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REPRESENTING CULTURE, TRANSLATING HUMAN RIGHTS SYMPOSIUM: Panel III: Asylum: Introduction

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**SUMMARY:**

... Panel topic: Those who claim asylum in one state generally need to demonstrate that they have a well-founded fear that, if returned to their home country, they will suffer persecution based on one or more of a variety of prohibited classifications. ... By way of introduction, I will simply identify and focus on one such intervention: with varying degrees of explicitness, the essays suggest unintended consequences to grants of asylum - for the host state as well as the sending state (and the relationship between the two), and for the individuals granted asylum. ... Thus, women are seen as seeking refuge from a weak state. ... Noll's essay thus introduces and addresses the relationship between host states and sending states by showing how much of asylum law is prefaced on an understanding of the other and its marked difference from the self. ... Piot considers the extent to which the grant of asylum and the narratives on which it is based in the host country affects - even disciplines - the sending state and its culture. ... While grants of asylum are difficult to obtain, Khanna suggests that the host state, even - if not particularly - in the grant of asylum or the moment of hospitality, exhibits hostility. ... Calling upon Jacque Derrida's notion of hospitality and Frederic Jameson's sense of postmodern utopia, Khanna suggests an asylum that says "yes to who or what turns up" to create "a utopia of misfits and oddballs. ...

**HIGHLIGHT:** Panel topic: Those who claim asylum in one state generally need to demonstrate that they have a well-founded fear that, if returned to their home country, they will suffer persecution based on one or more of a variety of prohibited classifications. Thus, they argue that the regimes they flee are repressive. In recent years, the basis of such oppression has often been attributed to the dominant "culture" of the country of origin and the state's complicity in what is argued is a repressive culture. To what extent do such claims reinforce essentialized understandings of culture and of the populations that live in particular states? What are the effects of (mis)representations of culture with regard to individual claims, the development of asylum jurisprudence and political relations among states, as well as political struggles within them?

**TEXT:**

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The essays that follow were submitted in response to the above set of questions. The author's responses were innovative, broad and multidisciplinary. As such, the primary essays by Gregor Noll and Ranjana Khanna cover a great deal of territory. The commentary essays by Guarav Desai and Charles Piot bring the two primary essays together and suggest additional questions.

The collection of essays makes a number of important interventions in debates about political asylum that can be found in a variety of disciplines, but especially in law, literature and anthropology. By way of introduction, I will simply identify and focus on one such intervention: with varying degrees of explicitness, the essays suggest unintended consequences to grants of asylum - for the host state as well as the sending state (and the relationship between the two), and for the individuals granted asylum. As such, the authors take a different tack from the traditional liberal criticisms of

asylum laws and policies in Western countries, which tend to focus on denials of asylum claims and the harm caused by such denials.

Gregor Noll identifies and discusses a shift in the nature and discourse of asylum claims since the end of the cold war, noting in particular how claims of gender persecution - and the success of such claims - are on the rise. Noll contrasts the traditional cold war understanding of asylum, in which individuals are considered to be fleeing direct persecution from a strong totalitarian state, with cases of gender violence. In the latter cases, the state is generally not accused of being a direct persecutor, but rather of failing to protect women from private conduct. Thus, women are seen as seeking refuge from a weak state. While strong states have "politics," weak states have "culture." Claimants from weak states, Noll argues, are most likely to be successful if the culture from which they flee is seen by the host country as different from its own culture. Claims based on female genital mutilation, for example, are more likely to be successful than those based on domestic violence.

Noll's essay thus introduces and addresses the relationship between host states and sending states by showing how much of asylum law is prefaced on an understanding of the [470] other and its marked difference from the self. The asylum claimant, by fleeing and rejecting the other, is presumed to be more akin to those living in the host than in the sending state. During the cold war, successful applicants from communist states were acculturated based on their presumed anticommunism. Today, shared repugnance at certain cultural practices in weak states, evidenced by the lack of such practices in the host state, would seem to make acculturation possible.

Guarav Desai and Charles Piot pursue this understanding of a semiotic relationship between the host and sending states, albeit in different ways. Desai provocatively suggests that multiculturalism might be incompatible with asylum in that, the more multicultural the host state, the more narrow the category of differences becomes. Piot considers the extent to which the grant of asylum and the narratives on which it is based in the host country affects - even disciplines - the sending state and its culture. For Noll, Desai, and Piot, it would seem that a grant of asylum is basically a monocultural act, and it carries with it the dangers of neocolonialism and cultural essentialism. It produces political effects in both states.

But what of the individuals themselves who are granted asylum? For the most part, both critics and supporters of asylum law and policy in Western states tend to assume that those who have been granted asylum have had the doors opened to a better, more stable, Western life. Ranjana Khanna calls into question the extent to which asylum is an unquestioned good. While grants of asylum are difficult to obtain, n1 Khanna suggests that the host state, even - if not particularly - in the grant of asylum or the moment of hospitality, exhibits hostility. Using Mona Hatoum's installation of a welcome mat made of nails, Khanna suggests that political asylum, like mental asylum and other forms of asylum, is a "totalizing institution." For her, "the space of asylum suggests the rights of institutions over living bodies, rather than the rights of citizens emerging in different spaces." Regulation is a necessary part of asylum. n2

While all of the essays in this section share a sense that the system - and maybe even the idea - of asylum is deeply flawed, Khanna ends with utopian aspirations. She pushes us to imagine a way in which "the foundational violations of utopia itself may offer a way of imagining asylum to come." Calling upon Jacques Derrida's notion of hospitality and Frederic Jameson's sense of postmodern utopia, Khanna suggests an asylum that says "yes to who or what turns up" n3 to create "a utopia of misfits and oddballs." n4 This aspiration avoids the more common disagreements over where the lines are drawn in the grant and denial of asylum; it refuses to draw lines at all.

Khanna's utopian aspirations suggest the possibility of the ultimate demise of the nation-state, which is of course a fear often raised by critics on the right. For the most part, though, these essays all remain within the nation-state paradigm and within the host/sending country distinction. They recognize that who is and is not let into the host state affects that state's identity. Even Khanna's utopian state - willing to let itself be undone in some sense by its own hospitality - remains a state. One needs to be a host to be hospitable.

### **Legal Topics:**

For related research and practice materials, see the following legal topics:

Education Law Instruction Extracurricular Activities Publications International Law Sovereign States & Individuals Asylum

### **FOOTNOTES:**

n1. Even those states that are seen to be generous asylum grantors recognize the asylum claims of fewer than 35 percent of the applicants. See U.N. High Comm'r for Refugees, 2004 Global Refugee Trends (2005) (indicating, for example, that approximately 34 percent of asylum applications resulted in refugee status in the United States, 12 percent in the United Kingdom, and 9 percent in Italy), available at <http://www.unhcr.org/statistics>.

n2. Ranjana Khanna, *Asylum*, 41 *Tex. Int'l L.J.* 471, 477 (2006).

n3. Jacques Derrida, *Of Hospitality: Anne Dufourmantelle Invites Jacques Derrida to Respond* 59, 77 (Rachel Bowlby trans., Stanford Univ. Press 2000) (1997), quoted in Khanna, *supra* note 2, at 488.

n4. Fredric Jameson, *Late Marxism: Adorno, or, the Persistence of the Dialectic* 102 (1990), quoted in Khanna, *supra* note 2, at 487.