

## QUEER KINSHIP IN THE GLOBAL ASYLUM REGIME

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Last year, the United Nations called for Finland to reconsider the case of a young boy who was denied asylum on the grounds that his mothers, a lesbian couple, did not have an adequate claim to protection. The 11-year-old boy fled Russia with his two mothers, who faced extreme levels of violence in Russia. They all faced further harassment on the move, but still Finland rejected their asylum claim. When the family appealed the case to the **Committee on the Rights of the Child**, a special treaty body at the United Nations, the UN intervened ruling that Finland had failed to consider what was best for the child in an LGBTQ family. They argued: "States must always ensure that the best interests of the child are effectively and systematically taken into account in the context of asylum proceedings, and that they are not discriminated based on their parents' sexual orientation."

This case raises many questions about the relationship between the state, its duty to provide asylum under international law, and its obligations to LGBTQ people and their families. Since 2013, **all countries within the European Union have been obligated to provide protection to LGBTQ people** facing persecution based on their sexual orientation and gender identity.

Normally, debates on this subject relate to the LGBTQ individuals themselves. However, this case reveals the relevant assumptions underpinning those conversations. It demonstrates that these conversations must extend beyond the LGBTQ individuals and to consider their family. Unsurprisingly perhaps, conversations around 'the family' in the context of refugee protection focus on heterosexual families, the rights they are afforded by states, or the horrific practices undertaken by states to separate them. Stories of family are often evocative because they are so intelligible: they pull-on heartstrings more than other stories of border violence and help to show people who

otherwise do not engage with the regulation of territory what kinds of consequences it can have for people's loved ones. However, there are obvious implications that follow from foregrounding only certain kinds of families.

This case in Finland raises the question of *who* exactly counts as a family and *what* are obligations of states to consider the family when it comes to the provision of asylum to LGBTQ individuals. These questions we asked ourselves, two scholars of LGBTQ displacement, in recent articles in **Migration Studies** and **Thomson Reuters Foundation** about whether family reunification should be afforded to *chosen families*, a queer kinship structure where LGBTQ people find solace in each other as a family unit when they cannot or chose not to rely on their biological family.

We began writing about queer families because we had heard of a case of a group of Central American trans women at the US border who chose to apply for asylum together. Putting in an application for asylum as a group is usually a right reserved for heteronormative family units: a married man and woman, and perhaps their children. It allows the applicants to stay together in case of detention and allows them to have their cases considered collectively. Queer families are systematically excluded from many of these rights. As such, they are separated (even when they meet legal stands of marriage or civil partnership). But there are other considerations of the uniqueness experienced by LGBTQ families that the asylum-granting states must reconcile with. This case has shown that being LGBTQ also impacts one's right to stay together and seek safety with their children. It also underscores the changing nature of our world. Over the last few decades new kinds of families have begun to be accepted in mainstream cultures. But in many ways, regressive ideas about different kinds of families still prevent many LGBTQ people from receiving protection. The scholar Mengia

Tschalaer writes in the **Journal of Ethnic and Migration Studies** and **Ethnic and Racial Studies** that often lesbian women with children are disbelieved in European asylum courts, even if their children are born from forced marriages or rape, as it is not understood how any 'actual' lesbian woman could have biological children.

Family remains a complicated structure for LGBTQ people, as many flee intrafamilial homophobia. Their biological family is the first locus of harm, and they have to escape to find new forms of community. In certain cultures of generalized social prejudice and violence, this search for community often takes them beyond their neighbours or community and makes them especially vulnerable as they cannot access traditional support networks. **The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe)** has documented how LGBTQ people face a double discrimination of fleeing homo/transphobia and xenophobia throughout Europe.

Questioning the limitations of protection for LGBTQ people is important at this moment, even in perceived 'open' places like Finland, because of the extraordinary nature of our times. Despite no changes in formal legal codes, the refugee regime is beginning to show itself as more LGBTQ inclusive. Queer and trans refugees are seeking protection more than ever before, in part because there is now a route for them to qualify for asylum due to homophobic and transphobic persecution. However, the refugee regime remains exclusionary to LGBTQ refugees in many other aspects. Since the international order has shown its capacity to 'queer' one area of asylum (who qualifies for Geneva Convention Status) without changes in international law, there is the possibility of going further in other areas to expand protection.

To explore these possibilities, we are undertaking a book project entitled *Toward a Queer Theory of Refuge* where we *queer* the moral debates surrounding refugee protection in order to reimagine what a just refugee regime could look like. What does it mean 'to queer'? To start, it begins by recognizing the experience of LGBTQ people, and their families, and building from this lived experience to push against normative assumptions underlying how we think about asylum. As demonstrated by the case of this young boy and his mothers, providing asylum for LGBTQ people requires a reconsideration of asylum beyond the individual, as well as an unpacking of what we think a fair refugee protection regime might look like.

Why does queering matter? Because when writing about LGBTQ people, there's a tendency to make sweeping external generalizations and to treat the community as a unitary monolith. Using lived experience to challenge normative assumptions, allows us to identify forms of political re-articulations that queer people themselves are already undertaking for their own survival. As we noted in our work on queer kinship, LGBTQ people in chosen families already view themselves as a family unit entitled to these goods: in queering the concept in relation to the refugee regime, we develop an argument for why the international refugee regime should respond to these queer rearticulations of kinship and put forth a suggestion of how. Writing a combination of queer theory, social science, and philosophy, we make clear a normative argument: that queer refugees and their "chosen families" should be able to apply for asylum as a group.

In 'queering' the refugee regime we, not only advocate piecemeal change to a fraught system, but challenge the deepest assumptions about what tolerance, inclusion, and protection means today.

## FUTURE PROFESSIONALS

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