint, adult women might be more likely to receive asylum than adult men because women and children are viewed as the primary if not sole victims of conflict.

Children and Unaccompanied Minors

Since children, along with women, are commonly overrepresented among refugee populations, some scholars have begun to turn their attention to the particular issues related to refugee children and asylum applications made by minors (Bhabha 2004b; Taylor and Byford 2003; Stellinga-Boelen et al. 2007; Christie 2003; Dunkerley et al. 2005). The issue of minor asylum seekers and, in particular, of unaccompanied children, is of growing concern for top asylum receiving states for two reasons. First, there has been a worrying increase in the number of such children arriving in these states – according to estimates from the UNHCR, unaccompanied children account for as much as 15 percent of asylum seekers in some states (Bhabha 2004b). The second reason minor asylum applicants are a concern is due to the fact that the increase in their number is often attributed to increases in human trafficking (Bhabha 2004b; Bocker and Havinga 1998).

There certainly does seem to be some concern over the trafficking element and the abuse trafficked children may suffer as a result of the experience. However, the primary focus of the policy debates connecting asylum and child trafficking is on the abuse of the asylum procedures by traffickers using the system to move children into particular states (Bhabha 2004b). If such abuse of the legal system is as pervasive as policy makers seem to fear it is, it might go a long way to explaining the approaches states take in addressing asylum applications from unaccompanied minors. It appears, therefore, that the age of an asylum applicant might trigger concerns about these abuses of the legal system when such cases are brought before the courts, making it more difficult for young asylum applicants to receive the full protection offered under the Geneva Convention.

At present, the bulk of the literature regarding minor asylum applicants focuses on either the medical needs of refugee children once they arrive in the receiving state (Taylor and Byford 2003; Stellinga-Boelen et al. 2007) or the interactions of national social work agencies and individual social workers with children seeking asylum (Christie 2003; Dunkerley et al. 2005). However, research has started to emerge that focuses on the legal implications and obstacles for asylum applications from minors. In particular, scholars are parsing out the similarities and, more importantly, the differences between the experiences of women and child refugees. This effort is important in that it deconstructs the assumptions of much of the literature as well as of policy makers that has traditionally collapsed them into a single category of vulnerable people (Bhabha 2004a).

In a similar fashion to female refugees, some scholars note that children, especially when unaccompanied, have a more difficult time in successfully securing asylum than adult applicants. However, unlike adult women, the primary source of difficulty for these young

applicants appears to come directly from the structures and procedures of the legal system rather than ambiguity or bias regarding specific aspects of their cases. In particular, because of their age, minor applicants have little to no agency within asylum courts; they must rely on the advocacy of others in search for protection.

[Minor applicants] have difficulties getting adequate legal representation, their cases are more likely to be postponed and to drag on over time, and they have less chance of being granted refugee status. The outcome of an asylum application is often a troubling limbo of indeterminacy, rather than reassuring guarantee of permanent status. (Bhabha 2004b: 143).

Further, while the feminist and women's rights movements have systematically challenged the male-centered aspects of the asylum regime, there has been no comparable movement to challenge the adult-centered aspects of asylum law (Bhabha 2004a). Thus, there has been little movement made to improve the legal outlook of minor asylum seekers.

State Persecution and Stateless Refugees

One of the most challenging areas of the asylum literature deals with stateless persons and stateless refugees. Stateless refugees form a particularly vulnerable population and often pose a challenge to states tasked with assessing their asylum claims. Stateless persons have no official nationality and are not considered a citizen by any state. As was mentioned above, international asylum law has largely interpreted the Geneva Convention refugee definition in a state-centric way (Aleinikoff 1992; Weiss 1954). In particular, the portion of the refugee definition that requires the individual to be 'unable, or owing to such fear, is unwilling to avail himself of the protection of that country' has often been interpreted to mean that the state or a state representative is the perpetrator of the persecution. For stateless individuals, this creates a seemingly insurmountable paradox: on the one hand these individuals are not under the legal protection of any state and thus fit

the definition; but on the other, they cannot claim persecution at the hands of their state since they have no state.

Further complications for stateless persons and stateless refugees come from the definition of statelessness: to be without nationality or citizenship. This definition of statelessness is a legal one, as are the conceptions of citizenship and nationality in this context, and does not take into account the nuances of the lived realities for stateless populations. For example, the degree to which citizenship is granted can vary, making determining the point at which statelessness occurs difficult, if not impossible (Batchelor 1995; Settlege 1997-1998). Further, given the international system's views of statelessness and refugee status as "problems" to be fixed and individuals fitting these definitions as "aliens" within the system, some stateless individuals refuse to identify as such (Alienkoff 1992: 120; Weiss 1954: 193; Van Waas, de Chickera, and Albarazi 2014). By contrast, the conditions in a person's original state of citizenship might be so dire or the persecution of their group so great, as in the case of the German Jews during the Third Reich, that the person voluntarily chooses statelessness in order to escape it (Batchelor 1995).

Both the international community – through the 1961 Convention relating to the Status of Stateless Persons and the work of the UNHCR – and the European Union have implemented agreements, put forth guidelines, and conducted studies on how to prevent statelessness (De Groot, Swider, and Vonk 2015; Van Waas 2014; Vukas 1972; UNHCR 2014a). However, despite the UNHCR's attempts to raise awareness and the EU's published research on internal statelessness (De Groot, Swider, and Vonk 2015), these efforts focus largely on statelessness in the developing world rather than developed states. Further, beyond the overall benefits of ending statelessness, these instruments are vague or simply

silent on how to protect stateless individuals who seek refugee status and asylum. Some research has been done in this area, but it too is limited in scope. The majority of these studies focus on the developing world as well (see e.g. Lee 1998; Sen 2000; Sen 1999; Settlege 1997-1998), though there are a few notable exceptions that highlight the role of statelessness in developed states like the United States (see e.g. Kerber 2007).

The available scholarship on statelessness and the protection available to stateless individuals does raise two additional problematic layers to the examination of statelessness within the asylum context. The first is that, in some instances, the refusal of asylum protection by a state can, in itself, put an individual in a “statelessness-like” situation (Blitz and Otero-Iglesias 2011: 657). This literature draws primarily from the work of Hannah Arendt and her conception of statelessness as entailing three losses: home, state protection, and having a place in the world. Individuals who are denied asylum and yet cannot return home due to safety concerns meet Arendt’s criteria (Arendt 1945; Blitz and Otero-Iglesias 2011).

The second problematic layer is created by the notion that all refugees are *de facto* stateless. So a gap is created between individuals who are *de facto* stateless and receive protection through the asylum regime and those who are *de jure* stateless and fall under the statelessness frameworks (Batchelor 1995). This complicates the definitional issues that already exist for statelessness and, one could imagine, complicates the efforts of refugees, stateless refugees, and stateless persons – who are not refugees – to secure protection and stability in the world.

Research Design

Data and Collection

The data for this study consists of three primary types:

Statistical Data

The first type of data I use is statistical data on rates of successful asylum claims and the determinants of asylum claims in Europe. The statistical data on the rates of successful asylum claims will come from the Eurostat database, which is run by the European Commission (European Commission 2014). It is more common in this area of research to use the data available through the UNHCR. However, the UNHCR's dataset only allows analysis based on the states of destination and origin. It is not possible to match up individual applicant characteristics, such as age and gender, with this aggregated state-specific data. Eurostat, by contrast, includes age and gender as variables in its asylum decisions datasets. Additionally, the Eurostat dataset include 'stateless' as a citizenship category. Therefore, I am able to analyze all three groups of vulnerable populations with the same set of data.

In addition to Eurostat, I will draw data for the destination state and origin state characteristics from a variety of sources. In particular, I plan to use destination state economic variables from the World Bank and state of origin variables from the Correlates of War Project, Freedom House, and the Political Terror Scale. Each of these datasets provides information that is relatively up-to-date, allowing me to use as much of the original Eurostat dataset as possible.

Finally, I am investigating the usefulness of statistical data on statelessness made available by the Institute on Statelessness and Inclusion as well as the UNHCR. However, data on statelessness is even more problematic than asylum data can be due to significant

definitional and reporting concerns. Therefore, the use of statistical data in this portion of the dissertation will be limited. The next stage of my ongoing research agenda, of which this dissertation is a part, will more directly address the obstacles in using stateless data and conduct preliminary analyses.

Legal Data

The second type of data I have collected consists of national and supranational legal decisions. In particular, I have gathered decisions from the European Court of Human Rights (ECtHR), European Court of Justice (CJEU), and appeals decisions from national courts. These decisions are drawn, primarily, from two databases: the CODICES Database and the European Database of Asylum Law. The European Commission for Democracy through Law, or the Venice Commission, publishes the CODICES Database. “One of its functions...has been collecting, translating, and organizing by topic the leading decisions of the constitutional courts of the member states of the Council of Europe” (Tolley 2012: 82). In addition, I have gathered additional high court decisions as well as appeals decisions made at lower courts from the EDAL – European Database of Asylum Law – database. EDAL is funded by the European Commission through the European Refugee Fund (EDAL 2016). It includes cases in its database that have “significant judicial impact” with the aim of encouraging legal harmonization in the European Union (EDAL 2015).

Organizational Data

Finally, I have collected publications, reports, and policy documents from inter-governmental and non-governmental organizations. From these documents, I put together a picture of protections and services offered to refugees and stateless persons living in Europe or seeking asylum protection in Europe. In addition, I analyzed the documents for

information on any policies or programs aimed at ending statelessness domestically or addressing the particular situation of stateless refugees. In particular, I collected a variety of documents from the European Union, the UNHCR, and the European Network on Statelessness; all of these organizations work directly with stateless persons or on the issue of statelessness.

Data Analysis

I take a multi-method approach in this dissertation. I, therefore, incorporate a variety of quantitative and qualitative methods. This allows me to assess both behavioral and institutional aspects of the asylum regime in Europe. The multi-method approach also provides a more complete picture of the issues at play in determining the access refugees have to protection in the European Union.

Article 1 Analysis

The method I use to analyze the data for the first article is logistic regression analysis. Logistic regression analysis is based on the mathematical concept of the logit or “the natural logarithm of an odds ratio” (Peng, Lee, and Ingersoll 2002: 3). This type of analysis was developed in the late 1960s and early 1970s as an alternative method for analysis with dichotomous dependent variables. Previously, ordinary least squares (OLS) or linear discriminant function analysis was used for data with dichotomous dependent variables, but both methods of analysis are problematic due to their strict statistical assumptions (Peng, Lee, and Ingersoll 2002). After its introduction, logistic regression analysis became increasingly popular in education and social science research. A further description of the method used in the first article can be found in Chapter Two.

Article 2 Analysis

In the analysis for my second article, I conducted a comparative legal analysis. I model my approach to comparative legal analysis on that described by Neil Komesar (1981) and on the analysis conducted by Michael Tolley (2012). According to Komesar, analysis of legal decisions should follow a comparative institutional approach. In other words “the determinants of legal decisions can best be analyzed when legal decision makers are viewed as though they are concerned with choosing the best, or least imperfect, institution to implement a certain goal” (Komesar 1981: 1350). Similarly, Tolley (2012) examines the decisions of high national courts in four European states to determine the degree to which these states ‘keep pace’ with the standards set by ECtHR decisions, as well as, EU directives, on asylum policy. Essentially, Tolley’s analysis assesses to what degree the high courts of these states find the European Union to be the best or least imperfect institution through which to implement their goals for national asylum policy.

Article 3 Analysis

In the third article, I will be using two types of analysis. First, I plan to use the same type of comparative legal analysis described above to analyze legal policies and guidelines involving issues of statelessness. Second, I will use document and content analysis.

Content and document analysis are very similar in that both “provide systematic procedures for reviewing or evaluating documents” (Bowen 2009: 27). The primary difference between these approaches is that document analysis tends to involve qualitative analysis (Bowen 2009) while content analysis is quantitative (Tonkiss 2004); however, the two terms are occasionally used interchangeably. In either approach, the goal is to use documents evaluate meaning and intention of the actors involved. In utilizing these

methods, the researcher gathers data based on the available text that can include quotes in the qualitative context or numerically coded variables based on specific terms in the quantitative case. In both approaches, these coded data are then organized into “major themes, categories, and case examples” that can be used for analysis (Bowen 2009: 28).

Significance of the Study

Although concerns over how states balance the tension between national interests and human rights commitments created by increasing numbers of asylum seekers have been of interest to scholars, advocates, and policy makers for years, the recent migrant crisis in Europe has required a reexamination of both what we know about the refugee and asylum procedures in Europe and how we know it. This study will contribute to an understanding of European approaches to asylum protection by focusing on particularly vulnerable populations of refugees. This focus on vulnerable populations allows us to arrive at a clearer understanding of how states in Europe and beyond balance their domestic concerns with commitments to providing asylum protection when the stakes are highest for the victims.

In addition, the variety of approaches utilized in this study will help to bridge some of the gaps in the existing literature. In particular, the critical literature has focused primarily on qualitative data, which often makes it difficult to test large cases and identify systematic bias. By contrast, many of the examinations that look at Europe as a whole have been quantitative and, at times, lack more in-depth, nuanced understandings of how decisions are made and policies developed. The mixed method approach I utilize in this dissertation allows me to incorporate both in depth analysis of legal outcomes and organizational activities as well as conduct wider-view statistical analyses of asylum claim

outcomes. In the conclusion chapter, therefore, I am able to highlight larger, overarching observations that might be missed without incorporating these various approaches.

This project will also offer a glimpse into three important aspects of asylum trends in the European Union: the continued complexities of European harmonization in asylum policy, an approach to gender-based persecution claims that may become the international standard with its acceptance in the EU, and real contradictions that still exist for groups like the stateless living in developed countries claiming to embody the best of human rights and asylum protection. An examination of the statistical, legal, and organizational data across the three articles of this dissertation will suggest the existence more nuanced approaches to asylum protection within the European Union and provide future researchers important reasons for looking more closely at the tensions between national interests and human rights commitment in this and other policy areas.

Outline of the Study

The second, third, and fourth chapters present the three articles that form the substantive analysis of this study. In the second chapter, titled “Decision-Making Processes and Asylum Claims in Europe: An Empirical Analysis of Refugee Characteristics and Asylum Application Outcomes,” I ask: what effect do individual applicant characteristics have on the rates of successful asylum claims in Europe? I use country level data from the Eurostat database to examine asylum decision rates in Europe. In particular, I assess the effects of various groups of characteristics on the likelihood of being granted asylum. Unlike many previous studies, I am able to include individual applicant characteristics – gender and age – that are believed to affect outcomes despite not being directly related to the merits of an

asylum claim. By doing so, I empirically test the asylum literature's anecdotal evidence of bias in the decision-making processes that determine the outcomes of asylum claims.

The third chapter, "Setting the Pace for Brussels and Strasbourg: Approaches to Gender-Based Asylum Appeals in the European Union," examines how European states interpret international, supranational, and national law in deciding asylum claims based on gender-based persecution. Using appeals of denied claims, I build on the work of Michael C. Tolley who demonstrated that high national courts in four European states rely on EU law and ECtHR rulings to bolster existing rights in national law. By doing so, the courts implement more progressive standards than those required by the EU. For cases based on gender-based persecution, however, I hypothesize that the imprecise nature of EU-level guidelines and relative lack in ECtHR rulings on gender-based persecution as a basis for asylum protection will lead courts to rely on other sources of law and traditional distinctions between private and public spheres. Instead of consistently leading to more progressive stances on asylum protection, these other legal precedents leave states with multiple, often competing, options for determining refugee status in cases where the persecution is based on gender.

The fourth chapter is titled "Nowhere to Go and No Place to Call Home: Stateless Refugees in a State-Centered World." This final article asks: in the absence of a clear supranational policy for addressing internal or external statelessness, what options do stateless refugees have to secure protection in Europe and how effective are these options at protecting stateless refugees? Although most states recognize the plight of stateless persons, few have clear policies or national laws addressing the needs of stateless refugees who seek protection. In Europe, decisions about how to help stateless refugees are

complicated by the continued existence of stateless persons residing across the region. The EU has offered no clear supranational policy or procedures for addressing either resident or migratory stateless populations. In this chapter, I examine how European states address claims from stateless persons and how their policies in immigration law are affected by their approaches to dealing with stateless populations residing within their own borders. In addition, the chapter analyzes supranational, national, and non-governmental approaches to addressing statelessness. I hypothesize that member states with statelessness determination procedures will offer greater and more accessible options for protection than the majority of European states which do not have such procedures.

In the final chapter, I summarize my findings across the three articles and what these results tell us about the asylum regimes and opportunities for protection in the European Union. I explain how my dissertation contributes to both the larger refugee literature examining the determinants of asylum claims and how particular groups have become especially vulnerable as well as the literature on harmonization of asylum law in the European Union. Finally, I conclude by pointing to ways that further research could benefit scholars' understandings of asylum protection more broadly as well as the protections available to particularly vulnerable refugee populations both in and beyond the European context.

CHAPTER TWO

DECISION-MAKING PROCESSES AND ASYLUM CLAIMS IN EUROPE: AN EMPIRICAL ANALYSIS OF REFUGEE CHARACTERISTICS AND ASYLUM APPLICATION OUTCOMES

Since the signing of the 1951 Geneva Convention Relating to the Status of Refugees (hereafter Geneva Convention), the paths taken by refugees seeking asylum have grown increasingly varied. The forces driving modern refugees from their home countries range from civil war to natural disasters. Some asylum seekers spend significant amounts of time in refugee camps before finding safe haven in another country while others travel directly to their chosen asylum destination. Even the initial application submission process can vary depending on where, when, and how a refugee gains – or attempts to gain – access to the state in which he or she seeks asylum. However, for refugees seeking asylum in Europe, there is a certain level of consistency in how asylum applications, once submitted, are assessed and the ways in which decisions regarding protection are reached.

In most European states, there is a single administrative body tasked with handling all asylum applications filed in a state – such as the Office of the Refugee Applications Commissioner (ORAC) in the Republic of Ireland. A few states delegate this authority to regional agencies, Germany and Italy are notable examples, but the administrative purview and procedure remains essentially the same within the individual regions. Once an asylum seeker's application has been registered with the appropriate authority, a case officer reviews the application and interviews the applicant to assess the validity of the claim. The case officer is charged with first determining the applicant's eligibility for refugee status and asylum protection. If the applicant is not eligible for asylum, the case officer may then consider any subsidiary protections offered under state law. The time taken to complete this process varies greatly between states; on one hand, it can take as little as two weeks

under the Dutch short asylum procedure while, on the other hand, some refugees wait as long as seven years for a first instance decision on their applications in Cyprus (Asylum Information Database 2015).

As signatories to the Geneva Convention,¹ European states have demonstrated their desire to offer protection to individuals seeking safety within their borders and have sought to standardize this process, in particular, within the European Union. Critics of the international and European legal regimes, however, ask whether this protection is offered equally to all refugees. Specifically, many claim that political leaders in key destination states face competing national and regional interests. Governmental leaders struggle between their desire to offer protection to refugees seeking asylum and their serious political and social concerns about the consequences of having asylum seekers in their countries. More importantly, critics claim that a desire to satisfy both of these competing interests has created an asylum system in which not all asylum applicants have an equal chance of receiving asylum. However, while many variables have been suggested, there is little consensus on which factors of an asylum application affect asylum case decisions. Further, while many offer anecdotal evidence of disparities between asylum decisions, few studies have been done to empirically test these claims.

In this article, I take the first of many steps to tackle a large and overarching question that addresses these gaps in the literature. In particular, this article asks: what factors determine the outcomes of asylum claims filed in Europe? To answer this question,

¹ All of the states included in the data set for this article are signatories to both the 1951 Convention and the 1967 Protocol (UNHCR 2014b).

I examine variables identified in the literature as affecting recognition rates,² including characteristics of the individual applicants, their states of origin, and the states in which their asylum applications were filed. Data was collected for 32 European states – the 28 members of the European Union as well as Iceland, Liechtenstein, Norway, and Switzerland – between 2008 and 2013. This analysis aims to simultaneously test the findings of earlier studies and to contribute to the limited set of studies that include individual applicant characteristics, specifically gender and age, as independent variables.

The estimation results of this analysis are mixed, but, like other empirical studies of asylum recognition rates in Europe, they provide cause for limited optimism against the charges of bias. The rates of full asylum – known as Geneva Convention status – and intermediate protection statuses as well as the rates of rejection in asylum cases are most consistently affected by the conditions of applicants' states of origin. The applicant characteristics have limited effect, with only certain age variables returning significant results.

The remainder of this article is organized as follows: the next section examines the key theories regarding the determinants of the decisions made in asylum cases identified by the literature. This section is followed by a brief discussion of the existing empirical studies of the determinants of asylum recognition rates. The third section outlines the research design of this project. In the fourth section, I present the results of the logistic regression analysis and a discussion of these results in light of my hypotheses. The article

² According to the UNHCR, recognition rates are “the proportion of refugee claims accepted each year” (UNHCR 2009). In other words, the term refers to the rate at which asylum seekers are granted refugee status and asylum protection.

concludes with a discussion of the implications of the findings of this study and areas for future research.

Determinants of Asylum Decisions

Women and Gender-Based Discrimination

One of the earliest and most extensive areas of research on the potential bias within asylum legal regimes examines the gender of asylum applicants, focusing specifically on female refugees. It should come as no surprise that research on women dominates much of the asylum and refugee literatures; women and children are strikingly overrepresented in refugee populations, accounting for as much as 80% of the world's refugees (Randall 2002). Despite this fact, the impact of an applicant's gender remains unclear. Some scholars note that women are seriously underrepresented in the population of successful asylum applicants and that being a woman contributes to the rejection of asylum claims (Randall 2002; Keith and Holmes 2009). Conversely, others argue that female refugees actually have an advantage over males in asylum cases (Bhabha 2004a).

The feminist and gender asylum literatures focus primarily on aspects of persecution that scholars argue are more common or particular to women, such as domestic abuse, female genital mutilation (FGM), and sexual violence (see e.g. Ankenbrand 2002; Anker 2000-2001; Anker, Gilbert, and Kelly 1997; Bahl 1997-1998; Bloch, Galvin, and Harrell-Bond 2000; Crawley 2000; Gomez 2003-2004; Heyman 2005; Heyman 2002-2003; Musalo 2002-2003; Randall 2002; Seith 1997; Sinha 2001). Two interrelated obstacles emerge for courts and administrators when considering asylum claims made as a result of these types of persecution. The first obstacle is that many of the instances of persecution considered to be of particular concern for women or that have historically

been viewed as belonging to the 'domestic' sphere rather than the public sphere are also less clearly covered by international legal conventions (Anker 2000-2001; Anker, Gilbert, and Kelly 1997; Randall 2002). Cases of refugees who suffered FGM, for example, often fall into this category. Second, the agents of persecution in many of these cases are non-state actors or are declared to be non-state actors during the adjudication of asylum claims due to what is often seen as aberrant rather than institutionalized or state-sanctioned conduct (Bahl 1997-1998). Victims of spousal abuse and rape by authority figures often struggle to prove the role of the state in presenting their cases for asylum. Within this framework, being a woman puts the individual at a disadvantage and results in fewer instances of full asylum protection. Human rights advocates have, therefore, been working to bring attention to the specific plights of women; although it remains unclear to what extent this advocacy has been successful in addressing potential sources of bias in asylum cases (Kelly 1993). It is possible that advocacy has increased the rate at which intermediate, rather than full asylum of protection is granted. The perspective presented in this literature leads us to the first two hypotheses to be tested in this analysis:

H1: As the number of female applicants increases, the total number of applications granted full asylum protection will decrease.

H2: Higher rates of applications from females will correspond to increased rates of intermediate protection.

The majority of the literature discussed above emphasizes the negative impact of being female on an applicant's likelihood of gaining asylum. However, there are other issues to consider. First, there is a strong victimization narrative in the civil war literature that has traditionally viewed women and children as the primary victims in times of

conflict (Alison 2007; Bhabha 2004a; Carpenter 2005). This overemphasis on women and children as the victims of conflict has two problematic consequences. First, the focus of this narrative on women and children has disempowered these groups and diminished their potential to be seen as autonomous political actors; this is especially true for adult women (Alison 2007; Carpenter 2005). This viewpoint supports the arguments outlined above in that it can make applications from women based on political persecution in civil conflict less compelling. Second, this narrative creates an environment in which adult male victims often do not get the protection they need; it is assumed that men can either take care of themselves if they are truly victims or that they are, in fact, active and willing participants of the conflict (Alison 2007; Carpenter 2005; Sivakumaran 2007; Zawati 2007). This would indicate, contrary to the feminist viewpoint, that adult women would be more likely to receive asylum than adult men because women are viewed as victims and men as potential perpetrators of violence.

H3: If women are viewed primarily as victims of conflict, then the rate of successful asylum claims will increase as the number of female applicants increases.

Age

Since children, along with women, are overrepresented among refugee populations, there is a growing literature related to the particular issues involved with refugee children and asylum applications made by minors (Bhabha 2004b; Taylor and Byford 2003; Stellinga-Boelen et al. 2007; Christie 2003; Dunkerley et al. 2005). At present, the bulk of this literature focuses on either the medical needs of refugee children once they arrive in the receiving state (Taylor and Byford 2003; Stellinga-Boelen et al. 2007) or the interactions of national social work agencies and individual social workers with children

seeking asylum (Christie 2003; Dunkerley et al. 2005). However, research has started to emerge that focuses on the legal implications and obstacles for minor asylum applicants. In particular, scholars are parsing out the similarities and, more importantly, the differences between the experiences of women and child refugees, deconstructing assumptions that have collapsed them into a single category of vulnerable people (Bhabha 2004a). Scholars like Bhabha (2004a) argue that, much like female refugees, children – especially when unaccompanied – seem to have a more difficult time in successfully procuring asylum than adult applicants. However, unlike adult women, the primary source of difficulty for these young applicants comes directly from the structures and procedures of the legal system rather than ambiguity or bias toward their claims. In particular, because of their age, minor applicants have little to no agency within asylum courts; they must rely on the advocacy of others in their search for protection.

[Minor applicants] have difficulties getting adequate legal representation, their cases are more likely to be postponed and to drag on over time, and they have less chance of being granted refugee status. The outcome of an asylum application is often a troubling limbo of indeterminacy, rather than reassuring guarantee of permanent status. (Bhabha 2004b: 143).

Further, while the feminist and women's rights movements have systematically challenged the male-centered aspects of the asylum regime, there has been no comparable movement to challenge the adult-centered aspects of asylum law (Bhabha 2004a). Thus, there has been little movement made to improve the legal outlook of minor asylum seekers.

H4: As the number of applicants under the age of 18 increase, the rate of successful applications will decrease.

One final note about the age of asylum applicants should be made before moving forward. In examining the impact of age on asylum applications, it is striking that there is

essentially no research that directly examines the impact of other points of the age spectrum. Some studies have included variables that may serve as partial proxies for later stages in life such as educational attainment or occupation. Keith and Holmes (2009), for example, found that marriage has a significant and negative effect on gaining asylum. There are studies within the migration literature that study the impact of age more fully, but the focus of many of these studies is on either the relationship between age and mobility (e.g. Sandefur and Scott 1981) or on the effect that one's age at the time of migration has on post-migration life (e.g. Angel et. al 1999; Angel and Angel 1992). Similarly, examinations of policies regarding the sustainability of the welfare state in the face of aging populations may denote a concern over admitting older asylum-seekers (Vincent 1996). However, while there is no clear indication of whether or how age might affect an applicant's chances of asylum, I posit two hypotheses based on the importance of economic factors, such as GDP, found in other studies (Neumayer 2005a) – discussed below – and the welfare state literature:

H5: An increase in the number of applicants whose age – between 18 and 64 – could make them more to be able to support themselves economically will correspond to an increase in the rate of successful asylum applications.

H6: An increase in applicants over the age of 65, who are likely to rely increasingly on state services, will lead to a lower rate of asylum protection.

Destination States

In addition to applicant characteristics, aspects of the state in which the case is decided are also believed to impact rates of asylum. There are three specific areas of research within this area of the literature: politics, economics, and history of applications.

The political characteristics of destination states have been a strong area of research in terms of asylum and immigration policy (Boswell 2007; Fekete 2005); however, to my knowledge political variables have not had much success in explaining asylum recognition rates (Boswell 2007; Neumayer 2005a). Conversely, both economic and historical variables have shown some promise as determinants of asylum claims.

When assessing the impact of the economic conditions of a destination state, the state's gross domestic product (GDP) and unemployment are often used within the asylum literature. Neumayer (2005a), for example, found that higher levels of GDP led to higher recognition rates in European states – perhaps because they can better afford to take on the financial cost of asylum seekers – while the percent of unemployed in the state had no significant effect. However, increasing concerns over the sustainability of welfare states (Vincent 1996) as well as rising unemployment in the wake of the Great Recession (Bell and Blachflower 2011; Cervany and van Ours 2013; Hatton 2012) may have changed or increased the influence of economic factors on asylum rates in recent years. Higher levels of GDP may still contribute to higher recognition rates, but high rates of unemployment may temper them, leading to a reliance on intermediate or temporary forms of protection, or even cause the overall rates of protection to decrease.

H7: As levels of a receiving state's GDP increase, the rate at which the state grants asylum will also increase.

H8: High levels of unemployment in receiving states will correspond to a decrease in the level of asylum protection granted, but an increase in the rate of intermediate protection.

In addition to economics, the asylum recognition rates of destination states may be affected by their history of received applications. Specifically, it is argued that higher

numbers of applications received by a destination state in previous years lead to lower rates of recognition moving forward. There may be a certain degree of ‘crisis fatigue’ affecting the willingness of destination states to continue to accept refugees and asylum seekers (Holzer and Schneider 2001). Both Neumayer (2005a) and Holzer and Schneider (2001) tested this theory and found that higher total numbers of applications corresponds to lower recognition rates. Both studies used data from before 2000; therefore, it is necessary to re-examine the effect of application numbers using more recent data to see if the conclusions hold.

H9: As the number of applications received in recent years increases, the rate at which asylum claims are successful will decrease.

States of Origin

Another aspect of asylum applications that might be impacting applicants’ chances of gaining asylum is from what state or part of the world the applicant originates. Much of the asylum literature has dealt with this feature in a different manner than it does other aspects of asylum cases, focusing particularly on the volume and direction of the migration of refugees from particular states of origin to states of destination (Bocker and Havinga 1998; Castles and Loughma 2003; Hatton 2004; Neumayaer 2005b). Another group of scholars has tried to test the impact of specific states of origin or characteristics of states of origin on the outcomes of asylum claims. In this analysis, I aim to contribute to the latter of these literatures.

There are two groups of characteristics related to an asylum applicant’s state of origin. The first set of characteristics is associated with an applicant’s specific state of citizenship. One of the most challenging areas of this literature deals with stateless refugees

or refugees who lack citizenship. Stateless refugees form a particularly vulnerable population and often pose a challenge to states tasked with assessing their asylum claims. Stateless persons have no official nationality and are not considered a citizen by any state. While on the one hand this reality means these individuals are not under the legal protection of any state, it also makes claims based on state persecution difficult to prove. Further, the definition of statelessness is a legal one and does not take into account the nuances of lived realities; for example, the degree to which citizenship is granted can vary, making determining the point at which statelessness occurs difficult (Batchelor 1995; Settlege 1997-1998). Indeed, as some have argued, the conditions in a person's original state of citizenship might be so dire or the persecution of their group so great, as in the case of the German Jews during the Third Reich, that the person chooses statelessness in order to escape it (Batchelor 1995). While international agreements have sought to prevent statelessness (UNHCR 2014a), they are less clear on how to protect stateless individuals who seek refugee status and asylum. Since the burden of proof in asylum cases falls most heavily on the applicants, we might expect that higher numbers of stateless applicants to lead to lower rates of asylum recognition; conversely, since there appears to be consensus that stateless individuals are at risk, the rates of intermediate protection might be higher.

H10: As the rate of applications from stateless individuals increases, the rate of asylum protection will decrease, but the rate of intermediate protections granted will increase.

The second group of characteristics related to applicants' states of origin deal with the conditions – or the perception of conditions – in the state of origin. Several studies have used common measures of political freedom and state violence to try to explain the rates of successful asylum claims. In a way, measures such as the Freedom House scores of states'

level of political rights and civil liberties (Freedom House 2014) and the Political Terror Scale, which measures violations of physical integrity in each state (Gibney, Cornett, Wood, and Haschke 2014), serve as proxies for the merit of individual asylum claims. This is especially true when using aggregate data where individual measures of merit are not available; these scores can mimic the effect of merit because they measure the potential for persecution in a state. Asylum applicants who are citizens of states with poor records on these scales would be expected to be more likely to receive asylum since they are less likely to receive protection in their state or origin.

H11: Low levels of political rights and civil liberties in a state of origin – as measured By the Freedom House – will increase the rate at which asylum is granted.

H12: As the likelihood of violations of physical integrity – denoted by a high score on the Political Terror Scale – increases, the rate at which asylum protection is granted will also increase.

Other measures of the characteristics of a state of origin are meant to gauge the perceptions of states and the conditions in those states by refugee destination states (Akram 2000; Keith and Holmes 2009). For example, while scholarly research has shown that there is no clear relationship between becoming a party to an international human rights treaty and greater respect for human rights (Goodman and Jinks 2003; Hathaway 2007; Neumayer 2005c), it is possible that the decision whether or not to sign a treaty still sends a signal to other states about a government's intent to comply with the treaty's terms (Martin 2005). Not signing the Refugee Convention, therefore, may signal to other states a lack of intent to protect individuals who would qualify as refugees outside of their state of

origin and, therefore, could lead to higher rates of asylum for individuals from these non-signatory states.

H13: An increase in the applications received from citizens of states that are not signatories to the Refugee Convention will correspond to an increase in the rate of successful asylum applications.

Similarly, Akram (2000) argues that Western perspectives of Islamic governments, specifically the prevalence of neo-Orientalist views among both Western states and human rights advocates, has proved detrimental to applicants from these states. The stereotyping of Islamic governments as ‘warmongering’ or as ‘terrorists’ has only served to [support and promote] the most repressive and extreme versions of Islamic interpretation currently being manipulated by fundamentalist regressive regimes...further [strengthening and entrenching] such regimes’ efforts to distance ‘Islam’ from universal human rights” (Akram 2000: 9). However, rather than contributing to the success of claims made by applicants from Muslim states, these simplistic characterizations have made it much more difficult for these refugees to seek asylum. Extreme or simplistic characterizations of Islamic governments often obscures the types of persecution that are actually occurring and, more importantly, such grandiose claims about the nature of such states can easily be disproved through the governmental research and expert testimony that are customary in the adjudication of asylum cases (Akram 2000; Polk 1997-1998). In both instances, the case for asylum becomes more difficult for applicants to prove and may lead to lower instances of successful asylum claims.

H14: As the rate of applications from refugees from Muslim states increases, the rate at which asylum protection is granted will decrease.

Existing Empirical Studies

To my knowledge, there are only four existing empirical studies that directly examine the specific determinants of asylum recognition rates: Holzer and Schneider (2001),³ Holzer, Schneider, and Widmer (2000), Keith and Holmes (2009), and Neumayer (2005a). The focus of most of these studies is on Europe before 2000 and they include variables from either the destination state alone (Holzer and Schneider 2001; Holzer, Schneider and Widmer 2000) or on the destination and origin states (Neumayer 2005a). Only Keith and Holmes (2009) use data that extends into the new millennium; it is also the only study to include variables that measure the impact of characteristics of individual applicants. The present analysis builds on these previous studies in two important ways. First, it builds on the available data temporally by using data for the years 2008 through 2013. Second, this study includes variables measuring the impact of characteristics of the destination state, of the applicant's state of origin, as well as qualities of the applicants. The examination of variables from each of these categories by the above authors has produced significant results; however, none of these four previous studies includes variables from all three categories into a single analysis.

Research Design

For this article, I used a data set compiled, primarily, from the European Union's Eurostat database (European Commission 2014). The observations in this dataset are country years for 32 European states – the 28 member states of the EU as well as Iceland, Liechtenstein, Norway, and Switzerland – for the years 2008 through 2013. In this section, I will outline each of the variables included in the models presented in the Results and

³ The article written by Holzer and Schneider (2001) is only available in German; therefore, my present knowledge of its contents comes directly from Neumayer's (2005a) assessment of it.

Discussion section. Table 1 provides descriptive statistics for each of the variables discussed in this section.

Table 2.1: Summary Descriptive Statistics

Variable	Observations	Mean	Std. Dev.	Minimum	Maximum
<i>Intermediate</i>	133	-.661	.174	-.858	0
<i>Asylum</i>	126	-.717	.096	-.860	-.201
<i>Rejected</i>	179	-.158	.173	-.697	0
<i>Female</i>	181	.266	.130	0	.665
<i>Unknown Sex</i>	171	.003	.040	0	.536
<i>Under 14</i>	181	.132	.108	0	0.5
<i>14-17 years</i>	181	.038	.042	0	.353
<i>18- 34 years</i>	181	.563	.155	0	1
<i>65+ years</i>	181	.007	.017	0	.175
<i>Unknown Age</i>	181	.006	.050	0	.536
<i>Prev. Applications</i>	186	9.389	12.573	.011	67.923
<i>GDP per capita</i>	188	37.013	25.868	6.453	138.537
<i>Unemployment Rate</i>	181	.090	.046	.026	.273
<i>Nonsignatory</i>	181	.226	.192	0	.914
<i>Muslim State</i>	181	.419	.236	0	1
<i>Stateless</i>	181	.010	.038	0	.4
<i>FH: Free</i>	181	.092	.112	0	.571
<i>FH: Not Free</i>	181	.464	.222	0	1
<i>Terror Scale: High</i>	150	.673	.230	0	1

Dependent Variables

In analyzing the determinants of asylum cases, the dependent variable is the outcome of an asylum case and, in general, there are three categories of potential outcomes: full asylum or Geneva Convention status, an intermediate decision – which includes statuses that provide some form of protection to the applicant, but fall short of full asylum status – and rejection. Most of the literature is focused on determining the variables that characterize claims that receive Geneva Convention status. The variable for Geneva Convention decisions is a log transformation of the proportions of decisions in which full asylum was granted each year. In addition to asylum, states have developed other protection statuses to address the needs of vulnerable populations that do not meet the

requirements for asylum. Therefore, I created a variable for intermediate decisions in order to assess the similarities and difference between the determinants of these two groups of decision types. It is possible that if there is bias in the rate of full asylum decisions due to certain characteristics that it is addressed by destination states through the use of the intermediate statuses. The final dependent variable includes cases in which the asylum claim was rejected. I use this depended variable to assess whether the determinants of these cases are any different than those of positive decision types. None of the literature I have found to date directly addresses the determinants of rejection in asylum cases. Implicitly, we would expect the determinants of rejection to be the inverse of those of successful applications. However, since it does not appear to have been analyzed directly, it is important to test this assumption empirically. I used the log transformation of the proportion of each of the outcomes in order to address violations of the normality and heteroskedasticity assumptions of regression.

Before discussing the independent variables, an important observation must be made about these dependent variables. As Neumayer notes, “the theoretically correct recognition rate is the percentage of asylum claims recognized relative to the number of asylum claims lodged” (2005a: 51). However, this is rarely what our data actually captures. As noted above, the data from the Eurostat database is organized by year. Our analysis is hindered by the reality that not all asylum claims are adjudicated in the same year in which they were filed as well as the fact that data on the submission date of applications is generally unavailable. Thus, this analysis follows Neumayer in his adoption of the UNHCR’s approach to assess the number of successful applications in a year compared to the total number of cases decided in that same year. “In other words, [the] recognition rate does not

measure the successful rate of applications but the rate of successful decisions” (Neumayer 2005a: 51). This is obviously an imperfect measure for the determinants of asylum.

However, despite this limitation, the analysis should at least provide a general idea of what factors might impact asylum recognition rates.

Independent Variables

As discussed above, this analysis focuses on three primary categories of independent variables drawn from the asylum literature as possible factors determining asylum cases: characteristics of the applicant, of the destination state, and the state of origin.

Applicant Characteristics

There are two groups of variables that measure the effect of the characteristics of applicants on the outcomes of asylum claims. The first is gender or, as measured by the Eurostat database, sex. The database provides information on three categories of sex: female, male, and unknown. The literature is clearest on the theoretical impact of being female; therefore, the proportion of cases out of the total in which the applicant was female was included in the models presented below. Based on the literature discussed above, there are three potential hypotheses for the effect of being female. The first two posit that, due to the fact that the types of persecution experienced by women are not clearly covered by international conventions, we could expect a higher proportion of claims made by female applicants to lead to lower rates of full asylum decisions but to higher rates of intermediate decisions as a result of advocacy on behalf of female refugees. Conversely, the third hypothesis states that the belief that women are primarily victims during conflict will mean that higher rates of female asylum applicants will correspond to higher rates of

asylum recognition. In addition to the variable for female applicants, I have included a variable for the proportion of cases in which the sex of the applicant was unknown. Since it is unclear exactly what the 'unknown' sex category contains, it would not be appropriate to use it as a reference category; the proportion of cases in which the applicant was male, therefore, fulfills this role and does not appear in any of the models presented in Table 2.

The second group of applicant characteristic variables measures the impact of various age categories. There are six age categories in this data set: applicants less than 14 years of age, from 14 to 17 years, from 18 to 34 years, from 35 to 64 years, 65 years of age and older, and cases in which the age of the applicant was unknown. The asylum literature only directly provides us with a hypothesis for minor asylum applicants: since the legal system presents unique obstacles for child refugees, higher proportions of minor applicants will lead to lower rates of asylum or other protection statuses. The literature is less clear about the effect of the other age categories. However, as noted above, two further hypotheses can be tested based on previous studies of the effects of economic variables on asylum outcomes as well as the welfare state literature. First, a higher rate of applications from adults of an age where they could feasibly join the work force and support themselves would lead to higher rates of asylum protection. Second, the proportion of older applicants – who may no longer be able to join the work force and would potentially add to the burdens of aging populations in various destination states – would lead to lower rates of asylum protection. As the proportion of applicants aged 65 or older rises, therefore, we would expect to see the rate of positive case decisions to decline if this perspective is true. Finally, the variable for the proportion of applicants between 35 and 64 is left out of the models and acts as the reference category.

Destination State Characteristics

As discussed above, the effects of the state in which an asylum claim is decided are often measured through economic and historical variables. For this analysis, I incorporated two economic variables and one historical variable. The first economic variable is a measure of the state's GDP in thousands of current US dollars per capita. The second economic variable measures the proportion of the destination state's total labor force that is unemployed in each year of the data set. The data for both of these economic variables came from the World Bank's database (World Bank 2014a; World Bank 2014b). According to the available literature, higher levels of GDP per capita should lead to higher recognition rates while we expect higher unemployment to lead to lower rates of asylum protection and higher rates of intermediate, or temporary, forms of protection.

To address the impact historical factors, namely the number of applications received by a state in the past, I use the average number of applications, in thousands, received by each European state in the data set over the previous 1 to 5 years.⁴ Taking an average of the previous applications is in line with earlier studies of this type (Neumayer 2005a) and is done for two reasons. First, it takes into account short-term changes in the total number of applications received by any state. Second, it addresses, in part, the endogeneity problem created by the fact that not all asylum claims are adjudicated in the same year in which they are filed. Based on earlier studies, I expect that as average number of applications increases, the rate of asylum recognition will decrease.

⁴ The number of years that I was able to include in the average for this variable was determined by the availability of data. There were several years with missing data, which limited the number of years that could be included in the average for each state.

Origin State Characteristics

The remaining variables listed in Table 1 address the impact of applicants' states of origin. The first of these variables addresses the issue stateless refugees and uses data from the Eurostat database. As the literature describes, stateless applicants face challenges in proving asylum claims that are not necessarily faced by other refugees. For this reason, it is expected that as the proportion of applicants who are stateless increases the rate of full asylum protection will decrease. However, since stateless persons are also considered a vulnerable population, the increase in such applicants should correspond to an increase in the rate of intermediate decisions.

In order to address the neo-Orientalism that Akram (2000) argues can affect asylum outcomes, I have included a variable for the proportion of applicants from Muslim majority states. I define a Muslim majority state as one in which at least 50 percent of the population identifies as Muslim and no other single religious community accounts for 20 percent or more of the population. I determined the religious breakdown of the various states of origin using the Correlates of War's World Religion data set (Correlates of War 2014). If neo-Orientalism is affecting asylum recognition rates in the way that Akram contends, then as the proportion of applicants from Muslim states increases, the rate of rejection should increase and the rate of decisions granting full asylum protection should decrease.

The final four variables address the conditions in applicants' states of origin. The first variable is the measure of the proportion of applicants that come from states that are not signatories to the 1951 Geneva Convention. If destination states view not signing the convention as a signal that a state has less intention to protect refugees then as the proportion of applicants from these states increases, the rate of intermediate and Geneva

Convention decisions should increase as well. The remaining variables are based on the scores assigned to states by Freedom House (Freedom House 2014) and the Political Terror Scale (Gibney, Cornett, Wood, and Haschkey 2014). Freedom House scores are based on the levels of political and civil liberties within a state and are grouped into three levels of freedom: free, partially free, and not free. The models below include variables for the percentages of applicants from free and not free states with the percentage of applicants from partially free states serving as the reference category. Applicants from free states would be less likely to be able to meet the burden of proof in asylum case than those from not free states. Therefore, as the proportion of applicants from free states increases, the rate of positive asylum decisions should decrease while the rate of rejections should increase. The inverse should be true for applicants from states deemed not free. The Political Terror Scale measures instances of state-sanctioned violence and assigns a score to each state on a 1 to 5 scale where 1 indicates states in which such violence is rare and a 5 indicates a state in which state-sanction violence is wide-spread and common. The Political Terror Scale data set only provides scores for the years 2008 through 2012 and for each of these years the average terror score for all of the European states included in the data set was less than 3. Therefore, I included a variable for the proportion of cases in which the applicant originated from a state that scored a 3 or higher on the terror scale; in other words, these are the applicants from states considered to have worse than the average levels of state-sanctioned violence. Much like the Freedom House classifications, I expect that as the proportion of applicants from states with terror scores of 3 or higher increases, so too should the rate of positive asylum decisions.

Statistical Methodology

In order to test the hypotheses outlined in the previous sections, I used logistic regression analysis to assess the effect of each of the independent variables on the log transformed dependent variables, each of which represents one of the three types of outcomes in asylum cases: Geneva Convention status, intermediate protection, and rejection. In each of these regression models, I also included fixed effects for the country and year in which the case was decided in order to control for different effects across these two variables. Similarly, I also clustered the observations by the country in which the state was decided; the standard errors reported in the remainder of this article, therefore, are robust standard errors.

Results and Discussion

Table 2 presents the results of each of the three models tested as part of this analysis. The first model uses the intermediate decisions as the dependent variable, the second the percent of Geneva Convention or full asylum decisions, and the final model uses rejection decisions. The remainder of this section analyzes the results of each group of variables – the characteristics of the applicant, the destination state, and the state of origin – as well as the overall performance of the models.

The most interesting point to note about the variables measuring qualities of applicants is that neither being female applicant or a minor asylum-seeker have statistically significant effects on any of the decision outcomes. The coefficient for female applicants is positive in the Geneva Convention model and negative in both the intermediate and rejection models. This means that neither *H1* nor *H2* – the hypotheses arguing that being female negatively impacts the rate of asylum protection and that

advocacy to address this issue might have increased the likelihood of intermediate protection – are supported. Indeed, the opposite appears to be true. This could indicate one of two things. Either the bias suggested in the literature did not exist or that it did exist and advocacy efforts over the past thirty years – or even some other unknown factor – have made a difference for female applicants. The third hypothesis representing the victimization narrative for women has better support in these models since the results are positive in the Geneva Convention model and negative in the rejection model. However, since none of these results are statistically significant, the hypothesis will need further testing.

The results for the age categories included in these models are somewhat more complicated. The influence of the proportion of minor applicants differs between the two age categories for minor applicants. The variable for applicants under the age of 14 is negative for both Geneva Convention and rejection decisions, but is positive for intermediate decisions. If the literature is correct and the legal system creates barriers for the youngest of applicants in gaining full asylum protection, it does not appear to prevent them from receiving some form of protection from the destination states. By contrast, applicants between the ages of 14 and 17 do not seem to receive the same level of consideration – the proportion of applicants in this age group have negative effects on the rates of intermediate *and* Geneva Convention decisions and a positive impact on the rate of rejections. The fact that the coefficients for these two variables are both negative in the Geneva Convention model provide tentative support for *H4*, which argued a higher proportion of minor applicants would correspond to a lower rate of successful asylum claims, but future research will need to see if these results hold.

Table 2.2: Results for the Rate of Each Decision Type

Independent Variables	Intermediate Decisions	Geneva Convention Decisions	Rejection Decisions
<i>Female</i>	-.045 (.259)	.075 (.175)	-.008 (.132)
<i>Unknown Sex</i>	.698 (.197)***	.105 (.071)	-.563 (.159)***
<i>Under 14</i>	.590 (.608)	-.011 (.286)	-.053 (.383)
<i>14-17 years</i>	-.095 (.261)	-.080 (.085)	.104 (.151)
<i>18- 34 years</i>	.108 (.207)	-.294 (.143)**	.129 (.098)
<i>65+ years</i>	-.258 (.586)	-.564 (.175)***	.636 (.444)
<i>Unknown Age</i>	-.148 (.153)	-.210 (.073)***	.351 (.106)***
<i>Prev. Applications</i>	.004 (.007)	.001 (.002)	-.001 (.005)
<i>GDP per capita</i>	.005 (.005)	.001 (.002)	-.002 (.003)
<i>Unemployment Rate</i>	2.175 (.995)**	-.573 (.474)	-.391 (.557)
<i>Nonsignatory</i>	-.099 (.179)	-.171 (.040)***	.122 (.127)
<i>Muslim State</i>	.279 (.321)	-.193 (.068)***	.056 (.132)
<i>Stateless</i>	.632 (.088)***	.461 (.529)	-1.086 (1.655)
<i>FH: Free</i>	-.403 (.276)	-.200 (.059)***	.263 (.155)*
<i>FH: Not Free</i>	.026 (.242)	.304 (.133)**	-.308 (.138)**
<i>Terror Scale: High</i>	.046 (.154)	.164 (.058)***	-.062 (.138)
Observations	108	103	143
R-squared	.768	.892	.772
Std. Error of Reg.	.111	.043	.101

In this table, * denotes statistical significance at the .1 level, ** at the .05 level, and *** at the .01 level. The values provided in parentheses are the coefficient's standard error.

Interestingly, although the asylum literature does not supply direct information on other age categories, the hypotheses posited above for adult applicants lead to significant

results in this model. The fifth hypothesis, which holds that increases in applications from adults of working age will increase the rate of asylum is not supported by these results. Instead, the coefficient for this variable in the Geneva Convention model, which is statistically significant at the .05 level, is negative. This result might indicate that the concern in receiving states might be that applicants between 18 and 34 years of age might be seeking admittance to their countries for the purpose of work. This would primarily make them economic migrants rather than refugees and not entitle them to asylum protection. In contrast, the results for the proportion of applicants 65 years of age and older – with a negative in both the Intermediate and Geneva Convention models and statistically significant coefficient at the .01 level in the Geneva Convention model– do support the sixth hypothesis and the notion that fears of overtaxing the welfare state could lead receiving states to offer protection to older applicants at lower rates.

The variables for the destination states perform differently in this analysis than they do in earlier studies (Holzer and Schneider 2001; Neumayer 2005a). Neither the average number of applications received by the destination state nor its GDP per capita have statistically significant effects on any of the asylum outcome types. However, the signs on the coefficients for GDP per capita are in line with previous research as well as with *H7*: higher levels of GDP per capita are related to higher rates of protection granted to refugees. Conversely, the average number of applications produces coefficients with signs in the opposite direction to that found in earlier studies and expected based on the ninth hypothesis.

The eighth hypothesis posits that higher rates of unemployment will negatively affect the rate of Geneva Convention decisions – which is supported by the sign of the

coefficient for unemployment in the Geneva Convention model though the result is not statistically significant. Unemployment is statistically significant in the model for intermediate decisions. However, in that model, the coefficient is positive. This may indicate that high unemployment makes receiving states less likely to offer full asylum protection – which can lead to the applicant’s permanent residence in the state – and that they rely instead on the temporary forms of intermediate protection to offer assistance to those who need it without potentially contributing to their unemployment in the long term.

The final group of variables – those for applicants’ states of origin – performs the best in these models. The variables for the Freedom House scores, in particular, as well as the Political Terror Scale variable perform well and as expected according to the hypotheses outlined above for Geneva Convention decisions: applicants from free states decrease the rate of successful claims while applicants from not free states and states with high scores on the Political Terror Scale increase it. The proportion of applicants from free and not free states also have statistically significant effects on the rate of rejections, again in the direction we would expect if these variables serve as proxies for the merit of a claim.

Statelessness has a strong significant and positive effect on the rate of intermediate decision. Further, it is noteworthy that, although the coefficients are not significant, the relationship between statelessness and the rate of Geneva Conventions is positive. These results are mixed in light of the hypotheses offered earlier and the available literature. The literature would lead us to expect that despite being acknowledged as an especially vulnerable population, stateless refugees face greater obstacles in receiving asylum protection but could receive intermediate protection at higher rates to compensate for the obstacles they face. These results indicate that the relationship between statelessness and

recognition rates could be more complicated. By contrast, the theory regarding the effect of neo-Orientalist perspectives on asylum outcomes does receive some support in these results. As suggested by *H14*, the effect of the proportion of applicants from Muslim majority states has a statistically significant and negative impact on the rate of Geneva Convention decisions. However, although not significant, the effect of this variable is positive on intermediate decisions. Therefore, this may be an instance where European states utilize intermediate forms of protection to assist refugees without being responsible for them indefinitely. The impact of not signing the Refugee Convention also has significant impact on the rate of full asylum decisions; however, the direction of the relationship is not in line with the theory discussed above, having a negative impact on the rate of Geneva Convention decisions. In this case, it is possible that aggregation of the data may be hiding the nuances of the relationship between the independent and dependent variables

Concluding Observations

The results of this study, overall, show low levels of bias in the decision-making processes within asylum legal regimes. The key applicant variables that would indicate a bias in asylum outcomes according to the literature – those for female and minor applicants – were not statistically significant in these models. Further, the variables for the states of origin, which are measures of the condition from which an applicant has fled and is seeking protection, have the greatest explanatory power for the rates of asylum outcomes analyzed above. Some of the findings, however, do indicate the existence of certain types of bias affecting decisions made in asylum cases. Specifically, the negative impacts that the proportions of applicants between the ages of 18 and 34 and 65 years of age and older have on the rate of cases in which full asylum protection was granted is of concern, especially

since the impact of age as a potential determinant of asylum claims has not been fully addressed within the asylum literature.

The incorporation of variables for the characteristics of the applicant, the destination state, and the state of origin seems to have provided important information regarding the determinants of asylum outcomes and indicates the need for future research that continues to examine the impact of all three of these aspects. As noted in the previous section, the characteristics of the state of origin appear to have the clearest relationship with asylum claim outcomes. Future research should attempt to disaggregate direct measures of a claim's merit from conditions of the origin state. Keith and Holmes (2009) included both types of variables in their analysis of cases filed in the United States and reported significant results. While, applicant characteristics are often difficult to include in the analysis of the determinants of asylum claims due to the rarity of individual-level data, the results in Keith and Holmes (2009) as well as the analysis presented here should make clear that individual characteristics do have an effect on whether or what type of protection an applicant receives. It is important for asylum scholars to continue to investigate the relationship between attributes of applicants, especially on an individual level, and the outcome of their asylum claims.

Conversely, the influence of characteristics of the destination state is less clear. It is possible that the effect of such variables changes over time or location. In the case of Europe, the variety of state-level asylum systems – despite the European Union's attempts at standardization through policies such as the Dublin Regulation – could be creating a selection bias problem in each state. Further, increasingly anti-immigration policies and the EU's stated intention to strengthen 'fortress Europe' could further affect the types of

applications seen by individual states as well as their response to individual asylum claims. It will be important, therefore, to attempt to gain a clearer understanding of the relationship between receiving state characteristics and asylum claim outcomes.

The model used to explain the rate of Geneva Convention decisions produced the strongest results out of the three models presented in Table 2. However, the results also provide a foundation for future research on the other categories of case outcomes. The rate of rejection was most sensitive to the state of origin variables, which makes sense in light of the literature discussed above. However, the variables for applicants of unknown sex and unknown age also have strong statistically significant effects on the rate of cases that are rejected; it is important to find out more about what these variables could be measuring and how they impact the rates of rejection. The results for intermediate decisions are also intriguing. In many instances, variables that decrease the rate of Geneva Convention decisions – such as those for applicants under the age of 14 or those between 18 and 34 years of age – have a positive effect on the rate of cases in which an intermediate protection status was granted. This may support the case that some bias exists in the asylum legal regime as well as point to strategies destination states have employed to provide some protection while stopping short of granting full asylum to applicants.

Overall, the results of this analysis are decidedly mixed, as are the results of most studies within this literature. While there are certainly reasons for optimism about the results presented here, there is not enough evidence to prove or disprove the charges of bias within the asylum legal regime in Europe. As some scholars have already noted (Neumayer 2005a), even the perception of bias impacts how, where, when, and whether refugees file asylum claims. Providing more definitive information on whether any bias

truly exists, therefore, will prove vital not only to refugees, but their legal representatives, members of the courts, and policymakers as well. There is clearly a great deal of ground yet to be covered in our attempts to uncover the factors that go into the decision-making process regarding asylum claims and it is to this uncovered ground that future research must turn.

CHAPTER THREE

SETTING THE PACE FOR BRUSSELS AND STRASBOURG: APPROACHES TO GENDER-BASED ASYLUM APPEALS IN THE EUROPEAN UNION

The current migrant crisis in Europe, driven largely by the ongoing civil war in Syria, has renewed criticisms of the immigration policies and procedures in the European Union. Anti-migrant and nationalist groups are concerned about the ease with which migrants enter the European Union and the effects the presence of these migrants have on national economies, political systems, and identities. Refugee and migrant advocates, by contrast, condemn the European states for being ill-prepared and unwilling to address the recent influx of refugees. According to some of these critics, the rise in xenophobic sentiment and right wing, nationalist political parties has made seeking protection in the European Union more difficult and arbitrary.

A long-standing area of debate within immigration scholarship and policy addresses how states deal with gender-based persecution claims from asylum seekers. Gender is not listed as one of the five grounds for persecution laid out in the 1951 Geneva Convention Relating to the Status of Refugees. In asylum determination procedures, claims of persecution based on sex or gender have often been relegated to the Convention's problematic 'particular social group' category. The lack of clear guidelines and definitions regarding gender-based persecution and what constitutes a 'social group' within the ambit of international, European, or national asylum law has led to disagreement over how to assess these claims and what level of protection to offer individuals who have suffered persecution based on gender.

In situations with this degree of confusion over the law, national courts and, in the case of the European Union, supranational courts are one source of clarification and

guidance of the laws and regulations in place. Through this function, courts are having a greater effect on policymaking across Europe, leading to the rise of the judicialization of politics (Stone Sweet 2001; Clayton 2002; Guarnieri et al. 2002; Tolley 2012). Michael C. Tolley (2012), for example, looks specifically at the judicialization of immigration politics in Europe and how the European Court of Human Rights (ECtHR) or Strasbourg Court impacts high national court decisions. Under the harmonization efforts in several areas of law, EU member states are expected to meet, at a minimum, the standard set at the supranational level. Tolley finds that national courts in Germany, Italy, France, and the United Kingdom were able to affect the greatest increase in judicial power by using European human rights law to support existing domestic law. By doing so, these courts are able to help keep their countries ahead of the minimum protection required by European human rights law.

This article builds on Tolley's analysis by examining gender-based claims as a subset of the larger immigration and asylum case law. There are guidelines for how to assess gender-based claims within European human rights law; however, they are vague and, at times, the decisions from the ECtHR and the guidelines of the European Parliament in Brussels are in conflict. In this environment, how do national courts chart their path? Do they continue to base their stance on the standards set by the supranational courts? Do they look to the European Parliament? Or do these courts turn the tables, setting the pace for the Strasbourg and Brussels to follow them instead?

Asylum and Gender-Based Persecution

As recent news stories and political analysis have made clear, seeking asylum in Europe is becoming an ever more difficult prospect. States continue to implement policies and procedures to expand the obstacles to apply for asylum leading us to expect that the

criteria applied to the applications may also become increasingly conservative. If this is the case, individuals whose claims are less clearly covered by the Geneva Convention and who are at the margins of asylum law could see even less protection than they might receive in less extreme times.

Critics have long claimed that women refugees, particularly those seeking protection from gender-based persecution, are less well protected under asylum law. The obstacles women face stem, most often, from the types of persecution that are more common or particular to women, such as rape, domestic abuse, female genital mutilation (FGM), and sexual violence (see e.g. Ankenbrand 2002; Anker 2000-2001; Anker, Gilbert, and Kelly 1997; Bahl 1997-1998; Bloch, Galvin, and Harrell-Bond 2000; Crawley 2000; Gomez 2003-2004; Heyman 2005; Heyman 2002-2003; Musalo 2002-2003; Randall 2002; Seith 1997; Sinha 2001). Many of these types of persecution have historically been relegated to the 'domestic' sphere rather than the public sphere. This has traditionally put claims based on these forms of violence beyond the remit of international legal conventions related to asylum or refugees (Anker 2000-2001; Anker, Gilbert, and Kelly 1997; Randall 2002).

The ongoing efforts to increase immigration policy harmonization in the European Union mean that the primary source of guidance for national policy makers and courts on addressing gender-based claims should come from supranational regulations, law, and court decisions. In his 2012 article, Tolley examines the role of national courts in ensuring their respective states follow the immigration and asylum guidelines set by the EU. An examination of rulings from high national courts on immigration cases in Germany, France, the United Kingdom, and Italy shows that these courts certainly do push their national laws

to keep pace with the minimum standard set by the ECtHR. Indeed, these high courts go beyond this minimum standard to take a position Tolley calls 'Strasbourg Plus' (2012). These states see the direction the ECtHR is heading and choose to stay just ahead of the requirements set by the court.

However, as Tolley points out, the particular areas of the larger body of EU immigration law he examines – principles relating to Articles 3 – the prohibition against torture – and Article 8 – the right to respect for private and family life – of the European Convention on Human Rights (ECHR) – are “well-developed case law principles” ensuring the “national courts will continue to look to this court for guidance on their international commitments (Tolley 2012: 71; Council of Europe 1950). Not all areas of immigration law are as well developed and, as Tolley himself notes, his framework may not travel well beyond the boundaries of his study. For example, here is very little case law addressing refugees who are seeking protection from gender-based persecution. Indeed, there are only two rulings from the ECtHR that relate to this issue in asylum claim determination. However, rather than clarifying the approach EU member states are expected to take to gender-based claims, these two decisions set up conflicting positions on the issue. In addition, there is sparse direction from the European Parliament and the direction that does exist is also contradictory, especially when taken together with the decisions of the ECtHR.

The purpose of this analysis is to assess how national courts in EU member states deal with areas of immigration law where no clear supranational directive exists. Without clear guidelines on how gender should be interpreted within existing refugee law, national courts have several options open to them. Two primary approaches to gender based claims

exist in the literature; I refer to these approaches as Gender PSG and Gender Plus. However, national courts are not bound by these two approaches and could institute a new interpretation of how gender fits into the definition of a refugee or dismiss it as legitimate grounds for a claim altogether. By analyzing appeals of gender-based asylum claims in the European Union, I am able to assess the approaches national courts take to incorporating gender within existing immigration law and what sources of law the courts use to support their positions.

The remainder of the analysis proceeds as follows. In the next section, I outline the guidelines, regulations, and jurisprudence from the United Nations and European Union related to gender-based persecution in asylum claims. I also outline the two primary approaches to addressing gender-based claims within current refugee law. Next, I will discuss appeals of gender-based claims filed in the European Union. This discussion takes place in two steps. First, I examine the approaches of several individual states, paying particular attention to whether and how these states changed their positions in relation to supranational standards. This first step will then set the stage for a larger discussion of the trends across all of the cases. Finally, I offer overarching conclusions regarding the determination of asylum claims based on gender-based persecution and areas for future research.

International and European Guidelines

For the member states of the European Union, there are two primary external sources of law and guidelines related to refugees and asylum. The first source is the United Nations and includes the 1951 Geneva Convention Relating to the Status of Refugees, hereafter the Geneva Convention or Convention, as well as guidelines published by the

United Nations High Commissioner for Refugees (UNHCR). The second source includes European law and regulations related to immigration and decisions made by the European Court of Human Rights (ECtHR)..

Based on these guidelines, two general approaches to assess gender-based persecution in asylum claims have emerged. These two approaches both find validation in UN and EU sources and have found favor among different member states at different times. The first approach considers gender to be a legitimate social group within the refugee definition of the Geneva Convention. The second perspective sees gender as a characteristic that can be part of a legitimate claim, but is not, in itself, sufficient grounds for international protection. This analysis is shaped, in large part, by the debate between these two approaches and each is discussed in greater detail in the final portion of this section.

UN Guidelines

The most important foundational elements of the international asylum legal regime are found in the Geneva Convention, which sets the minimum threshold that applicants must meet in order to be considered for asylum. Perhaps the most crucial aspect of this convention is its definition of a refugee in Article 1(a): a ‘refugee’ is an individual who

Owing to a well-founded fear of persecution 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. (UNHCR 2010)

Based on this definition, there are five grounds on which an applicant can claim they were persecuted: race, religion, nationality, membership of a particular social group, and

political opinion. Gender is noticeably absent from this list and has been the source of a great deal of debate in scholarship, policy, and law.

In addition to the legal definition and principles set out in the Geneva Convention, the UNHCR, as part of its mandate, publishes guidelines on various topics related to refugee-status determination. In 2002, the UNHCR released a set of guidelines specifically addressing gender-based persecution and how gender fits into the Geneva Convention's framework. According to the UNHCR, "even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment" (UNHCR 2002). The UNHCR, through these guidelines, emphasizes the importance of analyzing gender-related aspects of a claim regardless of which of the five categories is invoked as the grounds for persecution.

Despite the emphasis on always including gender considerations in refugee status determination procedures, the UNHCR does acknowledge that gender-based persecution has been most commonly tied to the 'particular social group' category of the refugee definition. The guidelines on gender-related persecution, thus, attempts to offer clear directives on how gender can and should be considered under this category. The guidelines reiterate the UN's position on what qualifies as a social group:

a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristics will often be one that is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights. (UNHCR 2002: 7)

Based on this definition, the UNHCR argues that sex can clearly be considered as a social group, "with women being a clear example of a social subset defined by innate and

immutable characteristics, and who are frequently treated differently than men” (UNHCR 2002: 7).

ECtHR Rulings

There are two rulings from the ECtHR that relate to gender considerations in asylum claims. The first decision, from *Collins and Akaziebie v. Sweden* (2007),⁵ addresses gender-based acts of persecution. In its ruling, the court recognizes that, taken together, the severity of female genital mutilation (FGM), its pervasiveness in many societies, and the inability or unwillingness of some states to protect women from this practice “amounts to ill treatment contrary to Article 3 of the Convention” (*Collins and Akaziebie v. Sweden* 2007). *Collins* also highlights the provision in Swedish asylum law “by which a well founded fear of persecution because of one’s sex constitutes a need for protection” (*Collins and Akaziebie v. Sweden* 2007). Thus, by noting this aspect of Swedish law, the decision lays some of the groundwork for sex or gender to be considered legitimate *grounds* for persecution, despite the case’s focus on addressing a specific *act* of persecution.

In the *Case of N v. Sweden* (2010), the ECtHR addresses the situation of women in Afghanistan and sets some guidelines for assessing country of origin information (COI). According to the court, when the applicant is a woman, this assessment should include consideration of the treatment of women by both state and non-state actors in the country of origin. However, while the *Collins* decision laid the foundation for gender to be seen as independent grounds for persecution, this second decision takes a different position. The ECtHR in *N v. Sweden* introduces what I term below as Gender Plus language; this perspective views gender as only one part of a cumulative set of grounds that establishes

⁵ Citation information for all of the court cases referenced in this chapter is listed in the Appendix.

an applicant as part of a social group. Citing information from the UNHCR, the Court remarked that women “who have adopted a less culturally conservative lifestyle...continue to be perceived as transgressing entrenched social and religious norms and may, as a result, be subject to domestic violence and other forms of punishment” (*Case of N v. Sweden* 2010). From this point of view, Afghan women who suffer such violence do not qualify as refugees, but Afghan women who have adopted liberal or Western lifestyles and suffer domestic or honor violence would be considered as meeting the definition of a refugee.

EU Directives

In addition to the decisions from the ECtHR there are two directives from the European Parliament that offer some direction to member states on how to evaluate gender-based asylum claims. These EU-level regulations can be found in the 2004 and 2011 versions of the Qualification Directive. In particular, the European Union provides information on how to assess the acts and grounds of persecution in articles 9 and 10 of these directives.

Article 9 of the Qualification Directive addresses “acts of persecution.” In particular, this article lays out the conditions under which violations of human rights rise to the level of ‘persecution’ as envisioned in international law. In the second section of this article, the directive lays out the potential forms this persecution can take and includes “acts of physical or mental violence, including acts of sexual violence” and “acts of a gender-specific or child-specific nature” (European Union: Council of the European Union 2004). This article also lays the foundation for consideration of gender-based persecution as meeting Geneva Convention standards and provides the guidelines by which states can determine whether and when gender-based violence qualifies as persecution.

Article 10 builds on the preceding article and moves on to consider the valid reasons for persecution under international law. In particular, subsection (d) of section 1 outlines the definition of a 'particular social group' for application in asylum cases:

A group shall be considered to form a particular social group where in particular:

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- that group has a distinct identity in the relevant country, because it is being perceived as being different by the surrounding society;
- depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects might be considered without by themselves alone creating a presumption for the applicability of this article. (European Union: Council of the European Union 2004)

The initial two components of the Qualification Directive's definition of a particular social group draw largely on the guidelines set forth by the UNHCR, but are more restrictive. Despite taking this more conservative approach, the article's framework, on first glance, seems to establish fairly clear ground for gender to qualify as a particular social group. Gender is an innate characteristic; whether the individual is cisgender or transgender, this identity is one that is felt as a natural and fundamental part of one's being and identity. Second, even in developed countries where women's rights movements have made large strides, women are still treated differently by society and, at times, the law (Randall 2002). However, the final sentence of this article alters the tone of the framework and sets the stage for the debate between the 'gender as a particular social group' and the Gender Plus camps. It allows that gender could be considered under the particular social group definition, but goes on to state that finding gender relevant to the determination of

an asylum claim does not necessarily mean that gender would meet the social group threshold. However, the directive is silent on the circumstances under which gender would or would not be considered a social group.

The vague and potentially restrictive stance of the 2004 directive becomes clearer when compared to the change made to Article 10 in the 2011 version of the Qualification Directive. In the new version of the directive, the EU urges states to take gender-based acts seriously in their asylum determination procedures, more closely reflecting the position of the UNHCR. This new stance is reflected in the revised final sentence of subsection (d) of section 1 of Article 10: "Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying characteristic of such a group" (European Union: Council of the European Union 2011). At the very least, the new directive offers clearer language on the role of gender in determining social group membership. However, it still falls short of stating whether gender is a 'particular social group' on its own or if it can form only part of a claim. Despite this continued silence on the issue, the 2004 directive seems to lend itself more to the Gender Plus approach, while the 2011 directive could be interpreted as moving European regulations toward accepting gender as an independent grounds for persecution.

As noted above, the first Qualification Directive was adopted in 2004 and the second in 2011. Member states were expected to transpose their guidelines into domestic law by October 10, 2006 and December 21, 2013 respectively. However, even if states did not meet this transposition deadline, EU member states are expected to follow the spirit or intent of EU law when it comes into conflict with domestic law even if the European law has not been integrated into national law. This expectation is expressed clearly in two cases

decided by the Court of Justice of the European Union (CJEU) (*Kolpinghuis Nijmegen BV* 1987; *Marleasing SA v La Comercial Internacional de Alimentacion SA* 1990). Therefore, the directives – along with the two ECtHR court decisions – provide good guideposts for evaluating the approaches taken in the appeals cases analyzed below.

Gender PSG v. Gender Plus

The competition over how states should address gender-based claims takes place, primarily, between two perspectives. The core difference between these two perspectives regards how gender falls under existing asylum guidelines. The first perspective of the debate views gender as a legitimate category under the Geneva Convention's fourth ground for persecution in the refugee definition: the 'particular social group' category. This is a position supported by the United Nations (2002). For the purposes of brevity, I will refer to this as the Gender PSG approach.

The second perspective on how to address gender claims is the Gender Plus approach. Persecution based on an individual's gender is not, in itself, enough to justify asylum protection according to this perspective. There must be some other component that when added to gender-based persecution creates a situation that makes the individual eligible for refugee status. The additional or 'plus' component can take various forms. The most common approach is to find persecution in the applicant's claim that is based on one of the other 4 persecution categories in the refugee definition: nationality, religion, race, and political opinion. These are seen as the more traditional or conventional categories and, thus, lend additional credibility to the claim and the decision of the administrative body or court applying this approach (Fletcher 2006).

Other ‘plus’ categories involve a cumulative approach; these often add layers of abuse-types or identifiers to create a more specific category than ‘women from country X.’ Common examples include women at risk of domestic violence and “prostitutes who come from the State of Edo, and who are both victims of human trafficking and anxious to extricate themselves actively from these networks” (*Cour nationale du droit d’asile 29 avril 2011, Mlle E., n°10012810*). This seems to be the approach supported by the 2004 Qualification Directive. However, some courts as well as the UNHCR hold that cumulative categories that include the persecution as an identifier, such as ‘women at risk of domestic violence,’ are invalid. Under the Geneva Convention, the social group category cannot use the type of persecution suffered as the identifier differentiating the group from the rest of the population because it creates an instance of circular logic that cannot be supported by the Convention (UNHCR 2002).

French courts, in particular, have used a final ‘plus’ category of note. The French approach focuses on the degree to which the characteristics that mark out the particular social group are ‘manifest’ or, in other words, the degree to which that characteristic could be hidden or limited through a change of behavior or location. This approach asks whether changing the applicant’s behavior – changing the way they dress or act in public, for instance – reduce or eliminate the likelihood of persecution. This approach has also been used to determine whether the individual manifests the particular characteristic enough to put them in danger. This latter type of assessment has been common in claims lodged by LGBT individuals, where the degree to which they ‘act’ or ‘appear’ to fit a stereotype associated with a particular sexual orientation could determine the outcome of their claim (Hannah 2005; Morgan 2006; Raj 2012).

National Courts and Gender-Based Claims

Just as there is little jurisprudence on gender-based claims at the supranational level, few appeals related to persecution on the grounds of gender have reached the high national courts of EU member states. Using two legal databases – the European Database for Asylum Law (EDAL) and the CODICES database – I examined 56 asylum appeals cases related to gender-based persecution. Of these cases, seven were decided at high national courts that act as the court of last resort and another eight were decided at other national level courts. However, these cases do not provide sufficient information for analysis for two reasons. First, there are important factors that have been shown to impact the rates of successful asylum claims in European states, including whether the states receives high, medium, or low levels of applications (Neumayer 2005a; Tolley 2012). The available high court decisions do not vary enough on this variable for analysis. Second, four of the high court cases, in addition to eight lower court decisions, could not be included in the analysis. In the decisions from these twelve excluded cases, the court in question does not directly address the issue of gender as grounds for persecution; most of the excluded cases only consider matters of law or procedure rather than the basis for the original asylum claim.

In this analysis, therefore, I choose to make use of the 44 remaining cases, including those from lower courts. These cases come from thirteen of the 28 EU member states and span 16 years, from 1999 to 2015. Inclusion of all of these cases, thus, allows me to account for variation in the rates of asylum applications received by states as well as differences in decisions made by different types of courts. I am also able take a broader temporal view, tracking how states have interpreted EU law and regulations in appeals made in cases involving gender-based claims over time.

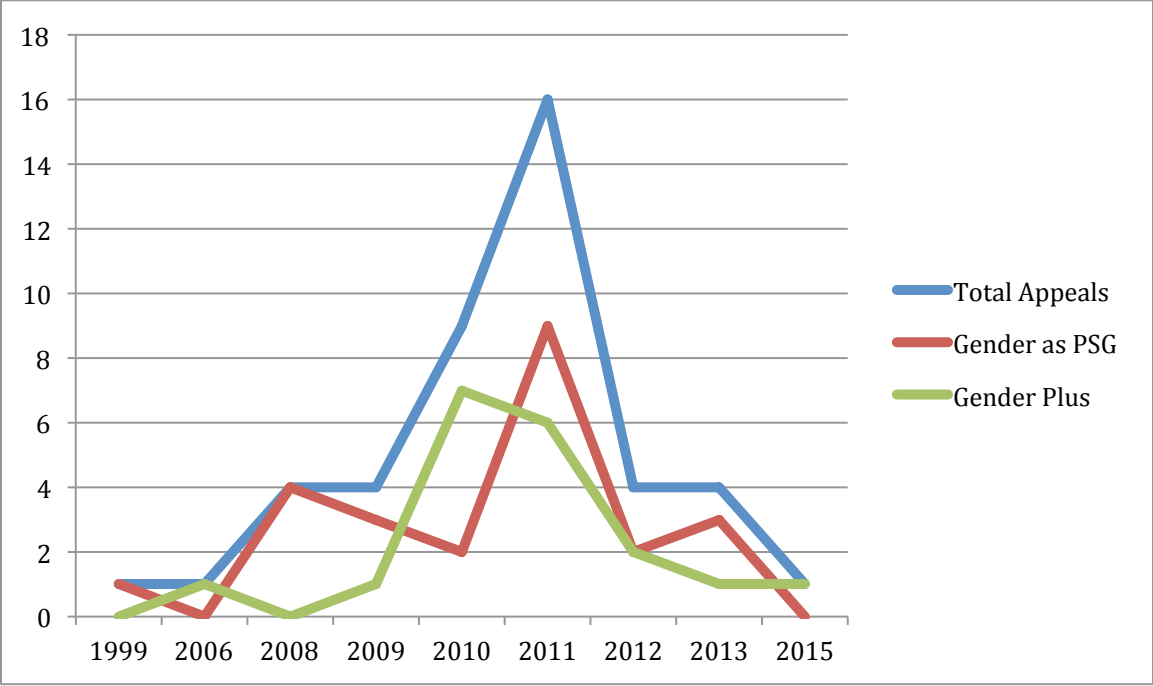
In analyzing these cases, I use, in part, the framework established by Tolley (2012). The labels he creates for categorizing a national court's position relative to the ECtHR are indeed helpful, but need clarification. In addition to the ECtHR, the European Parliament offers guidelines relevant to gender-based claims. Thus I offer a slightly different set of potential categories for this particular area of immigration law. The first category includes 'Pace Creators' or national courts that took a stance on gender based claims before 2004. 'Keeping Pace' is the second category; courts in this category, of course, have options in terms of which institution with which to keep pace. I include in this larger category courts that keep pace with the Parliament by following the regulations of the directives, with the ECtHR by following the court's decisions, or those who follow both. So we can break out three sub-categories under the 'keeping pace' label: 'Keeping pace with Brussels,' 'Keeping Pace with Strasbourg,' and, simply, 'Keeping Pace' for those states that follow both.

The 'Strasbourg Plus' category in this analysis will include courts that stay ahead of the minimums set by either the Qualification Directives or the rulings of the ECtHR. I hold the Gender PSG approach to be the more permissive approach; therefore, courts in this category will implement the Gender PSG approach early and, in general, maintain it regardless of changes in EU policy. Fourth, there are "Pace Setters" who choose their own path, not appearing to be influenced by supranational regulations or law. Finally, I include Tolley's 'Strasbourg Minus' category for states who, perhaps citing the conflicting guidance from Strasbourg, keep their jurisprudence behind either of the standards set at the European level.

There are, of course, states and courts in this sample that do not clearly fall under any of these categories. Indeed, other elements seem to be driving their stances on gender-

based persecution and asylum claims. In the second half of this section, therefore, I examine larger trends among the cases in my dataset. In particular, the type of court deciding the appeal, the average annual rate of asylum applications, and length of EU membership appear to have stronger effects in certain states and across the region than either the directives of the European Parliament or the decisions of the Strasbourg Court.

Figure 3.1: Gender-Based Persecution Appeals and Approaches By Year



Individual state approaches

Pace Creators

Before the implementation of the Qualification Directive in 2004, some courts were already dealing with appeals of denied gender-based asylum claims. In particular, the United Kingdom decided an appeal five years before the directive came into effect, establishing a national standard that gender qualified as a particular social group (*R v Immigration Appeal Tribunal and another, ex parte Shah* 1999). This position was then challenged in 2006, shortly after the transposition deadline for the 2004 Qualification

Directive passed (*Fornah v. Secretary of State for the Home Department* 2006). The court – the House of Lords in both cases – had to make decisions about whether and how to adjust its judgment in light of the Qualification in the absence of any guidance from Strasbourg.

In *R v Immigration Appeal Tribunal and another, ex parte Shah*, hereafter *Shah*, the House of Lords was presented with an appeal from two Pakistani women seeking protection from state-sponsored honor violence; they risked criminal persecution and punishment for alleged adultery if they returned to Pakistan. The representatives of the applicants were appealing a decision made by the Secretary of State, who had held that women did not and could not constitute a social group. Based on this reasoning from the Secretary, the appellants put forward a much more restrictive, Gender Plus style social group category based on their gender, suspicion of having committed adultery, and lack of protection from the state.

The House of Lords rejected both the position of the Secretary of State and that of the appellants. In the decision, written by Lord Steyn, the court held that the appellants' three part approach to the social group category contravened the guidelines of the UN by including in the definition of the social group in question the type of persecution to which these women would be subjected in Pakistan. The decision also dismissed the argument of the Secretary of State that women in Pakistan do not constitute a social group.

The decision from the House of Lords used an earlier case from the Supreme Court of Canada, *Ward v. Canada (Minister of Employment and Immigration)* (1993) as precedent. *Ward* offers two key points of relevance for the British case: it outlines “the correct approach to defining a social group” and “lends credence to the view that gender may in and of itself be an independent ground on which a claim of persecution can be founded”

(Randall 2002: 293). However, despite this support from *Ward* and the majority opinion in *Shah*, there remained a great deal of disagreement over whether to accept *Ward's* approach to defining a particular social group, especially as it related to gender-based persecution, and the applicability of the narrower, Gender Plus definition offered by the appellants.

After *Shah*, the House of Lords received another appeal related to gender-based persecution in 2006. The disagreements over the decision in *Shah* combined with the new Qualification Directive regulations led to a shift in the court's reasoning. In *Fornah v. Secretary of State for the Home Department* (2006), the applicant offered that she faced persecution on the basis of her membership in one of two particular social groups: "women in Sierra Leone' or, alternatively, 'uninitiated women in Sierra Leone who had not been subjected to FGM'" (*Fornah v. Secretary of State for the Home Department* 2006). The leading decisions, by Lords Bingham and Hope, divided on the issue of the particular social group, each allowing the appeal but on the basis of different social groups. Lord Bingham, who accepted 'women in Sierra Leone' as social group, addressed the role of the Qualification Directive in determining gender-based claims. He argued that a literal reading of the directive's position on a particular social group supports his decision in *Fornah* and states that if the directive is actually putting forward a more restrictive stance than the literal reading would suggest, in his opinion, then it is a standard "more stringent than is warranted by international authority" (*Fornah v. Secretary of State for the Home Department* 2006).

Interestingly, despite the availability of the Qualification Directive's regulations for the decision in *Fornah*, the House of Lords relied on case law from outside of Europe – especially case law from other Commonwealth countries – to support their positions in

both cases. In *Fornah*, there is a slight shift away from the Gender PSG stance seen in *Shah*. However, continued reliance on *Ward*, as well as the earlier *Shah* decision, may have kept that stance from being entirely taken over by the Gender Plus approach. This progression is important to note in light of later regional trends. In 1999, the UK would be considered as a state receiving a high level of asylum claims relative to other European states; in 2006, by contrast, the annual number of applications the country was receiving had dropped to less than half of the number in 1999 (European Commission 2016). As we will see below, high application-receiving states are more likely to adhere to the more restrictive Gender Plus decision. Here, we see the opposite is true; the British position is more conservative in a year when their annual rate of asylum applications has lowered. The shift in *Fornah* could be a sign that the House of Lords is following the first Qualification Directive and that it might have been willing to follow an EU-level court decision if one had been available. Unfortunately, there are no additional decisions from the UK in the databases to test these possibilities.

Strasbourg Plus

Belgium, Spain, and Poland are notable examples of the ‘Strasbourg Plus’ category because, despite important differences between them, courts from all three states take similar and consistent stances on gender as grounds for persecution. Poland and Spain, for instance, both generally receive relatively low levels of asylum applications, with Belgium starting in the low category and moving up to the middle category by 2010. Similarly, while Belgium is one of the original members of the EU, Spain has been a member for 30 years, and Poland for just 12. All ten of the cases from these countries were decided after the implementation of the 2004 Qualification Directive and the decision in *Collins*. As outlined

above, although it does not say so explicitly, *Collins* lays the groundwork for gender to be considered a legitimate social group within the Geneva Convention's refugee definition. By contrast, the 2004 Qualification Directive using language more in line with the Gender Plus approach. Strikingly, in all but one of the cases from Belgium, Poland, and Spain, the courts apply the Gender PSG standard in their decisions.

The Belgian Council for Alien Law Litigation (CALL) decided the one case that follows the Gender Plus rather than Gender PSG approach (*Nr. 45.395 2010*). The case dealt with the risk of FGM and was decided in June 2010, just before the decision in *N v Sweden*, but after *Collins*. Belgian law, in line with the *Collins* ruling and using language from the 2004 Qualification Directive, views FGM as an act of persecution on the grounds of gender. However, instead of applying this standard, the CALL in its decision looked beyond the specific persecution the applicant and her children would face upon return to their state of origin and focused on the applicant's opposition to the practice of FGM. Instead of granting the appeal exclusively on the basis of the threat of gender-based persecution, the court viewed the active opposition to such a widely accepted social practice as a political opinion for which she could face persecution. The Gender Plus approach in this decision could be seen as following the 2004 Qualification Directive since the court draws on the laws that transposed the directive's guidelines into Belgian law (*Nr. 45.395 2010*).

However, as will be discussed further below, the change in the relative level of asylum applications could explain this one anomalous decision from Belgium. While Spain and Poland both maintained low levels of yearly applications, Belgium's rate of applications increased between 2008 and 2010 (European Commission 2016). The case described above was the first appeal available in the EDAL database following that increase and it

shows a shift to the more restrictive Gender Plus approach. However, later in 2010 the CALL returned to the Gender PSG approach. In that case, the victim had suffered forced prostitution and the court's decision drew on the Qualification Directive as with the first decision from that year, but also cited the decisions in *Ward* and *Shah* (Nr. 49.821 2010). Despite slight variations in its application rates in following years, the Belgian Court maintained its position on gender as grounds for persecution after 2010.

The decisions from Polish courts are notable among the decisions from these three for their early, consistent, and expansive view on gender's place within the asylum legal framework. The first Polish case from the EDAL database is from 2008, which is after the transposition deadline for the 2004 Qualification Directive. However, at the time of the decision, Poland still had not transposed the directive's regulations into national law. The Polish court chose to follow the 'spirit of the directive' anyway (*II OSK 237/07 2008*). However, the Supreme Administrative Court of Poland appears to have used the decisions in *Ward* and *Shah* to bolster the 'spirit of the directive,' resulting in a more expansive interpretation of social groups and gender as grounds for an asylum claim. Even though the Polish courts do not cite *Collins*, they seem to follow its Gender PSG stance and remain faithful to that position despite the later shift in the ECtHR's stance in *N v Sweden*.

Keeping Pace with Strasbourg

The only 'Keeping Pace' category that seems to find any support among this data is the original 'Keeping Pace with Strasbourg' category. The French appeals available from the EDAL database place that nation in this category. The French courts choose the Gender Plus approach to gender-based asylum claims, starting with the first appeal in this dataset,

which was decided shortly after *N v Sweden*. Despite the later revisions to the Qualification Directive, the opinion of the French jurists does not become any more permissive.

The choice of the French courts to apply the Gender Plus approach seems to stem from their position that the particular social group category requires “applicants [to have] manifested their characteristic or identity by their external behavior” (*Cour national du droit d’asile, 23 décembre 2010, Mlle D., n°09011388*). From this perspective, if the characteristic causing the persecution can be hidden either by a change in behavior or by relocation to a less hostile location, then the individual is not eligible for international protection. Even in cases that involve the accumulation of identities and social groups that usually satisfy the Gender Plus standard in the courts of other European states, the French courts require this extra manifestation component (*CE, 21 décembre 2012, Mlle D., n°332491; Cour national du droit d’asile, 29 juillet 2011, Mlle O., n°10020534; Cour national du droit d’asile, 23 décembre 2010, Mlle D., n°09011388*).

For example, in the most recent appeal available on EDAL, the Cour national du droit d’asile (CNDA) finds in favor of an applicant from Nigeria who was the victim of human trafficking. The court highlights the ‘juju’ ritual that young women are forced to undergo as part of their introduction into a human trafficking network. This ritual permanently scars these women, making them easily identifiable as trafficking victims even if they are able to escape and return home; they, therefore, remain susceptible to being re-trafficked (*N°09011388*). Since this scarring is permanent, it is a characteristic that cannot be hidden nor can moving to another part of Nigeria minimize its effect.

By contrast, in an earlier case, a woman sought protection because she resisted going through the FGM procedure and suffered abuse due to her opposition to the Guinean

government (*Cour national du droit d'asile, 23 décembre 2010, Mlle D., n°09011388*). The court rejected the applicant's claim for refugee status because although the individual did 'manifest' the characteristics in question, the manifestation only took place after a forced marriage brought her to France. Since the applicant did not manifest the characteristics while still in Guinea, she did not qualify for international protection.

It would seem, by this 'manifestation' logic, that gender could very easily be considered a legitimate social group; it is very difficult to hide one's gender, especially in societies structured around gendered roles, rights, and responsibilities. However, the French courts appear unwilling to consider this interpretation. Interestingly, none of the appeals to French courts included in the EDAL database make claims based on the grounds of having suffered exclusively gender-based persecution; all five appeals present a cumulative, Gender Plus justification for protection. Perhaps by 2010 – the year of the earliest appeal in this data set – the French position was already well enough known to applicants and advocates that they have not since attempted the Gender PSG approach.

Strasbourg Minus

I find no support for the 'Strasbourg Minus' category and no real support for any of the other 'Keeping Pace' categories. The few cases that could potentially qualify under remaining two 'Keeping Pace' categories – such as Greece and Ireland – have too few decisions to support any definitive conclusions.

Regional Trends

In the previous section, I analyzed individual countries whose approach to gender-based asylum claims are relatively clear with respect to how well they follow the paces set by the European Parliament in Brussels and the European Court of Human Rights in

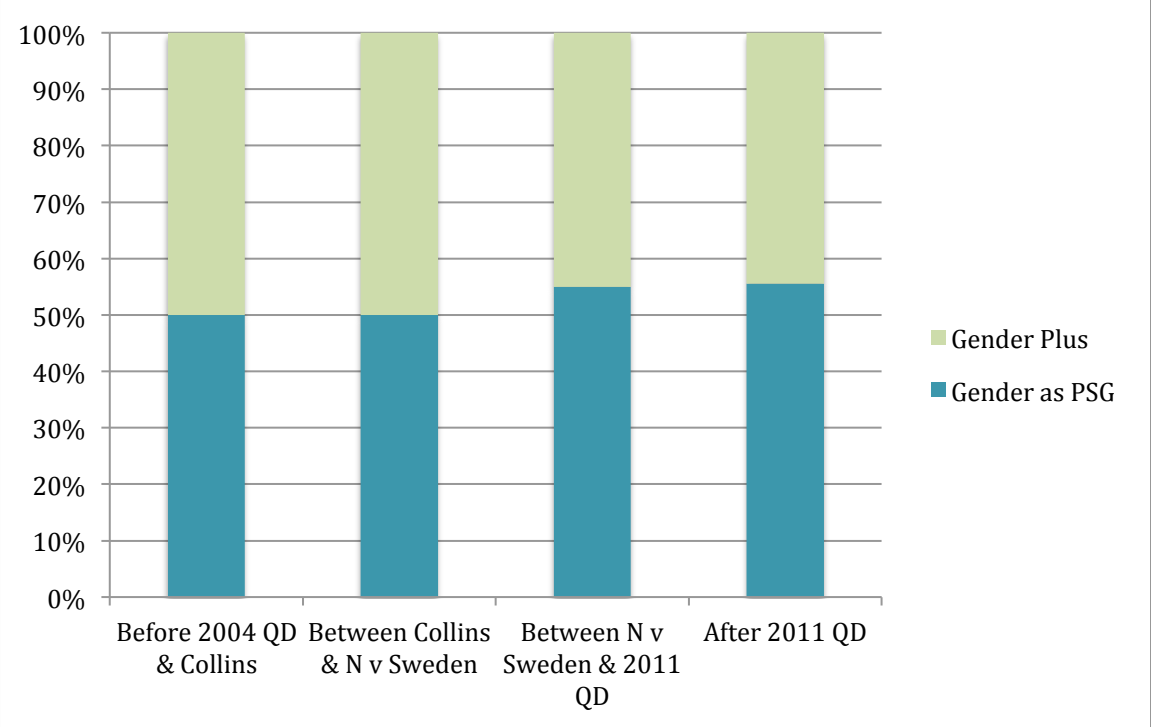
Strasbourg. However, the appeals discussed above represent less than half – only 18 – of total cases. The majority of the appeals come from countries that either have too few relevant decisions in the EDAL and CODICES databases to allow for clear analysis, such as the Czech Republic and Italy, or have several cases published in these databases but no discernable pattern among their approaches relative to the Qualification Directives or the ECtHR rulings. This later group includes two of the largest contributors to this dataset, Germany and Sweden.

Since the approaches to deciding appeals of asylum decisions in gender-based claims cannot be explained with reference to Strasbourg or Brussels for the majority of the cases in my sample, what might explain the choices made by the courts involved? Are there other trends in legal approaches to gender-persecution that extend across the European member states? As Figure 2 demonstrates, there do not seem to be any clear regional trends in whether courts change their approaches based on changes in the EU policies or jurisprudence. If we did see a clear pattern looking only at these time periods, it would lend support to the relevance of the keeping pace categories at the regional level. However, the data do not support this explanation. In fact, the overarching results seem to support one of two other explanations: either confusion among the European states about which institutions to follow when Brussels and Strasbourg disagree or the importance of other factors in determining the integration of gender into asylum determination. The remainder of this section explores the evidence for the second explanation.

In this final section of the analysis, I examine three factors that could explain larger shifts in the European approach to gender-based asylum claims. The first is the type of court that decides the appeal. Second, I assess the role the relative number of asylum

applications has on the court’s decisions. And finally, I look at how length of membership in the European Union may affect the choice in legal reasoning.

Figure 3.2: Approach Types By Time Period

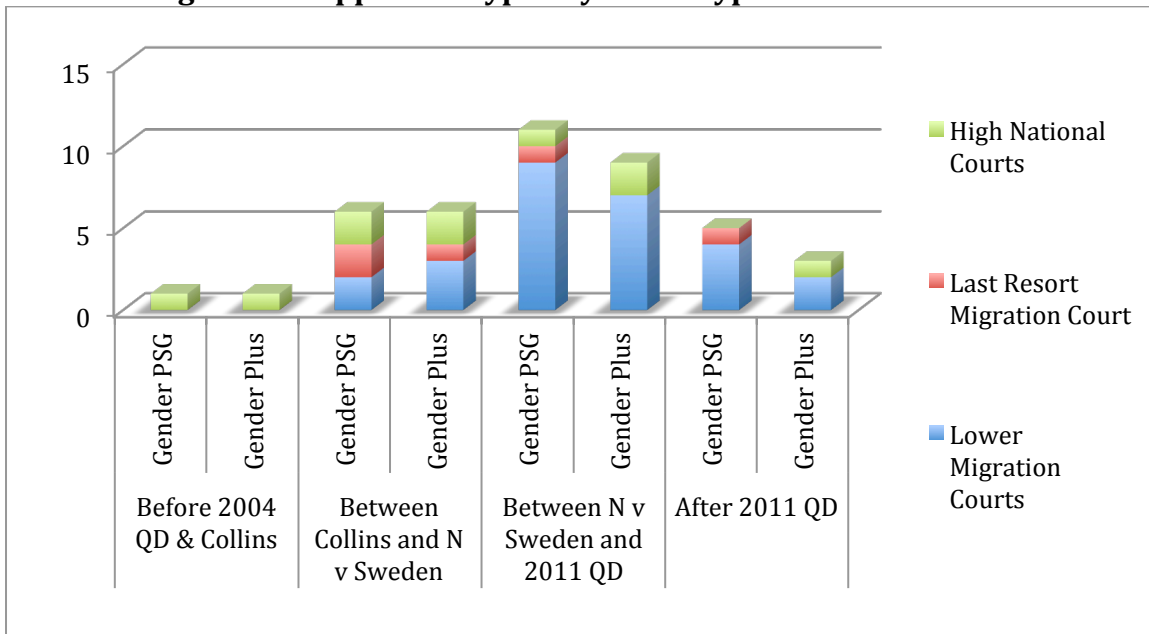


Court Type

In his analysis, Tolley is able to rely exclusively on decisions from high national courts (2012). However, very few high courts in Europe have addressed the issue of gender-based persecution in asylum claims. Part of the lack of decisions at this level is due to the jurisdiction of high courts in some of the European states, which are only able to assess points of law or procedure in the lower courts’ or administrative agency’s decisions. Given this limitation in their jurisdiction, the courts could not assess the credibility of the original claim and, thus, do not offer opinions on the validity of gender as grounds for persecution.

Since I could not, therefore, look solely at high court decisions, it seems necessary to determine what affect the type and level of court has on the gender-based reasoning used in the court’s decision. It is important to remember, as was noted above, that the majority of the decisions in this dataset come from first or second instance courts, many of which deal exclusively or primarily with immigration cases or, in some cases, only with asylum cases. Only six of the 44 cases are from migration courts of last resort and ten from high national courts – both those of last resort and those that are not.

Figure 3.3: Approach Types By Court Type and Time Period



As Figure 3 shows, the lower courts seem conflicted in their approach to gender-based claims. The number of decisions using Gender PSG reasoning is, in most time periods, roughly equivalent to those using the Gender Plus approach. In fact, the overall trend in their decisions does not seem to follow either the European Parliament or the ECtHR. Instead, it appears from this data that while the lower courts follow the Qualification Directive in the beginning, these courts then take the lead, setting the pace for Brussels. The lower courts favor the Gender Plus approach, staying in line with the 2004 directive

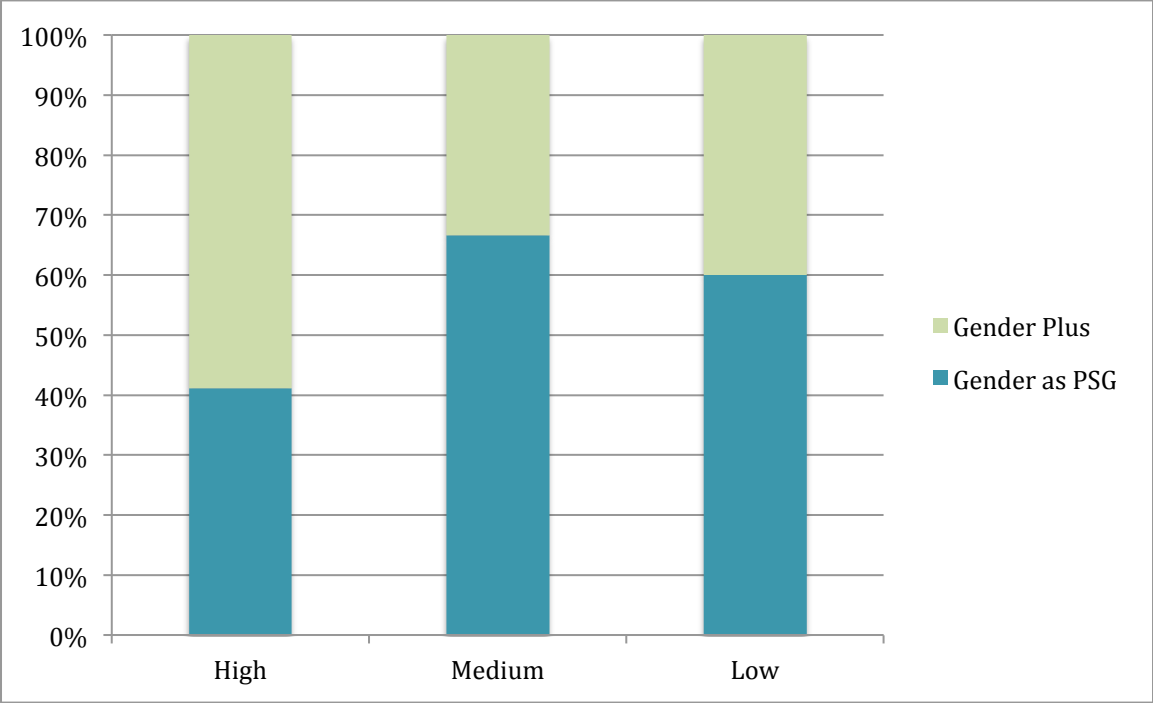
even after the decision in *Collins*. Then after *N v Sweden*, but before the 2011 directive is in place, the lower courts start to give more preference to the Gender PSG model. The lower courts are potentially caught between the conflicting standards set at the European level and those of their national courts or governments (Schmidt 1999). If that is the case, the decisions of the lower courts may highlight shifts in national perspectives on gender-based persecution that are then expressed by national representatives at the European Parliament and incorporated into EU-level guidelines.

As noted above, there are too few decisions among the higher courts to see definitive trends, but a few potential patterns do emerge from the data. The migration courts of last resort, such as the Supreme Administrative Court of Poland and the Migration Court of Appeal in Sweden, appear to be pace setters like the lower migration courts. While the lower courts shift over time from the Gender PLUS approach to the less restrictive Gender PSG position, the last resort migration courts establish Gender PSG as their standard early and maintain it throughout this time period despite changes at the European level. Since these are specialized courts, the judges involved may feel better able to interpret international, supranational, and national immigration and asylum law without direct reference to Brussels or Strasbourg. However, it is important to remember that given the relatively few cases in this category, these are only preliminary observations.

The high courts seem to follow a path contrary to that followed by the migration courts of last resort and lower courts. The high courts are fairly evenly split between the two gender-based approaches in the early years of this dataset. However, after the decision in *N v Sweden*, the high courts favor the Gender Plus standard through to the final cases in 2013 and 2015. It is interesting to note that, in this later period, when the high courts

choose to ‘keep pace’ with Strasbourg, all of the high courts in question are in states that receive relatively high annual rates of asylum applications. The high rates of applications in these cases in the later years of the dataset are driven, largely, by the Syrian crisis, which has resulted in significant push back from European governments and the implementation of increasingly conservative immigration policies. It may be that the high rates of applications have a stronger effect on high courts, leading them to follow the government’s lead by implementing more conservative legal interpretations. This would explanation, however, runs counter to the judicialization of politics literature and deserves further study.

Figure 3.4: Approach Types and Relative Rates of Application



Rates of Applications

A state’s rate of asylum applications has been shown to be a reliable predictor of the final outcome of asylum claims in Europe (Holzer and Schneider 2001; Neumayer 2005a). Therefore, it seems likely that application rates would have an impact on appeals cases as

well. Figure 4 shows the rates at which courts in high-receiving (more than 40,000 applications per year), medium-receiving (between 20,000 and 40,000 applications per year), and low-receiving states (below 20,000 applications per year) used the Gender PLUS and Gender PSG approaches.

Consistently low-receiving states include Austria, the Czech Republic, Greece, Ireland, Poland, and Spain. Most of the medium-receiving application states transition in and out of this category over time. These states include the UK, which transitions from high to medium and then back to the high range; Germany and Sweden, which shift from medium to high by 2010 and 2012 respectively; and Belgium, which starts in the low range and moves into the medium range in 2010. Finally, only one country is in the high range throughout this time period; France consistently receives the highest rate of asylum applications in this dataset until it is passed and then completely eclipsed by Germany beginning in 2012 (European Commission 2016).

The rate of asylum applications does seem to have at least some explanatory power for the approach courts take in incorporating gender in asylum determination procedures. The low and medium level countries follow the Gender PSG approach between 60% and 65% of the time. High application receiving states, by contrast implement the Gender Plus approach at approximately the same rate. As noted above, this may be driven by rising concerns in states over access to asylum protection and the consequences of higher numbers of refugees as the rates of application increase. The pressures to restrict the number of applicants receiving protection may be greater on the high courts than on the lower courts.

When these categories are broken down, however, the trend becomes more complicated, especially among states receiving high rates of applications. France, as discussed above, uses the Gender Plus approach across all of the appeals cases and is a high-receiving state in each year an appeal was decided. The UK, by contrast was a high asylum receiving state in 1999 when it chose to apply the expansive Gender PSG approach; in 2006, after its level of annual applications dropped by half, the court was more conservative regarding gender-based claims.

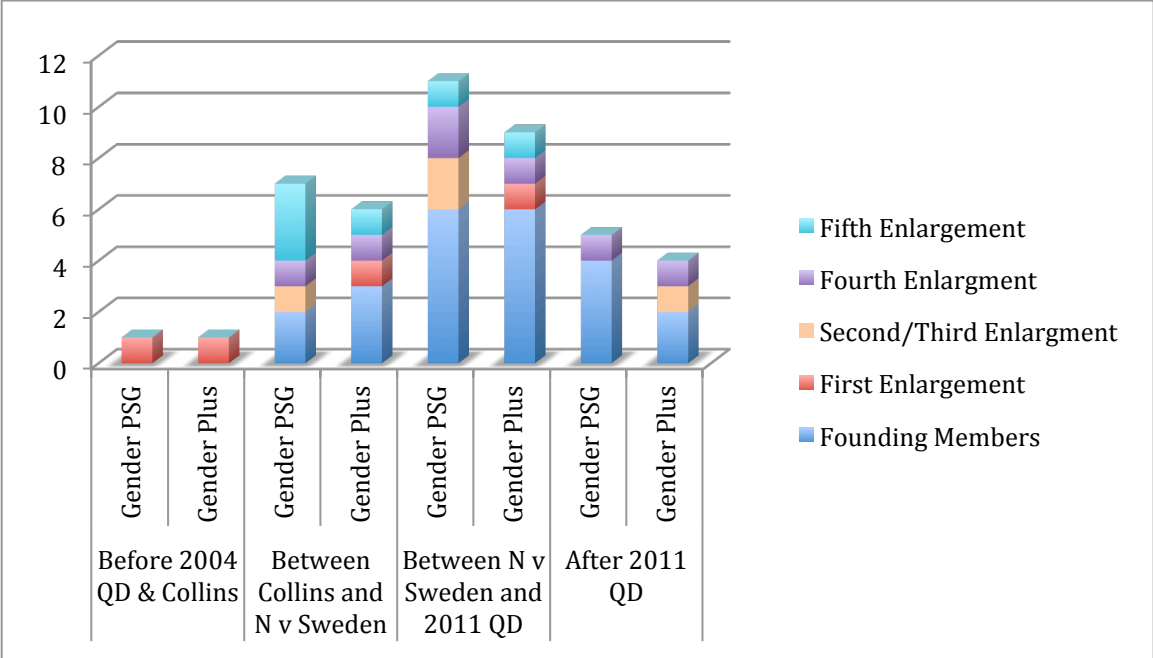
Germany and Sweden are even more complicated cases. Germany's rate of applications increased sufficiently to move it into the high category in 2010. The one appeal from a German court in the EDAL database decided before this shift shows the use of the Gender PSG approach in the court's decision. After the shift to the high-receiving category, the German courts took a more conservative view on gender as a social group, applying the Gender Plus perspective. Then, in late 2010, after the ECtHR's decision in *N v Sweden*, the German courts move back to the Gender PSG perspective. However, from this stage onward, the German courts seem to favor Gender Plus and Gender PSG equally, with no discernable pattern among the decisions.

The Swedish cases are interesting because the courts seem to shift their approach preemptively to changes in the national and supranational environments. In 2008, shortly after the Gender PSG-leaning decision in *Collins*, the Migration Court of Appeal denied an asylum appeal from an Albanian woman on the grounds that state protection was available, but found that she did demonstrate "a well-founded fear of persecution based on gender (as a particular social group) and that she therefore was eligible for protection as a refugee" (*UM 1042-08 2008*). The two appeals that follow were both decided in 2010 and

both use the Gender Plus standard in their decisions. However, this change in approach comes just before an increase in the annual rate of applications filed in Sweden and the ECtHR decision in *N v Sweden*. The final two appeals from Swedish courts are just before and during an additional increase in Sweden’s application rate and on either side of the adoption of the 2011 Qualification Directive. In both of these appeals, the court applied the Gender PSG approach. Therefore, the Swedish court’s susceptibility to changes in its application rate appears to be conditional on other factors – in these two cases, the changes in EU-level guidelines.

Future research should examine these trends more closely to see if other factors are driving the shifts in how gender is addressed in asylum determination procedures. In particular it would be important to examine domestic-level factors such as the selection process for judges, changes in the immigration law or procedure, and right-left electoral shifts.

Figure 3.5: Approach Types and Time in the EU



EU Membership

The final factor to consider is the length a state has been a member in the European Union. States that joined the union at different times may also differ in their commitment to supranational efforts at harmonization or in their opinions on human rights, especially regarding gender discrimination (Kvist 2004; Perkins and Neumayer 2007). In Figure 5, we see the distribution of the appeals cases from states that joined the European Union in each expansion of the membership. There are a few trends of note. The founding members – Belgium, Germany, France, Italy, Luxembourg, and the Netherlands – seem to most consistently follow the guidelines of the Parliament’s directives. Despite the Gender PSG ruling in *Collins*, the founding member states continue to apply the Gender Plus standard, keeping them in line with the 2004 Qualification Directive. After the decision in *N v Sweden*, we start to see the shift in the standard applied by these states that may have ultimately led to the change in language in Article 10 of the 2011 Qualification Directive. This transition to the Gender PSG position then presents itself more clearly in the final period, after the official adoption of the 2011 directive by the European Parliament in Brussels. By combining length of time in the EU and the Keeping Pace approach then, the founding members of the EU might all within the Keeping Pace with Brussels category outlined earlier.

There are only a handful of cases – four each – from the first, second, and third enlargements of the European Union making it very difficult to highlight any trends that might exist among those states. The fourth and fifth enlargements, by contrast, offer some possibilities for comparison with the approaches of the founding states. The fourth enlargement in this dataset includes cases from Austria and Sweden. Taken together the

appeals from these two states remain fairly divided in their approach to gender as grounds for persecution, which may indicate the courts had trouble deciding which set of guidelines to implement. These two states fall in the middle range in terms of length in the EU and may have been in the union long enough to be committed to the harmonization process, but not members long enough or states powerful enough to push for their own path when the European standards are unclear.

By contrast, the countries in the fifth enlargement, including the Czech Republic, Hungary, and Poland, are among the newest members of the European Union. They seem very dedicated to the Gender PSG approach after *Collins*. Although the support for this approach drops slightly after the *N v Sweden* decision, it is not overtaken by cases using the Gender Plus standard. As newer members, these states may feel strongly about following the guidelines regarding gender set at the supranational level given the legacy of gender equality during the Soviet era. However, these states also continue to struggle with how to incorporate and protect women in increasingly male-dominated societies in the post-Soviet world (Pascall and Manning 2000). Conversely, they may have wanted to continue to follow Strasbourg, but, with two competing decisions, might have struggled with how to do so. Much like the rates of asylum applications, these trends deserve further investigation to see if these patterns hold up over time and across other court cases dealing with asylum law.

Concluding Observations and Future Research

In a way, this analysis comes at an unfortunate time for really parsing out how courts implement European law in this area of asylum law and how these approaches might be changing. The Syrian migration crisis has driven unbelievable increases in the numbers of applications received by nearly all member states. Some states, such as

Germany, are receiving triple and quadruple the number of applications in 2015 as they did in 2010, the year before the civil war in Syria began (European Commission 2016). As a result, several states in Europe are working to resist and control the influx of refugees and their access to international protection. It seems almost inevitable that these policies would begin to affect the types – and perhaps even the number – of appeals reaching the courts examined here as well as how and which laws these courts choose to apply.

As we examine the appeals of gender-based asylum claims in the European Union, there definitely seems to be a general trend toward the increased application of the more permissive approach to assessing gender-based claims. However, there is a distinct drop in the available data in 2013. This could be a result of lags in adding and coding data on the part of the EDAL and CODICES databases. It could also be a reflection of the increasingly tense and divisive immigration debates now taking place in Europe. Initially, this data shows a movement toward incorporating gender into the list of recognized grounds for persecution and, in turn, international protection. However, the massive influx of refugees in recent years and the response from member states as well as the European Union to control and reverse this refugee flow could be leading states to return to a more conservative interpretation of the law. If this transition is occurring, we might expect to see its effect more strongly among the states with high rates of asylum applications, where a healthy competition between the Gender PSG and Gender Plus camps persisted through 2013 and 2015. Further data is needed to assess this trend, but given current conditions in Europe it may be some time before such data is available to the public.

Future research may have to wait for available data to surface, but there are several areas of research to pursue. In particular, the interaction between domestic level factors

and those at the supranational level need to be analyzed more completely. Despite harmonization efforts of the EU in immigration policy, each member state still maintains its own administrative procedures and judicial structures. Variations in these systems may provide more explanatory power for how courts interpret refugee law when there are no clear supranational directives – and perhaps even when clear directives do exist. The rise of the judicialization of politics makes courts increasingly important actors not just in interpreting law and policy, but also in shaping it. It is necessary, therefore, for us to have a better understanding of how these courts navigate the various areas of law available to them and the ways in which these legal influences shape their role in immigration law and policy.

CHAPTER FOUR
NOWHERE TO GO AND NO PLACE TO CALL HOME:
STATELESS REFUGEES IN A STATE-CENTERED WORLD

International law and human rights regimes are both based on a system of sovereign states. A core foundation of this system is that every individual belongs to a particular state. However, in reality, we know this is not the case. Stateless persons, those who do not belong to any state, reside around the world, including in Europe. When stateless persons are forced into refugee situations, their standing in the world becomes even more precarious. Stateless persons filing asylum claims in the European Union face legal obstacles arising from the international refugee definition, which requires that individuals are unable or unwilling to seek protection from their state. However, stateless persons, by virtue of their lack of nationality, have no legal claims on any protections available from the states in which they reside.

Both the international community and the European Union have implemented agreements, put forth guidelines, and conducted studies on how to prevent statelessness (De Groot, Swider, and Vonk 2015; Van Waas 2014; Vukas 1972; UNHCR 2014a). However, despite the UNHCR's attempts to raise awareness and the EU's published research on internal statelessness (De Groot, Swider, and Vonk 2015), little has been done to address the challenges facing stateless persons or stateless refugees in Europe. The focus of what little action the EU has taken is largely on dealing with statelessness in the developing world. Further, these instruments are often vague or simply silent on how to protect stateless individuals who have had to flee their states of residence and may or may not qualify as refugees. Some research has been done in this area, but it too is limited in scope. The majority of the available studies also focus on the developing world (see e.g. Lee

1998; Sen 2000; Sen 1999; Settlage 1997-1998), though there are a few notable exceptions (see e.g. Kerber 2007).

Protection against statelessness is further complicated by the definition of statelessness – which includes both *de jure* and *de facto* stateless persons – and the historical and legal connections drawn between stateless persons and refugees. These two forces have created various groups of stateless persons: stateless refugees, permanent stateless populations, and migratory stateless persons who do not qualify as refugees. The laws and procedures of both international system and the European Union have implicitly institutionalized the differences between these groups of stateless persons without addressing the gaps in protection these divergent categories create.

The European Union has offered recommendations and even criticisms of its member states' approaches to addressing statelessness particularly in reference to the international conventions on statelessness. But no clear supranational directives have been forthcoming on the prevention or reduction of statelessness or regarding the protection of stateless persons by recognizing a lack of nationality as independent grounds for international protection. This analysis, therefore, asks: in the absence of a clear supranational policy for addressing statelessness, what options do stateless persons have to secure protection in Europe and what gaps still exist in the available protection schemes?

The remainder of this article is organized as follows. The first section deconstructs the idea of statelessness and outlines the complications one faces in analyzing the concept in practice. In the next section, I summarize international efforts to address existing instances of statelessness and offer protection to stateless persons. I then examine the

policies and procedures in place in Europe and outline the gaps in protections for stateless persons, especially in the context of asylum and refugee protection. I end the analysis with some concluding observations and areas of necessary future research.

Statelessness Deconstructed

Statelessness is on its face a simple concept. It occurs when an individual lacks a recognized nationality. However, in practice statelessness is much more complicated. There are two particular issues that need to be addressed before we can proceed. First, the definition of statelessness will be deconstructed into its relevant components. And second, I outline the source and roles of nationality in domestic and international law.

De Jure and De Facto Statelessness

Stateless persons fall into one of two groups: *de jure* stateless and *de facto* stateless. Although both groups are considered to be part of the larger stateless population, each is addressed differently in international law and, thus, they deserve separate consideration here (Blackman 1998). The first group of stateless persons fits most closely with the simple definition for statelessness. *De jure* statelessness means that the individual has no nationality in any legal sense; in other words, the person “is not considered as a national by any State under the operation of its law” (UNHCR 1954).⁶ This traditional form of statelessness can result from several situations. The first stems from differences in how nationality is conferred, which will be discussed in more depth below. However, the core problem comes when a child has no opportunities for securing nationality from any state at

⁶ Nationality has taken on a different meaning within international relations over the last several decades. In particular, it is now often tied to ideas of identity and belonging to a community rather than a legal relationship to a political entity (Smith 2010). However, I use nationality here in line with the definition for the term given by the International Court of Justice (ICJ): “nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties” (Blackman 1998: 1147).

the time of his or her birth (Blackman 1998). This condition of statelessness at the beginning of a person's life has serious and lasting repercussions that can then be passed on to one's children, creating a perpetuating cycle of statelessness. *De jure* statelessness can also result from "the loss of nationality without the acquisition of another nationality" due to residency laws, changes in regime in the state of original nationality, or other "negative conflict of laws" (Blackman 1998: 1177).

However, before the end of World War II, a separate category of stateless persons came to the attention of the international community: the *de facto* stateless. In particular, the experience of the German Jews driven out by the Third Reich demonstrated that having a nationality on paper does not mean that such nationality comes with the "usual attributes of nationality, including effective protection" of the authorities of the state of nationality (Batchelor 1995: 233; Deng 2001). This experience has since been repeated for many other populations, including Black Mauritians in 1989 and Black South Africans under apartheid (Sironi 2016). Faced with existence as "nationals *and* non-citizens," individuals or even entire populations in this situation may choose or be forced to flee creating, by default, instances of statelessness (Batchelor 1995: 233; Arendt 1945).

Further complications for stateless persons and stateless refugees come from the definition of statelessness: to be without nationality or citizenship. This definition of statelessness is a legal one, as are the conceptions of citizenship and nationality in this context. Such a legal definition does not take into account the nuances of lived realities for stateless populations. The experiences of *de facto* statelessness, in particular, highlight the problematic nature of an exclusively legal definition of nationality. The legal approach does not take into account the quality of the nationality status or the myriad ways in which it can

be slowly eroded over time. These variations can make determining the point at which statelessness occurs difficult, if not impossible (Batchelor 1995; Settlage 1997-1998). The inability to clearly identify the point at which one lost his or her nationality can then impact the credibility of a claim of statelessness and the potential for international protection.

When placed within the refugee context, categorizing stateless persons becomes even more complicated. For reasons that will be discussed in greater detail below, stateless persons were, traditionally, assumed to be refugees, especially the *de facto* stateless (Batchelor 1995). In situations of *de facto* statelessness, according to this view, the individual would naturally leave his or her state of origin in search of protection and, potentially, the security of a new nationality elsewhere; the stateless person would then, logically, be considered a refugee under international law. However, interpretations of the refugee definition in the 1951 Geneva Convention Relating to the Status of Refugees (hereafter Geneva Convention) have become much less broad than they were in 1954 during discussions for the Convention Relating to the Status of Stateless Persons (hereafter Stateless Convention). Even if this original, broad understanding of the refugee definition was correct, modern refugee law emphasizes the issues of flight and persecution as requirements for protection (Batchelor 1995). Thus, stateless persons who find themselves outside of their state or origin today do not always meet the legal standard for refugee status and, more importantly, stateless persons who are not migratory would not qualify as refugees at all (Batchelor 1995; Blackman 1998). So in addition to the division of stateless persons into those who are *de jure* or *de facto* stateless, we can also speak of stateless refugees, stateless persons outside their country of origin or residence, and permanent stateless residents.

Nationality Laws

Domestic and International Laws

Even in the European Union, where supranational laws and directives have taken precedence in refugee and asylum protections, decisions regarding how and when to confer nationality still lie with individual states (Aleinikoff and Klusmeyer 2001; Blackman 1998; Deng 2001; Weil 2001). Nationality is “a legal relationship between an individual and the state, ‘conferring mutual rights and duties on both’” (Blackman 1998: 1147-1148). It is through this relationship that individuals have access to the system of rights and protections available through the state (Blackman 1998; Blitz and Otero-Iglesias 2011). In fact, Hannah Arendt characterized the right to nationality as the ‘right to have rights’ (Arendt 1945; Blitz and Ortero-Iglesias 2011). To be without a nationality, therefore, deprives a person of “the prerequisite for the realization of other fundamental rights” (Blackman 1998: 1148).

At the international level, nationality is viewed as “the mechanism by which states designate individuals to themselves in dealing with other states” (Blackman 1998: 1148-1149). For international relations to operate properly in a state-centric system, each individual should be under the jurisdiction of a particular state and be recognized by that state as being under its jurisdiction. In international law, nationality also plays an important role in other substantive areas of law such as humanitarian and human rights laws, including refugee law. Just as nationality gives the individual access to rights at the state level, nationality operates as the “individual’s primary link to the operation of international law” (Blackman 1998: 1150). So in the same way that statelessness deprives an individual of access to rights from a state, the absence of a recognized nationality also

puts him or her outside the normal mechanisms by which an individual seeks international rights, protection, or engagement.

Jus Soli and Jus Sanguinis

Nationality laws can be divided into two traditions: *jus soli* and *jus sanguinis*. Laws of nationality determined by *jus soli* are based on a person's birthplace; generally speaking; being born in the territory of a country with *jus soli* laws is often enough to receive nationality in that state (Weil 2001). *Jus soli* nationality laws are common in the Americas, which explains, in part, why states in this region can claim among the lowest rates of domestic statelessness in the world (Van Waas, de Chickera, and Albarazi 2014).

By contrast, most states in Europe rely primarily on the *jus sanguinis* principle.⁷ *Jus sanguinis* principles rely on bloodlines to determine nationality. In most European member states "citizenship [is] the result of [the] nationality of one parent or other more distant ancestors (Weil 2001: 17). This would imply a higher likelihood that stateless individuals would pass this status on to their descendants. Despite this difference, Europe, like the Americas, still reports low numbers of stateless persons. Advocates for stateless persons, though, have raised serious concerns about how individual states report these numbers to the United Nations High Commissioner for Refugees (UNHCR), the international agency tasked with assisting stateless persons. In particular, European member states often report individuals of 'unknown nationality,' which the European Network on Statelessness (ENS) contends is a way to mask the true number of stateless persons in a country (Van Waas, de Chickera, and Albarazi 2014).

⁷ Several European states also include laws based on *jus soli*, but they are often very constrained. For example, in France, birthplace nationality is only a possibility beginning with the third generation (Weil 2001).

Refugees and the Statelessness in International Law

The history of stateless persons and refugees is a long and strongly intertwined one. The international legal approaches to both were influenced particularly by the experiences of Russian, Spanish and German refugee flows and the problematic nationality shifts caused by the fall of various European empires during the first half of the twentieth century. At the end of the Second World War, dignitaries gathered to address “the legal status of persons who do not enjoy the protection of any Government, in particular pending acquisition of nationality, as regards their legal and social protection of their documentation” (Batchelor 1995: 241). In particular, this meant addressing the dual challenges of refugees and stateless persons.

These delegations built on previous agreements, standard practices, and definitions developed by the League of Nations and refugee organizations. Refugees came to be seen as a broader population, encompassing several groups without protection from their states of origin. In the immediate post-war period, refugees were also seen as a more serious and immediate problem for states, many of who were still hosting refugees and trying to facilitate their repatriation (Batchelor 1995). The pressure to address the issue of refugee populations and to deal with the issue quickly was so great that all of the time available to the representatives meeting at a conference in 1951 was used to address the status and protection of refugees. The issue of statelessness was determined to be too poorly understood and in need of a great deal more study before any international agreement could be decided upon (Batchelor 1995).

Similar concerns plagued the 1954 conference, which was explicitly convened to address the protection of stateless persons and the reduction of statelessness worldwide.

Although this second conference did ultimately result in the Convention Relating to the Status of Stateless Persons, any desires to develop an independent advisory body charged with assisting stateless persons to mirror the UNHCR's role with refugees or to implement initiatives aimed at the reduction and prevention statelessness were tabled. These specific concerns were championed by the United Nations – in particular the UNHCR – and various human rights organizations. However, these requests were thought too controversial in that they would “compel the members of the Conference to consult their Governments and might give rise to endless debate” (Batchelor 1995: 245).

In the interests of getting some kind of international accord entered into record, the UNHCR relented and the representatives at the 1954 conference put these issues on hold again. It would take nearly another decade before the 1961 Convention on the Reduction of Statelessness (hereafter Statelessness Reduction Convention) would be negotiated and enter into force. A separate, internationally-recognized organization for addressing the needs of stateless persons has never been created. Instead statelessness was added to the mandate of the UNHCR (Batchelor 1995).

In discussions about the definitions of refugees and stateless persons, delegates all three conferences struggled not only with how to assist the relevant populations, but also with how even to understand them. The differences between *de jure* and *de facto* statelessness and between *de facto* stateless persons and refugees were particular obstacles for many delegates. *De jure* statelessness seemed relatively clear to the members of the conference, but of less importance since there was no single population of concern to assist at the time. By contrast *de facto* statelessness seemed like a distinction without a difference for states whose primary concern was refugees. Despite continued persistence

on the part of the UNCHR to highlight the specific plight of the *de facto* stateless, members of the conference assumed that any person in this situation would flee to seek protection elsewhere. “If flight occurred, the refugee definition was thought broad enough to encompass all those concerned” (Batchelor 1995). It was this position regarding the *de facto* stateless that informed, in particular, the Statelessness Reduction Convention and the ultimate decision by delegates to task the UNHCR with assisting stateless populations (Deng 2001; Batchelor 1995).

Statelessness in Europe

The pride of place given to refugees in protection schemes remained evident despite the entry into force of the two statelessness conventions. In Europe, for example, all of the member states of the European Union are signatories to the Geneva Convention. In fact, thirteen of the current member states signed the convention within ten years; the majority of the remaining states gained independence with the dissolution of the Soviet Union and Yugoslavia; these states then signed the Geneva Convention within a few years of gaining statehood. In either case, all of the members of the European Union were signatories to the Geneva Convention by 1997 (UNHCR 2014b).

By contrast, twenty-four of the twenty-eight member states have signed the Statelessness Convention and only twenty have signed the Statelessness Reduction Convention. Four member states – Cyprus, Estonia, Malta, and Poland – are party to neither convention (United Nations 2016a; United Nations 2016b). Most accessions to the conventions have been quite recent – half of the EU member states that are parties to the Statelessness Convention signed after 1990, thirty-six years after it was introduced, and more than half signed the Statelessness Reduction Convention after 2000. The lack of

dedication to the statelessness conventions among European member states has persisted despite the European Union's promise that all member states would sign the 1954 Convention by 2014 and 'consider' signing the 1961 Convention soon thereafter (Council of the European Union 2015).

Beyond international legal concerns, the European Union and individual member states have addressed refugees and stateless persons differently in practice. Every member state has some form of asylum determination procedure and the European Union has taken the lead in harmonizing asylum policies across Europe (Blockmans and Wessel 2009; Collett 2016; Tolley 2012). Refugee status determination is strongly supported by the international convention and EU directives and these European level guidelines are expected to be followed at the national level regardless of whether or not the supranational laws have been written into domestic ones (*Kolpinghuis Nijmegen BV* 1987; *Marleasing SA v La Comercial Internacional de Alimentacion SA* 1990). There is, of course, a great deal of debate over the nuances of refugee law in Europe, especially during the recent refugee crisis, but there is, at least, an ongoing discussion and action to address individuals qualifying as refugees (Collett 2016; Kanter 2016).

There has also been a great deal of discussion in the European Union about addressing statelessness. The European Union has even gone so far as to publically acknowledge, "several Member States violate the international and European standards regarding protection against statelessness" (De Groot, Swider, and Vonk 2015: 9). There has been discussion; however, there has been very little action. In a set of "conclusions" adopted by the European Council in 2015, the Council highlighted several promises and directives it had tried to put in place related to statelessness. The list includes items that fall in four

relevant categories: the right to nationality, asylum and immigration policy, non-EU countries and statelessness, and statelessness determination procedures in European states. Each of these issues will be discussed individually.

Right to Nationality

The right to nationality is enshrined in the Universal Declaration of Human Rights and is cited as one of the “basic principles” of the 1997 European Convention on Nationality (Council of the European Union 2015). However, as noted above, decisions regarding nationality law remain under the authority of individual member states. The lack of leadership at the supranational level has prevented the stateless populations that reside in Europe, including the various Romani communities, from having effective remedy to their stateless status. No state wishes to take on the responsibility for these communities and given their dispersion across, in particular, Central and Eastern Europe, it is possible for states to claim these communities belong to other states and not eligible for international or supranational protection (Sardelić 2013).

Asylum and Immigration

The European Union has addressed how to treat stateless persons within asylum determination procedures in a general sense. According to article 67.2 of the Treaty on the Functioning of the European Union, “stateless persons shall be treated as third-country nationals when devising and implementing a common policy on asylum, immigration and external border control” (Council of the European Union 2015). This provision works to the benefit of stateless persons seeking asylum protection because it indicates the inability of a stateless individual to prove their nationality should not impede an asylum application.

However, treating stateless persons as third country nationals for the purposes of determining asylum claims does not address two problems that a lack of nationality can cause for stateless asylum seekers. First, article 67.2 does not address the core issue of statelessness – not having a nationality. It simply places the stateless person in short-term category for the purposes of asylum determination. Once that process is over, the individual still lacks a nationality. In addition, it is not clear how and whether individual applicants will be told that admitting statelessness – if they are even aware of it – should not harm their asylum application. In several cases, an applicant’s credibility is called into question specifically regarding the inability of the state reviewing an asylum claim to verify the applicant’s stated nationality. Further, stigmas connected with statelessness may make an applicant unwilling to admit he or she lacks a nationality (Van Waas, de Chickera, and Albarazi 2014).

External Statelessness

The European Union has been most active in addressing stateless populations in non-EU member states rather than domestically. In 2012, the EU agreed on the Strategic Framework on Human Rights and Democracy and an action plan which proposed “the establishment of a joint framework to tackle statelessness issues with non-EU countries.” The action plan was adopted as has a subsequent action plan, on Human Rights and Democracy. These action plans are part of the EU’s foreign policy initiatives to promote democracy (Council of the European Union 2015). This approach to statelessness might ultimately benefit European states by addressing the causes of stateless refugees from countries experiencing violent conflict, state collapse, or extreme regime changes. It may even encourage non-EU states to change nationality laws that create or perpetuate

instances of statelessness. However, it does not address the problem of statelessness within Europe nor does it directly give guidance to states in Europe on how to assist stateless person who have fled to Europe but do not qualify as refugees.

Statelessness Determination Procedures

The final category of pledges made by the European Union relates to the formal determination of an individual's status as a stateless person or as one lacking nationality. Recognition of stateless status, like refugee status, generally requires an official process to determine whether an individual meets the legal definition of statelessness and if, by meeting this definition, the individual would be eligible for some form of international protection. Unlike the European Union's leadership role in developing and harmonizing asylum procedures and refugee status determination mechanisms, there is no similar supranational requirement to implement determination procedures for statelessness. At most, the EU has "invited the [European] Commission to launch exchanges of good practices among member states" interested in developing procedures to determine an individual's stateless status (Council of the European Union 2015). As noted above, nationality laws are determined at the domestic level; therefore, while asylum procedures are expected to meet the minimum standards set at the supranational level, there is no similar approach for statelessness. This leaves us with a pressing question: where do stateless persons fit into the available protection schemes when they are seeking protection in the European Union?

Despite the numerous public statements and declared commitment from the EU, there are still no regional level guidelines or agreed upon best practices for determining individuals' stateless status. This leaves states to take the initiative in establishing their

own statelessness approach and bureaucracy. To date, only seven of the twenty-eight member states have statelessness determination procedures: France, Hungary, Italy, Latvia, Slovakia, Spain, and the United Kingdom (Gyulai 2013). In its guidelines on good practices, the European Network on Statelessness highlight three types of statelessness determination procedures in existence and three generations of states that have incorporated them into their national protection schemes. There are also different approaches to incorporating statelessness determination processes within asylum procedures. The next few sections outline the differences between these various approaches as well as the potential consequences of these differences for the access and level of protection available to stateless individuals.

Determination Mechanism Types

According to the ENS, only twelve states worldwide have statelessness determination procedures, seven of which are in Europe (Gyulai 2013).⁸ The ENS rates these determination procedures by clarity and strength relative to the law as well as the time at which the state adopted the procedure. Table 3 lays out the twelve states with determination procedures for stateless status by these two criteria. Although there are only a few states that have incorporated statelessness determination procedures in Europe, there is a clear trend toward incorporating more specific approaches to determining statelessness when such a mechanism is put in place. This trend is reinforced by recent developments in France, which has updated its national procedure from the one analyzed by the ENS in the organization's 2013 guidelines. The French authorities replaced the

⁸ In April 2016, the Greek Parliament passed an initiative that sets the country on the path to institute a statelessness determination procedure of its own. However, the initiative does not give a deadline by which this procedure needs to be in place so I do not include it in Table 3 (Kalantzi 2016).

original procedure, which according to ENS clearly recognized stateless as grounds for protection in its administrative process, with a new procedure “regulated by law” (Cosgrave 2016). This change means that all of the European statelessness determination procedures, except that in Slovakia, have enshrined protection for stateless persons in their domestic laws.

Table 4.1: States with Statelessness Determination Procedures

	First Generation	Second Generation	Third Generation
Specific rules in law, clear or relatively clear procedural framework		Spain (2001) Latvia (2004) Hungary (2007)	Moldova (2012) Georgia (2012) Philippines (2012) UK (2013)
Clear protection ground, but no detailed rules in law, yet functioning procedural framework	France (1952) Italy (1970s)	Mexico (2007)	
Clear protection ground, yet incomplete procedural framework			Slovakia (2012) Turkey (2013)

(Gyulai 2013)

The ENS guide on good practices emphasizes that none of the models in place for determining stateless status constitutes a good model on its own (Gyulai 2013). Indeed, each of the European procedures has strengths and weaknesses that can positively or negatively impact the protections received by stateless persons. For example, all of the member states with determination procedures, except for Hungary, do not require an individual to be in the state legally in order to apply for stateless status determination. Additionally, all of the states with a determination mechanism have established a right to residency to anyone whose statelessness is recognized. By contrast, there is a great deal of variation in access to education, health care, and, most importantly, naturalization

procedures for individuals who receive recognized stateless status from one of these national determination procedures (Gyulai 2013).

More striking than the differences between states with determination procedures, however, are the pitfalls stateless persons face in states without explicit statelessness determination authorities. Earlier this year, the European Migration Network (EMN) Ireland and UNHCR Ireland together hosted a seminar with representatives from Ireland, the UK, and France. The seminar was one developed to follow the recommendation of the European Union to share good practices in addressing statelessness (Council of the European Union 2015; European Migration Network 2016). The seminar highlighted some of the positive steps the Irish have taken to address the needs of stateless persons, including “potentially faster access to citizenship and waiver of the fees that are usually required of naturalisation applicants” (Cosgrave 2016). However, since Ireland does not have a specific determination procedure, it has been dealing with applications for consideration of statelessness status on an ad hoc basis. Catherine Cosgrave (2016) argues that this approach has not only been unsatisfactory for applicants, whose access to the few rights outlined in Irish law is not always guaranteed or consistent, but that it is not cost effective or efficient for the Irish state. The current approach in Ireland, therefore, does not seem to be to the benefit of any of the parties involved.

Representatives from the United Kingdom and France were invited to offer advice from their own experiences with determining stateless status. The UK is a state to which Irish courts and administrators often look for guidance and the French have the oldest statelessness determination procedure in Europe making them excellent sources for advice. The British representatives were able to offer many suggestions, but the discussion

also underlined the challenges the policies and procedures related to statelessness still face – including high refusal rates and the lack of judicial review. Recent improvements in the French system, by contrast, through its 2015 reforms, offered a view into a system attempting to implement lessons learned over decades of having a determination procedure. For example, now a “statelessness determination [in France] always results in the grant of residence permits, including family reunification rights” for the recognized individual (Cosgrave 2016). It is as yet unclear whether Ireland plans to implement its own statelessness determination procedure soon, but it is hoped that the recent conference provided insight into more effective ways to address statelessness protections.

Asylum Procedures

Three of the seven EU member states with statelessness determination procedures – France, Spain, and the UK – have delegated the responsibility for this procedure to the state’s asylum authority (Gyulai 2013). According to the EMN, this approach is acceptable in situations where the stateless population in the country is primarily migratory rather than being a domestic or resident stateless population. If one limits the stateless population of concern to those outside their state of residence, then there are similar issues in the process to determining both refugee and stateless status. This approach has informed the decision to place stateless determination procedures under asylum authorities because the expertise of these pre-existing institutions is believed to be effectively transferable to the consideration of statelessness. Criticisms of member states’ reporting of domestic stateless populations in Europe, however, call into question this conclusion (Van Waas, de Chickera, and Albarazi 2014). Further research is needed to determine how accurate state-level reporting is in this area.

Even in states without determination procedures, however, the ENS argues that utilizing asylum or immigration procedures can be an effective option until an official determination procedure for statelessness can be put in place. These authorities “have long standing experience in dealing with nationality” and they, generally, have “the necessary human...and infrastructural resources to effectively conduct statelessness determination procedures” (Gyulai 2013). Since in the European Union, these asylum authorities are also expected to meet minimum criteria set by supranational authorities, they have greater legitimacy as already respecting international and regional standards.

Challenges to Seeking Protection

Despite the benefits to using asylum or immigration authorities to conduct statelessness determination, there are several potential challenges for stateless persons seeking protection. In the remainder of this section, I highlight three particular areas in which the obstacles to protection are increased for stateless persons when asylum or immigration authorities are charged with addressing statelessness as well.

Statelessness as Separate Status

The assumption that the expertise with nationality developed in the context of immigration and asylum procedures is necessarily transferable to issues of statelessness raise several potential concerns. The differences between the challenges faced by stateless populations and those regarding voluntary immigration are especially problematic. There are different issues at stake for stateless persons than for migrants, who still have the legal protection of their state of origin to fall back on if the immigration procedure goes against them. It may not be an ideal situation for the migrant, but as a national of some state, he or she has at least the potential to access domestic and international legal protections.

Statelessness and refugee determination procedures are, perhaps, closer in the relevant issues involved in identifying individuals eligible for protection. However, subsuming statelessness determination under asylum authorities – either officially or on an ad-hoc basis – is still problematic for several reasons. First, delegating the statelessness determination procedure to asylum authorities perpetuates the conflation of stateless persons and refugees. It creates a situation in which stateless persons who are not refugees but are outside of their state of residence may still struggle to secure protection, even when statelessness mechanisms exist, because they are seen as less worthy of protection (Deng 2001). Some states are working to address these shortcomings, but they continue to plague many determination procedures.

Burden of Proof

A second challenge for stateless individuals seeking protection via asylum authorities comes in proving their claims. In most asylum systems, the burden of proof falls largely on the applicant. This is especially the case in applications where the asylum-seekers was a resident of or passed through a ‘safe third country’ – a state other than the applicant’s state of origin that is deemed safe enough to alleviate the applicant’s well-founded fear of persecution and was a state through which the individual passed through before arriving in the state in which the application is filed (Costello and Hancox 2016). As was discussed above, EU-level regulations direct member states to treat stateless persons as third-country nationals in asylum determination procedures. This means that if the stateless applicant in question had been a resident of a state considered to be a safe third country, he or she could be denied asylum protection. Further, if the protection of stateless populations is under the control of the asylum authorities, especially in the absence of an

official statelessness determination procedure, this same principle may be applied to requests for stateless status, making the individual ineligible for protection.

In instances where safe third countries are not at issue, the burden of proof for asylum applications or statelessness determinations can still be exceedingly difficult, perhaps impossible, for a stateless applicant to meet. Getting information from embassies and consulates can be costly in terms of time, money, and effort, especially if the state of potential nationality still refuses to recognize or assist the applicant (Gyulai 2013). Further, if the stateless person has reason to fear their state of origin or last residence – regardless of whether or not he or she qualifies as a refugee – then contacting the state of origin to acquire documentation or clarification of the individual’s nationality status may be an unreasonable requirement for the individual. It could place the individual in personal danger or put friends and family still in the state of origin in harm’s way. For determination of statelessness, some states, like France, take on the task of contacting states of origin or last residence and more equitably share the burden of proof with the applicant (Cosgrove 2016). This may also be the direction EU-level standards are heading in asylum determination procedures, which could be a good sign for national approaches to determining stateless status as well (Costello and Hancox 2016).

Durable Solutions

Finally, an important critique of the practice of subsuming statelessness determination procedures under asylum structures is that asylum determination procedures do not always provide durable solutions to statelessness. This is not necessarily a fault in asylum protection since international asylum protection is ideally meant to be temporary. Asylum-seekers who are granted asylum protection or another protection

status are only granted this protection for the short term. Ultimately, if the situation in the state of origin improves, the protection is lifted and the refugee is repatriated. Asylum protection can lead to opportunities to apply for permanent residency or even nationality, but these opportunities are not guaranteed as they are beyond the purposes of asylum protection. So, while official refugee status at least offers some recognized place within the international system, a stateless refugee would still lack nationality and face eventual return to a state where his or her refugee status would no longer be relevant. The individual would return to the same precarious situation he or she was in to begin with.

If an individual does not receive asylum protection or is not eligible to apply in the first place, they only have other protection options if the state recognizes statelessness as a protected status. If the individual claimed statelessness at the beginning of the status determination process, he or she could, depending on the national system, seek orders to stop deportation, grant temporary residence permits, or provide other protections. However, this is still a problematic process in most of the member states of the European Union and the options open to individual in such situations still vary across member states.

An interesting obstacle related to the durability of stateless that is not directly addressed in most of the literature comes about when applications for asylum protection are denied. In particular, when individual applicants who were not considered stateless at the beginning of their search for international protection are denied protection as refugees, they can become *de facto* stateless. Blitz and Otero-Iglesias (2011) show that the asylum procedure in the United Kingdom can, by refusing refugee status to asylum-seekers, result in statelessness for the denied claimants. When an individual flees a state of origin and seeks asylum, several events can take place that affect their nationality. The situation in the

state of origin that caused them to flee can worsen, resulting in administrative breakdowns or the destruction of records. State authorities may also choose to retaliate against refugees or take ongoing persecution of groups a step further by stripping individuals or groups of their nationality (Blitz and Otero-Iglesias 2011). When these refugees are denied asylum protection, they enter into the legal limbo of statelessness. In this case, the statelessness of the individual is created not only by the state of origin, but by the state reviewing the asylum application as well.

Blitz and Ortero-Iglesias conducted their research several years before the UK implemented its statelessness determination procedure. However, it is unclear whether an individual in the UK or in any of the other European states with determination procedures would allow failed asylum seekers who had a nationality at the time of their asylum application to subsequently apply for stateless status. In addition, the asylum procedure itself creates a body of evidence through the application process that is then evaluated, in part, for its credibility. Since nationality, or lack of it, is not as instrumental in determining refugee status, in depth questions may not be asked about the individual's stateless status at that time. When the individual then later attempts to seek a stateless status determination, this mountain of evidence may work against the applicant rather than for him or her (Berry 2013). Further research will need to be conducted to see whether and how this legal loophole might be addressed on the ground.

Concluding Observations and Future Research

There is clearly a great deal of work to do not only in protecting stateless persons, but in understanding the impact a lack of nationality has on the individual, the state, and the international system. The European Union, in particular, has a long way to go in

keeping the promises it has made regarding promoting the protection of stateless persons at the regional level. It will be a complicated process given the traditional deference given to states in deciding nationality policies. This authority is closely guarded and it would be a long road to convincing the member states to give it up to the EU.

However, this is not to say that there has been no progress in addressing statelessness in the European Union. As this analysis has shown, various states have, on their own, implemented statelessness determination procedures and are offering good practices and lessons learned to fellow member states. States with such determination procedures still face challenges and will need to closely examine their procedures to assess whether they actually assist the populations they were put in place to help. The recent reforms in France, though, give good cause to hope for a better and stronger statelessness determination approach in Europe moving forward.

There is still much work to be done on the study of statelessness and protection of stateless persons as well. Future research should address concerns particular to stateless persons attempting to gain protection through numerous protection mechanisms. The traditional connection between stateless persons and refugees has led the literature to focus on the ways in which asylum protections can be applied to individuals without nationality. However, it is possible that in the event that stateless individuals cannot meet the legal requirements for such protection, they have sought or created other avenues for securing international protection. In addition, greater attention needs to be paid to how individual states as well as international agencies report and track stateless populations. There is a great deal of variance and confusion in how this process is done and it affects our

ability as scholars and policy makers to adequately address the needs of these populations if their size and locations are less well known.

The right to nationality is the foundation upon which access to all other rights is granted. If states are serious about addressing human rights concerns in the long run – both for the individuals in need of protection and for states that would like to eliminate the need for such protection – tackling statelessness must become a priority. This will likely mean challenging core ideas about state sovereignty and the determination of nationality. The European Union has a unique opportunity to take the lead in this area, building on other areas of policy harmonization and protection structures. In an area and era of immense migration flows and protection crises, more efficient and clear guidelines can only be a benefit to us all.

CHAPTER FIVE

CONCLUDING OBSERVATIONS AND FUTURE RESEARCH

The knowledge generated by this dissertation enhances our understanding of the particular determinants of asylum claims as well as the complexities of seeking asylum protection in the European Union. The analysis presented in the previous three chapters focuses on three groups of vulnerable refugee populations – unaccompanied minors, women, and stateless persons – to highlight the special challenges that exist for refugees at the margins of asylum law. By examining the barriers to protection for these vulnerable groups, the articles that form this dissertation address three ongoing dialogues within the asylum law literature. First, these analyses address the claims of some scholars that certain groups of refugees, especially women, face particular and unjustifiable bias when seeking asylum recognition. Second, although they might not qualify as systematic bias in the sense used by critics, there are certainly several shortcomings in European asylum protection regimes; these shortcomings may, inadvertently, impact certain groups of refugees more than others. Finally, in testing for bias and outlining the shortcomings of the available forms of protection for asylum seekers, these articles highlight the ways in which states and applicants navigate less developed areas of asylum law.

Decision-Making Processes and Asylum Claims in Europe: An Empirical Analysis of Refugee Characteristics and Asylum Application Outcomes

The first article builds on and expands prior empirical analyses of the determinants of asylum claims (Holzer and Schneider 2001; Holzer, Schneider and Widmer 2000; Keith and Holmes 2009; Neumayer 2005a). Previous studies have focused on economic, political, and procedural characteristics related to the state in which an asylum application is filed

and the applicant's state of origin. These past analyses have found that economic conditions and previous rates of applications have a strong affect on the outcomes of asylum claims. However, the critical asylum literature focuses on individual features of the applicants, including gender and age, as sources of bias in decision-making procedures (see e.g. Ankenbrand 2002; Anker 2000-2001; Anker, Gilbert, and Kelly 1997; Bahl 1997-1998; Bhabha 2004a; Bloch, Galvin, and Harrell-Bond 2000; Crawley 2000; Gomez 2003-2004; Heyman 2005; Heyman 2002-2003; Musalo 2002-2003; Randall 2002; Seith 1997; Sinha 2001). This chapter, therefore, attempts to bridge these two literatures by including variables for applicants' age and gender to examine whether the rate of applicants who are female or children impacts the rate of successful asylum applications in the European Union.

The results of the analysis in the first article show, overall, low levels of bias in the decision-making processes of asylum regimes in the EU. The key applicant variables that would indicate bias in asylum outcomes according to the literature – those for female and minor applicants – were not statistically significant. By contrast, the variables measuring the conditions in the applicants' states of origin have the greatest explanatory power for the rates of asylum outcomes analyzed above. Some of the findings, however, do indicate the existence of certain types of bias affecting decisions made in asylum cases. Specifically, the rates of applicants between the ages of 18 and 34 and 65 years of age and older have a negative impact on rates of successful asylum claims. This result is of concern, especially since the impact of adult age ranges as a potential determinant of asylum claims has not been fully addressed within the asylum literature.

Overall, the results of the first article are decidedly mixed, as are the results of most studies within this literature. While there are certainly reasons for optimism, the relatively small sample of the study means there is not enough evidence to prove or disprove the charges of bias within the asylum legal regime in Europe. As some scholars have already noted (Neumayer 2005a), even the perception of bias impacts how, where, when, and whether refugees file asylum claims. Providing more definitive information on whether any bias truly exists, therefore, will prove vital not only to refugees, but their legal representatives, members of the courts, and policymakers as well.

Setting the Pace for Brussels and Strasbourg: Approaches to Gender-Based Asylum Appeals in the European Union

Although the results of the first article indicate that there is not strong evidence of systematic bias against female refugees, asylum applications made on the basis of gender-based persecution may still create an obstacle to gender equality in rates of successful asylum claims. Gender is not included as one of the internationally recognized grounds for persecution and, thus, the ways in which administrative bodies and courts should assess gender-based asylum claims is not clearly covered by EU asylum law. This gap in the law leaves it up to states to make decisions about how to use available precedents to assess cases involving gender-based persecution. The second article, therefore, examines how European member states evaluate gender-based asylum claims in the absence of clear supranational policy.

To answer this question, the analysis draws on a legal analytic framework developed by Michael C. Tolley (2012). Tolley demonstrated that high national courts in four European states relied on EU law and ECtHR rulings to bolster existing rights to

asylum and immigration protection under national law. By doing so, these courts drive their states to implement more progressive standards than those required by the European Union. He calls the progressive position taken by these courts 'Strasbourg Plus' because they stay ahead of the European Court of Human Rights (ECtHR) in Strasbourg rather than 'Keeping Pace with Strasbourg' or falling behind the court's standard, 'Strasbourg Minus.'

Unlike the broader legal principles related to asylum policy that Tolley used in his analysis, there is no clear minimum standard from the European Union on how to assess asylum claims lodged on the grounds of gender-based persecution. Further, few appeals cases on gender-based asylum claims have made it to high national courts, let alone the ECtHR. This means that even domestic guidelines are relatively lacking for lower courts to use in justifying their decisions in relevant appeals. Using Tolley's framework, this article examines 44 asylum appeals cases from the European Union that involve gender-based persecution to assess the courts' use of one of two approaches to incorporating gender within the existing refugee definition found in the Geneva Convention. The first approach argues that gender is an independent ground for application under the refugee definition, an approach I call Gender PSG, while the other approach views gender as only one potential component of an eligible ground on which to claim persecution. Since it requires an additional component to gender, I call this approach Gender Plus.

The analysis shows that there are a variety of ways in which states address gender-based claims in the absence of clear supranational directives or ECtHR decisions. Some states do seem to follow the approaches to gender used in the decisions of the ECtHR while others follow those of the directives implemented by the European Parliament in Brussels. Still others seem divided as to how they should navigate the conflicting European

guidelines. However, despite the handful of states that fit within Tolley's 'Keeping Pace' framework, other factors seem to have greater impact on which approach to gender-based claims courts follow. In particular, the relative rate of applications a state receives, the type of court deciding the case, and the state's length of time in the European Union affect the path courts take in hearing appeals of gender-based claims. In particular, high courts in high application receiving states seem to take more conservative approaches to gender-based persecution while migration-specific courts of last resort are more permissive, especially in states with stable low to medium ranges of applications. However, there is a significant drop off in the appeals available through the CODICES and EDAL databases in 2013. Future research will need to assess whether the current migrant crisis drives states – and, by extension, their courts – to take more conservative positions on less clearly included grounds for protection in asylum claims.

Nowhere to Go and No Place to Call Home: Stateless Refugees in a State-Centered World

Much like gender-based persecution, the European Union has not set a unified policy for member states to follow in addressing statelessness. Further, although most of the member states recognize the plight of stateless persons, only seven of the 28 members currently have official statelessness determination procedures to assess claims of statelessness. In the third and final article, I examine the opportunities stateless persons – whether or not they qualify as refugees – have for accessing protection mechanisms in the European Union. I examine state approaches that directly address the lack of nationality experienced by stateless persons through the implementation of statelessness determination procedures. I also examine the much more common ad-hoc approaches to

protection claims from stateless persons. In addition to these domestic legal approaches, the analysis draws on organizational assessments from governmental agencies, including the European Council and UNHCR, and non-governmental organizations, such as the European Network on Statelessness to evaluate how the available protections schemes work out in practice. As part of this evaluation, I pay particular attention to the unintended consequences of the available approaches.

The analysis in the third article shows that even in states with specific procedures for assessing requests for stateless status determination, serious gaps in protection exist for stateless persons in Europe. Some problems stem from the conflation of refugees and stateless persons. Many states delegate control over their statelessness determination mechanisms – whether official or ad-hoc – to asylum authorities. Specific problems often arise when statelessness is placed under asylum procedures due to the expectations placed on applicants for asylum to provide credible information to support their claims. In systems that use asylum procedures to evaluate claims of statelessness, there is concern regarding where the burden of proof lies. In asylum claims it falls largely on the refugee, but stateless persons are often even less capable than refugees to establish the credibility of their claims.

Perhaps the most important concern remaining in European protection schemes for statelessness is the relative lack of durable solutions for stateless persons. The combination of relatively few official procedures for assessing statelessness with the reliance on asylum procedures allows states to utilize temporary measures of protection common in asylum systems. Such temporary measures do not address the core problem faced by stateless

persons – their lack of nationality. Overall, therefore, the protection most stateless persons find in Europe is incomplete.

Suggestions for Future Research

One of the greatest challenges of this dissertation is the enormity of the material and the number of puzzles that could be addressed at each stage of the analysis. Indeed, any one of questions guiding the three articles in this analysis could have been the basis for an independent book project. Further, the current migrant crisis in Europe, driven by the ongoing Syrian civil war, has intensified concerns among refugee advocates and refugee-receiving states over the effectiveness of the region's asylum determination procedures and the available levels of protection.

Based on this experience, my future research agenda will expand the analyses presented in each of the articles from this dissertation, with the hope of building a more complete understanding of the determinants of asylum claims in Europe and the experiences of various vulnerable refugee populations, including women, children, stateless persons, LGBTQ individuals, and the elderly. I plan to incorporate all three types of data used in the three articles in the dissertation – statistical, legal, and organizational – in these analyses in order to more fully understand asylum determination procedures at each stage of the decision-making process. In addition, incorporation of multiple types of data – and data analysis – will allow me to go further in assessing the impact of advocacy campaigns on expanding available rights and the consequences of the available protection mechanisms on the lived realities of refugees and asylum-seekers.

When this analysis is complete for Europe, the next stage of the larger research agenda will involve a geographical shift to the developing world. According to the UNHCR

(2016) the vast majority of refugees do not make it to developed states and must seek protection, most often, in neighboring states or refugee camps, especially in Africa, Asia, and the Middle East. Are the protections available to or requested by refugees in these regions different than those under discussion in Europe? Do the experiences of refugees in these regions, especially in refugee camps, drive them to return to their states of origin or on to developed states despite the inherent dangers in either choice? While a great deal of research has looked at refugee creation and movement in the developing world, strikingly little research has been done on asylum seeking and the availability of other protection statuses in these regions. Future research, therefore, must be dedicated to creating a more complete picture of the refugee and asylum-seeker experience worldwide.

BIBLIOGRAPHY

- Acer, Eleanor. 2004-2005. "Refuge in an Insecure Time: Seeking Asylum in the Post-9/11 United States." *Fordham International Law Journal* 28, 1361-1396.
- Agamben, Giorgio. 1995. "We Refugees." *Symposium: A Quarterly Journal in Modern Literatures* 49:2, 114-119.
- Akpinar, Aylin. 2003. "The Honour/Shame Complex Revisited: Violence Against Women in the Migration Context." *Women's International Forum* 26:5, 425-442.
- Akram, Susan M. 2000. "Orientalism Revisited in Asylum and Refugee Claims." *International Journal of Refugee Law* 12:1, 7-40.
- Aleinikoff, T. Alexander. 1992. "State-Centered Refugee Law: From Resettlement to Containment." *Michigan Journal of International Law* 14, 120-138.
- , 1991. "The Meaning of 'Persecution in United States Asylum Law.'" *International Journal of Refugee Law* 3:1, 5-29.
- Aleinikoff, T. Alexander and Douglas Klusmeyer. 2001. "Plural Nationality: Facing the Future in a Migratory World." In T. Alexander Aleinikoff and Douglas Klusmeyer, eds. *Citizenship Today: Global Perspectives and Practices*. Washington, D.C.: Brookings Institution Press, 63-88.
- Alink, Fleur, Arjen Boin, and Paul t'Hart. 2001. "Institutional Crises and Reforms in Policy Sectors: the Case of Asylum Policy in Europe." *Journal of European Public Policy* 8:2, 286-306.
- Alison, Miranda. 2007. "Wartime Sexual Violence: Women's Human Rights and Questions of Masculinity." *Review of International Studies* 33:1, 75-90.
- Allen, Trevor J. 2015. "All in the Party Family? Comparing Far Right Voters in Western and Post-Communist Europe." *Party Politics*, 1-12.
- Amowitz, Lynn L. et. al. 2002. "Prevalence of War-Related Sexual Violence and Other Human Rights Abuses Among Internally Displaced Persons in Sierra Leone." *Journal of the American Medical Association* 287:4, 513-521.
- Angel, Jacqueline L. and Ronald J. Angel. 1992. "Age at Migration, Social Connections, and Well-Being Among Elderly Hispanics." *Journal of Aging and Health* 4:4, 480-499.
- Angel, Ronald J. et. al. 1999. "Age at Migration and Family Dependency Among Older Mexican Immigrants: Recent Evidence from the Mexican American EPESE." *The Gerontologist* 39:1, 59-65.
- Ankenbrand, Birthe. 2002. "Refugee Women Under German Asylum Law." *International Journal of Refugee Law* 14:1, 45-56.
- Anker, Deborah. 2000-2001. "Refugee States and Violence Against Women in the 'Domestic' Sphere: The Non-State Actor Question." *Georgetown Immigration Law Journal* 15, 391-402.
- Anker, Deborah, Lauren Gilbert, and Nancy Kelly. 1997. "Women Whose Governments Are Unable or Unwilling to Provide Reasonable Protection from Domestic Violence May Qualify As Refugees Under United States Asylum Law." *Georgetown Immigration Law Journal* 11, 709-745.
- Arendt, Hannah. 1945. "The Stateless People." *Contemporary Jewish Record* 8:2, 137-153.
- Asylum Information Database. 2015. "Country Reports. <<http://www.asylumineurope.org/reports>>.

- Bahl, Anjana. 1997-1998. "Home is Where the Brute Lives: Asylum Law and Gender Based Claims of Persecution." *Cardozo Women's Law Journal* 4, 33-73.
- Batchelor, Carol A. 1995. "Stateless Persons: Some Gaps in International Protection." *International Journal of Refugee Law* 7:2, 232-259.
- Bauer, Thomas K., Magnus Lofstrom, Klaus F. Zimmerman. 2000. "Immigration Policy, Assimilation of Immigrants and Natives' Sentiments towards Immigrants: Evidence from 12 OECD-Countries." Discussion Paper No. 187. *Institute for the Study of Labor (IZA)*.
- Beckett, Clare and Marie Macey. 2001. "Race, Gender and Sexuality: The Oppression of Multiculturalism." *Women's Studies International Forum* 24: 3-4, 309-319.
- Bell, David N. F. and David G. Blanchflower. 2011. "Young People and the Great Recession." *Oxford Review of Economic Policy* 27:2, 241-267.
- Berry, Adrian. 2013. "Proving Statelessness: Evidential Issues for Refused Asylum Seekers." *Blog*. European Network on Statelessness. 14 June. < <http://www.statelessness.eu/blog/proving-statelessness-evidential-issues-refused-asylum-seekers>>.
- Besselink, Leonard F.M. 1998. "Entrapped by the Maximum Standard: On Fundamental Rights, Pluralism and Subsidiarity in the European Union." *Common Market Law Review* 35: 629-680.
- Bhabha, Jacqueline. 2004a. "Demography and Rights: Women, Children and Access to Asylum." *International Journal of Refugee Law* 16:2, 227-243.
- , 2004b. "Seeking Asylum Alone: Treatment of Separated and Trafficked Children in Need of Refugee Protection." *International Migration* 42:1, 141-148.
- Billings, Peter W. 2000. "A Comparative Analysis of Administrative and Adjudicative Systems for Determining Asylum Claims." *Administrative Law Review* 52:1, 253-303.
- Blackman, Jeffrey L. 1998. "State Successions and Statelessness: The Emerging Right to an Effective Nationality Under International Law." *Michigan Journal of International Law* 19, 1141-1194.
- Blitz, Brad K. and Miguel Otero-Iglesias. 2011. "Stateless By Any Other Name: Refused Asylum-Seekers in the United Kingdom." *Journal of Ethnic and Migration Studies* 37:4, 657-573.
- Bloch, Alice, Treasa Galvin, and Barbara Harrell-Bond. 2000. "Refugee Women in Europe: Some Aspects of the Legal and Policy Dimensions." *International Migration* 38:2,169-190.
- Blockmans, Steve and Ramses A Wessel. 2009. "The European Union and Crisis Management: With the Lisbon Treaty Make the EU More Effective?" *Journal of Conflict & Security Law*, 1-44.
- Bocker Anita and Tetty Havinga. 1998. "Asylum Applications in the European Union: Patterns and Trends and the Effects of Policy Measures." *Journal of Refugee Studies* 11:3, 245-266.
- Bögner, Diana, Jane Herlihy, and Chris R. Brown. 2007. "Impact of Sexual Violence on Disclosure During Home Office Interviews." *The British Journal of Psychiatry* 191:1, 75-81.
- Borrás, Susana and Blaudio M. Radaelli. 2011. "The Politics of Governance Architectures: Creation, Change and Effects of the EU Lisbon Strategy." *Journal of European Public Policy* 18:4, 463-484.

- Boswell, Christina. 2007. "Migration Control in Europe After 9/11: Explaining the Absence of Securitization." *Journal of Common Market Studies* 45:3, 589-610.
- Bowen, Glenn A. 2009. "Document Analysis as a Qualitative Research Method." *Qualitative Research Journal* 9:2, 27-40.
- Brekke, Jan-Paul and Grete Brochmann. 2014. "Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation." *Journal of Refugee Studies*, 1-18.
- Brekke, Jan Paul and Vigdis Vevstad. 2007. *Reception Conditions for Asylum Seekers in Norway and the EU*. Oslo, Norway: Institute for Social Research.
- Brown, Gillian and George Yule. 1983. *Discourse Analysis*. Cambridge: Cambridge University Press.
- Campanaro, Jocelyn. 2000-2001. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *Georgetown Law Journal* 89, 2557-2592.
- Carpenter, R. Charli. 2006. "Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations." *Security Dialogue* 37:1, 83-103.
- , 2005. "'Women, Children and Other Vulnerable Groups': Gender, Strategic Frames and the Protection of Civilians as a Transnational Issue." *International Studies Quarterly* 49, 295-334.
- Castles, Stephen and Sean Loughma. 2003. "Trends in Asylum Migration to Industrialized Countries: 1999-2001." Discussion Paper 2003/31. *United Nations University: World Institute for Development Economics Research*.
- Cervany, Jakub and Jan C. van Ours. 2013. "Unemployment of Non-Western Immigrants in The Great Recession." *De Economist* 161:4, 463-480.
- Christie, Alastair. 2003. "Unsettling the 'Social' in Social Work: Responses to Asylum Seeking Children in Ireland." *Child & Family Social Work* 8:3, 223-231.
- Cichowski, Rachel. 2013. "Mobilisation, Litigation and Democratic Governance." *Representation* 49:3, 321-332.
- Clayton, Cornell W. 2000. "The Law of Politics: The Supply and Demand Sides of Judicial Policy-Making (Or, Why Be So Positive about the Judicialization of Politics?)." *Law and Contemporary Problems* 65, 69-85.
- Collett, Elizabeth. 2016. "The Paradox of the EU-Turkey Refugee Deal." Newsroom. Migration Policy Institute. <www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal>.
- Cook, Rebecca J. 1993. "Women's International Human Rights Law: the Way Forward." *Human Rights Quarterly* 15:2, 230-261.
- Copelon, Rhonda. 1994. "Surfacing Gender: Re-Engraving Crimes against Women in Humanitarian Law." *Hastings Women's Law Journal* 5, 243-266.
- Correlates of War. 2014. "World Religion Data (v1.1)." <<http://www.correlatesofwar.org>>.
- Cosgrave, Catherine. 2016. "Ireland's Ad-Hoc Approach Is Failing Stateless Persons: Dublin Seminar Highlights Shortfalls and Need for Formal Procedures." *Blog*. European Network on Statelessness. 6 May. <<http://www.statelessness.eu/blog/ireland-ad-hoc-approach-failing-stateless-persons-dublin-seminar-highlights-shortfalls-and>>.
- Costello, Cathryn and Emily Hancox. 2016. "The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection." In Vincent Chetail, et al. *Reforming the Common European Asylum System: The New European Refugee Law*. Leiden: Brill.

- Council of Europe. 1950. *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, <<http://www.refworld.org/docid/3ae6b3b04.html>>.
- Council of the European Union. 2015. "Council Adopts Conclusions on Statelessness." Press Release. 12 April. <<http://www.consilium.europa.eu/en/press/press-releases/2015/12/04-council-adopts-conclusions-on-statelessness/>>.
- Crawley, Heaven. 2000. "Engendering the State in Refugee Women's Claims for Asylum." in Susie Jacobs, Ruth Jacobson, and Jen Marchbank, eds. *States of Conflict: Gender, Violence, and Resistance*. London: Zed Books, 87-104.
- Davis, Michael C. 1998. "Constitutionalism and Political Culture: the Debate Over Human Rights and Asian Values." *Harvard Human Rights Journal* 11, 109-147.
- De Groot, Gerard-René, Katja Swider, and Olivier Vonk. 2015. "Practices and Approaches in EU Member States to Prevent and End Statelessness." Policy Department C: Citizens' Rights and Constitutional Affairs. European Parliament <[www.europarl.europa.eu/RegData/etudes/STUD/2015/536476/IPOL_STU\(2015\)536476_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536476/IPOL_STU(2015)536476_EN.pdf)>.
- Deng, Francis M. 2001. "Ethnic Marginalization as Statelessness: Lessons from the Great Lakes Region of Africa." In T. Alexander Aleinikoff and Douglas Klusmeyer, eds. *Citizenship Today: Global Perspectives and Practices*. Washington, D.C.: Brookings Institution Press, 183-208.
- Dølvik, Jon Erik and Jelle Visser. 2009. "Free Movement, Equal Treatment, and Workers' Rights: Can the European Union Solve its Trilemma of Fundamental Principles?" *Industrial Relations Journal* 40:6, 491-509.
- Dunkerley, D., et al. 2005. "The Experiences of Frontline Staff Working with Children Seeking Asylum." *Social Policy & Administration* 39:6, 640-652.
- Düvell, Franck and Bill Jordan. 2002. "Immigration, Asylum, and Welfare: the European Context." *Critical Social Policy* 22:3, 498-517.
- EDAL. 2016. "About EDAL European Database of Asylum Law." *European Council on Refugees and Exiles* <<http://www.asylumlawdatabase.eu/en/content/about-edal-european-database-asylum-law>>.
- , 2015. "Case Selection Criteria and Summary Style-Guide." *European Council on Refugees and Exiles* <<http://www.asylumlawdatabase.eu/en/content/case-selection-criteria-and-summary-style-guide>>.
- Emiliandes, Achilles, ed. 2011. *Religious Freedom in the European Union: the Application of the European Convention on Human Rights in the European Union: Proceedings of the 19th Meeting of the European Consortium for Church and State Research, Nicosia (Cyprus) 15-18 November 2007*. Leuven: Peeters.
- Estébanez, María Amor Martín. 1995. "The Protection of National or Ethnic, Religious and Linguistic Minorities." In Nanette a. Neuwahl and Allan Rosas, eds. *The European Union and Human Rights*. The Hague: Martinus Nijhoff Publishers, 133-163.
- Etienne, Margareth. 1995. "Addressing Gender-Based Violence in an International Context." *Harvard Women's Law Journal* 18, 139-170.
- European Commission. 2016. "Statistics." *Eurostat* <<http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/themes>>.
- , 2014. "Statistics." *Eurostat* <<http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/themes>>.

- European Union: Council of the European Union. 2011. *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, <<http://www.refworld.org/docid/4f197df02.html>>.
- 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, <<http://www.refworld.org/docid/4157e75e4.html>>.
- Fekete, Liz. 2005. "The Deportation Machine: Europe, Asylum, and Human Rights." *Race & Class* 47:1, 64-91.
- Feldman, Shelley. 2010. "Shame and Honour: the Violence of Gendered Norms Under Conditions of Global Crisis." *Women's Studies International Forum* 33:4, 305-315.
- Fletcher, Aubra. 2006. "The REAL ID Act: Furthering Gender Bias in U.S. Asylum Law." *Berkeley Journal of Gender Law and Justice* 21, 111-131.
- Freedom House. 2014. "Freedom in the World: Country Ratings and Status." <http://freedomhouse.org/report-types/freedom-world#U_xtxZgaa5>.
- Freeman, Gary P. 1995. "Modes of Immigration Politics in Liberal Democratic States." *The International Migration Review* 29:4, 881-902.
- Gibney, M., L. Cornett, R. Wood, and P. Haschke. 2014. *Political Terror Scale 1976-2012*. <<http://www.politicalterror scale.org/>>.
- Gillespie, Shanyn. 2003. "Terror in the Home: The Failure of U.S. Asylum Law to Protect Battered Women and a Proposal to Right the Wrong of *In re R-A*." *The George Washington Law Review* 71, 131-158.
- Ginsburgs, George. 1957. "The Soviet Union and the Problem of Refugees and Displaced Persons 1917-1956." *The American Journal of International Law* 51:2, 325-361.
- Goldberg, Pamela. 1993. "Anyplace but Home: Asylum in the United States for Women Fleeing Intimate Violence." *Cornell International Law Journal* 26, 565-604.
- Goldberg, Pamela and Nancy Kelly. 1993. "International Human Rights and Violence." *Harvard Human Rights Journal* 6, 195-209.
- Gomez, Danette. 2003-2004. "Last in Line – the United States Trails Behind in Recognizing Gender-Based Asylum Claims." *Whittier Law Review* 25, 959-987.
- Goodman, Ryan and Derek Jinks. 2003. "Measuring the Effects of Human Rights Treaties." *European Journal of International Law* 14:1, 171-183.
- Gorlick, Brian. 2005. "Improving Decision-Making in Asylum Determination." New Issues in Refugee Research: Working Paper No. 119. Evaluation and Policy Analysis Unit. *United Nations High Commissioner for Refugees*.
- Goudappel, Flora A.N.J. and Helen S. Raulus, eds. 2011. *The Future of Asylum in the European Union: Problems, Proposals and Human Rights*. Hague: T.M.C. Asser Press.
- Green, Jennifer et. al. 1994. "Affecting the Rules for the Prosecution of Rape and Other Gender-Based Violence Before the International Criminal Tribunal for the Former Yugoslavia: a Feminist Proposal and Critique." *Hastings Women's Law Journal* 5, 171-241.

- Grimmer, Justin and Brandon M. Stewart. 2013. "Text as Data: The Promise and Pitfalls of Automatic Content Analysis Methods for Political Texts." *Political Analysis*, 1-31.
- Guarnieri, Carlo, Patrizia Pedezoli, and Cheryl A. Thomas. 2002. *The Power of Judges: A Comparative Study of Courts and Democracy*. (New York: Oxford University Press).
- Gyulai, Gabor. 2013. "Statelessness Determination and the Protection of Stateless Persons." *European Network on Statelessness*. <<http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Statelessness%20determination%20and%20the%20protection%20status%20of%20stateless%20persons%20ENG.pdf>>
- Hafner-Burton, Emilie M. 2008. "Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem." *International Organization* 62:4, 689-716.
- Hafner-Burton, Emilie M. and Kiyoteru Tsutsui. 2005. "Human Rights in a Globalizing World: the Paradox of Empty Promises." *American Journal of Sociology* 110:5, 1373-1411.
- Hailbronner, Kay. 2007. "Detention of Asylum Seekers." *European Journal of Migration and Law* 9, 159-172.
- Hanna, Fedi. 2005. "Punishing Masculinity in Gay Asylum Claims." *The Yale Law Journal* 114:4, 913-920.
- Hathaway, Oona A. 2007. "Why Do Countries Commit to Human Rights Treaties?" *Journal of Conflict Resolution* 51:4, 588-621.
- Hatton, Timothy. 2012. "The Recession and International Migration." In Richard Baldwin And David Vines, eds. *Rethinking Global Economic Governance in Light of the Crisis: New Perspectives on Economic Policy Foundations*. London: Centre for Economic Policy Research, 143-156.
- , 2004. "Seeking Asylum in Europe." *Economic Policy*, 5-62.
- Heyman, Michael G. 2005. "Domestic Violence and Asylum: Toward a Working Model of Affirmative State Obligations." *International Journal of Refugee Law* 17:4, 729-748.
- , 2002-2003. "Asylum, Social Group Membership and the Non-State Actor: the Challenge of Domestic Violence." *University of Michigan Journal of Law Reform* 36:4, 767-814.
- Hillion, Christophe. 2004. "Enlargement of the European Union – the Discrepancy Between Membership Obligations and Accession Conditions as Regards the Protection of Minorities." *Fordham International Law Journal* 27, 715-740.
- Holzer, Thomas and Gerald Schneider. 2001. *Asylpolitik auf Abwegen – Nationalstaatliche Und Europäische Reaktionen auf die Globalisierung der Flüchtlingsströme*. Opladen, Germany: Leske und Budrich.
- Holzer, Thomas, Gerald Schneider, and Thomas Widmer. 2000. "The Impact of Legislative Deterrence Measures on the Number of Asylum Applications in Switzerland (1986-1995)." *International Migration Review* 34:4, 1182-1216.
- Humphrey, Michael. 1993. "Migrants, Workers and Refugees: The Political Economy of Population Movements in the Middle East." *Middle East Report* 181, 2-7.
- James, Stanlie M. 1994. "Challenging Patriarchal Privilege through the Development of International Human Rights." *Women's Studies International Forum* 17:6, 563-578.
- Kalantzi, Erika. 2016. "Greece Moves One Step Closer to Introducing and Effective Statelessness Procedure." *Blog*. European Network on Statelessness. 14 April. <<http://www.statelessness.eu/blog/greece-moves-one-step-closer-introducing-effective-statelessness-determination-procedure>>.

- Kälin, Walter. 2000-2001. "Non-State Agents of Persecution and the Inability of the State to Protect." *Georgetown Immigration Law Journal* 15, 415-431.
- Kanter, James. 2016. "European Union Reaches Deal with Turkey to Return New Asylum Seekers." *New York Times*. March 18. <www.nytimes.com/2016/03/19/world/europe/european-union-turkey-refugees-migrants.html?_r=0>.
- Kaunert, Christian and Sarah Léonard. 2012. "The Development of the EU Asylum Policy: Venue-Shopping in Perspective." *Journal of European Public Policy* 19:9, 1396-1413.
- Keely, Charles B. "How Nation-States Create and Respond to Refugee Flows." *The International Migration Review* 30:4, 1046-1066.
- Keith, Linda Camp and Jennifer Holmes. 2009. "A Rare Examination of Typically Unobservable Factors in US Asylum Decisions." *Journal of Refugee Studies*, 224-241.
- Kelly, Nancy. 1993. "Gender-Related Persecution: Assessing the Asylum Claims of Women." *Cornell International Law Journal* 26, 625-674.
- Kerber, Linda K. 2007. "Presidential Address The Stateless as the Citizen's Other: A View from the United States." *American Historical Review* 1-34.
- Keygnaert, Ines, Nicole Vettenburg, and Marleen Temmerman. 2012. "Hidden Violence Is Silent Rape: Sexual and Gender-Based Violence of Refugees, Asylum Seekers and Undocumented Migrants in Belgium and the Netherlands." *Culture, Health, & Sexuality* 14:5, 505-520.
- Kjærum, Morten. 2002. "Refugee Protection Between State Interests and Human Rights: Where Is Europe Heading?" *Human Rights Quarterly* 24:2, 513-536.
- Knigge, Pia. 1998. "The Ecological Correlates of Right-Wing Extremism in Western Europe." *European Journal of Political Research* 34, 249-279.
- Koser, Khalid and Richard Black. 1999. "Limits to Harmonization: The 'Temporary Protection' of Refugees in the European Union." *International Migration* 37:3, 521-543.
- Komesar, Neil. 1981. "In Search of a General Approach to Legal Analysis: A Comparative Institutional Alternative." *Michigan Law Review* 79:7, 1350-1392.
- Kvist, Jon. 2004. "Does EU Enlargement Start a Race to the Bottom? Strategic Interaction among EU Member States in Social Policy." *Journal of European Social Policy* 14:3, 301-318.
- Lambert, Hélène. 2006. "The EU Asylum Qualification Directive, Its Impact on the Jurisprudence of the United Kingdom and International Law." *International and Comparative Law Quarterly* 55:1, 161-192.
- Lavenex, Sandra. 2001. "The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies." *Journal of Common Market Studies* 39:5, 857-874.
- . 1998. "Passing the Buck': European Union Refugee Policies Toward Central and Eastern Europe." *Journal of Refugee Studies* 11:2, 126-145.
- Lee, Tang Lay. 1998. "Refugees from Bhutan: Nationality, Statelessness and the Right to Return." *International Journal of Refugee Law* 10, 118-155.
- Levy, Carl. 2005. "The European Union after 9/11: the Demise of a Liberal Democratic Asylum Regime." *Government and Opposition*, 26-59.
- Love, Emily. 1994. "Equality in Political Asylum Law: For a Legislative Recognition of Gender-Based Persecution." *Harvard Women's Law Journal* 17, 133-155.
- Malkki, Liisa H. 1995. "Refugees and Exile: From 'Refugee Studies' to the National Order of Things." *Annual Review of Anthropology* 24, 495-523.

- Martin, Lisa L. 2005. "The President and International Commitments: Treaties as Signaling Devices." *Presidential Studies Quarterly* 35:3, 440-465.
- McAdam, Jane. 2005. "The European Union Qualification Directive: the Creation of a Subsidiary Protection Regime." *International Journal of Refugee Law* 17:3, 461-516.
- McKinnon, Sara L. 2009. "Citizenship and the Performance of Credibility: Audiencing Gender-Based Asylum Seekers in U.S. Immigration Courts." *Text and Performance Quarterly* 29:3, 205-221.
- Merry, Sally Engle. 2003. "Constructing a Global Law-Violence against Women and the Human Rights System." *Law & Social Inquiry* 28:4, 941-977.
- Meetoo, Veena and Heidi Safia Mirza. 2007. "There is Nothing 'Honourable' about Honour Killings" Gender, Violence, and the Limits of Multiculturalism." *Women's Studies International Forum* 30:3, 187-200.
- Meili, Stephen. 2015. "Do Human Rights Treaties Matter?: Judicial Responses to the Detention of Asylum-Seekers in the United Kingdom." *International Law and Politics* 48, 209-258.
- Melikian, Lia G. 2014. "No Country for Some Men?: Statelessness in the United States and Lessons from the European Union." *Georgia Journal of International and Comparative Law* 43, 281-308.
- Migration and Home Affairs. 2016a. "Asylum Procedures." Directorates-General. *European Commission* <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/common-procedures/index_en.htm>.
- 2016b. "Country Responsible for Asylum Application (Dublin)." Directorates-General. *European Commission* <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm>.
- 2015a. "Reception Conditions." Directorates-General. *European Commission* <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index_en.htm>.
- 2015b. "Who Qualifies for International Protection?" Directorates-General. *European Commission* <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/refugee-status/index_en.htm>.
- Morgan, Deborah A. 2006. "Not Gay Enough for the Government: Racial and Sexual Stereotypes in Sexual Orientation Asylum Cases." *Law and Sexuality Review* 15, 135-161.
- Musalo, Karen. 2002-2003. "Revisiting Social Group and Nexus in Gender Asylum Claims: A Unifying Rationale for Evolving Jurisprudence." *DePaul Law Review* 52, 777-808.
- Neumayer, Eric. 2005a. "Asylum Recognition Rates in Western Europe: Their Determinants, Variation, and Lack of Convergence." *Journal of Conflict Resolution* 49:1, 43-66
- 2005b. "Bogus Refugees? The Determinants of Asylum Migration to Western Europe." *International Studies Quarterly* 49, 389-409.
- 2005c. "Do International Human Rights Treaties Improve Respect for Human Rights?" *Journal of Conflict Resolution* 49:6, 925-953.
- 2004. "Asylum Destination Choice: What Makes Some West European Countries More Attractive Than Others?" *European Union Politics* 5:2, 155-180.
- Neuwahl, Nanette A. and Allan Rosas. 1995. *The European Union and Human Rights*. Boston: M. Nijhoff.

- Okello, Moses Chrispus and Lucy Hovil. 2007. "Confronting the Reality of Gender-Based Violence in Northern Uganda." *International Journal of Transitional Justice* 1:3, 433-443.
- Oxford, Connie G. 2005. "Protectors and Victims in the Gender Regime of Asylum." *NWSA Journal* 17:3, 18-38.
- Pascall, Gillian and Nick Manning. 2000. "Gender and Social Policy: Comparing Welfare States in Central and Eastern Europe and the Former Soviet Union." *Journal of European Social Policy* 10:3, 240-266.
- Paulussen, Christophe, et. al., eds. 2016. *Fundamental Rights in International and European Law: Public and Private Law Perspectives*. The Hague: Asser Press
- Peers, Steve. 2004. "Mutual Recognition and Criminal Law in the European Union: Has the Council Got It Wrong?" *Common Market Law Review* 41, 5-36.
- Peng, Chao-Ying Joanne, Kuk Lida Lee, and Gary M. Ingersoll. 2002. "An Introduction to Logistic Regression Analysis and Reporting." *The Journal of Educational Research* 96:1, 3-14.
- Perkins, Richard and Eric Neumayer. 2007. "Do Membership Benefits Buy Regulatory Compliance? An Empirical Analysis of EU Directives 1978-99." *European Union Politics* 8:2, 180-206.
- Polk, Michael F. 1997-1998. "Women Persecuted Under Islamic Law: The Zina Ordinance in Pakistan as a Basis for Asylum Claims in the United States." *Georgetown Immigration Law Journal* 12, 379-393.
- Pratt, Kathleen M. and Laurel E. Fletcher. 1994. "Time for Justice: the Case for International Prosecutions of Rape and Gender-Based Violence in the Former Yugoslavia." *Berkeley Women's Law Journal* 9, 77-102.
- Pridham, Geoffrey. 2006. "European Union Accession Dynamics and Democratization in Central and Eastern Europe: Past and Future Perspectives." *Government and Opposition* 41:3, 373-400.
- Raghu, Maya. 1997. "Sex Trafficking of Thai Women and the United States Asylum Law Response." *Georgetown Immigration Law Journal* 12, 145-186.
- Raj, Senthoran. 2012. "Asylum Seekers Either 'Too Gay, or Not Gay Enough.'" Amnesty International. 13 July. < <http://www.amnesty.org.au/refugees/comments/29227/>>.
- Randall, Melanie. 2002. "Refugee Law and State Accountability for Violence Against Women: A Comparative Analysis of Legal Approaches to Recognizing Asylum Claims Based on Gender Persecution." *Harvard Women's Law Journal* 25, 281-318.
- Rehaag, Sean. 2012. "Judicial Review of Refugee Determinations: The Luck of the Draw?" *Queen's Law Journal* 38:1, 1-58.
- Rider, Erin. 2014. "Asylum Seekers' Credibility Burden: Managing Trauma in the Asylum Process without Collective Support." *Journal of Sociology and Social Work* 2:2, 263-284.
- Romany, Celina. 1993. "Women as Aliens: a Feminist Critique of the Public/Private Distinction in International Human Rights Law." *Harvard Human Rights Journal* 6, 87-125
- Sainsbury, Diane. 2006. "Immigrants' Social Rights in Comparative Perspective: Welfare Regimes, Forms of Immigration and Immigration Policy Regimes." *Journal of European Social Policy* 16:3, 229-244.

- Sandefur, Gary D. and Wilbur J. Scott. 1981. "A Dynamic Analysis of Migration: An Assessment of the Effects of Age, Family, and Career Variables." *Demography* 18:3, 355-368.
- Sardelić, Julija. 2013. "Romani Minorities Caught In-Between: Impeded Access to Citizenship and de facto Statelessness in the Post-Yugoslav Space." *Blog*. European Network on Statelessness. 20 September. <<http://www.statelessness.eu/blog/romani-minorities-caught-between-impeded-access-citizenship-and-de-facto-statelessness-post>>.
- Schain, Martin A. 2009. "The State Strikes Back: Immigration Policy in the European Union." *European Journal of International Law* 20(1): 93-109.
- Schmidt, Vivien A. 1999. "European 'Federalism' and its Encroachments on National Institutions." *Publius: The Journal of Federalism* 29:1, 19-44.
- Schoenholtz, Andrew I. and Hamutal Bernstein. 2008. "Improving Immigration Adjudications Through Competent Counsel." *The Georgetown Journal of Legal Ethics* 21, 55-60.
- Schwartz, Paul M. 1994-1995. "European Data Protection Law and Restrictions on International Data Flows." *Iowa Law Review* 80, 471-496.
- Seith, Patricia A. 1997. "Escaping Domestic Violence: Asylum as a Means of Protection for Battered Women." *Columbia Law Review* 97:6, 1804-1843.
- Sen, Sumit. 2000. "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 2." *International Journal of Refugee Law* 12:1, 41-70
- , 1999. "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 1." *International Journal of Refugee Law* 11:1, 625-645.
- Settlage, Rachel. 1997-1998. "No Place to Call Home: Stateless Vietnamese Asylum-Seekers In Hong Kong." *Georgetown Immigration Law Journal* 12, 187-202.
- Shaw, Jo. 2007. *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*. Cambridge: Cambridge University Press.
- Shoraka, Kirsten. 2010. *Human Rights and Minority Rights in the European Union*. New York: Routledge.
- Sinha, Anita. 2001. "Domestic Violence and U.S. Asylum Law: Eliminating the 'Cultural Hook' for Claims Involving Gender-Related Persecution." *New York University Law Review* 76, 1562-1598.
- Sironi, Alice. 2016. "The Double Plight of Stateless Migrants." *Blog*. European Network on Statelessness. 13 May. <<http://www.statelessness.eu/blog/double-plight-stateless-migrants>>.
- Sivakumaran, Sandesh. 2007. "Sexual Violence Against Men in Armed Conflict." *The European Journal of International Law* 18:2, 253-276.
- Smilevska, Martina. 2012. "The Influence of Intercultural Factors on Asylum Decision Making in the Republic of Macedonia." *Security Dialogues* 3:1, 67-91.
- Smith, Anthony D. 2010. *Nationalism: Theory, Ideology, and History*. Cambridge: Polity Press.
- Smith-Cannoy, Heather M. and Charles Anthony Smith. 2012. "Human Trafficking and International Cheap Talk: the Dutch Government and the Island Territories." *Journal of Human Rights* 11:1, 51-65.
- Spencer, Michael. 1995. *States of Injustice: A Guide to Human Rights and Civil Liberties in the European Union*. Boulder, CO: Pluto Press.

- Stellinga-Boelen, Annette A. M., et al. 2007. "Vitamin D Levels in Children of Asylum Seekers in the Netherlands in Relation to Season and Dietary Intake." *European Journal of Pediatrics* 166:3, 201-206.
- Stephens, Beth. 1999. "Humanitarian Law and Gender Violence: an End to Centuries of Neglect?" *Hofstra Law and Policy Symposium* 3, 87-109.
- Stone Sweet, Alex. 2001. *Governing with Judges: Constitutional Politics in Europe*. (New York: Oxford University Press).
- Storey, Hugo. 2008. "EU Refugee Qualification Directive: a Brave New World?" *International Refugee Law* 20:1, 1-49.
- Suhrke, Astri. 1998. "Burden-Sharing During Refugee Emergencies: the Logic of Collective versus National Action." *Journal of Refugee Studies* 11:4, 396-415.
- Taylor, Margaret H. 2007. "'Refugee Roulette' in an Administrative Law Context: The 'Déjà vu' of Decisional Disparities in Agency Adjudication." *Stanford Law Review* 60:2, 475-501.
- Taylor, Samantha and Sarah Byford. 2003. "Research with Unaccompanied Children Seeking Asylum." *BMJ* 327, 1400-1402.
- Tee, Luke T. 1996. "Internally Displaced Persons and Refugees: Toward a Legal Synthesis?" *Journal of Refugee Studies* 9:1, 27-42.
- Thielemann, Eiko R. 2004. "Why Asylum Policy Harmonisation Undermines Burden Sharing." *European Journal of Migration and Law* 6, 47-65.
- Thomas, Dorothy Q. and Michele E. Beasley. 1993. "Domestic Violence as a Human Rights Issue." *Human Rights Quarterly* 15:1, 36-62.
- Tolley, Michael. 2012. "Judicialization of Politics in Europe: Keeping Pace with Strasbourg." *Journal of Human Rights* 11:1, 66-84.
- Tölölyan, Khachig. 1996. "Rethinking Diaspora(s): Stateless Power in the Transnational Moment." *Diaspora: A Journal of Transnational Studies* 5:1, 3-36.
- Tonkiss, Fran. "Analyzing Text and Speech: Content and Discourse Analysis." in Clive Seale, ed. *Researching Society and Culture*. London: Sage Publications, 368-382.
- UNHCR. 2016. "Who We Help." < <http://www.unhcr.org/pages/49c3646c11c.html>>.
- , 2014a. "Convention on the Reduction of Statelessness." <<http://www.unhcr.org/3bbb286d8.html>>.
- , 2014b. "States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol." < <http://www.unhcr.org/3b73b0d63.html>>.
- , 2010. "Convention and Protocol Relating to the Status of Refugees." *Office of the United Nations High Commissioner for Refugees* < <http://www.unhcr.org/3b66c2aa10.html>>.
- , 2009. "Chapter IV: Asylum and Refugee Status Determination." *UNHCR Statistical Yearbook*. <<http://www.unhcr.org/4ce531e09.pdf>>.
- , 2002. "Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees." < <http://www.unhcr.org/3d58ddef4.html>>.
- , 1954. "Convention Relating to the Status of Stateless Persons." < <http://www.unhcr.org/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html>>.

- United Nations. 2016a. "Chapter V Refugees and Stateless Persons: 3. Convention Relating to the Status of Stateless Persons." *United Nations Treaty Collection* <https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en>.
- . 2016b. "Chapter V Refugees and Stateless Persons: 4. Convention on the Reduction of Statelessness." *United Nations Treaty Collection* <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en>.
- Van Waas, Laura. 2014. "Addressing the Human Rights Impact of Statelessness in the EU's External Action." Directorate-General for External Policies of the Union, Directorate B, Policy Department. European Parliament <[www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU\(2014\)534983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU(2014)534983_EN.pdf)>.
- Van Waas, Laura, Amal de Chickera, and Zahra Albarazi. 2014. "The World's Stateless: a New Report on Why Size Does and Doesn't Matter." Blog. European Network on Statelessness. 15 December. <<http://www.statelessness.eu/blog/world's-stateless-new-report-why-size-does-and-doesn't-matter>>.
- Vincent, John. 1996. "Who's Afraid of an Aging Population? Nationalism, the Free Market, and the Construction of Old Age as an Issue." *Critical Social Policy* 47:16, 3-26.
- von Bogdandy, Armin. 2000. "The European Union as a Human Rights Organization? Human Rights and the Core of the European Union." *Common Market Law Review* 37:6, 1307-1338.
- von Bogdandy, Armin and Stephan Schill. 2011. "Overcoming Absolute Primacy: Respect for National Identity Under the Lisbon Treaty." *Common Market Law Review* 48, 1-38.
- Vukas, Budislav. 172. "International Instruments Dealing with the Status of Stateless Persons and of Refugees." *Belgian Review of International Law* 8, 143-175.
- Weil, Patrick. 2001. "Access to Citizenship: a Comparison of Twenty-Five Nationality Laws." In T. Alexander Aleinikoff and Douglas Klusmeyer, eds. *Citizenship Today: Global Perspectives and Practices*. Washington, D.C.: Brookings Institution Press, 17-35.
- Weiss, Paul. 1954. "The International Protection of Refugees." *The American Journal of International Law* 48:2, 193-221.
- World Bank. 2014a. "GDP (Current US)." *Indicators*. <<http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>>.
- . 2014b. "Unemployment, Total (% of Total Labor Force) (Modeled ILO Estimate)." *Indicators*. <<http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS>>.
- Zawati, Hilmi. 2007. "Impunity or Immunity: Wartime Male Rape and Sexual Torture as a Crime Against Humanity." *Torture* 17:1, 27-47.
- Zimmerman, Klaus F. 1995. "Tackling the European Migration Problem." *The Journal of Economic Perspectives* 9:2, 45-62.
- Zolberg, Aristide R. 1983. "The Formation of New States as a Refugee-Generating Process." *The Annals of the American Academy* 467, 24-38.

APPENDIX: APPEALS CASES⁹

European Court of Human Rights

Collins and Akaziebie v. Sweden. Application No. 23944/05 (March 8, 2007).
Case of N v. Sweden. Application No. 23505/09 (July 20, 2010).

Court of Justice of the European Union

Kolpinghuis Nijmegen BV. Case 80/86 (October 8, 1987).
Marleasing SA v La Comercial Internacional de Alimentacion SA. Case C-106/89 (November 13, 1990).

Austria

*AsylGH (Asylum Court) Decision of February 24, 2011. EDAL A4 213316-0/2008.
AsylGH Decision of November 21, 2011. EDAL AsylGH 21.11.2011, C2 419963-2/2012.
AsylGH Decision of December 6, 2012. EDAL AsylGH 06.12.2012, C16 427465-1/2012.
*AsylGH Decision of January 29, 2013. EDAL E1 432053-1/2013.
*VfGH (Constitutional Court) Decision of March 12, 2013. EDAL VfGH 12.03.2013, U1674/12.

Belgium

CALL (Council for Alien Law Litigation) Decision of July 9, 2008. EDAL Nr. 13.874.
CALL Decision of June 24, 2010. EDAL Nr. 45.395.
CALL Decision of October 20, 2010. EDAL Nr. 49.821.
CALL Decision of April 29, 2011. EDAL Nr. 60.622
*CALL Decision of June 9, 2011. EDAL Nr. 62.867.
CALL Decision of October 17, 2012. EDAL CCE, arrêt n°89927.
CALL Decision of March 21, 2013. EDAL No. 99380.

Czech Republic

R.S v Ministry of Interior [2011]. Supreme Administrative Court. EDAL 6 Azs 36/2010-274.

Finland

*Helsinki Administrative Court Decision of May 28, 2010. EDAL 10/0642/1.
*Helsinki Administrative Court Decision of March 11, 2011. EDAL 11/0294/1.

France

Mlle D., n°09011388 [2010]. CNDA (Cour nationale du droit d'asile). EDAL
Mlle E., n°10012810 [2011]. CNDA. EDAL.
Mlle O., n°10020534 [2011]. CNDA. EDAL
CE (Council of State) Decision of December 21, 2012. EDAL CE, 21 décembre 2012, n°332491.
CNDA Decision of March 24, 2015. EDAL N°10012810.

⁹ Cases with an asterisks were excluded from the analysis in Chapter Three

Germany

Administrative Court München Decision of December 10, 2008. EDAL M 8 K 07.51028.
Administrative Court Münster Decision of March 15, 2010. EDAL 11 K 413/09.A.
Administrative Court Aachen Decision of May 10, 2010. EDAL 2 K 562/07.A.
Administrative Court Stuttgart Decision of January 18, 2011. EDAL A 6 K 615/10.
Administrative Court Stuttgart Decision of March 14, 2011. EDAL A 11 K 553/10.
Administrative Court Trier Decision of March 23, 2011. EDAL 5 K 1181/10.TR.
Administrative Court of Oldenburg Decision of April 13, 2011. EDAL 3 A 2966/09.
Administrative Court Berlin Decision of June 9, 2011. EDAL 33 K 285.10 A.
Administrative Court Augsburg Decision of June 16, 2011. EDAL Au 6 K 30092.
High Administrative Court Baden-Wurttemberg Decision of November 3, 2011. EDAL A 8 S 1116/11.
Administrative Court Gelsenkirchen Decision of July 18, 2013. EDAL 5a K 4418/11.A.

Greece

2nd Special Appeal Committee Decision of June 26, 2011. EDAL Application No. 95/126761.
Appeal Committee of Vyronas Decision of April 23, 2013. EDAL Application No. 4/118365.

Hungary

L.M.N. v. Office of Immigration and Nationality [2009]. Metropolitan Court. EDAL 17.K.32.826/2007/15.
I.A.Z v. Office of Immigration and Nationality [2009]. Metropolitan Court. EDAL 21.K.31555/2009/6.

Ireland

Meadows v. Minister for Justice, Equality and Law Reform [2010]. Supreme Court. CODICES IRL-2010-1-001.
*J.T.M. v. Minister for Justice, Equality and Law Reform [2011]. High Court. EDAL [2011] IEHC 393.
A.A. v. Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform [2011]. High Court. EDAL [2011] IEHC 389.
*J.T.M. v. Minister for Justice, Equality and Law Reform [2012]. High Court. EDAL [2012] IEHC 99.

Italy

Tribunale civile di Cagliari Decision of April 3, 2013. EDAL No. RG 8192/2012.

Poland

Supreme Administrative Court of Poland Decision of May 8, 2008. EDAL II OSK 237/07.
Supreme Administrative Court of Poland Decision of February 18, 2009. EDAL II OSK 247/08.
Polish Refugee Board Decision of September 8, 2010. EDAL RdU-439-1/S/10.

Spain

High National Court Decision of January 13, 2009. EDAL 1528/2007.

High National Court Decision of March 23, 2011. EDAL 1423/2011.

Supreme Court Decision of June 30, 2011. EDAL 1519/2010.

Sweden

Migration Court of Appeal Decision of November 21, 2008. EDAL UM 1052-08.

Migration Court of Appeal Decision of March 17, 2010. EDAL UM 4230-09.

Migration Court of Appeal Decision of April 19, 2010. EDAL UM 6770-09.

Migration Court (Malmö) Decision of November 4, 2010. EDAL UM 2675-10.

*Migration Court of Appeal Decision of March 9, 2011. EDAL UM 3363-10 & UM 3367-10.

Migration Court of Appeal Decision of April 21, 2011. EDAL UM 7851-10.

Migration Court of Appeal Decision of October 12, 2012. EDAL UM 1173-12

United Kingdom

R v Immigration Appeal Tribunal and another, ex parte Shah [1999]. House of Lords.
CODICES GBR-2001-1-001.

Fornah v. Secretary of State for the Home Department [2006]. House of Lords. EDAL [2006]
UKHL 46.

*EM (Lebanon) v. Secretary of State for the Home Department [2008]. House of Lords.
CODICES GBR-2008-3-005.