

# A BRIEF INTRODUCTION TO THE CONVERSATION

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As the global refugee crisis intensifies, developing a consistent, comprehensive, and just framework for interpreting and applying the 1951 Refugee Convention becomes increasingly imperative. In addition to the swelling number of refugees displaced by military, economic, and environmental forces, norms and understandings of what constitutes identity and “acceptable” discrimination have also evolved, further complicating the formation of a coherent asylum jurisprudence. One particularly critical, if contentious, question is how to treat individuals applying for protection under the Refugee Convention who claim they will suffer persecution on account of their sexual orientation if returned to their home country.

This issue of the *Journal of International Law and Politics* and the accompanying online symposium seek to ignite a dialogue that will answer that question. It features an article by James C. Hathaway and Jason Pobjoy, which posits an overarching theory to govern asylum claims based on sexual orientation. A panel of contributors ranging from immigration advocates to judges, and from human rights scholars to sociologists, utilize Hathaway and Pobjoy’s article as a point of departure to further explore topics intersecting with, and implications raised by, Hathaway and Pobjoy’s article. Lord Justice Richard Buxton, formerly of the Court of Appeal of England & Wales, begins with an inquiry into the legal genealogy of the groundbreaking *HJ (Iran) v. Secretary of State for the Home Department* decision handed down by the United Kingdom Supreme Court—a case that plays a central part in many of the other pieces, including that by Hathaway and Pobjoy.<sup>1</sup> New York University Professor Ryan Goodman then dissects the *HJ and HT* decision from a human rights perspective. In light of the complex and multifaceted human rights implications of *HJ*

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1. See *HJ (Iran) v Sec’y of State for the Home Dep’t (HJ and HT)*, [2010] UKSC 31, [2011] 1 A.C. 596, (appeal taken from Eng. & Wales C.A.).

*and HT* and sexual orientation asylum law generally, Melbourne Law School Professor John Tobin also contemplates the role of international human rights law in shaping the Refugee Convention's application to sexual orientation claims. Professor David John Frank, a sociologist at University of California, Irvine, surveys the global fruition of lesbian, gay, bisexual, and transgender ("LGBT") rights, and examines how that development can inform and foment the moral foundation for LGBT asylum claims. Professor Jenni Millbank, a member of the University of Technology, Sydney faculty and expert on recognition of same-sex relationships, then assesses the doctrinal promise of *HJ and HT* as well as of Hathaway and Pobjoy's proposed paradigm for evaluating asylum claims based on sexual orientation, using her own overview of judicial implementation and practice.

Next, Professor Deborah Anker, director of the Harvard Immigration and Refugee Clinic (HIRC), and Sabi Ardalán, clinical instructor at HIRC, draw on their experiences as advocates to build upon Hathaway and Pobjoy's treatment of endogenous harm caused to LGBT individuals by "covering," or masking their sexual orientation, and then to distill the contours of the "nexus" requirement under the Refugee Convention. Finally, as a professor of international law and former consultant in the public and private sectors, Professor Guglielmo Verdirame presents an interdisciplinary mapping of asylum law as a space for cultural contestation and division, which proves particularly germane to addressing the global fragmentation of (and friction generated by) sexual orientation norms.

While several of the pieces refer to Hathaway and Pobjoy's article, the ultimate objective of this issue and accompanying online symposium is to launch a conversation about the direction of asylum law as nations increasingly come to recognize the rights of LGBT individuals. While providing deep and insightful analyses, the authors raise as many questions as they do answers. Courts around the world will make the final determinations about the jurisprudence's destination; in the meantime, we hope to provide them with a thoughtful, theoretical platform from which to begin.