

**The changing nature and function of credibility in law and culture***Work in progress, please do not cite without written permission*

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### Abstract

The asylum system projects a common-sense myth that asylum seekers need only tell the truth and those with credible claims will be protected, and yet both the broader cultural context and the specific institutional framework in which claims are raised reflect a much more unstable approach. Rather than being part of a transparent legal test to prove eligibility, credibility functions instead as a kind of shibboleth, a way to introduce changing cultural expectations into the process. The result is an institutional framework in which both the law and policy that structures the system and the content of asylum claims must evolve in response to these changes, absorbing and reflecting broader social, political and ideological shifts. Building on Swidler's (1986) framework for understanding the relationship between culture and action in settled and unsettled times, this paper asks how and to what extent the evolution of the asylum system, and in particular the nature and function of credibility, are a product of the institutionalization of cultural changes. To answer this question, I offer a two-part analysis consisting of an historical framework for identifying and characterizing settled and unsettled periods in the evolution of asylum and credibility which reveals a top down institutionalization of cultural change, and an empirical evaluation of 120 asylum claims filed from 1989-2018, which reveals how, from the bottom up, asylum narratives reflect these changing institutional requirements and evolving cultural shifts to present asylum seekers' lives as legible and credible.

The asylum process, despite significant growth and standardization since its earliest inception in the 1950s, remains highly politicized, sensitive to cultural changes, and discretionary.

Credibility sits at the heart of determining eligibility for asylum, and therefore telling a credible story is arguably the most crucial part of a claim that for many individuals can mean the difference between life and death. Yet, what it looks like to credibly narrate persecution has changed considerably over time. For the asylum system, a focus on credibility is significant beyond its role as part of an institutionalized organizational structure that is used to evaluate eligibility, and to approve or deny claims. Credibility as both an idea and metric is uniquely positioned to reflect and facilitate deeply ideological political and cultural changes in the way the US responds to asylum-seekers over time, while continuing to project a common-sense myth that asylum seekers need only “tell the truth,” and that those who have genuinely suffered or live in fear of persecution will be protected. Such an approach shapes and reinforces an institutional framework in which asylum narratives must evolve over time to absorb and reflect broader social, political and ideological shifts. Building on Swidler’s (Swidler 1986) framework for understanding the relationship between culture and action in settled and unsettled times, this paper asks how and to what extent the evolution of the asylum system, and in particular the nature and function of credibility, are a product of the institutionalization of cultural changes.

Situating developments around asylum in general and credibility in particular in terms of settled and unsettled times is a useful theoretical frame, as it helps us connect cultural resources in law, politics and society to action. Importantly, it connects these resources both to institutional and organizational strategies of action which can be seen as top-down, and also to the responses of those asylum-seekers navigating the system, the bottom-up strategies. This reveals an important tension between the law on the books and the law in action, specifically how available

cultural resources shape the ways law and policies are made, and how, in interaction with individual claims, influence which of those strategies becomes institutionalized over time.

In settled periods, Swidler argues, culture independently influences action by providing resources that individuals use to shape diverse actions and approaches, whereas in unsettled times action is much more strongly guided by ideology and facilitated by structural opportunities (1986). As asylum is an inherently political area of law and policy I use settled times in a relative sense, building on Bonikowski's (2016) definition which sees settled times as those in which disruptions arise but are "absorbed by existing institutions instead of generating widespread social and political transformations" (429).

The relationship between politics and the asylum system is thrown into particularly stark relief during unsettled times – periods of cultural transformation or contestation brought about by intense social and political shifts – during which communities are more likely to revert to and rely on deeply-held ideological positions (Swidler 1986; but see also Geertz 1968; Hunt 2004 [1984]). During such a tumultuous cultural period the cultural schemas (Sewell 1992; 1996) which give meaning to and justification for particular social actions are also in flux. As new cultural models compete for dominance existing connections between explicit cultural scaffoldings and practical action break down (Meyer and Rowan 1977; Lizardo and Strand 2010), counter-ideological movements emerge amid rapidly changing and diminishing support for existing ways of doing things (Bourdieu 1977) and as a result, people look for and work to create new strategies of action that are legitimized by and consistent with these newly emerging ways of structuring communities. For the asylum system, these unsettled, high-ideology periods are particularly relevant for representations of and claims to truth and credibility.

The paper proceeds in four sections. I begin below by situating the project in the literatures on asylum, narrative and institutions. In section two I present an historical framework for understanding the cultural and legal landscapes in which asylum was developed, and how it has evolved through and been shaped by settled and unsettled periods over time. This framework focuses on the legal and organizational developments that gave rise to both the ideological orientation of and material structures that make up the asylum system, with a focus on the role of credibility. In section three I present an analysis of asylum narratives based on this historical framework, allowing us to see the evolution in settled and unsettled times of credible narratives “on the ground.” The analysis is based on first-person declarations in 120 affirmative asylum claims from 1989-2018 which reflect four types of persecution: LGBT identity, sexual and gender-based violence (SGBV), political opposition and participation in or resistance to revolutionary civil conflict. Changes over time to the structure and content of these first-person accounts reveal greater adherence to ideology in unsettled times, and the rise of a standardized institutional form during settled times. These imperatives interact in such a way as to create an environment in which the system demands an institutionally-legible structure for narrating experiences of persecution or fear, but also how in order to preserve credibility claims, rooted in different experiences of persecution are narrated in different ways. This analysis demonstrates how credibility operates in the asylum system as a highly discretionary and weakly-bounded concept, serving as a conduit for the institutionalization of shifting cultural and political attitudes and ideologies.

My findings have important implications for asylum seekers, immigration lawyers and judges, and those who create, enforce and resist immigration and asylum-related policies. The consequences of the relationship between culture and credibility are significant both for affected individuals and communities, whose very lives are on the line in these decisions, and for the

integrity and fitness of the asylum system, which is meant to realize and protect the fundamental humanitarianism underlying this area of law and policy.

### **Asylum narratives in law, culture and institutions**

This project draws on and contributes to two intersectional literatures relevant to understanding the way credibility has evolved in the asylum system, namely, the literatures on law and institutions, and on asylum and narratives. These literatures are ideally placed to explore both the top-down and bottom-up forces that shape and reflect evolving notions about credibility, speaking to the ways that institutions and individuals draw on available cultural resources to build strategies of action in settled and unsettled times.

Neoinstitutional scholars exploring the symbolic/strategic effect of law in an institutional or organizational setting have pointed to the ways in which legal change and organizational change can be mutually constitutive. Neoinstitutional theory has provided a solid theoretical base in which to understand the complex ways in which law operates in and on institutions. Cultural and cognitive approaches are especially useful, providing the theoretical framework for understanding the various roles played by law, including those which draw on older institutional work that sees law as a source of external pressures and regulations, to a normative framework creating value-laden roles and expectations. Work on institutional logics, those "material practices and symbolic constructions" that provide organizational governing principles (Friedland and Alford 1991: 248) bring the question of institutions more squarely into the realm of culture and action, and in particular the intersection of culture and institutions evidenced through mutually constitutive relations between material practices and symbolic constructions (Meyer and Rowan 1977; Mohr and Duquenne 1997: 306).

Culture shapes both how the goals of public policy are defined and the "strategies of action" employed to reach them (March and Olsen 1989; Scott and Meyer 1994; Gusfield 1981).

Governmental organizations in particular, such as those that shape the asylum system, are active in formulating policy and deciding how it will be implemented as well; they are neither neutral arbitrators in conflicts among social groups nor the agents of dominant groups (Korpi 1989; Skocpol and Amenta 1986). These governmental organizations claim institutional practices that discursively aligned with public preferences and beliefs – and in turn exercised their power to reinforce those views.

The literature on law and institutions, and particular that on the way institutions manage and respond to exogenous shocks, especially those in culture and politics (Armstrong and Bernstein 2008; L. B. Edelman, Leachman, and McAdam 2010) allows for an understanding of institutional environments as responsive to outside changes, but also deeply instrumental in establishing which ideologies and strategies of action will be successful and enduring.

Law and legal institutions occupy important cultural and structural spaces, becoming in many ways a locus of action and legitimization during high ideology periods. Changes in law and policy reflect cultural attempts to make and test new modes of action, seeing which align with the competing or newly-dominant ideological and cultural ways of being. Those with the ability to shape law and policy are in a unique position to allocate resources and power to those schemas that best align with the cultural world-view and strategies of action that they support. Embedding something in the law is a uniquely powerful and durable structural opportunity for ideological survival.

Cultural sociologists in particular recognize that publicly available meanings facilitate certain patterns of action (Swidler 1986; Lizardo and Strand 2010), and that culture is especially likely to fill in spaces where organizations do not provide clear guidance on what is considered “rational” or “legitimate.” This means that people “fall back” on culture, so to speak, when they need to make

decisions and the best course of action is unclear. If asylum claimants cannot expect those determining their claims to have access to the relevant cultural information to understand the reality in which they lived and made decisions, they have to turn to modes of shared understanding.

For asylum seekers, all these rules, conventions and styles become additional barriers to communicating their experiences. To be found credible we ask them to meet not only a range of articulated legal tests, but also key cultural tests of legibility and deservingness. Accessing and making use of these cultural tools requires translating asylum-seekers' experiences, many of which are distant from those of the decision-maker, into tangible, intelligible forms of both private, subjective harm and legal, objective persecution. Scholars have documented the difficulties inherent in overcoming cultural difference in interviewing asylum seekers and assessing claims (Monnier 1995; Durst 2000; Good 2011); the limits of legibility in a foreign language (Douzinas and Geary 2005: 72), the links between asylum and moral panics (Welch and Schuster 2005a) and the significance of using criminological frames to interpret asylum stories (Welch and Schuster 2005b). The impact and efficacy of asylum seekers' story hinges on their ability to build a knowable, plausible "world" and to direct the decision-maker towards a shared interpersonal reality in which the asylum seeker is credible and deserving of protection. For most claimants that will mean balancing the need to meet legal tests about persecution whilst tapping in to cultural stereotypes and assumptions about factors such as, agency and desirability.

This is not unique to asylum, of course, we all build our own narratives out of the stuff of the stories that surround us in dynamic and fluid ways (Ewick and Silbey 2003). Stories also follow narrative rules, both structural and epistemological, which vary depending on context, power, and place. A story told in church is not the same as one told to a newspaper reporter is not the same as one told to a judge (Gilkerson 1991; Sarat and Felstiner 1997). We need other people's stories to

know which elements of our own stories are important, to provide a basis for change or comparison, and to assist in judgments of truth, relatability and meaning.

What do we know about how asylum narratives “work?” We know narratives are deeply shaped by social and political context in which they are created and considered (Coutin 2001; Paskey 2016) and those that fit comfortably into the Convention’s categories of persecution will have to do less work to be found credible (Cohen 2011; Musalo 2006; Melloy 2006; McKinnon 2009). This is particularly true if the content of their struggle is well-documented publicly, or physically (Fassin and D’Halluin 2005; Fassin and Kobelinsky 2012) even more so than legally (Coutin 2001). Narratives that fit less well into the established body of law must do more evidentiary and communicative work, and must produce more corroborating documents or witnesses, in order to, as Ticktin describes “sell” their suffering, (1999), especially where asylum narratives are based in experiences of torture (Kelly 2012).

The evolution of the asylum system is in some ways a story of formalization over time, and of the institutionalization of certain ideas and ideological views. It is also a story of how law, culture and institutions shape policy environments, and the very real consequences on individuals and communities. This change process is most powerful and effective in places where political and cultural shifts are felt acutely, where there are sufficient interest, incentives and resources to test new ways of doing things, and where there is sufficient power to make those things publicly relevant. Cultural changes in the asylum do not emerge seamlessly, but, as my analysis will reveal are the result of a culmination of decisions by and interactions between individual and institutional cultural actors.

### **Institutionalizing asylum in settled and unsettled times**

Asylum seeking is not a new social phenomenon, though it is still a relatively young legal concept, introduced in the early 1950s, and as a matter of explicit law and policy it has only been

formalized for about 30 years. In this section I discuss the broader social, political and cultural landscape in which the asylum system was developed in the US from WWII to the present. This is not an exhaustive history of the legislative or political history (for comprehensive accounts see, among others Ngai 2004; Zolberg 2006; Kanstroom 2007) but instead offers an historical framework for considering the evolution of the asylum system in the context of settled and unsettled periods.

### *Before the 1980 Refugee Act*

The US did little to recognize or regulate immigration for humanitarian reasons throughout most of the 18<sup>th</sup> and 19<sup>th</sup> centuries. The provisions that were developed favored protection of religious minorities and excluded those fleeing political persecution, owing to fears of importing radical ideological views (Price 2009: 54). In practical terms these provisions relied heavily on temporary grants of humanitarian parole (Legomsky 2009: 124).

In the run up to WWII, faced with mounting evidence of persecution faced by European Jewish communities in particular, both public opinion<sup>1</sup> and public policy remained opposed to formalizing a process for recognizing those in need of admission to the US for humanitarian reasons. The US signed the Geneva Convention on the Status of Refugees in 1951, establishing the fundamental tenets for domestic refugee and asylum law and policy. Protections are designed to protect those who are outside their country of origin or last habitual residence to which they cannot safely return, and have a well-founded fear of persecution in that country which exists *as a result* of one of the enumerated protected grounds: race, nationality, religion, political opinion or membership in a “particular social group” (United Nations 1951).

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<sup>1</sup> As late as April 1939, 83% of the American people were opposed to admitting Jewish refugees. For a comprehensive history see Robert A. Divine, *American Immigration Policy, 1924–1952* (New Haven, CT: Yale University Press, 1957), pp. 96–99. See also Bill Ong Hing, ‘No Place for Angels: In Reaction to Kevin Johnson’ (2000) *University of Illinois Law Review* 559 at 590–591.

In 1952 Congress introduced the first version of the legislation which still contains most immigration control provisions, the Immigration and Nationality Act (INA), and during the next two decades passed a series of temporary and geographically-specific measures designed to protect particular populations, mostly those displaced by WWII in Europe and Asia. Despite ratifying the 1967 Protocol which expanded the Refugee Convention's scope<sup>2</sup>, as the Cold War progressed domestic policy shifted to focus on protecting those fleeing Communism, facilitating ad-hoc conditional entry, did not contain non-refoulement provisions, and did not provide a pathway to permanent residence (Loescher and Scanlan 1986).

At the same time, government and private sector-driven US imperialism around the world was laying the ground work for mass displacement. Anti-democratic political and economic interventions across Latin America (Chomsky 2015; M. Edelman and León 2013) support for the oppressive regime of “Papa Doc” Duvalier in Haiti, seen as an anti-Cuba ally, and intervention in the Vietnam War in particular led to the displacement of hundreds of thousands, a significant majority of whom would eventually seek to resettle in the US (Zolberg 2006: 347).

There was not much in the way of formalized processes for claiming asylum during this time, indeed the word “asylum” did not appear in the INA at all until 1980, though this is the era when we see the first references to the importance of credibility. In 1980 David Martin, an architect of what would become the 1980 Refuge Act, acknowledged that asylum claims rest on “uniquely elusive grounds” and revolve “critically around a determination of an applicant’s credibility, and as such it is likely “political considerations” will intrude on decision making (Martin 1981).

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<sup>2</sup> Ratification of the 1967 protocol means that failure to ratify the 1951 Convention is without legal consequence

*Unsettled times: From The Refugee Act to Immigrant Responsibility*

Formal provisions for claiming asylum were introduced into US law with the passage of the 1980 Refugee Act, and while the establishment of a central piece of legislation may seem likely to have a settling or stabilizing effect, the 1980s and early 90s would prove to be a deeply unsettled period for asylum. As a series of political crises, revolutions, and war spread around the globe, pressure on the system ballooned almost instantly. A December 1982 internal report by the Immigration and Naturalization Service (INS) suggested that despite the passage of the Refugee Act “few guidelines” existed for actually making decisions and by 1983 there was a backlog of more than 170,000 cases, mostly Cubans, Central Americans, Haitians and Iranians (Grier 1983).

As the system shifted away from ideological coherence that drove a focus on Communism during the previous three decades, the 1980s and 90s brought the drastic changes and restructuring of the asylum processing system. Attempts to formalize and improve fairness led to standard claim-processing guidelines were introduced and a series of memos, guidelines, and interim rules allowed asylum processing to take shape, legally and organizationally (INS 1994, 1995). A so-called “final rule” in 1990 created specially-trained Asylum Officers, in recognition of the fact that the INS regarded the granting of asylum as an “inherently a humanitarian act distinct from the normal operation and administration of the immigration process” (INS 1990). It was also during this time that the formalized application procedures on which we largely still rely were first established. The system created two paths for claiming asylum: affirmatively, wherein individuals seek asylum *before* they are involved in any other immigration proceedings, or defensively, wherein they raise an asylum claim *in response* to removal. As the empirical part of this article only considers affirmative claims I focus here on information here relating to the affirmative asylum process.

These affirmative procedures required an individual to submit a written application and,

if they wish, various supporting documents to corroborate their claim. Generally,<sup>3</sup> they must also submit to at least one in-person interview with an Asylum Officer. During the entire process the legal burden of proof rests on claimants to establish eligibility for asylum, and they may qualify based on past persecution, *or* owing to a well-founded fear of future persecution on account of a protected ground. Additionally, individuals must demonstrate how an objective basis for their fear intersects with their own subjective experience or fear of harm – a concept referred to as “nexus”. Finally, their case must warrant a favorable exercise of discretion (USCIS 2013).

Claims must meet a “reasonable possibility” standard; the Asylum Officer must feel it is reasonably possible that a claimant has experienced the persecution they claim or will experience what they fear.<sup>4</sup> While there is no articulated test for credibility in the published policy documents of the time, internal documents shed perhaps the best light on the centrality of credibility and more importantly, how credibility is first operationalized. Documents in my sample relating to a claim submitted in 1990 show a tick-list of categories against which a claim was evaluated. As can be seen in Figure 1, below, the categories for evaluating testimony were roughly Specific/Generalized; Consistent with I-589/Inconsistent with I-589; Convincing/Unconvincing; and Credible/Not Credible. Other early examples in the sample suggest similar categories, though not listed in the same order. This is also one small example of how little there was in the way of consistent structure in the process at the time.

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<sup>3</sup> There are some exceptions where the claimant has mental health or other impairments that would make the interview dangerous for the asylum seeker or fruitless for the AO

<sup>4</sup> This is lower than “more likely than not” but is higher than the threshold for establishing a “credible fear.” Each of these terms is further defined by the INA as follows. Firstly, a claimant may show that there is a “reasonable possibility” that he will be “singled out individually for persecution” if removed. 8 C.F.R. § 1208.13(b)(2)(iii). Second, in the alternative, a claimant may show that there is a systematic “pattern or practice” of persecution against the group to which he belongs in his home country, such that, even without any evidence of individual targeting, his fear of persecution is deemed reasonable. See also *Wakkary v. Holder*, 558 F. 3d 1049 - 2009

|   |  |
|---|--|
| <u>REQUEST BASED ON:</u>  | <u>TESTIMONY:</u>                                      |
| <input type="checkbox"/> Race   | <input type="checkbox"/> Specific                      |
| <input type="checkbox"/> Nationality                                      | <input type="checkbox"/> Generalized                   |
| <input type="checkbox"/> Religion   | <input checked="" type="checkbox"/> Consistent with I- |
| <input checked="" type="checkbox"/> Political Opinion                     | <input type="checkbox"/> Inconsistent with             |
| <input checked="" type="checkbox"/> Membership in Particular Social Group | <input type="checkbox"/> Convincing                    |
| <input type="checkbox"/>  | <input type="checkbox"/> Unconvincing                  |
| <u>DOCUMENTS:</u>   |  |
| <input checked="" type="checkbox"/> Specific                              | <input type="checkbox"/> Credible                      |
| <input type="checkbox"/> Generalized                                      | <input type="checkbox"/> Not Credible                  |
| <input type="checkbox"/> Relevant   | <input checked="" type="checkbox"/> Grant              |
| <input type="checkbox"/> Irrelevant                                       | <input type="checkbox"/> Deny                          |
| <input type="checkbox"/> No Documentation                                 | <input type="checkbox"/> Non-committal                 |
| <u>PRELIMINARY ASSESSMENT:</u>  |  |
| <input checked="" type="checkbox"/> (if so, why?)                         |  |

Other changes at this time included a formal differentiation between past and future persecution, the extension of grants of permanent, rather than temporary, residence for those granted asylum, and the ability to seek work authorization while a claim was processed. While these early changes suggest the emergence of a somewhat humanitarian ideological approach, this would change in the early 1990s as the system began to reflect competing views about the nature and function of asylum and increased suspicion of potential for abuse. In 1994, number of new claims grew to 150,000 per year, the INS proposed a new rule that would facilitate “expeditious removal” for asylum seekers whose claims were unsuccessful. In 1995 and 1996 a series of “asylum reforms” sought to increase administrative efficiency in decision-making by streamlining documentation<sup>5</sup>. Additional reforms brought in under the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) sought to disincentivize frivolous claims by barring eligibility for anyone who claimed asylum after more than one year in the US, creating a delay of at least 180 days before an applicant could apply for a work permit, and introducing the option of

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<sup>5</sup> For example, before 1995 if an Asylum Officer did not approve a case they provided lengthy, written denial letters. After 1995 this was replaced with a brief checklist and a referral to the immigration court (Martin 2000).

expedited removal for those who did not establish a credible fear<sup>6</sup>. During this same window the government also sought to decrease asylum applications by increasing the number of border guards, sensors, and detection or prevention mechanisms, particularly along the border between the US and Mexico (Schoenholtz, Schrag, and Ramji-Nogales 2014: 26). Those in favor of these changes, and of limiting asylum overall, heralded them as a success: new asylum applications declined steadily from 150,000 in 1994 to 35,000 in 1999, and the backlog decreased as well (Martin 2000).

During this unsettled period public opinion and policy motivations had begun to shift away from a view of asylum seekers and refugees as individuals in need of refuge in a country with a proud history of offering sanctuary, to one which was increasingly concerned about pressures on and potential abuses of the system. Chief amongst these concerns were potential threats to national security and abuse of the asylum system as a “backdoor” way to secure work authorization or to enter the US with the intention of living without documents. As such, the relatively settled decade following the 1996 passage of IIRIRA was dedicated largely to implementation of the immense amount of legislation and policy guidance developed in the 80s and early 90s.

### *Settled Times: Implementing and maintaining*

The relatively settled period from 1997 to 2008 shows a move away from competing ideological claims to one in which the system is operationalized. As noted above, by the mid 1990s somewhat of a cultural consensus is reached about asylum seekers and while the system is understood to retain elements of humanitarianism its primary function is to protect against threats of abuse both from would-be economic migrants and from crime and terrorism. The

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<sup>6</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, 604 (one year filing deadline); 689 (defining refugee); §203(b) (1) (B) (i)-(ii), 110 Stat. 3009 (expedited removal for asylum seekers who do not establish a credible fear). Regulations for the one-year application deadline and its limited exceptions are found at 8 CFR §208.4(a).

continued implementation of these policies saw both new claims and the backlog fell steadily.

New applications in 1997 (55,000) were two and a half times lower than in 1993 (142,000) and beginning in 1999 the backlog also started to decline from roughly 350,000, reaching a low of under 5,000 by the end of 2008 (USCIS 2018).

Guidance on the processing of claims<sup>7</sup> and lesson plans for Asylum Officers shed light on how a formal framework for the assessment of credibility emerged in the settled period. This guidance reveals how asylum seekers are expected to demonstrate and Asylum Officers are expected to evaluate credibility along a number of axes. This approach builds upon the guidelines established in the 1990s, but in greater detail. Asylum Officers are instructed to assess whether facts – both material to the claim and generally known, support the claim and if it includes sufficient detail, in particular sensory detail to indicate first-hand knowledge of the events (USCIS 2016). Claims are also assessed for plausibility, defined as whether the facts asserted by the applicant “conform to the objective rules of reality” (USCIS 2016: 286). Lastly, consistency over time and candor, or a quality of being “open and honest” are also considerations, though they are more relevant in the evaluation of spoken testimony during interviews. The first-person account of the asylum-seeker is key in building a credible claim for protection, and legally *may* be enough to sustain the burden of proof without corroboration if it is sufficiently credible, persuasive, and specific.<sup>8</sup> It is these metrics – facts, detail, plausibility, consistency and candor – which formed the structural framework for establishing credibility.

Other settled period developments in law and policy sought to increase the already significant of discretion given to asylum officers in their application of the existing guidelines.

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<sup>7</sup> Guidance is issued by an office within the US State Department

<sup>8</sup> INA§ 208 (b)(l)(B)(ii); see also *Rapheal v. Mukasey*, 533 FJd 521, 527 (7th Cir. 2008); *Matier o(J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007).

While asylum processing was given a new home in US Citizenship and Immigration Services (USCIS), under the newly-created Department of Homeland Security (DHS), most of the operations relating to claim processing continued to reflect the laws and policies put into place in the 1990s.

Crucially, the already-established concerns about terrorism, first raised in the mid 1990s, allowed the majority of post-9/11 legal responses to be absorbed into existing mechanisms, including those raised in the 2005 REAL ID Act. These provisions further increased the burden of proof, expecting asylum seekers to provide “corroborating evidence” of their experiences, to prove their persecutor’s “central” motives, and introduced “demeanor” as an additional axis along which to assess credibility<sup>9</sup>. Procedurally, the process for claiming asylum remains almost identical to the above-described process developed in the early 1990s. Credibility remains at the heart of the contemporary asylum process. Indeed, they describe it as “fundamental to the evaluation of eligibility and, in many cases, is *the determining factor*” (emphasis added) when considering a claim for asylum (USCIS 2016: 286).

These changes are important, but as opposed to representing ideological tensions or competing claims, they instead signal an intensifying of the widely accepted view that asylum seekers could not be trusted. Measures such as these are evidence of an increase in institutional strategies of action to implement the settled policy goals of the era.

### *Contemporary moment: Unsettling again*

The relatively settled period draws to a close more or less at the end of 2008. In 2009 President Obama calls for “comprehensive immigration reform,” and despite common characterizations of his administration as favoring measures such as DACA and the DREAM Act

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<sup>9</sup> U.S. Congress, House, REAL ID Act of 2005, HR 418, 109<sup>th</sup> Cong., 1st sess., introduced in House January 26, 2005, <https://www.congress.gov/109/bills/hr418/BILLS-109hr418rfs.pdf>

which sought to address some of the burdens and vulnerabilities experienced by undocumented individuals and communities in the US, this was also an era of significantly increased immigration enforcement. From 2009-2014 more than 2.4M people were removed from the US (Gonzalez-Barrera and Krogstad 2016) and pressure was mounting on the asylum system. By the end of 2013 the asylum case backlog had ballooned again to over 40,000, with 28,000 of those claims filed in 2013 alone (Attix 2014). The complex and ultimately fruitless attempts at comprehensive reform during this era reflect the increasing tensions not just between parties and elected representatives, but across the country as well. Between 2013 and 2016 marked politicization in attitudes towards immigrants is increasingly evident, especially along major US political party lines (Jones 2016).

In this early part of the unsettled period the process for claiming asylum remained almost identical to the above-described process developed in the early 1990s, with credibility continuing to be an essential aspect. Yet this is also the period in which the profile of those entering and seeking to enter the country, in particular at the US/Mexico border, began to change. Beginning in summer 2014, those seeking asylum were increasingly women, children and families largely fleeing violence in Central America (TRAC 2018). The Obama administration responded to this with the introduction of additional measures to process these claims quickly (Chan 2014) and so began the erosion of the standardized procedural protections established in the previous era.

By early 2016 rhetoric about immigration had emerged as a key focus in the presidential election, with then-candidate Donald Trump in particular focusing on threats posed by refugees (Lamont, Park, and Ayala-Hurtado 2017). The first three years of the Trump administration have brought increased attention to the asylum system. A combination of administrative changes such as policies which prioritize the processing of newly-arrived asylum seekers' claims first, described as an attempt to avoid allowing those waiting years to benefit from work authorization in the

meantime, and larger, more structural changes to the way the US engages with the international protection system broadly have once more radically changed the legal and social climate around asylum and will likely do so for years to come. Chief amongst these recent changes have been the negotiation of several so-called “safe third country” agreements in Central America (Karas 2019), designed to facilitate the removal of asylum seekers from the US to other countries where their claims can be considered, and the highly controversial Migrant Protection Protocols (MPP) more commonly referred to as the “Remain in Mexico” policy. Taken together these measures are often referred to, more bluntly, as the “asylum ban.” The effect of these policies has been to drastically reduce the ability to seek asylum US/Mexico border, placing those waiting in border towns in significant danger and those in the US in long-term detention, and raising significant concerns about violence and a lack of due process (Blitzer 2019).

To date this era reflects the most significant attempt to restructure the asylum system since the early 90s, but as many of these changes remain part of ongoing legal challenges (Narea 2019) it is too soon to know which, if any, of these changes will be enduring. As claims in my sample were only filed as late as 2018 my analysis of this current unsettled period is limited, and yet it is clear that this era is characterized by deeply ideological arguments about asylum and an all but total abandonment of any of the humanitarian principles which remained, to greater and lesser extents, during the previous eras.

### **Narrating asylum in settled and unsettled times**

The historical analysis offered in the previous section is important because it establishes the framework of settled and unsettled periods in asylum and locates the evolution of the system in a discussion of relevant social, political and legal changes over time. In many ways, however, this is a top-down story about how powerful actors in law and politics shape institutional spaces and create organizational structures, incentives, and processes that align with and further those actors’

ideological goals. This is only half of the story about the evolution of the asylum process. The other half is the bottom-up story, that which centers the actual claimants and applications. The asylum system has, as evidenced above, always been highly discretionary and centered on assessments of “elusive” criteria. As such it is the actual claims themselves that have generated the material form and content of what it looks like to claim asylum and to attempt to credibly narrate experiences or fear of persecution. These narratives reveal how claims draw on available cultural resources, in particular those that reflect the ideological orientations of the asylum system at the time in which they apply, and in particular, what aspects remain constant, what variations develop and what becomes institutionalized in an enduring way. The narratives constructed in each of these eras overlap and diverge in important ways, shaping and limiting what is “tellable” and what is not (Goldstein and Shuman 2012), resulting in the emergence and evolution of norms relating to both narrative structure and substance.

### *Data*

To document and discuss these changes I analyze a stratified random sample of 120 asylum files I collected at multiple Northern California non-profit legal service providers during summer 2018. These claims were filed between 1984 and 2018, by nationals of 33 countries. To be included in the sample, claims had to meet the following criteria: the file had to contain at a minimum a copy of the I-589 and some form of written declaration and the written documents sufficiently legible; the asylum seeker had to be over the age of 18 when they filed; the case had to be closed; and the asylum seeker had to have had the benefit of legal representation throughout the process<sup>10</sup>.

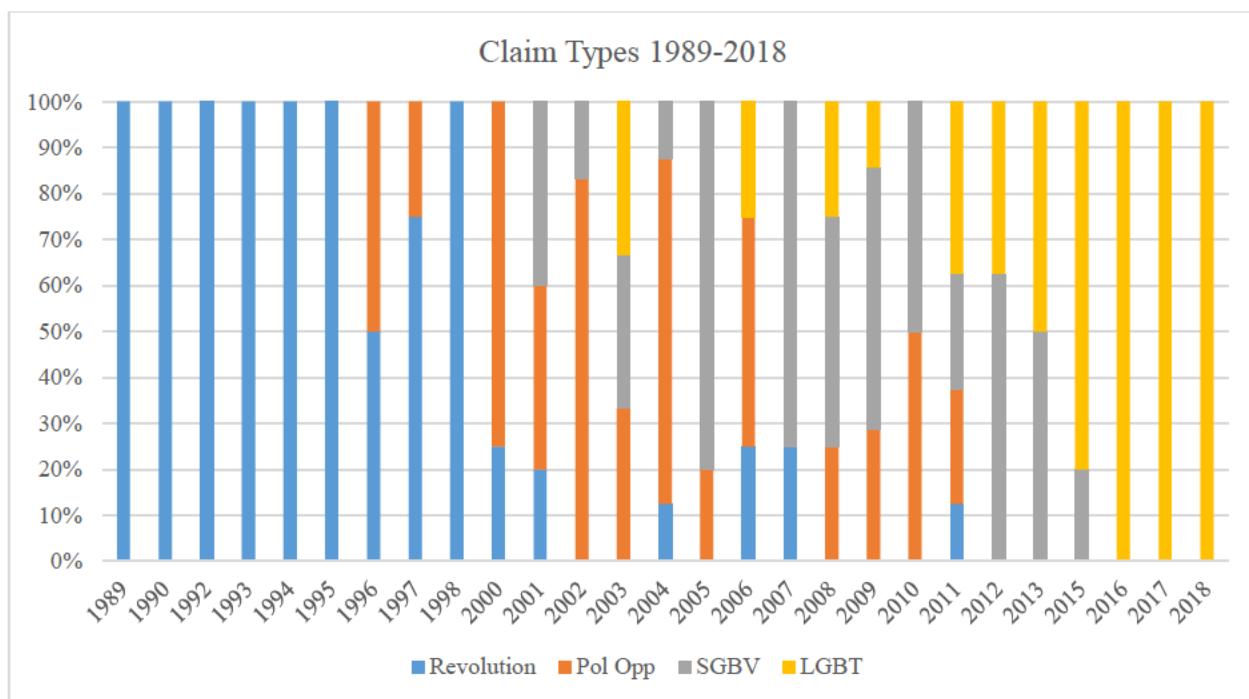
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<sup>10</sup> Having legal representation is a distinct advantage in the asylum process. More than 20% of asylum seekers are unrepresented throughout the process, and those who do have an attorney are 20% more likely to be granted by USCIS (Schoenholtz, Schrag & Ramji-Nogales 2014: 133) and five times more likely to be granted by an immigration judge (TRAC 2017). However, limiting the sample in this way was inevitable to gain access to files. There are no large, accessible repositories of asylum files outside of legal service providers, and any files that could be collected may not have been as complete or covered as wide a range of claims in terms of country of origin, year of filing or characteristics of the claimants.

My sampling frame consisted initially of 4,800 available cases. Of these, just over 40% (1,983) met the requirements outlined above. I then stratified into segments based on persecution type as articulated in the claimant's I-589 application. While many claimants may describe or claim to have experienced a range of harms or types of persecution, cases are stratified based upon the articulation of the *central* experience or fear that animates their claim. This is distinct from the formal persecution grounds enumerated in the Convention – race, religion, nationality, political opinion or membership in particular social group – as almost all claimants invoke multiple grounds. Indeed, only nine claims in the sample invoke a single persecution ground, with the majority invoking two and a third invoking three or more. Political opinion and membership in a particular social group co-occur most frequently, regardless of the nature of the violence experienced. As such, I argue that these categories, while legally important, are less significant when shaping the way claims are narrated. What is more relevant is the kind of violence or nature of the persecution itself. This is evidenced in a close analysis of the narratives, as I will discuss below, but is also signaled by the way that claims are introduced on the I-589. On this form there is a small box that asks for the reasons a claim is being made. In 85% of claims this section refers the Asylum Officer to an attached or otherwise submitted formal declaration, but this small section also provides a space for indicating, in brief, the kind of violence experienced. In 96% of cases a short description is offered which clearly characterizes the claim type. For example, in the claim of Qara, a young Mongolian woman, this part of the form reads "If I return to Mongolia I am afraid that the man who raped and beat me will find me and beat, rape and kill me [...] I will bring a detailed declaration to my interview." This brief sentence clearly indicates that Qara's claim will be based on her experiences of sexual violence. It is these categories of violence which emerge from the claims themselves that gave rise to the way the sample was stratified. Initial coding

revealed 40 highly-specific violence types, and these were consolidated into four main categories.

(1) Political opposition: being a member of an opposition or minority political party, or involvement in other forms of political opposition such as being a member of a labor union or political social movement; (2) sexual and gender-based violence: including domestic violence, rape, female genital cutting, and forced marriage; and (3) LGBT violence: persecution on account of sexuality or gender identity<sup>11</sup> and (4) displacement as a result specifically of revolutionary armed conflict. I sampled 30 claims randomly within each segment. As can be seen below in figure 1, claims are not even distributed over time, and this is a function both of the types of violence and persecution causing displacement at various times and also, as I will detail below, a result of changes to the asylum process.



<sup>11</sup> It is important to note that in nearly all LGBT claims individuals report experiences that could have been listed under sexual and gender-based violence. However, in these cases individuals' sexualities or gender identities were constructed as the primary cause for harm or motivation of the perpetrators.

*Methods*

I anonymized files and narratives, read them, and imported them into the mixed-methods software package MaxQDA. My analysis focuses both on the content of the claims, coding the life history and types of fear or violence described, as well as the structure of the narratives. Employing a grounded theory analytic-inductive approach, I began the coding process by identifying analytic categories and themes as they emerged from the data (Glaser and Strauss 2017; Charmaz and Mitchell 2001). Drawing on the work of Timmermans and Tavory who described a method of “abductive analysis,” in order to innovate and modify existing theories, I systematically coded narratives in dialogue with one another, and alongside close readings of salient themes in the sociology, law, migration and culture literatures (Timmermans and Tavory 2007; 2012)

In terms of analyzing structure, I code the narratives relying on analytic concepts and practices from discourse and content analysis, such as variation or repetition in language (within and across files), rhetorical organization, linearity and other narrative conventions (Wood and Kroger 2000; Josselson 2011). Coding for both narrative and substance and structure allows me to capture socio-cultural, as well as lexical and grammatical patterns that provide insight into how asylum claims reflect social, cultural and legal realities (Gumperz 1982), helping to establish how and to what extent there are identifiable ways to tell particular types of asylum stories.

*A note on authorship*

The question of authorship of asylum narratives is complex. As discussed above, this sample reflects only those narratives of claimants who had access to legal representation or advice when applying for asylum. That said, in the analysis below I refer to claimants as authors of these narratives because fundamentally, the experiences that give rise to, and the consequences of

decisions made about the asylum narrative, belong to them. This is not intended to minimize the significance of work done by attorneys or interpreters. This is also not an attempt to avoid problematizing agency or to suggest that asylum seekers have more control than they do in a complex legal process which many navigate in a language they do not speak fluently. Throughout the process, however, the state will hold them responsible for establishing the facts of the case, narrating with sufficient detail, maintaining consistency, and being plausible. It is the asylum seeker's life that is materially on the line, and so the story must be theirs.

Vignettes discussed below are reproduced with as little editing as possible, beyond what was necessary to protect anonymity and occasionally to improve clarity. Original phrasing, syntax, grammar and spelling are retained. Any changes to the original text are in brackets, and names have been changed.

#### *Early Unsettled Period 1980-1996: Concise and coherent*

Data in the sample begin in 1989, during what I identify as the early unsettled period. This part of the sample is small compared to later periods ( $n=18$ ) and reflects only two of the four identified claim types: displacement as a result of revolutionary civil conflict and political opposition. The small relative size is due in part to the capacity of my data collection sites in the late 80s and early 90s. They were much smaller then and able to serve relatively fewer asylum seekers. Additionally, many records were hand-written and stored in hard copy. This led to more illegible or incomplete files for this era. Despite the small size, however, there are important trends that emerge from this part of the sample.

Structurally these early narratives are brief at just over 1200 words on average, and they focus specifically on the events or circumstances that led directly to the need for asylum. As discussed in part one, at the beginning of this early unsettled time there is a strong, coherent ideological position; in many ways asylum is oriented almost entirely with regard to opposing

Communism, but that gives way in the 80s as the system formalizes. As such, these early claims shed light on the emergence of the asylum narrative form as an attempt to create and develop a credible “strategy of action” responding to the explicit ideological demands made on the process. It is unsurprising that these early narratives reflect attempts to align claimants’ views with the mainstream anti-Communist and pro-American ideology, even more so than reflecting attempts to meet the specific legal tests. Early unsettled narratives, such as those from Eduardo<sup>12</sup> in 1990, a Salvadoran, and Lorenzo in 1993, a Nicaraguan, reflect a narrow ideological focus and expression of personal political beliefs, as well as a largely unedited structure.

By this means I address to you in my most sincere and respectuous way with the purpose to show the following. The Communist Guerrillas of my country tried to recruit me to fight with them. I was approached by a group of men, who had hidden fire-arms and told me I should join them to fight to gain liberty in our Country. That our Country was under the control of the imperialist Americans. I told them I couldn't, they told me if I did not join, I was a traitor and deserved to be eliminated. (Eduardo)

I never wanted the Communist system but the Somoza's Government was killing the young Nicaraguan people so, I joint the people of Nicaragua to get out the Somoza's regime. After the Sandinistas got into power [they] wanted the communist system into Nicaragua, and thousands of International Communists got into Nicaragua. I had problems since the begining when I started to defend and protect the young people that I knew. They were democratic and not Somocistas. At the time I become an enemy of the Sandinistas also because of my political ideas, that were and are democratic and believe in liberty and freedom (Lorenzo).

These sentiments are extremely common as are characterizations of Communist groups as “anti-American,” anti-freedom, and anti-prosperity. While 17 of the 18 cases in this part of the sample are from Latin America, there is one West African case as well which invokes many of the same concepts as the others even though the context is quite different. In this 1996 declaration a young Nigerian man, Osawe, discusses why he joined an opposition party, noting that he believed

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<sup>12</sup> Names have been changed to preserve anonymity

the party would improve the share of political power, would “maintain democracy” and give “all people a voice in government.”

The fact that these data represent only two of the claim types: revolution and political opposition is also interesting. On the one hand civil conflicts in Central America were displacing large numbers of individuals, especially to California, but there are claims in this part of the sample that discuss experiences of violence that could have led to a different framing. For example, the two claims in this sample from women both recount sexual violence as evidence of political persecution by the guerrillas, but it is not constructed central to their claims. The political opportunity structure of the time made centering resistance to Communism more legible and may even have elevated other forms of persecution, such as gender-based violence, from a presumption of private harm into a solidly public example of persecution.

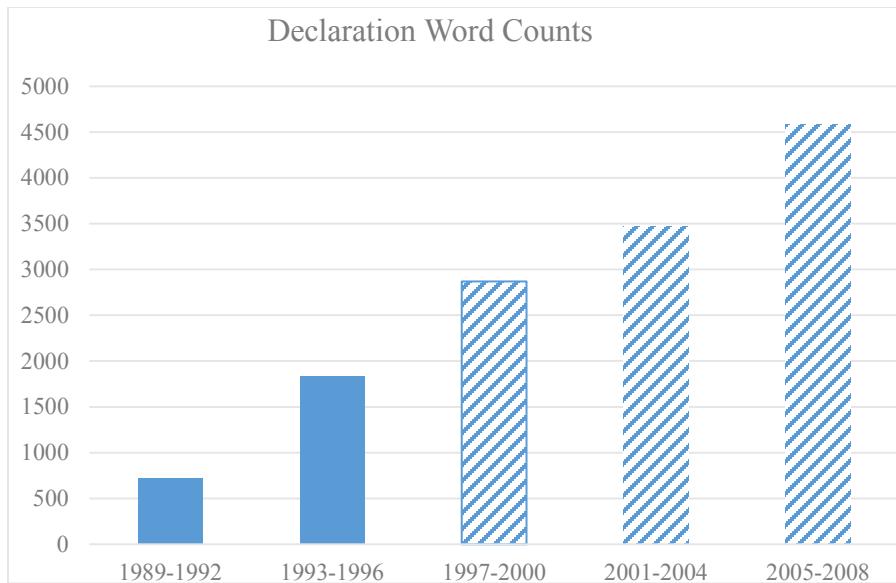
These narratives are also presented in a less formal manner, and most (n=10) include phrasing that suggests an acute awareness of the discretionary nature of decision making. For example, Lorenzo’s narrative finishes with “God BLESS AMERICA, that is the only one that can give the peace and protection we need.” Others make it clear they are “respectfully” seeking asylum, or as Victor, a Salvadoran claiming in 1995 writes, “I fervently wish that I be granted political asylum.” A small number of narratives (n=4) do invoke more of a rights-based model, constructing their experiences as “human rights violations” or making specific reference to international instruments, such as the Universal Declaration on Human Rights. However, even in these claims the tone is still one of seeking permission, not asserting a right. This is in line with the kind of sentiment expressed by the INS when creating the role of the dedicated Asylum Officer, that asylum processing is an “inherently a humanitarian act” (1990).

In these declarations of the early unsettled period it is easiest to see the cultural view of asylum as an avenue for the explicit expression of geopolitics reflected in the way institutional practices create the structural opportunities that allow certain actions to emerge and become standard. During this time the demands on structure and content are closely aligned and deeply coherent and as such, the structural model for the narratives reflects the narrow ideological scope of the process at the time.

#### *Settled Period 1997-2008: Detailed and divergent*

As we move in to the relatively settled period from 1996 to 2008 the sample for this era is larger (n=52) and reflects all four claim types. These narratives begin to evolve structurally and substantively in three important ways. Firstly, there is evidence of a nearly universal formalization of the declarations' structure, in which claims no longer focus narrowly on an experience of persecution and its connection to ideological underpinnings, but instead to longer and more detailed whole-life narratives. Secondly, within this structure we see greater evidence of greater reflection of core credibility metrics – facts, detail, consistency, plausibility and, to the extent possible in written documents, even candor. Thirdly, it is in this period that we see narratives of particular claim types begin to be institutionalized in different ways, representing a shift to a model in which the cultural and ideological underpinnings of the system exercise indirect influence, allowing for the emergence of claim-type specific ways to seek asylum.

The whole-life narrative structure builds over time, with narratives gradually increasing in both length and detail throughout the late 90s and into the 2000s, as can be seen below in figure 2.

*Figure 2*

By 1998 claims are on average just over 2500 words long, and nearly 90% begin with the claimant's early life. In fact, a third of the narratives begin with the exact same phrase: "I was born." This serves as a sort of "once upon a time" to begin the narratives. Other indicators of the shift to a whole-life structure include discussions of domestic life, such as information about family size, structure and relationships, specific mention of access or lack thereof to formal education, work experience, significant cultural markers such as weddings or funerals, and attempts to demonstrate personality. Narratives are woven through with statements about or examples of desirable personality traits such as "I always had a lot of friends," "My siblings and I were always good students," or "it was a happy marriage." These whole-life markers imbue the narratives with both the weight of a life, with all its many relationships, obligations and experiences, and an emotional sense of how it was actually lived.

While the structural change from persecution-specific to whole-life narrative is consistent across claim types, the narrative content provides a window into claim-type specific differences. This settled period allows for greater substantive "incoherence" – that is, there are more ways to

narrate an asylum claim, and while cultural assumptions still inform strategies of action, the system allows greater flexibility in how experiences are presented. While on the one hand this could have led to a fairer system in which cases were held to less ideological standards and instead evaluated entirely on individual merits, I argue that instead, this time of greater incoherence instead spurred the institutionalization of type-specific ways to claim asylum. During this time claims begin to institutionalize by type, and yet must retain sufficient elements of the standard form to be legible. This tension manifests in greater levels of substantive coherence within claim types and also a tighter adherence to credibility metrics – facts, detail, plausibility, and candor.

For example, certain claims are more likely to focus on the long-term effects of having experienced violence or trauma, even though many types of violence, such as beatings or verbal harassment, occur widely across all claim types. One example of this is the way that LGBT and sexual and gender-based violence (SGBV) claims focus on the consequences of persecution and how claimants live with persistent levels of fear and anxiety. Such a focus presents these claimants as in need of saving, and frame a grant of asylum as integral to safety and recovery from trauma and abuse.

Karen from the Democratic Republic of Congo, for example, focuses on her ongoing fear, describing the US as place she can be at peace: “I don’t want to sleep during the night because I am afraid of my nightmares which feel so real. I often wake up screaming, sweaty and short of breath. I am tired of living a life where I am constantly scared, where I have to hide. I want to live in peace.” Similarly, Alejandra, a lesbian woman from Mexico, links her experiences of violence to a need for mental health treatment, noting “My children and I are receiving therapy because we lived through so many years of violence.” These claims are also much more likely to submit

supporting evidence in the form of psychological or other medical assessments of the ongoing impact of trauma than the other claim types. Of the 50% of claims that include this kind of documentary evidence 40% (n=24) are LGBT cases and 38% (n=23) are SGBV.

For other claim types, especially those with political opposition claims, narratives typically focus instead on the individuals as agentic and risk-taking and constructing their actions as necessary. Yonas from Ethiopia worked as a political activist for a pro-democracy party, and acknowledges the risks he took and decisions he was able to make, stating “I knew that as I became more and more vocal about what the Ethiopian government did to my cousin, my own life was at risk. So I decided to leave my beloved soccer, my wife, my family whom I may never see again to seek asylum and save my life.” Similarly, Faneel, a journalist who wrote about Maoist rebels in Nepal writes “If I go back to Nepal, I am sure that eventually the Maoists will find me. They were looking for me even when I had already been away for 2.5 years. Because I worked as a journalist and my reporting was politically against them, I believe they will try to kill me.” These claimants are constructed as being at risk but not necessarily as being as vulnerable as the SGBV or LGBT claims.

Claims filed in this era from those fleeing revolutionary civil conflict (n=11) are another particularly interesting example in demonstrating the shift away from ideologically tethered claims to those more focused on meeting the tests established in law and policy. Ten of these claims are based on persecution by state forces either during or after the conflict, including four because they were indigenous and three because they either openly supported (n=2) or were accused of supporting (n=1) the leftist guerrillas. Take for example the claim of Oscar, a Salvadoran who claimed asylum in 2006, stating “Because I was a member of the FMLN guerrillas I have been persecuted by the military and death squads. Shortly after the 1992 Peace Accords, after I was

demobilized, I was shot and wounded and then beaten.” Such a claim, even if it did give rise to legal eligibility for projection, would likely have been unthinkable during the 1980s or early 90s.

This period also sees a significant increase in claims which rely on the submission of additional evidence to establish facts and speak to the plausibility of certain experiences. This evidence comes most commonly in the form of reports on the human rights situation in the country of origin, medical documentation, and various other additional submissions such as clarifying letters, character witness affidavits. In the unsettled period 1997 only four of 18 of cases submitted any extra documentation, three sets of country of origin information and one medical record. From 1997-2008 this trend balloons and additional supporting documents are submitted in 41 of the 52 filed cases, with country of origin information becoming by far the most commonly filed type of support (n=33).

These country of origin (COO) information documents are many claimants’ best chance at demonstrating the plausibility of their actions. USCIS defines plausibility as “adhering to the objective rules of reality,” but the fact is that most Asylum Officers do not share an objective reality with those who narratives they encounter and evaluate. As such these documents, such as US State Department or civil society reports on human rights conditions and newspaper articles reporting on instances of violence or discrimination become a way of corroborating facts, establishing consistency with information that is already accepted, and demonstrating the plausibility of your own account. COO supporting documents are particularly relevant in political opposition cases, and especially so for claims from countries that are more physically distant from the US. Claims from Asia, Africa and the Middle East were more likely to include these documents than claims from Latin America.

Narratives submitted during the settled time also demonstrate high levels of detail, in particular sensory detail, which is recognized by USCIS as a key indicator of a credible account<sup>13</sup>. Whereas during the early unsettled period only three cases had referred to sensory experiences, they become increasingly common throughout the settled period. Nearly 75% of all claims in this period (n=39) refer to more than one sensory experience with the most common being references to particular things they saw, heard, smelled, felt, tasted or touched during their experiences of persecution (n=38), descriptions of physical pain (n=35), and physical or psychological manifestations of fear such as panicking or having nightmares (n=31).

Karen from the Democratic Republic of Congo talks about the morning after she and her family were attacked by soldiers there is a strong focus on her sensory experiences:

When my mother opened the cave it was day time. The sun dazzled me and my eyes hurt. The first thing I saw was the swollen face of my mother. When we left the cellar I could see that nothing was left in the house. They had taken everything; the chairs, the tables, the beds, our school uniforms... The windows and the doors were broken. My brothers, aged just 14 and 10 were still lying [dead] on the floor.

Sensory detail is most often used to describe experiences of fear, deprivation or torture, or to describe ongoing mental and physical health consequences of such experiences. This detail serves both to enrich the account itself, and also to bolster the validity of the claim, often by emphasizing the inevitability, pervasiveness or severity of the experience. Yaro from Kenya describes his experience of torture, stating:

On about four separate occasions, I was taken to a room that was nearly ankle deep in water. There were several raised rubber mats on which policemen stood while I had to stand in the water. One officer held my hands behind my back while another two officers applied live electrical wires to my ankles. The pain was incredible throughout my whole body. My heart sped up. My mind became disoriented. It was a terrible shock.

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<sup>13</sup> “It is reasonable to assume that a person relating a genuine account of events that he or she has experienced will be able to provide a higher level of detail, especially sensory detail, about that event than he or she could if the account were not genuine” (RAIO 2016: 282).

Sensory detail is often also used to bolster credibility when other concrete facts cannot be recalled, or perhaps were never known to the claimant, such as in the narrative of Bashim from Turkmenistan:

I don't have a sure idea of the time It seemed like the beating went on for a long time, but it was probably about twenty minutes. Periodically they would force me to stand up so that they could karate chop me on the back of my neck. A few times they broke ammonia capsules in front of my nose to revive me.

Linearity in narratives emerges in the settled period as the most common way to organize detail, show strict adherence to a progress-oriented narrative and remarking in detail upon the passage of time and the way events are organized. Linearity is also often integrated with frequent use of proper names for people and places, another effort to make detail in the story robust and, at least potentially, verifiable. One particular form this takes is the use of non-English terms, reducing the likelihood that the claimant could be accused of inconsistency between accounts if they translate a term into English differently on different occasions, or if a term does not have a suitable English language counterpart.

In these two political opinion claims, for example, acts of violence are meticulously organized by date, type and sequence, and in the second example a non-English term is used and defined. The narrative of Batsa from Nepal explains his experiences of persecution over time with significant, orderly detail:

The Maoist guerillas in Nepal have persecuted me. The first time the Maoists threatened me with a pistol. The second time they slapped me and threatened with a pistol. The third time they dunked me in a stream, then tied me up and beat me with bamboo sticks and belts. The fourth time they tied me up and whipped my back with wet leather belts. The fifth time, they tied me to a post, put a gun to my head, beat me with fists and a metal rod, and stabbed me in the leg with the metal rod. (C2409)

Similarly, that narrative of Zera from Kenya sets out a comprehensive analysis as to why not being accepted to a college is evidence of persecution:

In early 1992,<sup>1</sup> I applied to a government-funded college, and although I was clearly qualified for admittance, I was not accepted, almost certainly because of my tribal membership and political activities. Supporting this conclusion are the facts that: 1) the stated criteria of admission are: time of application, quality of grades, and strength of references, 2) a friend of mine, from a favored tribe, was accepted even though she had dramatically lower grades than<sup>1,3</sup> 3) the head of admissions was from the President's tribe, the Kalenjin, which has historically discriminated against my tribe, 4) when I submitted my application ~ long before the deadline ~ an admissions officer looked over my qualifications and noted that I would surely be admitted, and 5) others, from favored tribes, who applied very late in the process, were accepted even though they had weak grades.

As demonstrated above, patterns emerge in the way that violence and experiences are narrated, highlighting ongoing reliance on tropes and stereotypes about who should claim asylum, how those people can and should behave and what kinds of experiences warrant an offer of permanent residence. The increase in formal rules and procedures especially in the mid 1990s had a strong effect on the structure and content of claims beginning in 1997. In particular, these reforms introduced the possibility for “expeditious removal” if a claim was unsuccessful, greatly increasing the stakes. General concerns about a rise in unfounded applications, as reflected in particular in the 1996 policy changes, led to a steep increase in the number and type of documents submitted in support of a claim.

Similarly, asylee status was no longer an offer of temporary residence reflecting a short-term humanitarian exercise of discretion with broader political utility, but was instead a process which offered permanent political membership as a remedy for harms suffered elsewhere. Asylum seekers were now citizens in waiting and the process needed to produce them as legible potential members (Haas 2017).

In this relatively settled period we see culture as a source of diverse resources, but we also see those resources being deployed selectively. These selective, strategic narrative choices actually serve to reinforce many of the underlying cultural habits and assumptions that were

already present. In other words, culture's independent influence may be obscured by the multiplicity of ways in which it is deployed, but its power remains (Swidler 1986: 280).

### Current Unsettled: Structured and stereotypical

The data for last period, from 2009 to 2018 are based on 50 cases. As in the previous settled period all four claim types are present in the sample, though claims based in fleeing revolutionary violence have all but ceased, with only one claim raised in 2011.

As we move back in to an unsettled period, beginning around the end of 2008 we see an intersection of this institutionalization by type with a return of stronger ideological forces shaping the system, yet the styles and habits, namely the comprehensive structure and the adherence to the explicit credibility metrics do not fall away from the narratives. Instead these narratives reveal attempts to convey unique, detailed experiences of violence to overarching ideological positions in way that wasn't seen during the previous periods. In effect we see the strategies and tools developed and institutionalized in the previous two periods, but especially in the settled period, acting as cultural resources to shape the current highly structured and highly ideological form.

For women making sexual and gender-based violence (SGBV) claims and individuals making LGBT claims this ideological resurgence is evidenced in a turn towards reflecting stereotypes of traditional gender roles. In the SGBV claims there is a shift in the way that women describe experiences of and, crucially, responses to violence. Much like in the settled period the claims remain highly structured and detailed, yet almost universally include a passage describing how the women resisted violence. Evidence of standardization of women's responses to that violence first emerge in late 2008 and is illustrated by the tensions around representations of rape

and sexual assault and female genital cutting. Femke, a young woman from Burkina Faso describes resisting ceremonial genital cutting:

When I was 7 years old, my family arranged for me to undergo the ritual. The ceremony was performed at my grandmother's house with a group of 11 girls. I tried to run away, but I could not run very fast because of [a problem with] my leg, and some boys caught me. There are always boys there to catch girls who try to run away.

Similarly, Esther from Liberia recounts being sexually assaulted by a soldier, stating "I struggled to move my body any way I could...I tried to keep my legs closed but I couldn't. I was too tired and in too much pain. Finally, I stopped resisting."

The SGBV claims also show an increase in references to loss of virginity as an exacerbating factor when describing the severity of violence. Five of the 18 SGBV cases filed in this era refer to a loss of virginity as linked to additional pain, shame and trauma. Interestingly, the only mentions of virginity in the previous era were two references to women who, in contravention of community norms, had not been virgins when they were married. In both of those cases those women had also noted in their declarations their support for women's rights and belief in gender equality.

LGBT claims increase significantly in this recent unsettled era. Only two such claims were filed before 2009 and more than half (n=17) were filed in 2015 or later. As such these claims represent both the system's increasing openness to claims based in sexuality and gender identity (particularly so in Northern California), and yet these narratives emerge in a form that reflects traditional gender stereotypes. One particularly common narrative trend is the characterization of realizing one's sexuality in childhood because of a preference for traditionally male or female toys, hobbies or clothing. Marcos, a gay man from Colombia notes "When I was little I preferred to play with the girls rather than the boys. I liked to play indoor games with my hands inside the house or inside the school. I did not like to play soccer or other sports."

Similarly, Fernanda, a lesbian from Brazil describes noticing that there was something “different” about her around age six noting “I liked to play with my brother's toys, and I did not like spending time with the other girls around me. Instead, I preferred to hang out with the boys, playing soccer and with toy cars.”

Further ideological shifts are evident in the rise of claims in which individuals either disavow Islam or go to great lengths to explain their faith and how they practice it, despite the fact that religion persecution is not central to these claims, but instead are raised in political opposition cases. In these cases, claimants are able to reject a fundamentalist approach to Islam while also expressing that their only views align with an idealized American value of religious tolerance.

Mariam from Mali describes the following:

The way that I believe in Islam is different from my father. The Koran does not say that girls must not go to school. Girls must be able to learn the Koran and must practice Islam. My father believes that girls must cover their entire bodies, and not even show any hair. I believe that my father practices such strict Islam so that he can be recognized in society as being very correct. I do not believe that is the right way to practice Islam.

These narratives reveal how recent claims strive to situate individuals as adhering to traditional “values,” in particular with regard to gender and sexuality. This demonstrates a deeper and more ideological entrenchment of the type-specific institutionalization of claims that first emerged in the settled period. In the first decade of this current unsettled era, claims reflect the highly structured nature of the system as developed in the settled era, paired with a shift toward the kind of ideological coherence last seen during the most fevered years of perceived threats from and staunch opposition to Communism. In this current period, we again see explicit ideological demands being made on the system, but what differentiates it from the previous unsettled period is a shift to all but eradicate structural opportunities to incorporate these demands into the existing institutional framework. Whereas the competing ideologies and

cultural strategies of the 1980s and early 90s culminated in a relative settling through the use of increased structure and accountability, this era seems thus far intent on dismantling those structures without replacement.

As asylum in particular becomes a major cultural question, we can see the emergence of new law and policy as evidence that we are testing new cultural habits and actions. Amid competing ideological claims about who and what we are and want to be as a country, we are able to do away with the long-standing (if deeply flawed) cultural model which sees America as a place of welcoming refuge, jettisoning as well the practical tools and structures which provided actions in support of that vision. Debates about building walls at the border shared by the United States and Mexico, the separating of children from their families, the duration and conditions of immigration detention, and the “asylum ban;” these new ways of responding to immigrants, and to asylum seekers in particular, are evidence of the massive cultural shifts underway. They are clear articulations of changing ideological positions, and specific structural moves designed to concretize and legitimize new modes of social organization and action. This has never really been a moment about discrete policies, but has always been about an attempt to articulate a singular vision of what America is, a unified cultural system – suspicion and rejection of immigrants is core to that project.

## Conclusion

My analysis shows how both the enumerated institutional requirements for claiming asylum and what it actually looks like to narrate persecution have changed considerably over time, shifting in particular with the rise and fall of settled and unsettled times. By evaluating the historical evolution of the asylum system and combining it with a close reading of the narratives of actual asylum seekers, I show how asylum narratives reflect the creation of new strategies of action that integrate structural requirements formalized through settled times, and yet also responsive to ideological pressures in unsettled times. This interaction between the top-down changes to law and policy and the bottom-up strategies employed by individuals reveals the ongoing power of culture to inform what ideas and actions are successful during periods of contention, and ultimately which approaches and understandings are institutionalized.

For asylum these two strands intersect in the concept of credibility. The need to tell a credible story has been central to asylum seeking for decades, and yet, as is evidenced by the claims themselves, the ways that people frame their experiences reveals significant change over time. Claims reveal how narrative strategies of action are developed that draw on both the institutional changes, especially around narrative form and structure, as well as tapping in to ideological shifts as seen in the management of narrative substance. Narratives show evidence of navigating these changes over time, with greater ideological pressures evident in the unsettled times, and greater emphasis on the structural credibility metrics, such as use of detail or corroborating evidence, in the settled times. This analysis allows us to push back against the myth that asylum seekers stories need only be truthful: in reality they must be highly strategic.

This analysis is also relevant for considering the interplay between culture and institutions more broadly. When the law in particular institutionalizes some strategies of action, it can and

does have a power effect on other cultural actors, especially those that are more distant from the locus of ideological power or change. For example, an institutional culture which permits the kind of contemporary efforts we see to distrust, demonize and exclude asylum seekers from the legal process is connected to a rise in armed border militias taking matters into their own hands (NYT 2019). The ideological view that migrants cannot be trusted is not only culturally, but practically cascaded from the institutional space of law and policy into the more pedestrian spaces of everyday life. This is how myths become political truths (Sewell 1996: 865). When the principles of social organization are brought into harmony with the new foundational ideology (Sewell 1996: 874). Law has the institutional power to harmonize emergent principles of social organization with the new ideology.

In our contemporary moment, asylum has been in many respects reduced to a debate about fundamental questions of truth, membership and violence. In the asylum system, laws and policies granting or denying protection become agents not just of a discrete administrative corner of the state, but of cultural change itself. Given the robust cultural space occupied by the law, and the complex set of practices that surround adopting, altering or dispensing with legal change, it is perhaps more likely that these seemingly administrative adjustments are actually the best evidence of a new cultural model that is likely to “take root and thrive” (Swidler 1986: 280), making their impact more likely to be enduring in the long-term.

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