

The Gender Guidelines *From the Margins to the Centre?*

BY PAMELA FOSTER

Cet article explore la langue utilisée pour parler des réfugiées et se demande si les lignes directrices selon le genre, instaurées par le Bureau canadien des immigrantes et réfugiées défient ou si elles reproduisent la discrimination systémique.

Once, I participated in a development education workshop.¹ The facilitator asked us, a group of ten, to list some of our “favourite” development issues. The issue of migration and intolerance was chosen from this list as the topic for the next exercise, which required us to think of a motion or phrase related to those issues. We were told to repeat it over and over, with the goal of building a “machine” of intolerance or tolerance. A woman began the exercise by letting out an enormous sigh, while slamming shut an imaginary file. Another woman, acting as a Canadian, crossed her arms across her chest and whined, “What about me?” One person began chanting, “No more immigrants! Send them home!” hoisting her pretend placard high in the air. A man rushed in front of the exasperated official and angrily repeated, “Why?” only to be trailed into the scene by someone demanding, “Passport, please.” Joining the chorus was another voice, “We don’t observe Ramadan here, you are in Canada now.”

I did not know how to contribute to this scene. I was distressed that no one had acted in a positive way about migration and intolerance. Then, as a person entered the scene dropping to her knees before the official and begging, I reacted, pulling her to her feet and standing beside her. Later, when discussing why we had chosen our particular actions, I was questioned as to why it was the image of the pathetic, pleading refugee woman that had compelled me to act. I responded that I felt the image was degrading, false, and forced, and that in order to throw this “machine” of intolerance into reverse, the image of the refugee must change from one of pity to power.

This article is an exploration of the processes that foster and feed the current antagonistic image of refugees, and the effect of these processes on refugee women. Specifically, it seeks to understand the effects of Canada’s Immigration and Refugee Board’s (IRB) Guidelines entitled “Women Refugee Claimants Fearing Gender-Related Persecution” by situating them within the broader discourse of identity. The belief shaping this article is that overcoming intolerance towards refugees, will require more than a policy change. It will require a change at the level of consciousness.

Visit a refugee camp and the image that will stick with you will be of crowds of women and children. Who looks after them? (UNHCR)

Women refugee claimants who have suffered sexual violence, may exhibit a pattern of symptoms referred to as Rape Trauma Syndrome, and may require extremely sensitive handling. (IRB 1993: 9)

The above quotations reveal the power relations in which refugee women navigate. These relations are very often patronizing as refugee women are identified as vulnerable and dependent victims.

The power relation between the refugee and the asylum state can be characterized as that of Self and Other. This relationship is shaped by the global political economy and the interplay of race and gender. The refugee, especially the refugee woman, as a representative of the South, becomes the Other. The asylum state defines itself as the Self, as it exists within the relationships of colonialism, charity/development assistance, and the market economy. In other words, asylum states are self-constituted as superior and the refugee as inferior. Audrey Macklin discusses this relationship in her article, “Refugee Women”:

Canada, the United States, Australia, New Zealand and the states of Western Europe (that is to say, the “Western nations”) locate themselves firmly in the latter camp [refugee-accepting], and constitute themselves as distinctive and superior by reference to what they are not, namely, the kind of governments that propel them to claim refugee status. (264)

Macklin argues that this distinction between refugee and asylum state as Self and Other is blurred with the superimposition of feminism on the Self/Other dichotomy or refugee discourse. Her hypothesis is that a serious challenge to incorporate gender-persecution in refugee discourse would erode “the self-understanding of so-called non-refugee producers” (264).

The power relation between the refugee and the asylum state can be characterized as that of Self and Other and is shaped by the interplay of race and gender.

The premise of this argument is on the feminist recognition that the marginalization of women is cross-cultural and therefore global. As no country can claim to protect women's rights, no country can hold claim to safe asylum from gender-persecution. The superior asylum states, however, use the Self-Other construction to define what occurs in the West as discrimination and in the South as persecution. This assumption, in turn, rests on the unquestionable belief in the power of "democracies" to protect its citizens.

Macklin provides the example of an American woman who is fleeing domestic abuse, although a Canadian example is wholly interchangeable. It is well-known that "the system" does not protect battered women. However, as Macklin questions,

...how can she bring the entire U.S. police and the judicial machinery into disrepute? ... How often does it have to fail before a claimant's fear of abuse and lack of faith in state protection will be validated as objectively well-founded? (266)

The continuation of the Self/Other dichotomy between a refugee and the State is premised on the belief that a refugee has access to asylum.

If countries of refuge cannot guarantee a woman that she will be protected from the kind or persecution that she flees, what is the point of granting her refuge? Indeed can one even talk meaningfully about "refuge" under these circumstances? (Macklin 271)

In order to maintain the Self/Other dichotomy between an asylum state and a refugee, Macklin points out that a superficial application of feminism to refugee discourse can easily be neutralized, resulting in a further entrenchment of the Self/Other dichotomy. This assimilation is particularly likely, if it is western mainstream

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feminism, which views itself as superior and embraces difference to the extent that similarities in the global manifestation of patriarchy are ignored. However, if global gender-persecution and state inability to protect in the current liberal paradigm are recognized, Macklin argues that a re-thinking of refuge in a way which challenges the definition of asylum state as Self will occur. "At a theoretical level, the Guidelines also present a challenge to implicit assumptions about the stability of categories" (276). Macklin assumes that by destabilizing the categories of refugees and asylum the

Guidelines will alter power relations. However, this assertion is contentious. I would like to posit that the Guidelines can be seen to reproduce rather than unsettle the power dynamic between the refugee woman and the asylum state.

The Self/Other dichotomy of refugee discourse is premised on three tenets of the liberal paradigm—the superiority of the Self over the Other, separation of the actions from the Other from actions of the Self, and the optionality of all relations. Macklin discussed gender-persecution as a challenge to Self-superiority, and to some degree, as a challenge to the assumption that issues and actions of the Self and Other are unrelated. However, gender-persecution as defined in the Guidelines continues to foster both a degree of optionality in the relationship between the asylum state and the refugee and distance between the Self and the making of refugees.

Optionality is maintained through the Guidelines' lack of legislative power and tentative language. Women refugees fleeing gender-based persecution to Canada may not have the Guidelines applied to their case. The general proposition which fosters and frames the analysis of the Guidelines states that the definition of a Convention refugee may properly be interpreted as providing protection (IRB 1993: 2). David Matas articulates the concern over this proposition.

Why is the whole matter left as a possibility? Anyone who has a well-founded fear of gender-related persecution by reason of any one, or a combination of, the enumerated grounds is a refugee. The guidelines should say so. (3)

The Self-Other dichotomy assumes that issues of the Self are fundamentally unrelated to those of the Other. The links between foreign policy and refugee flows are as invisible as the links between race and gender, or the economic and social realms. The Guidelines, through the maintenance of the hierarchy of rights and the primacy of an individual identity, fail to challenge the power dynamic between the refugee and the asylum state.

Whereas gender-persecution is the cause of flight, it is not the only factor, and undoubtedly not the primary factor, influencing a refugee to choose to seek asylum in the North. A refugee from the South does not choose to flee to Canada, for example, because she believes it is her only option for protection. She may choose to seek protection from Canada because of her identity as an English or French speaker, as a member of an ethnic community well-established in Canada, and for economic opportunities.

The term "refugee" conjures up images and assumptions that all a person is, and has been, is a refugee. This term "does not convey differences in class, education, ideology, race, ethnicity, culture, nor rural or urban backgrounds" (Moussa 26). All of these "identities" are

likely factors leading a refugee to Canada for asylum. The categories of refugee and asylum state, refugee producer and refugee protector, Self and Other will not truly be challenged until an individual's identities are blurred and the types of persecution "levelled."

Women refugees and the asylum state

The Guidelines can be argued to reproduce a stereotype of women refugees which typifies women's unequal relationship with the state as that of a "damsel in distress" (Pittaway 16). Women's unequal relationship with the state derives from the myths of gender neutrality and "male-as-norm" as well as the public/private dichotomy. Typically, women's relationships with the state can be described in two mutually reinforcing ways. First, the state reduces women and women's needs to special interests. Second, it works best for women when they fit a stereotype of helpless victim. This section discusses each of these aspects of women's relationships with the liberal asylum state and reflects on whether the Guidelines challenge or contribute to this unequal relationship.

Women as deviant

One need only turn to most feminist work in refugee studies, to date, to see the prevalence of the myth that women's needs are deviant or "special." Overwhelmingly, researchers documenting the falsity of gender-neutral policies and practice, discuss aspects of refugee life such as material assistance and the need for protection in terms of women's "special" needs. Even the United Nations High Commissioner for Refugees (UNHCR) reproduces the stereotype of pathetic victims with "special" needs in its materials for public consumption.

Who is today's refugee? More often than not she is a woman. And she is frightened and alone. From Afghanistan to Somalia to former Yugoslavia, women are fleeing war and repression: the helpless victims of other people's disputes.... The UNHCR has a mandate to protect all refugees. It can play no favourites. But it recognizes that refugee women have special needs that are not being met (UNHCR)

Women's needs are usually articulated in terms of their conventionally-defined roles as mothers and wives (Indra 1989). Whereas these relationships do characterize many women refugees, they are roles which are not recognized as valuable in the market economy or the refugee camp. Similarly, the role of women in the paid economy, as well as their roles as community and household managers, have historically been invisible in camps, and in resettlement programs, due to the public/private dichotomy. The emphasis on women as wives and mothers and the devaluation of these roles in liberal societies impacts negatively

on refugee women seeking asylum in Canada.

As a study done by Kostadina Jordanova shows, women are significantly more likely to receive a positive decision if they are considered with men. Canada allocated 500 "spaces" for Bosnian refugees under the designated class category. Yugoslavian women who claimed independently had a 26 per cent acceptance rate, compared to women who claimed jointly with spouses whose success rate rose to 67 per cent.

The Guidelines, through their silence on joint hearings, are complicit in the myth of refugee women as "only" wives and mothers. They are also complicit in the myth of women and women's needs as deviant because they do not create a separate category for gender (Ramirez 1993; Macklin; Foote).

The argument that the Guidelines further marginalize women and gender persecution is premised on the awareness that gender is as intrinsic to a context as race, religion, nationality, or political opinion. The linking of gender-persecution to one of these four enumerated grounds therefore subsumes gender, once again rendering it invisible. Linking it with one of the other grounds also assumes that gender-persecution is a subtle variation of men's persecution. "Adding gender will protect a greater range of gender-based claims than utilizing the existing grounds along the lines recommended by the Guidelines" (Macklin 257). Female genital mutilation, bride burning, forced abortion, for example, have no parallel in men's experience and therefore should be recognized for what they are—gender-persecution. Lastly, the emphasis the Guidelines place on linking women fleeing gender-persecution with the ground of "membership in a particular social group" is premised on the assumption of "male-as-norm."

The "particular" group classification strongly implies that women be categorized and sub-categorized in a manner suggesting that refugee women, despite their majority status among the global refugee population, are an aberration from the norm.... The implication is that women refugees, by virtue of being female, are perennial victims and therefore belong to a particular social group. (Foote 11)

The option to name persecution as gender or not should exist for refugee women, just as the option to name one's persecution as racial or religious exists.

The linking of gender-persecution to membership in a particular social group is problematic for a number of reasons. First, on the one hand, a

Women's unequal relationship with the state derives from the myths of gender neutrality and "male-as-norm" as well as the public/private dichotomy.

woman claimant must show “an individuated persecutory foundation,” and on the other, show that her situation is one of generalized oppression and violence against women (Ramirez 3). This evidentiary “fine line” is difficult to walk, and has resulted in negative decisions on the basis that gender-based persecution was a common crime.

Second, the listing of gender as a ground for persecution avoids essentializing and universalizing women’s experience which results from using women as a particular social group. The identification of “women” as reason for persecution rather than “gender” focuses persecution not on what has happened but on who the claimant is.

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The rendering of women as a particular social group therefore results in the underlining of all persecution that women face as persecution resulting from being women. The fact that women claimants, like men, can claim status for one or a combination of enumerated grounds, means that it is only through the inclusion of gender that the distinction between “as a woman” and “because a woman” can be made.

Lastly, the argument to exclude gender as a named ground because it is not needed to have a woman refugee successfully claim is myopic. Not only could the same argument be applied to the Guidelines themselves but the argument assumes that the feminist struggle for inclusion of gender is not strategic but merely practical.

Women refugees as helpless victims

The image of a refugee as pathetic, helpless, and vulnerable has been compounded with the addition of the word “woman.” With few notable exceptions, namely the works of Doreen Indra (1987; 1989) and Helene Moussa, refugee woman are rarely described in terms of their strengths and their feelings. Consistently, they are depicted as victims, needy for assistance.²

As Moussa notes, the questioning of this depiction is not to deny that refugee women are vulnerable and victims of horrible events. The rejection of the depiction is not to engage in the “they are/they are not” dynamic, but rather to place their victimization in a human context, so as to also portray women refugees’ ability to survive, cope and adapt. Moussa highlights two reasons for the necessity of this action. First,

this perception of women in turn hinders their chances for settlement in such countries as Canada because the expectation is that refugees, like immigrants, will become economically independent.... (19)

Second, she discusses how a focus on women’s vulnerability shifts the attention away from the environment, micro and macro, which caused her victimization to her personal characteristics.

This trend can be seen in the Guidelines in two ways. First, the use of the language “failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices” is problematic. It focuses attention on the woman, making the violent experience in her life seem a personal, but understandable, choice. The IRB expressed these sentiments in the hearing of “Nada,” the Saudi Arabian women fleeing religious, political, and gender persecution:

Il lui faudrait bien, comme toutes ses compatriotes se conformer aux lois d'application générale qu'elle dénonce, et ce en toutes circonstances et non seulement, comme elle l'a fait pour étudier, travailler ou ménager les sentiments de son père qui, comme toute sa nombreuse famille, était opposé au libéralisme de sa fille la demanderesse. (CRDD No. M91-04822 qtd. in Macklin 215)

Their comments indicate the assumption that women make their own victimization.

To interpret violence against women as women-based and not gender-based, denies the social construction of gender which leads to violence in some situations for some women. Women, as a group, are not doomed to be victims due to their biological characteristics, any more than men. Therefore, if gender was to be added to the list of enumerated grounds, the same link with a specific time and specific situation leading to violence would be made as with the other socially constructed grounds of race, religion, political opinion, and nationality. As Foote notes,

...assuming that one’s biology dictates one’s social status for the sake of the legal system, women will continue to be beholden to their biological functions in order to acquire or maintain legal legitimacy. (12)

There is a seeming contradiction between women who show agency in their situations and therefore are victimized and women who are victimized passively, simply because they are women. The creation of this tension can be attributed to the legal, bureaucratic framework which attempts to reinterpret women’s experiences to meet a pre-ordained administrative definition. The work of feminists critiquing the “Battered Women’s Syndrome” and the research of Linda Hitchcox will be used to expand on this claim.

The “Battered Women’s Syndrome” is used to describe a pattern of severe physical and psychological abuse inflicted upon a woman by her violent partner. Its symptoms are “learned helplessness” which assists in explaining why a woman would not flee such a situation (Chan). The Syndrome has been used successfully in courts, notably at

the Supreme Court in the case of *R. v. Lavallee*, to acquit women convicted of murdering their violent partners. Although the acceptance of the Battered Women's Syndrome assists individual battered women to claim they acted in self-defence, some critics express concern for its impact on women.

First, there is some question around the physical existence of the Syndrome. As Wendy Chan reports in her article "A Feminist Critique of Self-Defence and Provocation," the research undertaken on the Syndrome is methodologically flawed.

There are few, if any, independent diagnostic markers to distinguish battered and truly passive, helpless women who kill their spouses from battered but not helpless women who do so. (Schulhofer qtd. in Chan 59)

Second, the Battered Women's Syndrome homogenizes women, giving the impression that all women act and react in the same manner. As women who kill their violent husbands, generally do not do so during one act of provocation, they are not perceived to "be reasonable" as male-defined. Therefore, the Battered Women's Syndrome creates a stereotype of a "reasonable woman," and women who do not fit this stereotype, are less likely to be considered battered despite their experiences (Chan).

Her chances of getting an acquittal on the basis of self-defence depends on whether or not she can prove she is a genuinely battered woman rather than on whether or not she acted in reasonable and necessary self-defence. (Chan 56)

Third, testimony which focuses on the helplessness and passivity of the battered woman reinforces negative stereotypes. The "syndromization" of women's experiences transforms the battered woman's reasonable act into an unreasonable act, prompted by a psychiatric disorder. An overemphasis on passivity leaves the jury confused as to how such a pathetic figure could kill someone (Chan; Grant).

These same criticisms can be applied to refugee discourse generally and the Gender Guidelines specifically, in so much as they do not challenge assumptions about refugee women. First, there is little empirical evidence to prove that the overwhelming majority of refugee women are passive and helpless. As the research of Doreen Indra (1987; 1989) and Helene Moussa indicates, women refugees are resilient and strong. In the words of one woman refugee:

After all those experiences I think of myself as a heroine, because I overcame all those situations. I never imagined I could do that. Now if I have to face even harder situation, I know that I can manage it. (qtd. in Moussa 255)

This research does not deny their vulnerability, instead it denies the victimization of all refugee women.

Second, as discussed earlier, defining a woman fleeing a gender-based persecution as a member of a particular social group comprised of women not only results in the homogenization of themselves and their experiences, but it also assumes their inherent victimization.

Third, the existence of the stereotype of a passive and helpless refugee women has created a standard on which to judge their need for protection. Some argue that the depiction of refugees, women and southerners as pathetic perpetuates the charity model and ensures the granting of asylum. Whereas this stereotype may assist some in meeting a "practical" need, it acts as a barrier to others who "deviate" from the "standard." This barrier is evident in the comments of an IRB panel, reflecting on the case of a claimant from Brazil. In the panel's view, the claimant could live safely elsewhere in Brazil since, in the panel's words, "the claimant's adjustment in Canada demonstrates her capabilities for independence" (IRB 1995: 3). Whereas this may not have been the sole reason for the rejection of her claim, the coping skills and independence of a claimant is irrelevant to whether she has a well-founded fear of persecution. Likewise it should not be used to justify an internal flight alternative, which instead should be justified through evidence of state protection.

Linda Hitchcox discusses the standard of a "pathetic woman" in her article "Vietnamese Refugees in Hong Kong: Behavior and Control." Her research discusses the vulnerability of Vietnamese women in refugee camps in Hong Kong, and the administrative response to their protection needs. She argues that as long as women behave in a compliant and helpless way, they are likely to receive more consideration from the authorities at the camp than if their behaviour was interpreted as being overly demanding. Accordingly, Hitchcox shows the claims of demanding women were regarded as non-serious.

The required responses from detainees, appropriate to a well-controlled population and favoured by management, tend to be stereotypically feminine in type.... The management supplies order, protection, care and maintenance, but to fulfill these objectives, certainly paternalistic, in their implementation, it is necessary to have not only a controlled population, but also one that is perceived from the official perspective as being permanently in a state of helplessness and dependency. (157)

Hitchcox also shows the agency and ingenuity of some refugee women who fit this administratively defined stereotype in order to better manipulate the system. The passivity and helplessness of refugees can therefore also be thought of as an "everyday act of resistance" rather than as an innate characteristic.

However, the emphasis on helplessness, endemic in

refugee discourse, effects all refugees. Whereas it is intrinsic to recognize their vulnerability, it is crucial to desegregate vulnerability from helplessness and passivity. This is particularly true for women who are less likely than men to be recognized as fully independent and responsible individuals, perpetuating inequity in their relationship to men and to the state.

Conclusions

The Guidelines have their roots in the feminist inquiries which detail the male bias in policies, research, and practice dealing with refugees. Whereas this inquiry is undisputedly necessary, for the most part it fails to unearth the tacit norms and implicit assumptions that define the problems and solutions in a particular controlled way. The Guidelines, as a product of this reform movement, destroy some myths about women and refugees while re-creating others.

The unearthing of these ideological dimensions and tacit assumptions of the Guidelines is not to say that women will be denied refugee status—the Guidelines do increase the likelihood of women receiving asylum. However, it is important to recognize that whereas the Guidelines may assist individual women seeking asylum, they may also inhibit women generally from receiving asylum in Canada, through the perpetuation of stereotypes. This may skew women's chances of successful integration.

Therefore, whereas the Guidelines began as a reverse or counter discourse, they exhibit characteristics of the dominant discourse in their scope and implementation. In no way do they challenge the unequal power relations between the asylum state and the claimant, and in some ways can be seen to reinforce them. What is considered by most to be a "progressive" policy is constrained by its roots in the liberal paradigm and its construction of the Self-Other dialectic.

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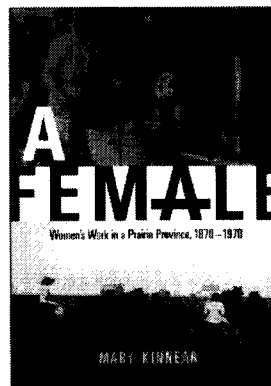
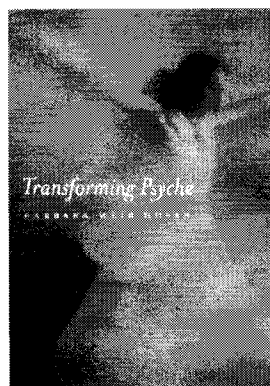
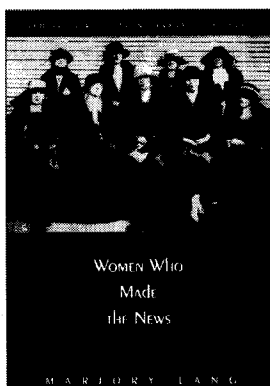
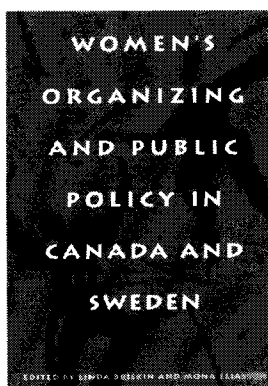
¹YMCA/YWCA Development Education Committee retreat, Ottawa, June, 12, 1994.

²The stereotype of women as victim is most typical in North American culture. Many third world feminists take issue with the export of this stereotype through mainstream western feminism. Even within North America, there exist cross-cultural nuances of this stereotype of women. It can be argued that there exists a hierarchy of patheticness. In the West, black women are considered the least pathetic, then Latin American women, white women and Asian women. These stereotypes may effect the sym-

pathy which a panel feels for a refugee women's case.

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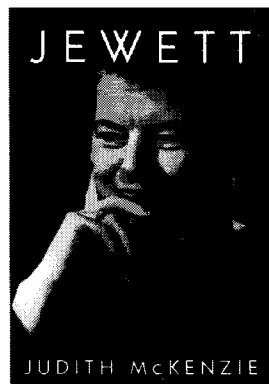
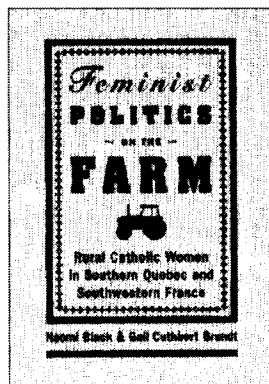
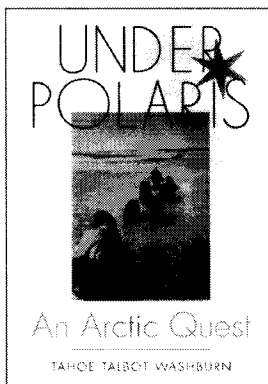
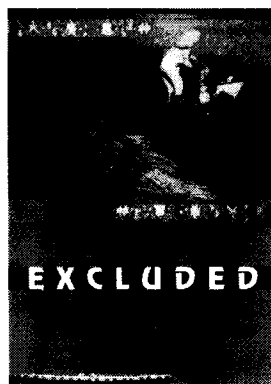
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