

Reviews

Crawley, Heaven (2001) Refugees and Gender: Law and Process, Jordans, Bristol

Refugees and Gender is a timely examination of the way in which gender impacts on the experiences of women seeking asylum. It is an essential tool for anyone interested in working with women refugee applicants to ensure that their experiences are appropriately addressed by refugee determination processes. The observations contained in the book have particular relevance within an Australian context. In recent months the Howard Government has enacted amendments to the *Migration Act* which human rights advocates have argued could be detrimental to women refugee applicants. Against this, the High Court have just ruled against the Department of Immigration, Indigenous and Multicultural Affairs, in a judgment which supported the application of a woman seeking refugee status on the grounds that she experienced 'serious and prolonged domestic violence' by her husband and members of his family; and that such violence constituted persecution of a particular social group, as per the Convention, because the police in Pakistan refused to enforce laws to protect her, and 'that such refusal is part of systematic discrimination against women which is both tolerated and sanctioned by the state' (*MIMA v Khawar* at 2).

In *Refugees and Gender* Heaven Crawley provides a comprehensive theoretical overview of the current status of gender in international refugee law and proposes an alternative framework for considering gender in asylum claims, before moving to a more detailed discussion of the ways in which gender differences manifest for those women who have engaged international protection obligations. *Refugees and Gender* contributes to a broader project being pursued by the UK based Refugee Women's Legal Group (RWLG) which seeks to bring about the development of gendered perspective on refugee law and policy.

Crawley starts from the premise that women may often experience persecution differently from men and as such, the refugee determination system needs to develop a gendered analysis and interpretation to enable it to recognise the particular ways in which women fit the definition of refugees as contained in the *Refugee Convention* and its protocol. She argues that to focus solely on women limits the potential of constructive engagement with the refugee determination system, arguing instead for a focus on gender, which enables the social and cultural construction of 'power relations between women and men' (p7) to be included in an assessment of persecution. Moreover, by focusing on gender Crawley ensures that the essentialism associated with the term 'woman' (which has precluded consideration of the diversity of women's experiences, and resulted in women from other cultures being represented as victims of oppressive societies in contrast to the independent white women of the west) is avoided in the case studies developed in *Refugees and Gender*. Crawley argues that it is vital to distinguish between 'gender-related persecution' and 'gender-specific persecution'. She argues that gender-specific violations, including examples of sexual violence, female genital mutilation, forced abortion and sterilisation, are the result of women being persecuted *as* women (p7). The distinction lies in the concept of 'gender-related persecution' and its relationship to 'serious harm' within the Convention definition of

persecution. Crawley argues that where 'a woman fears persecution *because* she is a woman' the use of 'gender-related persecution' enables decision-makers and advocates to address 'the causal relationship between gender (as socially constructed) and persecution. For example, sexual activity outside a socially condoned relationship may result in persecution' (p7). This is an important element in her argument, and is well argued and logical. Moreover, she applies the argument throughout the book, building a strong case to consider gender in the context of a feminist interpretation of refugee law.

Within an Australian context much of the work on women's asylum claims has focused on their membership of a 'particular social group'. While Crawley gives consideration to this, much of the theoretical overview for the book focuses on the ground of 'political opinion'. In a densely-written discussion she challenges the dominance of 'public' arena politics in the interpretation of the Refugee Convention. She 'suggests the need for alternative approaches to the conceptualisation of 'politics' which take account of the fluidity of boundaries between the public and private spheres and which are grounded in the reality of women's experiences' (p25). Specifically, she argues that the overwhelming spectre of the public in politics has precluded consideration of women's activities as political, largely because many of the activities occur in the so-called private realm. Crawley reinforces this argument with her discussion of gender, nationalism and the state. She makes the link between the increasing number of struggles over national identity and the reliance of those struggles on the construction of a national identity which requires particular forms of behaviour by women. Within the context of her argument, the failure to recognise resistance to such policies should be recognised as political activity, but is rarely seen as such by the refugee determination system. Despite the internal logic of her argument, the focus on 'political opinion' precluded a discussion at this point of the book of the important recent advances in ideas of due diligence (the idea that the failure of a state to take appropriate action to prevent human rights violations constitutes, in and of itself, a violation of human rights) and its application to refugee determination processes. Nonetheless, Crawley's argument is a sophisticated contribution to the debate on gender and refugee determination, and provides readers with the tools to begin the hard work of reconceptualising the difference gender makes for women refugees and asylum seekers.

While the theoretical discussion focuses on political opinion, the gendered framework for the analysis of asylum claims put forward in *Gender and Refugees* revolves around the two concepts of political opinion and membership of a particular social group, and a recognition that persecution 'must taken into account harm inflicted upon women which is both specific to their gender and/or takes place at the hands of non-State agents' (p35). Crawley uses Hathaway's division of the Refugee Convention into six essential elements (alienage, genuine risk, 'serious harm', failure of state protection, grounds for persecution, and needs and deserves protection) as the basis for her framework. In particular, she focuses the discussion on the gendered elements of 'serious harm' and failure of state protection. Specifically, Crawley makes the case that sexual violence and discrimination against women constitute 'serious harm' within the Convention definition of persecution. She provides a comprehensive gendered analysis of the failure of state protection, giving due consideration to those circumstances in which serious harm has been inflicted by authorities or other state actors; to those circumstances in which serious harm has been committed by others yet the state has been *unwilling* to provide protection or where the state has been *unable* to provide protection. She then provides a gendered analysis of actual or imputed political, and finally, a detailed analysis of particular social group. The discussions are thorough, grounded in a consideration of a variety of jurisdictions, and should prove invaluable to advocates preparing claims.

Gender and Refugees provides a more detailed account of a series of particular circumstances, including chapters on women's political participation and resistance, gendered social mores and the concept of 'honour', violence within the family, reproductive rights including forced sterilisation and abortion, sexual orientation and female genital mutilation. Each section identifies key concerns for practitioners, and particularly addresses the issues of serious harm and the failure of state protection, as well as a discussion of the ways in which these must be linked to Convention grounds. Each chapter makes use of case studies, as well as reviews of Australian, Canadian, British, US and New Zealand cases to illustrate successes and failures. Taken in total the detailed application of the gender framework to all of the enumerated areas provides a comprehensive blueprint for practitioners preparing asylum claims.

Throughout the book, Crawley leans towards a redefinition of the Convention grounds related to 'political opinion' as being the most effective means of women securing refugee status. This is interesting within an Australian context where, as with the recent *Khawar* case, 'particular social group' has been more commonly used, though followed closely by applications which rely on both political opinion and particular social group (Pickering forthcoming). Crawley argues that the danger of relying solely on particular social group is in the circularity of the argument which defines particular social group as to some extent reliant on the persecution, as was seen in Australia with *A v the Minister for Immigration* (at 388). Certainly, as *Khawar* demonstrates the practice of recognising women's experiences as a grounds for particular social group has been challenged by the Minister for Immigration, who has lodged appeals in all such cases. Yet Crawley's approach has much to offer the current Australian environment, particularly when we consider the ramifications of Migration Legislation Amendment No.6 (2001) which established limitations to the definition of serious harm, such that it is 'expected to include the elements of threat to life or liberty, or significant physical harassment or ill-treatment, or significant economic hardship that threatens a person's capacity to subsist, where the persecution feared is part of a systematic or discriminatory conduct directed against the person.' Clearly the difficulty for women is in the element of 'significant' — significant in whose eyes? In this respect Crawley's book is invaluable. Throughout *Refugees and Gender* she elaborates the ways in which a redefinition of politics, along with a recognition of discrimination and other human rights violations as serious harm can contribute to a better outcome for women refugee applicants. She provides documentary evidence of other case law, and outlines the arguments that could be used in constructing such a case.

The book concludes with a consideration of procedural and evidential issues practitioners should consider. This section covers important issues such as the decision to file a derivative status or independent claim, and the most appropriate ways in which to find out about women's experiences, including the importance of culturally sensitive communications. Crawley also provides a careful and engaged consideration of the issue of credibility in asylum applications, including issues of demeanour and the gendered considerations which must be taken into account when decision makers determine whether an applicant is credible. Finally, the appendices are a goldmine of information, including the UNHCR EXCOM Resolution on Refugee Women, Canadian, UK, Australian and European guidelines on gender issues in refugee determination, including guidelines on the meaning of particular social group and claims based on sexual orientation, and the UNHCR techniques for gender-sensitive interviewing of women refugees, and a particularly comprehensive bibliography.

Within an Australian context *Gender and Refugees* is an essential tool for those involved in this work, particularly when read in conjunction with work being developed by academics and activists in the field.¹ *Gender and Refugees* is a groundbreaking book for all those interested in ensuring that women achieve justice through the international protection system. The style and content make it equally relevant for those just entering the field, and those who have been working in the field for some time. Crawley challenges readers to reconsider the ways in which we have interpreted the Convention, taking us into new and productive sites for discussion and the development of asylum claims.

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LIST OF CASES

Minister for Immigration and Ethnic Affairs v Respondent A and Others (1994) 127 ALR 383.

Minister for Immigration and Multicultural Affairs v Khawar (2002) High Court of Australia 14 (11 April 2002).

REFERENCE

Pickering, S 'Narrating women and asylum: hostile administrative-legal justice' in Pickering, S & Lambert, C (eds) *Global Issues, Women and Justice* (forthcoming).

1 See for example work by Dr Sharon Pickering at Charles Sturt University and the work of the Women's Rights Action Network Australia, Amnesty International Australia and Feminist Lawyers. The latter project in particular has conducted research into the ways in which gender impacts on all stages of the refugee determination process, analysing publicly available decisions of the Refugee Review Tribunal, and talking with lawyers and advocates to gain a better understanding of the way in which gender roles intersect with culture in the Australian refugee determination process.