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Abstract

One of the newest ways of exploring international relations is through a queer lens. Known as queer international relations, this field of study attempts to break through traditional binaries often used to categorize states, people, and actors within the state system. This paper queers refugee theory; more specifically, studies queer refugees, and asks “are queer refugees discriminated against in the state system, how, and why?” To answer this question, queer refugees in Austria were interviewed as a case study to explore what international, regional, and state-level norms exist that potentially help or hinder the acceptance of queer refugees in their host countries. If there are international and regional norms for accepting queerness and accepting refugees, there also exists a norm to accept queer refugees at the state level, regardless of traditional norms in that state that may be xenophobic or homophobic. Austria was chosen as a case study as its geographic location and historic ties between east and west Europe, and because it is one of the first ‘safe’ countries for queer refugees along the Balkan Route (which many queer refugees travelling to Europe take). The analysis shows that there is an international and regional norm of accepting queerness and accepting refugees. The top-down pressure (plus grassroot movements within Austria) is slowly changing domestic norms within Austria to accept queer refugees as well.

Eine der neuesten Möglichkeiten, die internationalen Beziehungen zu erforschen, ist der Blickwinkel der Queer Studies. Dieses als „queer international relations“ bekannte Forschungsgebiet versucht, die traditionellen Binaritäten zu durchbrechen, die oft verwendet werden, um Staaten, Menschen und Akteure innerhalb des staatlichen Systems zu kategorisieren. Diese Arbeit untersucht die Flüchtlingstheorie, genauer gesagt, die Erfahrungen von queeren Flüchtlingen und fragt: „Werden queere Flüchtlinge im staatlichen System diskriminiert, wie und warum?“ Um diese Frage zu beantworten, wurden queere Flüchtlinge in Österreich als Fallstudie interviewt, um zu untersuchen, welche internationalen, regionalen und staatlichen Normen existieren, die die Akzeptanz von queeren Flüchtlingen in ihren Aufnahmeländern möglicherweise fördern oder behindern. Wenn es internationale und regionale Normen für die Akzeptanz von Queerness und die Aufnahme von Flüchtlingen gibt, dann gibt es auch eine Norm für die Aufnahme von queeren Flüchtlingen auf staatlicher Ebene, unabhängig von traditionellen Normen in diesem Staat, die möglicherweise fremdenfeindlich oder homophob sind. Österreich wurde aufgrund seiner geografischen Lage und seiner historischen Verbindungen zwischen Ost- und Westeuropa als Fallstudie ausgewählt, und weil es eines der ersten „sicheren“ Länder für queere Flüchtlinge entlang der Balkanroute ist (über

die viele queere Flüchtlinge nach Europa reisen). Die Analyse zeigt, dass es eine internationale und regionale Norm der Akzeptanz von Queerness und der Aufnahme von Flüchtlingen gibt. Der Druck von oben (und die Basisbewegungen in Österreich) verändert langsam die nationalen Normen in Österreich, um queere Flüchtlinge zu akzeptieren.

Pledge of Honesty

On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.

Charlotte Ehlers

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Introduction

Queer international relations (queer IR) can be seen as the newest and most progressive study of international relations, with roots tracing back to the second wave of feminism in the 1970s, which moved beyond women's political rights (such as voting and ownership of property) to focus on their gender and sexual liberation. Queer theory grew from this offshoot of feminism, where intellectuals began exploring and theorizing dominant scientific and cultural assumptions about how gender and sexuality relate to power dynamics within societies, and more broadly, in the state system.¹ By the 1990s, 'queer' and queer theory' divided itself into political activism and an intellectual discipline, with strong overlaps.² The term 'queer' itself was reclaimed from its derogatory connotations to a word for protest and celebration.³ Queer theory attempted to address the vagueness of the term 'queer' and how its vagueness simultaneously expands and limits the possibility of its usefulness. Its overlap - queer politics - is a raging debate both domestically and internationally because it forces people to reconsider their own identities and relationships with each other.

Queer IR is the application of queer theory on traditional international relations theories, a lens through which to view the existing power structures international relations has trapped itself in. Queer IR takes many forms. It attempts to account for the fluidity, the 'grey areas' of reality; to see what traditional theories have inadvertently erased or overshadowed; explore opposing dominant international relations norms and creating space for new ways of being and preforming to exist; and resist the urge of international relations to categorize social structures. Queer IR is paradoxical in the way it attempts to simultaneously acknowledge different binaries yet move away from them, without erasing what their existence entails. Queer IR questions why certain labels exist as they do in a certain context and certain time and the meaning and power structures behind them. Is a state its label, or is the label the state? What happens when a state moves beyond or between its labels? Queer IR offers scholars to explore these often-unclear spaces and ideas, seeing the world in more than just black and white.

¹ "Queer theory." *The SAGE Encyclopedia of LGBTQ Studies*, 2016, <https://doi.org/10.4135/9781483371283.n324>.

² Levy, Denise L., and Corey W. Johnson. "What does the Q mean? including Queer Voices in qualitative research." *Qualitative Social Work*, vol. 11, no. 2, 21 June 2011, pp. 130–140, <https://doi.org/10.1177/1473325011400485>.

³ *ibid.*

On the other hand, refugee theory is not a new field of international relations study, but is more than deserving of a new interpretation, as refugees will exist as long as states do. Refugees, according to the 1951 Refugee Convention, are people who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country.”⁴ In other words, because they did not fit with their state’s rigid definition of who and who does not belong to the state – they are unable to be part of the norm of ‘citizenship’ – they could not safely exist in their state or trust their state with their existence.

To fully implement queer IR onto refugee theory, this paper will focus on queer refugees, or refugees fleeing because of their identification to the queer community. Queer refugees are particularly vulnerable to falling through the ‘cracks’ of traditional international relations theory (for example, trans people tend to visibly define gender norms, which leaves them especially vulnerable to sexual violence), and, as a marginalized group of people among marginalized group of people, face even more threats beyond their existence as refugees during the process of escaping their home countries, applying for asylum, and living in their host countries. Though in general, there has been an increase of acceptance of queer people since the 1980s, as of 2024, 64 countries criminalize same-sex behavior, 12 of which impose the death penalty.⁵ Only 37 countries formally grant asylum to individuals due to a well-founded fear of persecution on the basis of sexual orientation or gender identity.^{6 7}

In this paper, I will attempt to explain through the lens of queer refugee theory if and why queer refugees, in comparison to non-queer refugees, face disproportionate amounts of discrimination during the asylum procedure and in the host country itself. I will argue that traditional refugee theory does not account for the extra discrimination queer refugees may face during the asylum process. Traditional refugee theory assumes neutrality in the host countries in accepting refugees; however, as traditional refugee theories only ‘accept’ certain types of refugees, queer refugees are less likely to be accepted by their host countries (government and society). States were created to hold people who are already in power to

⁴ “The 1951 Refugee Convention.” *UNHCR*, www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention. Accessed 24 Jan. 2024.

⁵ “Countries That Criminalize Homosexuality 2024.” *Statista*, 6 May 2024, www.statista.com/statistics/1227390/number-of-countries-that-criminalize-homosexuality/.

⁶ *LGBTQI+ Refugees and Asylum Seekers a Review Of ...*, williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQI-Refugee-Review-Jul-2022.pdf. Accessed 24 Jan. 2024.

⁷ *thisisloyal.com*, Loyal |. “Social Acceptance of LGBTI People in 175 Countries and Locations.” *Williams Institute*, 28 Oct. 2022, williamsinstitute.law.ucla.edu/publications/global-acceptance-index-lgbt/.

stay in power, and there is little space in refugee theory to explain the patterns of queer refugees, for people who do not fit into the ‘norm’ or certain expectations placed on refugees and their host countries. Using queer refugees as a tool to explore how queer theory can be applied to refugee theory, this paper will argue that traditional refugee theories must be viewed with new queer lenses to more accurately describe how refugees fit in the state system.

This paper will attempt to answer the questions of “where are the queer refugees within the state system, and why are they there?”, and “are queer refugees discriminated against in the state system, how, and why?” This paper is broken up into several chapters. In Chapter 1, this paper will trace the roots of queer IR to explain what, exactly, queer IR entails and how it can be applied to traditional IR theories. This paper will then differentiate it from feminist IR, which is similar but has significant differences. There will be a short discussion of how norms are built from the international sphere to the local level, which is important to discuss as it picks out how states decide which norms they want to implement and how they define these norms. Finally, this paper will talk about what is a refugee, trace the main contributions of traditional refugee theory and create a queer IR lens through which to view refugee theory.

In Chapter 2, the research question is presented, as well as the methodology used to study queer refugees in Austria. The theoretical framework is developed to propose a new theory to analyze the chance of acceptance of queer refugees into their host states using queer refugees in Austria as a case study.

This novel theory will be tested on an international scale, analyzing the acceptance of queerness and refugees through the history of the UN and select institutions and legal frameworks in Chapter 3.

In the following chapter, the same theoretical framework will be applied on a regional (European) scale, analyzing the acceptance of queerness and refugees through the history of the Council of Europe and the EU as well as select institutions and legal frameworks in both.

In Chapter 5, the theoretical framework will be employed to explore the clash between national sovereignty and international norms by uncovering the norms surrounding queers and refugees in Austria. This paper traces the history of queer law and refugee law, and its combination into queer refugee law to understand how international norms are or are not implemented at the national level, depending on the openness or resistance of the state to accept the international norms.

Lastly, this paper will conclude that there is an international, regional, and national norm to accept queerness and accept refugees, but the norms become more diluted the further they are transferred down. Queer refugees, therefore, still experience discrimination based on their sexual orientation and gender expression at the national level, as the international and regional norm of accepting queerness and refugees has not fully permeated the national level.

Austria as a host country was chosen to explore these questions. According to the Rainbow Map of 2023, which is Europe's annual benchmarking tool for queer acceptance and respect of human rights, reported Austria at 49%.⁸ Of the 9 million people in Austria, 180,000 identify as queer.⁹ Though more open than surrounding eastern European countries, Austria still did not legalize same-sex marriage until 2019.¹⁰ 40% felt discriminated against in 2022, and 11% experienced physical or sexual attacks. More than half of queers in Austria feel that the government does not respond adequately to the safety needs of queers, nor does it effectively combat discrimination.¹¹ Austria was chosen as a case study because it makes for a general representation of Europe as a whole. It straddles both eastern and western Europe, both geographically and culturally, a transition zone between the more liberalized west and more conservative east. Though Austria accepts asylum applications on the basis of queer identity, it still does not wholly accept its queer community, citizens or otherwise. Though discrimination against queers is punishable by law, instances of discrimination still occur often. According to one survey in 2020, 33% in Austria say they were harassed the year before the survey. The number of the EU-28 amounts to 38%. Additionally, 11% of queers in Austria had been attacked in the 5 years before the survey – the same percentage as in the EU-28.¹² In other words, Austria has the potential to find the shades between the binaries of acceptance and rejection of queer refugees and queer international relations.

This paper provides several innovative contributions. First, in general, queer IR opens up the possibilities of seeing the spectrum of possibilities beyond traditional state system studies to be more inclusive to just binary thoughts. Relationships are often not black and white – they are overshadowed and complicated by history, laws, politics, even personal feelings, and queer IR can account for this. Secondly, this paper suggests a novel theory to

⁸ *MAP2023*, www.ilga-europe.org/files/uploads/2023/05/rainbow-map-2023.pdf. Accessed 24 Jan. 2024.

⁹ "Diskriminierung in Zahlen - Schwule, Lesben Und Transgender-Personen." *Zur Startseite Der Stadt Wien*, 4 Mar. 2014, www.wien.gv.at/menschen/queer/diskriminierung/zahlen.html.

¹⁰ "Same-Sex Marriage around the World." *Pew Research Center's Religion & Public Life Project*, 9 June 2023, www.pewforum.org/fact-sheet/gay-marriage-around-the-world/.

¹¹ "LGBTI Survey Data Explorer." *European Union Agency for Fundamental Rights*, 29 June 2022, fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer.

¹² *LGBTI Survey Country Data Austria*, fra.europa.eu/sites/default/files/fra_uploads/lgbti-survey-country-data_austria.pdf. Accessed 25 Jan. 2024.

understand the way norms are formed from both the bottom-up and top-down actors and institutions. Finally, queer refugees are an incredibly understudied group of state actors that need to have their stories amplified. Their unique position of being minorities of minorities helps illustrate the faults in the current state system, and how it lacks the ability to protect their existence. If the international community and individual states learn how to manage these gaps, refugees and the state system as a whole will benefit to understanding how to manage refugees.

Chapter 1: Literature Review

To understand what queer refugee theory is, we must first explore what queer theory is, and how being queer creates a lens through which to view international relations theories.

What is “queer” and queer theory?

At the heart of understanding queer theory is the discussion surrounding the question, “what does it mean to be queer?” The earliest known use of the adjective – a label to describe someone or something - *queer* is in the early 1500s, and was first found in use by the Oxford English Dictionary in William Dunbar’s work in 1513.¹³ There are hints the word is of German origin from the word *quer*, meaning “transverse, oblique, crosswise, at right angles, obstructive, (of things) going wrong (now rare), (of a person) peculiar (now obsolete in this sense), (of a glance) directed sideways, especially in a surreptitious or hostile manner (now rare), (of opinion and behaviour) at odds with others.”¹⁴ Its frequency peaked in the 19th century, where the dictionary defined queer as “strange, odd, peculiar, eccentric; also: of questionable character; suspicious, dubious,” a rather negative term but emphasizing that queer is not of the norm and is not to be desired.¹⁵ ¹⁶ In 1914, the OED stated simply that queer meant “(slang, especially of men) homosexual. Also, of things: pertaining to homosexuals or homosexuality.”¹⁷ This definition is problematic in that it does not include the various other forms of sexuality, such as bisexual, and of gender identity such as trans or intersex. The OED still lists these definitions on its website, stating only that the 1914 definition was used “Frequently *derogatory* and *offensive*.”¹⁸ Though “queer” in recent times has been reclaimed to express non-heterosexual, cisgender people, queer is still seen as negatively going against ‘the norms.’

As queer and queerness goes against norms of society, and because it goes against the norms, queer theory, then, is a field created to explore what these norms are and how and why they exist. It is a way to challenge these existing norms, identities, sex, sexuality, and gender, and how they relate to politics and society. It challenges heteronormativity including the

¹³ “Queer, *Adj.* (1).” *Oxford English Dictionary*, Oxford UP, December 2023, <https://doi.org/10.1093/OED/9610104456>.

¹⁴ *ibid.*

¹⁵ Whittington, Karl. “QUEER.” *Studies in Iconography*, vol. 33, 2012, pp. 157–68. *JSTOR*, <http://www.jstor.org/stable/23924280>. Accessed 25 Jan. 2024.

¹⁶ *Oxford English Dictionary*, www.oed.com/dictionary/queer_adj1. Accessed 3 Mar. 2024.

¹⁷ Whittington, Karl. “QUEER.” *Studies in Iconography*, vol. 33, 2012, pp. 157–68. *JSTOR*, <http://www.jstor.org/stable/23924280>. Accessed 25 Jan. 2024.

¹⁸ “Queer, *Adj.* (1).” *Oxford English Dictionary*, Oxford UP, December 2023, <https://doi.org/10.1093/OED/9610104456>.

institutionalized hierarchy that goes into preferring one sexual orientation and gender identity over another. It attempts to uncover, through historical context, where notions of binaries existed and how they suppressed certain groups of people and aspects of states.¹⁹ Valocchi defines queer as a way to disrupt traditional and binary notions of identity, challenging the assumption that identities are fixed and that individuals and states are one-dimensional, stable, and nonfluid actors.²⁰ Much like the word itself, queer theory allows for different viewpoints and perspectives to be used when exploring topics taken for granted or questioned. Queer theory, in sum, is a tool to examine relationships of power and hierarchy, and power itself through the lens of gender and sexuality, as well as other aspects of traditionally marginalized identities that interact with one another in a process called ‘intersectionality.’²¹

Some scholars point out the dual nature of queer theory as an activist and intellectual pursuit.²² The term queer has been reclaimed by many to be a term to unite people who do not conform to societal norms. This paper will consider that area of study as “LGBT studies.” This paper will veer away from LGBT studies that focus more on identity politics and promoting policies that support queer-identifying youth.²³ In contrast, queer theory attempts to unify scholars who attempt to identify and describe existing normative and dominant thought processes and assumptions, and question their legitimacy.²⁴ Queer theory here is an attempt to acknowledge existing binaries and what they represent, then divert away from categorizing people into binary categories at all, instead only using them as reference points when exploring the relationship between them.²⁵

One author described queer as a verb: ‘queering’, a process meant to deconstruct what is assumed to be stable features of a state or its identity, opening up the possibility that these identities and existence are simply constructs.²⁶ Most importantly, as the name implies, these identities and existence were constructed to create hierarchical power structures that benefit

¹⁹ “Queer theory.” *The SAGE Encyclopedia of LGBTQ Studies*, 2016, <https://doi.org/10.4135/9781483371283.n324>.

²⁰ Levy, Denise L., and Corey W. Johnson. “What does the Q mean? including Queer Voices in qualitative research.” *Qualitative Social Work*, vol. 11, no. 2, 21 June 2011, pp. 130–140, <https://doi.org/10.1177/1473325011400485>.

²¹ “Queer theory.” *The SAGE Encyclopedia of LGBTQ Studies*, 2016, <https://doi.org/10.4135/9781483371283.n324>.

²² *ibid.*

²³ *ibid.*

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ Levy, Denise L., and Corey W. Johnson. “What does the Q mean? including Queer Voices in qualitative research.” *Qualitative Social Work*, vol. 11, no. 2, 21 June 2011, pp. 130–140, <https://doi.org/10.1177/1473325011400485>.

‘the norms’ or the majority groups or identities. These identities and existences therefore can also be reconstructed. Robert Mills suggested to “read against the grain of conventional critical practice in order to expose the regulatory hierarchies that define and qualify the heterosexual imperative as normal.”²⁷

Queer theory moves beyond exploring binaries and attempts to destabilize them altogether.²⁸ Author Kathy Rudy identified four unique features of queer theory. The first is that queer theory assumes relationships, events, and attitudes always require a certain amount of individual interpretation, meaning that what actually happens is not self-evident or fixed. In this sense queer theory is committed to challenging ‘normal’ perceptions of events. Secondly, queer theory presumes sexual and gender identities are fixed in their historical contexts, which change in meaning and form over time. The Greeks, Rudy pointed out, saw sex as not between a male/female binary but between an active/passive binary – one person penetrated another’s sex organs with their own sex organs. This act cemented a political order. She also asserted that gender and biological sex are socially constructed and exist because of socially-constructed fantasies about what ‘men’ and ‘women’ should be. The idea that there are only two sexes – male and female – is rejected by queer theory, which instead suggests it is possible to be both or something in between. It also questions society’s obsession with clinging onto these labels and roles they play. As discussed before, queer theory is also attached to political organizing. As Judith Butler worded it, “the personal is the political.”²⁹ Finally, queer theory promotes sex positivity, or the exploration of sexual behavior. Queer theory questions why only certain types of sexual behaviors given the consent of both parties are acceptable.³⁰ In sum, queer theory is exploring how the performances of gender and sexuality – one’s existence - relates to one’s position in society, what the ‘normal’ performances are, and how and why people choose (or are forced) how to perform.

²⁷ “Queer theory.” *The SAGE Encyclopedia of LGBTQ Studies*, 2016, <https://doi.org/10.4135/9781483371283.n324>.

²⁸ Rudy, Kathy. “Queer theory and feminism.” *Women’s Studies*, vol. 29, no. 2, Jan. 2000, pp. 195–216, <https://doi.org/10.1080/00497878.2000.9979308>.

²⁹ Lee, Theresa Man. “Rethinking the personal and the political: Feminist activism and civic engagement.” *Hypatia*, vol. 22, no. 4, 2007, pp. 163–179, *JSTOR*, <http://www.jstor.org/stable/4640110>. Accessed 25 Jan. 2024

³⁰ Rudy, Kathy. “Queer theory and feminism.” *Women’s Studies*, vol. 29, no. 2, Jan. 2000, pp. 195–216, <https://doi.org/10.1080/00497878.2000.9979308>.

Queer International Relations (Queer IR)

Given our new understanding of queer theory, how is queer theory implemented in international relations? There are several suggestions.

One way is to use ‘queer’ as an analytical category.³¹ Queer IR explores how certain norms and subjects are produced and reproduced within and between states, and how policies are built with an ‘either-or’ binary mindset.³² For example, queer IR scholars ask questions such as “how do cultural ideas about gender and sexuality shape foreign policy and military operations?” and “how do normative understandings of gender and sexuality intersect with understandings of racial difference to produce internationally dangerous figures—like ‘the terrorist’ and/or ‘the insurgent’?” Topics for study include the (uneven) diffusion of human rights, foreign policy, geopolitics, humanitarian aid, migration, (in)security, war and peace, capitalism, and neoliberal development policies.³³ Cynthia Weber, leading Queer IR theorist, calls this the ‘queer logistics of the and/or.’

Another way queer theory intersects with IR is through the idea that states – and the international community – are constructed by an international concept of gender and sexuality.³⁴ Queer IR attempts to answer who exactly the homosexual is, and even more fundamentally, who is considered human and thus, who is allowed to construct the state.³⁵ Butler argues that gender and sexuality are simply performances, which are repeated (and reinforced) through praise or punishment of society.³⁶ Betts and Loescher noted that refugees were often used as symbols to showcase the weakness of other states – their failure to keep their nation together and support fundamental rights. This further divides weak from strong states – strong states have the ability to care for their people. On the other hand, strong states would try to get rid of bodies that do not belong in the nation – those that do not perform their expected roles in their states.³⁷ What these expectations are and who it gives power to is another question queer IR asks.

Queer IR calls into question the ability of traditional views of international relations to reflect the intersectional nature of states and actors. Wilcox exemplifies international

³¹ Richter-Montpetit, Melanie. “Everything you always wanted to know about sex (in ir) but were afraid to ask: The ‘queer turn’ in international relations.” *Millennium: Journal of International Studies*, vol. 46, no. 2, 9 Oct. 2017, pp. 220–240, <https://doi.org/10.1177/0305829817733131>.

³² *ibid.*

³³ *ibid.*

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ Betts, Alexander, and Gil Loescher. *Refugees in International Relations*. Oxford University Press, 2013.

relations through the bodies of trans people as proof of challenging preconceived notions of norms regarding international security. That there are fixed ideas of ‘success’ and ‘failure’ in the first place are problematic in that they are not only binary, but latch on the idea that what is not successful is automatically a failure. The author takes airport security as an example – should a man, woman, or someone in-between, do the pat-down on a trans-person? Certain performances of gender can ultimately subvert the traditional ideas of security.³⁸ In another example of security, Leigh explores how queer bodies are used in the military, which traditionally is tied with ideas of state sovereignty, hard power, and masculinity.³⁹ Though this image has changed somewhat thanks to efforts of pinkwashing, Western soldiers are pictured to be hypermasculinized men, ready to defend and fight for the nation from any external threats under the guise of protecting the state.⁴⁰ Leigh paints a picture of how bodies, which make up the state, are rejected or accepted based on their perceived adherence to a particular sex.

In another example, a rising number of ‘western, liberalized, democratized’ states ‘allow’ more rights to queer people to promote their image of being progressive societies (only to later take away these rights during times of crisis). Russia, for example, recently re-criminalized homosexual acts, casting the state into an even more unfavorable light in the eyes of western states. What is perceived to be human rights is largely defined by the majority westernized international institutions such as the European Union and United Nations. By promoting queer rights as human rights, these institutions try to showcase their validity of supporting human rights. This is known as pinkwashing.⁴¹

At the same time, queer IR is not without its challenges. When attempting to analyze ‘queer’ as a variable, the non-definition, or at the very least, ambiguous definition of queer creates unique challenges. As the definition and self-identification of queer and queer subjects are fluid, studies only are valid for that particular moment of time.⁴² Similarly, the subjects of studies (especially human subjects) may re-define themselves at any time or feel uncomfortable expressing their identities to researchers.⁴³ In the case of queer refugees, for

³⁸ Betts, Alexander, and Gil Loescher. *Refugees in International Relations*. Oxford University Press, 2013.

³⁹ Leigh, Darcy. “Queer feminist international relations: uneasy alliances, productive tensions.” *Alternatif Politika*, <https://doi.org/10779/uos.23449577.v1>.

⁴⁰ *ibid.*

⁴¹ Blackmer. “Pinkwashing.” *Israel Studies*, vol. 24, no. 2, 2019, p. 171, <https://doi.org/10.2979/israelstudies.24.2.14>.

⁴² Levy, Denise L., and Corey W. Johnson. “What does the Q mean? including Queer Voices in qualitative research.” *Qualitative Social Work*, vol. 11, no. 2, 21 June 2011, pp. 130–140, <https://doi.org/10.1177/1473325011400485>.

⁴³ *ibid.*

example, some queer refugees do not state their queer identity as their primary reason for seeking asylum. This limits the accuracy of studies dealing with queer identities and queer IR.

Queer IR versus Feminist IR

As previously mentioned, queer IR was formed from feminist IR, which shifted IR away from “the Woman question” – the role of women in society, economics, politics, the labor market, and sex - to the “queer questions.”⁴⁴ However, they are not one and the same, and can come in conflict with one another. To further clarify and distinguish what queer IR is, this paper will now explore several important distinctions to be made between the two fields of study, and some “dangers” associated with queer IR.

Both feminist IR and queer IR explore the power dynamics between the binaries of ‘male’ and ‘female’ and how these power dynamics play into international relations. However, feminists tend to focus on women and men whereas queer IR attempts to analyze all genders and include sexual orientation. According to Darcy Leigh, queer IR theorist, queer IR explores beyond the ontological and epistemological limits of traditional feminist IR. While Enloe, prominent feminist IR scholar, once asked “where are the women?” queer IR asks, “where are the queers?” and “who are the queers?”.⁴⁵ While feminist scholars such as Enloe explore power dynamics between the binary genders in various levels of study – from individual homes to foreign policy – these studies have revolved around their relationship with men. Queer IR makes visible not only the binary of male and female, but of all genders and sexualities in between. Both fields of study include other facets of identity not only members of the LGBTQ+ community. Leigh points out, for example, that the UN Women, Peace, and Security Agenda leaves out all individuals who do not conform to heterosexual or cisgender women.⁴⁶

One author warns against the sole use of queer IR, arguing that by deconstructing these binaries, queer IR undervalues the historical work women have put into society. The author adds that the process of deconstruction inadvertently dishonors the role women have played, and goes so far as to say by erasing the concept of “woman,” queer IR inadvertently

⁴⁴ Leigh, Darcy. “Queer feminist international relations: uneasy alliances, productive tensions.” *Alternatif Politika*, <https://doi.org/10779/uos.23449577.v1>.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

shifts these subservient role of women to other minorities.⁴⁷ However, queer IR does the exact opposite – to first break down these binaries, queer IR first identifies the existing power structures and questions why they exist in that form. In that sense, there is no devaluation, but simply an evaluation. The author later seems to agree – they call for a “feminist version of queer theory,” which does not only deconstruct norms but pay attention to the role of the category of woman, and rise above such categorization.⁴⁸ Leigh has a similar vision for “queer feminist IR” in that it should “centre women and femmes as well as sexuality and gender variance.”⁴⁹

Another drawback Leigh warns against is using queer IR as the perfect all-inclusive, consider-everything, make-everything-visible lens. Feminist IR points out that the most acceptable form of being queer is being a heterosexual, white male, and that queer IR itself rejects women.⁵⁰ Bisexual or lesbian asylum seekers who married men (out of security, safety, or desire for children), Leigh illustrates, have a lower chance of finding asylum in their (most likely Western) host country.⁵¹

In other words, while feminist IR and queer IR are similar as they share the same roots, queer IR prioritizes breaking down the binaries not only between men and women but all genders and sexual orientations in between. By examining who and what is queer, queer IR can fill in gaps that feminist IR does not focus on by identifying the intersectionality between different identities, such as not only between the binaries of male and female, but between heterosexual/homosexual, normal/perverse, and transgender/cisgender.⁵² Queer IR sheds light on international policies, actors, agents, and subjects as it analyzes seemingly mutually exclusive opposed positions simultaneously. Cynthia Weber calls this the “and/or” analysis.⁵³

Queer IR as well moves beyond just examining what the norms are, but attempts to predict what happens when these norms are broken. Queer IR would suggest that there is a new way of operating in the world, where there are no norms. This does not mean the state system will collapse, but will find a place of every type of existence, and protect the rights of

⁴⁷ Rudy, Kathy. “Queer theory and feminism.” *Women’s Studies*, vol. 29, no. 2, Jan. 2000, pp. 195–216, <https://doi.org/10.1080/00497878.2000.9979308>.

⁴⁸ *ibid.*

⁴⁹ Leigh, Darcy. “Queer feminist international relations: uneasy alliances, productive tensions.” *Alternatif Politika*, <https://doi.org/10.779/uos.23449577.v1>.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ Weber, Cynthia. *Queer International Relations*, 1 Apr. 2016, <https://doi.org/10.1093/acprof:oso/9780199795857.001.0001>.

all humans as humans. After all, norms are created by and for people. Who these people are and what benefits they get is what queer IR attempts to find out.

International Norms and Norm-building

As a final important concept before applying queer IR to refugee theory, we now turn our attention to the question ‘what are norms? How do they form and how are they re-formed?’. Norms are a set of behaviors or standards deemed acceptable or typical by the majority of a group. They are learned standards and are highly influential into dictating how not only individuals, but how states behave or react. Variation from the norm often results in punishment.⁵⁴ In queer IR, punishment may come from domestic sources (such as laws criminalizing homosexuality) or external (such as the international shunning of Russia by the majority of the international community for invading Ukraine, as the norm of invading neighboring states/nations has become more or less obsolete). On the other hand, upholding norms are also rewarded.⁵⁵ Norms are fixed until the benefits of creating and maintaining new norms exceed the costs.⁵⁶ Benefits and costs are defined by the norm-creators and people carrying out the norms.

There is also a life cycle of a norm, beginning with an actor or group of actors that believe something must change. They then use existing organizations or norms to build their case, falling back on international norms to legitimize the norm they attempt to implement.⁵⁷ This insinuates that there already has to be a higher authority that accepts the norm for it to be implemented on the lower level. However, change often begins from the grassroots level, but until it is legitimized by the national authority, change is often slow.

A tipping point leads then to the next stage, called the ‘norm cascade.’ States sometimes adopt norms because they see other states doing so, even if there is no domestic pressure to do so. States accept the norm out of the desire to increase their legitimacy on the world stage, their international prestige, or their need to conform.⁵⁸ If the state at first is

⁵⁴ Basu, Manali. “Angles of Approaching Gender Equality: Top-Down vs. Bottom-Up” .” City University of New York, academicworks.cuny.edu/cgi/viewcontent.cgi?article=1347&context=cc_etds_theses.

⁵⁵ *Defining Social Norms and Related Concepts - UNICEF*, www.unicef.org/media/111061/file/Social-norms-definitions-2021.pdf. Accessed 16 Dec. 2023.

⁵⁶ Basu, Manali. “Angles of Approaching Gender Equality: Top-Down vs. Bottom-Up” .” City University of New York, academicworks.cuny.edu/cgi/viewcontent.cgi?article=1347&context=cc_etds_theses.

⁵⁷ *ibid.*

⁵⁸ Hoffman, Matthew. *Entrepreneurs and Norm Dynamics: An Agent-Based Model of the Norm Life Cycle*, <https://doi.org/https://www.polisci.upenn.edu/ps->

against change, it follows that the only way the state can save face and have the space to change its practice is if a higher authority, in this case, the international community, changes its mind first. Like the individual or group that wants to change a domestic norm and is unable to do so without the legitimacy of the higher authority, the state itself cannot allow itself to change without a higher authority (in this case, other states as a larger group) influencing it to do so. It changes its norms out of fear of naming and shaming, a common deterrent on the international level.⁵⁹

The last stage is norm internalization, when the norm becomes integrated into the domestic level. The new norm has become the normal norm, and no longer is seen as a variation of the norm.⁶⁰ Through the life cycle of a norm, the norm gains legitimacy as it passes from the top to the lower levels of the state. Gender equality as a norm, for example, was established on an international level by several treaties and covenants. As they are signed by member states, the codification and acceptance of this norm constitutes as a way to cooperate with other states, as it provides a common practice and value among states that other states can relate to and pull from.⁶¹

Another interpretation of the life cycle of a norm is the spiral model of human rights change, which identifies five phases instead of three: repression of the grassroots changers by the state, denial of the grassroots changers by the state, tactical concessions by the state for the grassroots changers in hopes of pacifying them, prescriptive status, and rule-consistent behavior.⁶² Similarly to the three-step phase, it identifies how a norm can be assimilated from the bottom-up. However, it focuses on the perspective of the authority onto the new norm rather than the local group attempting to create the new norm. This shifts the perspective from the forcer to the enforced, maintaining there is always a struggle or clash between the new and old norms at both the lower and national level.

How well norms take hold in a society also is a factor to consider. Norms can be adapted from the bottom-up at the national level, but the state may adopt the norm without

i/Pamla/Hoffmann_norms.doc#:~:text=The%20norm%20life%20cycle%20is,1998%2C%20896%2D901).

⁵⁹ Hoffman, Matthew. *Entrepreneurs and Norm Dynamics: An Agent-Based Model of the Norm Life Cycle*, https://doi.org/https://www.polisci.upenn.edu/ps-i/Pamla/Hoffmann_norms.doc#:~:text=The%20norm%20life%20cycle%20is,1998%2C%20896%2D901).

⁶⁰ Basu, Manali. "Angles of Approaching Gender Equality: Top-Down vs. Bottom-Up" ." City University of New York, academicworks.cuny.edu/cgi/viewcontent.cgi?article=1347&context=cc_etds_theses.

⁶¹ *ibid.*

⁶² *ibid.*

actually supporting it. However, it does teach the state what the norm is, and illustrate that it can be genuinely adopted, and is desired to be adopted. This provides a path for the state to avoiding the naming and shaming of the international community. It is important to note that these norms insinuate that it takes a significant amount of people, organized in a group, to change norms.⁶³ Norms can also be generated from non-governmental actors, though they are often limited by legitimacy, funding, coercion, resources, and organizational arrangements.⁶⁴ Habitualization is the last stage of integration, which is often met with cultural and traditional resistance.⁶⁵ This insinuates that even a bottom-up approach finds difficulties among its own population local level.

What is a Refugee?

To first understand what refugee theory is, I will briefly discuss what a refugee is. There is much debate surrounding the exact conditions one must fulfill to be considered a refugee. The discourse surrounding refugees gained seriousness starting in 1939. A pioneer in refugee studies, J.H. Simpson describes the ‘essential qualities’ of a refugee to be someone who “left his country of residence, of which he may or may not be a national, as a result of political events in that country which render his continued residence impossible or intolerable, and has taken refuge in another country, or if already absent from his home, is unwilling or unable to return, without danger to life or liberty, or as a direct consequence of the political conditions existing there.”⁶⁶ According to Simpson, therefore, a refugee is someone fleeing only because of political events within the country of residence. It is interesting to note that the person does not have to be a national of the state they are residing in to be a refugee, which already pushes the boundaries of citizenship and which state is responsible for the existence of people within its borders. He rejects all other types of refugees, such as economic or social. Additionally, his use of male pronouns can lead to the assumption that refugees are usually seen as males, which rejects the consideration and erases the specific needs of non-male refugees.

⁶³ Germar, M., & Mojzisch, A. (2023). Broadening the Scope and Dropping Dead Weight: Toward a Better Understanding of the Full Life Cycle of Norms. *Perspectives on Psychological Science*, 0(0). <https://doi.org/10.1177/17456916231187403>

⁶⁴ Basu, Manali. “Angles of Approaching Gender Equality: Top-Down vs. Bottom-Up” .” City University of New York, academicworks.cuny.edu/cgi/viewcontent.cgi?article=1347&context=cc_etds_theses.

⁶⁵ *ibid.*

⁶⁶ Black, Richard. “Fifty Years of Refugee Studies: From Theory to Policy.” *The International Migration Review*, vol. 35, no. 1, 2001, pp. 57–78. *JSTOR*, <http://www.jstor.org/stable/2676051>. Accessed 3 Mar. 2024.

The 1951 UN Refugee Convention is perhaps the most well-known and most conflicting. According to the Convention, a refugee is someone who “is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”⁶⁷ However, the degree to which a “well-founded fear” is necessary remains debated, as well as the use of “persecution” to decide which refugee deserves more protection. In other words, how is one able to judge if the refugee fleeing from civil war is more ‘prosecuted’ than the refugee fleeing because of their queerness, a political prosecution?⁶⁸ It is, however, important to note that this definition includes queerness as ‘membership to a particular social group.’

Zetter points out that the term ‘refugee’ has become popularized because of its connotations to victimhood, reliance on humanitarian aid, and helplessness.⁶⁹ Therefore, they have justification for special policies regarding how states should handle them. This supports the idea that the definition of refugees is politicized. States frame refugees in certain ways that express their attitude towards refugees. While terms such as asylum seeker, humanitarian refugee, stateless persons have political definitions, other terms such as exiles, expellees, transferees, and illegal immigrants reflect the discourse and negative feelings host countries can have towards refugees.⁷⁰ Academic literature surrounding this discourse circles less around creating new theories for refugees but in documenting empirical examples of displacement, which are used to create specific policies for specific types of refugees. It has moved away from simply looking at refugees as types of refugees or situation but as contexts with holistic views on socio-economic and psychological factors.⁷¹

Betts and Loescher (2011) define refugees as simply “people who cross international borders in order to flee human rights abuses and conflict.”⁷² They understand refugees not only as people but as symbols of the failed state, and more broadly of the failed state system, where their own state is unable or unwilling to ensure their safety and fundamental rights, and the state system fails to guarantee international order and justice. Therefore, they argue,

⁶⁷ *The Refugee Convention, 1951*, www.unhcr.org/sites/default/files/legacy-pdf/4ca34be29.pdf. Accessed 3 Mar. 2024.

⁶⁸ Gibney, Matthew J. “The Ethics of Refugees.” *Philosophy Compass*, vol. 13, no. 10, 10 Aug. 2018, <https://doi.org/10.1111/phc3.12521>.

⁶⁹ Black, Richard. “Fifty Years of Refugee Studies: From Theory to Policy.” *The International Migration Review*, vol. 35, no. 1, 2001, pp. 57–78. *JSTOR*, <http://www.jstor.org/stable/2676051>. Accessed 3 Mar. 2024.

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² Betts, Alexander, and Gil Loescher. *Refugees in International Relations*. Oxford University Press, 2013.

refugees have the right to seek another state that will secure their rights and possibly return to their country of origin.⁷³ They point out that the common understanding of refugee has changed over the centuries, from the Peace of Westphalia's (1648) broad idea of refugees seeking sanctuary from political or religious prosecution to the 1951 UN Refugee Convention definition of fleeing from general prosecution. Since its founding, the United Nations High Commissioner for Refugees (UNHCR)'s mandate has expanded to include migrants fleeing from environmental catastrophes as well as state fragility.⁷⁴ Refugees, therefore, are not just a movement of people fleeing from persecution by their country of origin, seeking stability, but people seeking out protection for their fundamental rights laid out in the UN Universal Declaration of Human Rights, whether permanently or temporarily.

Traditional Refugee Theory

Refugee theory has been an understudied part of international relations for a variety of reasons. First, refugees do not fit within one simple category, depending on the lens through which one views them. Most theories rely on the assumption that states are responsible for caring for the well-being of its citizens, who make up the nation. Realism, for example, relies on the assumption that states are rigid, fixed agents that aim for survival. Realists may see citizens that do not comply with their established norms as hindrances to their survival, and force them to become refugees. Liberalists, on the other hand, may view refugees as a failure of the state system, where even leading institutions such as the UN fail to sufficiently manage their resettlement. The failure of the state to ensure the security of its people is hard for the state to admit or truly make sense of. In this section, I will cover the history and main ideas of traditional refugee theory.

Betts and Loescher trace the origins of the modern idea of refugees from the Treaty of Westphalia in 1648, as it is recognized as the emergence of the modern state system. The notion of *ius migrandi* was also established, giving state's citizens the right to become a member of another state.⁷⁵ During the 1700s and 1800s, refugees were a common by-product of state-building, such as refugees produced during the French Revolution. One of the first official forms of 'border control' between states was through the creation of the Alien Acts, which gave states the power to decide who may cross their borders.⁷⁶ This also solidified the

⁷³ Betts, Alexander, and Gil Loescher. *Refugees in International Relations*. Oxford University Press, 2013.

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *ibid.*

‘us’ vs. ‘them’ mentality of being a part of a nation. A nation could decide who its members were or not.

Richard Black traces the progression of refugee studies since the early 1900s. He cites two difficulties faced when creating his anthology, namely that there have been little mainstream academic schools of study for refugees, which began post 1951 Refugee Convention, and the difficulty of defining who, exactly, is a refugee, which makes it difficult to define what refugee studies are.⁷⁷ Additionally, refugee studies have had, and continue to have, close ties with refugee policy, meaning that refugee studies are useful most often only for particular geographies to particular times and contexts, rather than give general theories to predict the movements of refugees.⁷⁸ In other words, refugee studies have historically been driven out of necessity rather than desire. Betts and Loescher also mention that the study of refugees and forced migration has yet to become mainstream IR, as most research is based on empirical data rather than theories.⁷⁹

Given these difficulties, Black identifies one of the earliest forms of refugee studies in 1939 through a special issue of the *Annals of the American Academy of Political and Social Science on Refugees*, where almost half of the articles offered explanations and solutions for the “refugee problem.”⁸⁰ This indicated that refugees were historically considered issues rather than victims of state authorities they could not control. These articles focused on the perspectives of the receiving country rather than the refugees themselves. Another 1939 annotated bibliography similarly focused on “refugee problems” with focus on the capacity of the host country, the League of Nations, and private entities to deal with the refugees.

It was not until the first international organization to study refugees formed in Liechtenstein in the 1950s – the Association for the Study of the World Refugee Problem – under Prince Franz Josef II von und zu Liechtenstein, that a concentrated effort to coordinate refugee and migration studies and consider what to do with refugees resulting from WWII was given.⁸¹ This started a shift in the discourse away from dealing with refugees simply as a problem to humanizing them, attempting to understand refugees as people unwillingly on the move, and what their specific needs were. At the same time, Betts and Loescher assert that

⁷⁷ Black, Richard. “Fifty Years of Refugee Studies: From Theory to Policy.” *The International Migration Review*, vol. 35, no. 1, 2001, pp. 57–78. *JSTOR*, <http://www.jstor.org/stable/2676051>. Accessed 3 Mar. 2024.

⁷⁸ *ibid.*

⁷⁹ Betts, Alexander, and Gil Loescher. *Refugees in International Relations*. Oxford University Press, 2013.

⁸⁰ Black, Richard. “Fifty Years of Refugee Studies: From Theory to Policy.” *The International Migration Review*, vol. 35, no. 1, 2001, pp. 57–78. *JSTOR*, <http://www.jstor.org/stable/2676051>. Accessed 3 Mar. 2024.

⁸¹ “History.” *AWR*, www.awr-int.de/en/history/. Accessed 3 Mar. 2024.

nation-states needed a framework to restore international order once refugees entered the state system, especially in the post-WWII order to ensure stability and security.⁸² It is unclear if the authors mean stability and security for the refugees, host states, or states of origin.

It may come to no surprise that there was a marked increase in refugee studies following the 1950 establishment of the UN High Commissioner for Refugees, the 1951 Refugee Convention and 1967 Protocol – a global “refugee regime” was born in the hopes of solving a global issue collectively.⁸³ At the same time, refugees became part of the political spiel in the Cold-War Era. The US, for example, offered refugee protection from people fleeing from communist countries. These refugees became symbolic of communist states’ failure to take care of its citizens. The post-Cold War era then welcomed the idea of foreign state intervention into ‘failed’ states to prevent refugees from emerging.⁸⁴ A 1970s issue of the *International Migration Review*, for example, examined the psychological issues of refugee integration and adaptation into a host country.⁸⁵

The early 1990s proved to be another boon for refugee studies in response to crises in the 1980s, such as the Rwanda genocide which produced more than 2 million refugees, or the 4 million refugees resulting from the Yugoslav Wars.^{86 87} The intersectionality of the refugee experience was explored. Academic articles on specific topics such as mental health or on new regions such as the UK or Southeast Asia, spawned during this time, and many journals called for multidisciplinary, comprehensive studies on the plight of refugees themselves rather than on just the host countries.

Another normative shift occurred post 9/11, where the discourse surrounding refugees changed from one of acceptance and sympathy to refugees seen as threats to the security of states.⁸⁸

Another integral study of refugees comes from Egon Kunz, who created one of the first widely-recognized refugee theories.⁸⁹ He categorized refugees by their home-related

⁸² Betts, Alexander, and Gil Loescher. *Refugees in International Relations*. Oxford University Press, 2013.

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ Black, Richard. “Fifty Years of Refugee Studies: From Theory to Policy.” *The International Migration Review*, vol. 35, no. 1, 2001, pp. 57–78. *JSTOR*, <http://www.jstor.org/stable/2676051>. Accessed 3 Mar. 2024.

⁸⁶ The Refugee Convention, 1951, www.unhcr.org/sites/default/files/legacy-pdf/4ca34be29.pdf. Accessed 3 Mar. 2024.

⁸⁷ “Where We Work.” *UNHCR South Eastern Europe*, www.unhcr.org/see/where-we-work. Accessed 3 Mar. 2024.

⁸⁸ Betts, Alexander, and Gil Loescher. *Refugees in International Relations*. Oxford University Press, 2013.

⁸⁹ Kunz, Egon F. “Exile and Resettlement: Refugee Theory.” *The International Migration Review*, vol. 15, no. 1/2, 1981, pp. 42–51. *JSTOR*, <https://doi.org/10.2307/2545323>. Accessed 3 Mar. 2024.

factors, displacement-related factors, and host country related factors to create a series of predictive hypotheses on the outcomes of the refugees. Under home-related factors, he discussed different types of refugees (marginally identified, events alienated, or self-alienated), attitudes towards displacement (reactive fate groups or purpose groups) and nationalist orientation abroad (ranging from founders of idealist colonies to restoration activists). Displacement-related factors transitioned from push to permitting refugees to stay. Finally, host-related factors included the cultural compatibility (measuring how close refugees were to the host countries in terms of, for example, language, traditions, politics, and food), population policies (augmentative or self-sufficient) and the social receptiveness of the citizens (ranging from monistic to pluralistic or tolerant.) He predicted, for example, that anticipatory refugees come from a higher class than other types of refugees, and that the most successfully integrated refugee is an events-alienated refugee.⁹⁰

However, these ‘traditional’ refugee theories leave much out of the picture – though Kunz has a few labels for refugees, he largely ignores non-heterosexual male refugees, and does not touch upon the power dynamics between sending and receiving states. Additionally, queer refugees do not fit into any of his categories of refugees – they are not majority-identified refugees in that their existence of being queer within their nations is shared by the majority of their compatriots. They may not have strong ties to their nation. They are not events-alienated refugees as their existence was not an event that happened upon them, and they are not self-alienated in that they may still want to identify with their nation, even if their nation does not want to identify with them. Kunz sees these types of refugees almost as voluntary refugees. This does not always match with the reality of queer refugees. While Betts and Loescher offer a more nuanced view of refugees, even touching on structural barriers refugees face, they too lack a defined approach to the discourse surrounding refugees, focusing less on how refugees contribute to breaking down the binaries between the state system, and the insecurity this causes states to face. Additionally, while they acknowledge other types of refugees such as environmental refugees, queer refugees are not touched upon as a type of social group. Therefore, we must understand what binaries are in place. To do so, we will look at poststructuralism IR refugee theory.

⁹⁰ Kunz, Egon F. “Exile and Resettlement: Refugee Theory.” *The International Migration Review*, vol. 15, no. 1/2, 1981, pp. 42–51. *JSTOR*, <https://doi.org/10.2307/2545323>. Accessed 3 Mar. 2024.

Poststructuralism is defined as dismantling what can be considered the ‘truth’ of knowledge, questioning where norms come from, which narratives dominate the international sphere, and why they dominate.⁹¹ These beliefs are then (re)produced (in comparison to discovered) within a society, favoring certain elites into continually reinforcing their power and silencing minority narratives. Poststructuralism conflicts with traditional IR theory in that it questions where the definitions of power come from, how is it produced, and what is missing from the dominant narrative.⁹² There is a certain emphasis on language to categorize and divide people, creating a simple ‘us’ vs ‘them’ dichotomy, which can be incredibly dangerous as a justification for taking certain actions. Poststructuralism believes traditional IR theory simply covers the actual truth.

Poststructuralism is unique in the way it deals with intersectionality, or the idea that different forms of discrimination or systems of subordination create layers of inequality that often exacerbate each form of discrimination, as preconceived by structural norms.⁹³ It also looks at how specific acts and policies create unique burdens that follow these intersections, creating even more disenfranchisement.⁹⁴ This thesis chose to highlight post-structuralism as a way to shift from traditional forms of refugee theory, moving closer to queer refugee theory.

Similar to queer theory, post-structuralist refugee theory deals with the intersectionality of different ‘isms,’ including feminism, racism, postcolonialism, and, of course, structuralism. This thesis will now walk through a few of these ‘isms’ in an attempt to understand international norms and where they come from, and how they impact people.

One study by Eileen Pittaway & Linda Bartolomei look at the intersection between race and gender when it comes to refugees.⁹⁵ According to the authors, the gender-blindness of the 1951 Refugee Convention definition – in that it does not recognize persecution based on ground of gender as a claim for refugee status or provide clarity on if gender-based violence could also be held under consideration for refugee status – coupled with the fact refugees flee their home countries because of a well-founded fear of persecution based on

⁹¹ Morrow, Aishling Mc. “Introducing Poststructuralism in International Relations Theory.” *E*, 5 Aug. 2018, www.e-ir.info/2018/02/13/introducing-poststructuralism-in-international-relations-theory/.

⁹² *ibid.*

⁹³ Pittaway, Eileen, and Linda Bartolomei. “Refugees, Race, and Gender: The Multiple Discrimination Against Refugee Women”. *Refuge: Canada’s Journal on Refugees*, vol. 19, no. 6, Aug. 2001, pp. 21-32, doi:10.25071/1920-7336.21236.

⁹⁴ *ibid.*

⁹⁵ *ibid.*

their race, among other reasons – creates layers of discrimination refugees face when arriving at a potential host country. Considering the reluctance of potential host countries to take on more refugees, many encourage the repatriation of refugees instead, and encourage asylum officers to create narrower and narrower definition on who counts as a refugee. States often use the rhetoric that refugees strain the social systems of the state, or threaten to change the existing culture. Refugees are also consistently demonized in popular media, despite evidence suggesting refugees have little lasting impact on their host countries economically.

In terms of gender, the authors focus on discriminated faced by women during times of armed conflict, in refugee camps, and during resettlement. Overall, the authors argue, current policies are not sufficient to adequately meet women refugees' needs. The authors push for wartime and conflict-driven gender-based asylum as reason to flee their home countries – which has historically been met by strong pushback from host countries - and point out the lack of sufficient protection and resources women receive during their stay in refugee camps.

When race and gender intersect, the authors walk through various UN-led initiatives to combat both forms of discrimination, and the failure to acknowledge how one affects the other. The 1995 Beijing Platform recognized that factors such as race, age, or disability create barriers to women's empowerment. The Committee to Eliminate Racial Discrimination noted that discrimination does not affect women and men equally or in the same way. The UN itself in the UN Division for the Advancement of Women acknowledged that the failure to address these differences can obscure, or at worst case, deny human rights protection to all women.⁹⁶

The status of being a refugee, compounded with being a woman and/or person of color, creates even more barriers and complexity in the attempt to guarantee human rights to all. Women are often seen as the culture bearers of a society, both in a literal and metaphorical sense. As the reproductive part of society, the not only bear the burden of carrying and birthing a child but are often expected to teach the child how to be a part of the nation. Often this leads to gender-based violence during conflict, as the enemy line attempts to 'tear' the nation apart by impregnating the culture-bearers with violence. This alienates women from their own society. The typical 'othering' of refugees adds another layer of marginalization.

⁹⁶ Pittaway, Eileen, and Linda Bartolomei. "Refugees, Race, and Gender: The Multiple Discrimination Against Refugee Women". *Refuge: Canada's Journal on Refugees*, vol. 19, no. 6, Aug. 2001, pp. 21-32, doi:10.25071/1920-7336.21236.

The term “othering” is incredibly important in this discussion. Simply by creating categories (for example of “us” vs “them”), a hierarchy is immediately created that favors the “us” over the “them,” which then immediately creates a power imbalance. “Othering” can be traced back to the Western philosophy of dichotomous thought, where ideas are paired and assumed to be opposites and mutually exclusive from the other.⁹⁷ Often one idea is privileged over the other (for example, of the dichotomy between men and women). In other words, refugee women are often discriminated against on the grounds of both their ethnicity and gender, ‘doubling’ the amount of discrimination they face in conjunction with their refugee status. Refugee women who have suffered through rape do not always report their trauma to asylum officers for fear of being labeled prostitutes, which would be grounds enough to deny their asylum claim, for example.⁹⁸ A case study of the Australian Women At Risk Program, which was designed to identify refugee women at risk of gender-based violence at the refugee camps, noted that one issue relating to the low-number of positive asylum cases was that the head of the programs – mostly white males – described the trauma the women experienced as “only rape,” which significantly diminishes their experiences.⁹⁹ This also exemplified not only the insensitivity to their trauma, but to their gender and race, implying these women were of lesser class and therefore not worth the state allocating resources toward them.

To understand how racism and refugees are connected, the authors turn to the refugees produced by the Yugoslav War and compares them to conflicts from Africa, Iran, Iraq, the Horn of Africa, and South American. It was during the Yugoslav Wars that rape became punishable as a war crime, which the authors suppose stemmed from the international outrage of the mostly western Caucasian women who could emphasize with the female victims of that conflict.¹⁰⁰ Suddenly, rape was seen as unacceptable, especially as Caucasian men had to reconcile with the fact that it was other Caucasian men employing these tactics on Caucasian women.¹⁰¹ One can see similar rhetoric today with the Ukrainian conflict. In comparison, developing nations, seen as people with lesser rights rather than equal rights did not benefit from this new norm.

Even the resettlement process is discriminatory based on race and gender. Refugee women are seen as second-class citizens, even among the refugee population. Many refugee

⁹⁷ Pittaway, Eileen, and Linda Bartolomei. “Refugees, Race, and Gender: The Multiple Discrimination Against Refugee Women”. *Refuge: Canada’s Journal on Refugees*, vol. 19, no. 6, Aug. 2001, pp. 21-32, doi:10.25071/1920-7336.21236.

⁹⁸ *ibid.*

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*

women are limited by employment opportunities as sex workers or domestic workers, freedom of movement, reproductive rights, and other basic human rights. They are also more likely to be victims of trafficking. There is a trend where host countries are more likely to accept refugees that are more able to easily ‘blend’ into their country. As states have little motivation to take on refugees, especially those from non-European countries, states have increased deterrence measures to keep refugees to the borders of, for example, the Schengen zone. Only countries with which the host country has strong trade relations tend to accept their refugees quicker.¹⁰²

International institutions also are gender-blind in that they often do not take gender into account. They are headed by men who are often in the “public” sphere. Women, on the other hand, occupy the “private” sphere, the domestic, sexual part of society that are often not addressed because they are not part of the public sphere. The authors call for an overhaul on international institutions to include more women’s – and refugees – rights.

In contrast, a postcolonial writer, Claire Gallien, examines the narratives given to refugees to understand how they interact with international relations. The author problematizes the traditional representational discourse as the ‘politics of pity,’ which instead of looking at refugees as humans deserving of their rights as a fictionalized narrative. She calls into question the use of narratives in framing the refugee experience, and states that there is a long-term impact of refugee literature seeped in the uprootedness and extraterritoriality states of refugees that is defined along ‘natural’ borders.¹⁰³ Gallen emphasizes that the role of artists and activists is to expose the hidden narrative of these experiences, and question why normative narratives are portrayed the way they are. Freelance drawer Laura Genz, for example, drew pictures on the everyday life of UK detention center prisoners, which had remained unmapped “for security reasons.”¹⁰⁴ Her drawings documented the terrible living conditions and re-humanized the prisoners.

Gallen also questions the term ‘refugee’ as a historical construction that prioritizes political and ideological will over economic and ecological. She goes as far to say that refugees are the “human face” of climate change, economic and environmental inequalities, and armed conflict, and that refugee literature is a way to resist the narrative of perpetuation of

¹⁰² Pittaway, Eileen, and Linda Bartolomei. “Refugees, Race, and Gender: The Multiple Discrimination Against Refugee Women”. *Refuge: Canada’s Journal on Refugees*, vol. 19, no. 6, Aug. 2001, pp. 21-32, doi:10.25071/1920-7336.21236.

¹⁰³ Full Article: “Refugee Literature”: *What Postcolonial Theory has to say*
www.tandfonline.com/doi/full/10.1080/17449855.2018.1555206. Accessed 3 Mar. 2024.

¹⁰⁴ *ibid.*

colonial control, predation, and destruction in postcolonial times.¹⁰⁵ Another word she briefly studies is “exile” as it inflicts a certain muteness onto the group being exiled, and forces people to separate from loved ones.¹⁰⁶

So then, which refugees are prioritized, and why? A study based on populist radical-right rhetoric in Estonia looked at the discourse aimed at migrants within the country to understand what hierarchies form within the immigrant community within the community itself and its host country.¹⁰⁷ The paper draws on discourse theory, which claims that populist discourse relies on creating “us” vs “them” dichotomies, usually between ‘the people’ and ‘the state,’ ‘the elites,’ or ‘the establishments.’ By examining this rhetoric, the authors dissect which types of immigrants are valued and organized and disentangle hierarchies from what each hierarchy ‘deserves’ from the host country.

The authors first define hierarchies as an ‘organic and unavoidable phenomenon in social groups.’ Hierarchies, they claim, stem from economic and power inequalities, and are held structurally in place by exploitation of the out-group by the in-group and opportunity hoarding where the in-group blocks the access of the out-group to value-producing resources. These two gatekeeping methods, implemented by people in power, are reproduced by the same elites or through cultural practices to maintain or grow their power.¹⁰⁸

These hierarchies are often expressed through language, which also affect the institutional order. Policies created from these institutional orders often prioritize one group over another, evaluating them by how powerful/less a group is and how positively/negatively the group is perceived. Groups with a positive public image and power tend to have fewer policy blocks compared to groups with a negative public image and little power. Some groups, therefore, are perceived to be more ‘deserving’ of protection or access to resources.¹⁰⁹ It is not a stretch to believe that there is a difference between what is deserved and what is needed, as the earlier discussion on gender and race within the refugee community exemplified.

Who deserves what is clearly divided along the lines of ‘us’ vs ‘them,’ where the immigrants that have more – the good migrants - are prioritized over those that have less –

¹⁰⁵ Full Article: “Refugee Literature”: What Postcolonial Theory has to say
[www.tandfonline.com/doi/full/10.1080/17449855.2018.1555206](https://doi.org/10.1080/17449855.2018.1555206). Accessed 3 Mar. 2024.

¹⁰⁶ *ibid.*

¹⁰⁷ Koppel, Katrina, and Mari-Liis Jakobson. “Who is the worst migrant? migrant hierarchies in populist radical-right rhetoric in Estonia.” *IMISCOE Research Series*, 2023, pp. 225–241, https://doi.org/10.1007/978-3-031-23996-0_13.

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

the bad migrants. There are several factors the authors touch on that help decide if an immigrant is ‘worthy,’ including their reason for immigration, economic status, gender, ethnicity, and race. Here one notes that the intersectionality of these immigrants plays an incredibly important role in their acceptance into the host country. Migration policies often grant higher-educated, higher income immigrants. White immigrants (mostly from the Global North) also have a higher likelihood of acceptance as whiteness is closely tied to higher income and education and not foreign.¹¹⁰ Male immigrants are also depicted as less deserving, especially compared to women and children. In other words, if an immigrant does not meet the ideal immigrant as defined by western standards – if they are not compatible with the ‘us’ -, they have a lower likelihood of acceptance.

Finally, the authors use the discourse-theoretical approach as an instrument of power to construct hegemony and impose hostility on certain groups. Populism uses the anti-immigrant discourse to create scapegoats to erase the nuances and differences among ‘the people’ to strengthen the unification between them. Often using politics of fear is an effective method, which takes the form of racism, xenophobia, and antisemitism, to name a few. Depending on the perceived ‘deservingness’ of the immigrants, sub-groups of immigrants are targeted, often based on their race, religion, or country of origin. These un-deserving immigrants are then blamed for crime, stealing jobs away from the ‘natives’ of a nation, or invading the country. Immigrants from the MENA region, for example, are associated with acts of terrorism, while those from Eastern Europe are associated with petty crimes.¹¹¹

The sub-category of refugee has, of course, a hierarchy as well. Host countries differentiate which refugees are actually ‘deserving’ of protection, measured also by their ideal refugee – are they of a similar race, religion, and language as the host country? Do they pull on the heartstrings of the nation? Or are they simply trying to rob the host country of valuable resources? This paper points out illegitimate claims of asylum: immigrants that cross the Mediterranean from Algeria and Tunisia are not considered refugees, as it is assumed their home nation’s conditions do not give reason for a rise of refugees.¹¹²

¹¹⁰ Koppel, Katrina, and Mari-Liis Jakobson. “Who is the worst migrant? migrant hierarchies in populist radical-right rhetoric in Estonia.” *IMISCOE Research Series*, 2023, pp. 225–241, https://doi.org/10.1007/978-3-031-23996-0_13.

¹¹¹ *ibid.*

¹¹² *ibid.*

Queer Refugee Theory

Finally, this thesis will examine current queer refugee theory. As discussed, traditional refugee theory leaves out the structural biases and intersectionality that not just queer refugees, but refugees in general face. While post-structuralism fills in some of these gaps – acknowledging that certain systematic factors influence the likelihood they will have a successful asylum procedure – the idea of gender in the post-structuralism still focuses on traditional biological man/woman dichotomy, and sexual orientation is not fully addressed. Therefore, the lens of queer IR must be used to fill in the gaps left by poststructuralism and feminist IR.

There is a growing body of studies regarding queer refugees, ranging from their reasons for leaving their country, the journey to host countries, the asylum procedure, finding community and housing, and integration into a new society, and all of the complexities that come with navigating a new legal, economic, political, and social systems. These will now be discussed and turned into theory.

In one paper documenting the experiences of queer refugees in Wales, the authors conclude that the UK's immigration and refugee policies discriminate against the very people they supposedly are created to support.¹¹³ The authors highlight both milestones in UK refugee policy, including the 1981 Nationality Act that allowed foreign-born people to apply for citizenship instead of simply people born in the UK, and setbacks such as the 2012 Hostile Environment Policy, which made the UK a more difficult place for refugees to live. Some measures included a weekly allowance of 37 pounds and random, inefficient accommodation.

These policies reflect the idea that refugees have been treated by the UK as a collective, not people with specific needs beyond their relationship to citizenship or legal status. Despite literature suggesting the best way to integrate refugees is to allow them to interact with the host populations, policies and global and local social structures often have the opposite effect, keeping them in cramped camps in rural areas, away from the public's eye and hindering their ability to find networks and communities. Queer refugees are especially vulnerable and negatively impacted by these hindrances. The queer community is different from other social groups in there is no generational ties to being queer, unlike religions or ethnicities that are passed down. There are only found families, meaning community is

¹¹³ Vamvaka-Tatsi, Ourania. "LGBTQ+ forced migrants: Precarious experiences of arrival and settlement in Wales." *IMISCOE Research Series*, 2023, pp. 95–111, https://doi.org/10.1007/978-3-031-23996-0_6.

created making connections between queers incredibly important to their ability to survive and thrive.

Several studies also suggest the assimilation in general was insufficient. Interviewed queer refugees in Italy expressed distress during the arrival process, where they were detained for several hours without information. When they were eventually transferred to housing to await their asylum trial, they are often housed in unsafe living conditions with a “toxic, dangerous and homophobic” atmosphere.¹¹⁴ Queer refugees noted the irony of the situation: they left their home countries to avoid persecution only to find it once again in a supposedly safe country. The asylum trials were often traumatic as well, made worse when the host countries provide no translators or psychological support. Queer refugees are judged based on how ‘gay’ they seem – diminishing the experiences of that refugee when the judgment is based solely on appearance, despite the fact that there is no one way to ‘look’ gay. Some applications are rejected as host states assume that because some refugees are able to hide their queerness, they are not in danger in their home country, despite this recognized as a human rights abuse. During the asylum trial, the applicants must prove their membership to the queer community, which can be difficult to procure when their home countries forbid their very existence. Often these refugees have only their self-identification and stories as proof. These narratives must fit the western ideals of sexual orientation – a binary between people being either straight or gay, which erases trans, bi, and other forms of queerness - to be seen as legitimate claims.¹¹⁵ Applicants must often relive traumatic experiences and are probed deeply into their sex lives.

Even after receiving asylum, queer refugees faced difficulties in integrating into their new host countries. Many try to distance themselves from their queer identity, preferring to be known as simply a refugee. In some host countries, being a refugee elicits more pity and being a queer elicits disgust.¹¹⁶ They do not receive any cultural support when attempting to enter the workforce and feel ostracized by the local queer community who may not share the same racial or ethnic identity as them. This intersectionality is used to ‘other’ the queer refugees, and subordinate them to society, despite the fact that social categories are not fixed or stable.¹¹⁷

¹¹⁴ Vamvaka-Tatsi, Ourania. “LGBTQ+ forced migrants: Precarious experiences of arrival and settlement in Wales.” *IMISCOE Research Series*, 2023, pp. 95–111, https://doi.org/10.1007/978-3-031-23996-0_6.

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*

A report by Queer Base gave an outline of the discrimination queer refugees face specifically in Austria.¹¹⁸ The report noted that because of the structural norms in Austria, queer refugees are specifically disenfranchised because of their race and sexual orientation. They suggested, however, that these vulnerabilities can be used to better understand the weaknesses of the asylum process and where queer refugees can be better supported in their host country.¹¹⁹

The report brings up the concept of queer citizenship, which they define as the theoretical connection to inequalities in the context of asylum and highlighting these inequalities.¹²⁰ Queer citizenship criticizes the idea that some lives are worthier than others if they fit in with the norm of the society. It questions the moment when one's individuality becomes part of the state's, and how often this process happens, especially given that it is the state that determines if a body belongs to it.¹²¹ There often only exists a binary of belonging or not belonging, and a hierarchy in between, as decided by the state and society. Queer citizenship also deals with the idea that there is a normative idea of accepted sexuality and gender, and everything beyond this ideal does not deserve to be protected or is seen as worth protecting. The ideal queer refugee is intended to model the 'European citizenship' which allows for only a certain type of queer to integrate into the European ranks (white, male, homosexual). In the asylum process, this translates to the situation where home countries are at a face-value level not homophobic but are homophobic enough to not recognize or acknowledge the plight of queer refugees. Instead, they are used as instruments of the state to prove its democratic values.

In sum, current queer refugee theory focuses on the empirical experiences of queer refugees as they navigate the asylum process, focusing on their arrival, accommodation, and assimilation into their host countries. Queer refugee study also focuses on how the very existence of queer refugees in the host state break down the clear binaries the host states lay out when deciding whether or not to accept the queer refugee. Queer refugees that fit the ideal European citizenship – a white, homosexual male – are more likely to be accepted into society. The intersectionality between being queer, a refugee, race, and gender are fully explored in queer refugee theory, which traditional refugee theory overlooks and

¹¹⁸ Arslan, Serdar, et al. "LGBTIQ-Geflüchtete Zwischen Vulnerabilität und selbstermächtigung im österreichischen Asylsystem." *ISR-Forschungsberichte*, vol. 53, 2020, pp. 143–164, https://doi.org/10.1553/isr_fb053s143.

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

¹²¹ *ibid.*

structuralism only touches upon. However, there is not much study done on general theories on the likelihood of a queer refugee to be accepted by a host society and why. Therefore, a general theory is needed, which is discussed in the next chapter.

Chapter 2: Research Question, Theoretical Framework, and Research Method

Research Question

Queer IR hints that the usual viewpoint of studying refugees, especially queer refugees, is not sufficient to understand the full extent of what it means to be a refugee in the state system. There are still several gaps in refugee theory offered by international relations. Traditional refugee theory erases the intersectionality not only queer refugees, but regular refugees face when travelling from their home countries to their host countries. While post-structuralism introduces and incorporates different facets of identity and intersectionality, it does not go as far as to touch on sexuality or (trans)gender. How accurate, then are these refugee theories in explaining real-life situations?

Therefore, this paper will use queer IR theory applied to refugee theory explore how queer refugee theory better explains refugees (especially queer refugees) in the state system. Refugees, and migration as a whole, is an incredibly polarizing topic, which affects all levels of the state, from individual to international. Refugees are often seen as invaders or unwanted burdens, and rarely initially as political subjects with human rights.¹²² Queer refugees – queer, transnational bodies – are even more controversial, as not only do they carry the burden of being rejected by the state system, but are often marginalized in local systems in host countries as well. In the refugee hierarchy, queer refugees are on the bottom tier, and have the most difficult time being recognized as refugees. Being queer means not being part of the state system, of challenging traditional state system norms, not quite fitting with or being totally included in international laws. They are, in a way, not seen as totally human, and therefore are not protected by the state system. Therefore, how can one expect queer refugees to exist? How can queer refugees be legitimized in the state system?

This thesis will attempt to answer the queer IR question of “are queer refugees discriminated against in the state system, how, and why?” and argue that there is a gap between the norm of accepting queerness and accepting refugees, and therefore queer refugees in the state system.

¹²² Schwietz, Helge. “Radical democratic theory and migration: The Refugee Protest March as a democratic practice.” *Philosophy & Social Criticism*, vol. 48, no. 2, 12 Apr. 2021, pp. 289–309, <https://doi.org/10.1177/0191453721996398>.

Theoretical Framework

Due to the fluidity of queer IR, it is difficult to pin down a way to analyze situations with a queer IR lens. However, some frameworks exist.

Drawing from traditional refugee theory, Betts and Loescher¹²³ use a framework model of causes, consequences, and responses to analyze refugees.¹²⁴ Causes would include the reasons why refugees become refugees (what was the political situation in their countries of origin, as well as the state's position in the global stage?). Consequences are defined by what impact refugees have on the host country and other states. Refugees themselves are seen not only as a consequence of insecurity and conflict, but cause insecurity and conflict. The authors measure responses as the way in which states respond to refugees. States are forced to weigh in the rights of citizens versus noncitizens in deciding how to allocate scarce resources between the groups.¹²⁵

Post-structuralism emphasizes the discourse that surrounds disenfranchised people and provides a lens through which to view these marginalized people. Often the method used is case studies interviewing the disenfranchised group, and state and non-state actors (often NGOs) on their experiences of navigating the systems put in place.

Michael Foucault provides a framework for analyzing sexuality in four steps. First, he analyzed how sex is put into discourse.¹²⁶ In this case, how are refugees described in public media? Are they portrayed as aliens or survivors? Are they seen as both, or something beyond these labels? Secondly, he analyzed the functions and effects of productive power. Here the author takes the word sex literally, exploring why normal sex was represented by the white, Christian, bourgeois, able-bodied, cisgender, procreative, heterosexual 'Malthusian couple,' the most privileged of the privileged. Foucault points out that doctors and theologians and other professions consistently produced and enforced the idea that the non-heterosexual person were medically deformed. This also allowed the state to constantly monitor and handle queers with suspicion and anxiety, and gave justification to handle them badly.¹²⁷ Thirdly, Foucault calls to examine the dynamic between pleasure and power, stating that pleasure and power do not cancel each other, but intentionally seek each other out and reinforce one another. Focusing on the Victorian view of homosexuality, queer people were

¹²³ Betts, Alexander, and Gil Loescher. *Refugees in International Relations*. Oxford University Press, 2013.

¹²⁴ *ibid.*

¹²⁵ *ibid.*

¹²⁶ Weber, Cynthia. *Queer International Relations*, 1 Apr. 2016, <https://doi.org/10.1093/acprof:oso/9780199795857.001.0001>.

¹²⁷ *ibid.*

‘diagnosed’ with homosexuality, a perverse version of heterosexuality and standing in direct contrast to healthy, productive subjects. Finally, Foucault analyzes how the concepts of ‘normal’ and ‘perverse’ are frozen in a moment in time, noting that they are never truly fixed.¹²⁸ This can also be seen in the idea of norm shaping and re-shaping. Author Cynthia Weber gives the example of Hillary Clinton expanding the definition of ‘normal’ to include LGBTQ+ couples in the US from the idea of a perverse homosexual.¹²⁹

Another important aspect Weber discusses is the use of figuration in queer IR studies.¹³⁰ Figuration is the creation of images from shared meanings in forms or images. Weber notes that these forms do not represent the world as that would imply there was a fixed meaning to begin with.¹³¹ Instead, figurations are simply the distillation and approximation of the world or a worldview. These figurations are powerful in the sense they map our worlds through four key elements: *tropes*, *temporality*, *performatives*, and *worlding*.

Tropes are references to actual things that show how they are understood. Figures of speech, for example, are tropes in that they show one understands something but is not the exact representation of that thing. Queer refugees are a type of trope in that they represent the idea that nothing in the world system is fixed, and there are no true, clear categories for states or actors within the state system. *Temporality* explores the relationship between these figurations and time, which is usually valued as a progression through time to measure its success. This also can be connected to the idea of norm-building, in that the more ‘progressive’ states are those that have robust systems to managing refugees and queerness within their borders. *Performatives* is a concept from Judith Butler, who explained how sexes, genders, and sexualities appear to be normal, natural, and true, but are actually repeated iterations of societally enforced performances. These performances appear fixed, but they, like international norms and institutions, can be changed. However, these performances depend on the historical context in which they are formed and who they are placed upon given their outward appearance or status. At the same time, it is inevitable for performances to change over time, as each iteration is varied slightly person to person. Finally, *worlding* is how one “map[s] universes of knowledge, practice, and power.”¹³² This is the process of combining tropes, temporality, and performances are channeled through an individual by

¹²⁸ Weber, Cynthia. *Queer International Relations*, 1 Apr. 2016, <https://doi.org/10.1093/acprof:oso/9780199795857.001.0001>.

¹²⁹ *ibid.*

¹³⁰ *ibid.*

¹³¹ *ibid.*

¹³² *ibid.*

outside forces (such as society) and how they interact with the world and how the world interacts with them.

One framework, wrote by Anthony Langlois, suggests a four-point model when analyzing politicized and weaponized homophobia by states to exert and legitimize their authority over the members of that state. First, policies supporting homophobia are established as part of a deliberate strategy from people who want to gain positions of power or maintain power. By demonstrating the authority it claims to hold, it proves to those that doubt the state that it still holds power. Etienne Balbar states the purpose nicely: “National citizens can be persuaded that their rights do in fact exist if they see that the rights of foreigners are inferior, precarious, or conditions repeated manifestations of allegations.” The second step is looking at the diffusions of homophobia across borders, and analyzing where these borders meet, and how they create overlapping barriers for queer people. Thirdly, interstate analysis on how state-based homophobia hinders LGBTQ+ organizing and the emergence of queer identities within its borders is examined. Lastly, Langlois looks to Rao’s intersectional analysis of the process of colonialism and decolonialism and western practices on other regions, and how these perceptions create deliberate political practices.¹³³

In sum, queer IR can be applied though certain frameworks to analyze international relations themes. Most of these themes center around the gap between the image people hold of what it means to be queer or a refugee, which often paints them as disturbing, subhuman beings. How people interact can be interpreted as learned performances, which shape’s one’s worldview and preferences for certain people with certain characteristics. These in turn build norms that favor certain people but leave others out. In the next section, these ideas will be applied to the state system and queer refugees.

Research Method

Combining these frameworks, some important patterns emerge. A central idea is the emergence of norms and their practice in society. Weber would call this a performance, and post-structuralism the beginning of an institution. Betts and Loesher, post-structuralism, Foucault, and Weber insinuate that context is key when figuring out the norms that exist within the international community, which may explain why the state system was not built to withstand refugees. Post-structuralism, Foucault, Weber, and Langlois emphasize the need to

¹³³ Weber, Cynthia. *Queer International Relations*, 1 Apr. 2016, <https://doi.org/10.1093/acprof:oso/9780199795857.001.0001>.

understand which actors are given the most power and why, and to identify which structures are put in place to keep these actors in power. Additionally, Weber, Foucault, and Langlois all point out the punishment that follows when something does not follow a norm or preconceived category. This punishment keeps the systems in place that ensure queers, and their marginalized people or actors, to not threaten the status quo. The threat of punishment, for queers, often leads them to become queer refugees.

There is no refugee theory that fully explains the existence of refugees, or how states react to refugees. Therefore, this thesis will use the lens of queer IR applied to refugee theory to answer an impossible question – where do refugees, especially queer refugees – belong in a state system that is designed to keep them out? To understand how queer theory gives us more insights into the gaps of traditional IR theory, this thesis will examine queer refugees, people who were forced from their homes because of their adherence to a certain group – queers – who are unable to receive help from the state. Queer refugees were chosen as they represent an intersection of two almost universally marginalized identities: queer and refugee. Queerness at its nature goes against ‘the norm’ and therefore is punished. Refugees are also not part of the norm of the state system (as they are ‘rejects’ of their own state) and are therefore alienated from their own society, and attempt to find a new one. This thesis will attempt to explore if queer refugees, given their intersectional status as queer and as a refugee, have a harder time being accepted in the asylum process and in their new society because there is no international or national norm to do so. As the asylum process is one of most clear ways to measure the stability of the state system as they are seen as failures of the state system. The more closely a queer refugee follows the norm of the host country, the more likely they will to be accepted. the more closely state norms match international law, the more likely it will be accepted.

This thesis focuses on two variables: the norm of accepting queerness and the norm of accepting refugees. A state can fully accept, partially accept, or reject queerness in its society. Likewise, a state can fully accept, partially accept, or reject refugees in its society. This thesis will argue that if there is an international norm of accepting refugees and accepting queerness, it is more likely for states to also accept refugees and queerness, and therefore queer refugees will also be accepted into the society without discrimination, as seen in Table 1: Queer Refugee Theory.

	Accept refugees	Partially accept refugees	Reject refugees
Accept queerness	Accept queer refugees	Accept queerness, partially accept refugees	Accept queerness, reject refugees
Partially accept queerness	Partially accept queerness, accept refugees	Partially accept queerness, partially accept refugees	Partially accept queerness, reject refugees
Reject queerness	Reject queerness, accept refugees	Partially accept refugees	Reject queerness, reject refugees

Table 1: Queer Refugee Theory

This thesis will pose the following theory: First, an international norm of accepting queerness and accepting refugees comes into existence and is in some shape established. This is what Loescher would consider a cause, and Weber a performance. This will be measured by the existence of these norms solidified into international law. Given the theory that states are more likely to accept a new norm if a higher authority (international law) practices the norm, the state is more likely to accept the international law and put it in practice. Therefore, queer refugees are also more likely to be accepted in their host countries. This thesis will assume changing norms happen from the top-down, as in the end, in this current international state system, national authorities have the power to enforce norms.

To test this theory, this thesis will first establish if there are international laws that exist to ‘accept’ queerness and accept refugees. There are few instances that address the protection of queer status, but one can infer their protection under the Universal Declaration of Human Rights (UDHR). Likewise, this thesis will take the 1951 Refugee Convention (and its 1967 Protocol) as the primary source of international refugee law. These two documents will be examined in Chapter 3 to see if there is an acceptance of queerness and refugees at the international level.

As the case study is Austria, this thesis will also need to test if the international norms have penetrated Europe at a regional level, before transitioning to state level. Therefore, in Chapter 4, this thesis will examine if there is an EU-wide norm to accepting queerness and refugees. To examine the acceptance of queerness, we will look at the Council of Europe’s European Convention on Human Rights (EUDHR) and the EU’s and Treaty of the European Union (TEU), the Treaty on the Functioning of the EU (TFEU), and the Charter of Fundamental Rights of the EU (CFR). To examine refugee acceptance, a brief history on EU refugee policy post 1967 will be examined.

Finally, in Chapter 5, we will take Austria as a case study of a state within the EU to examine the political willingness to accept queerness and accept refugees. National policies

regarding refugees and queerness will be examined with a queer lens. Finally, queer refugees seeking asylum in Austria were interviewed on their experiences as queers in their respective original states, how they reached Austria, then how they were treated during the asylum process, as well as how secure they feel in Austria now. Members of the organization called Queer Base, located in Vienna, Austria whose mission is to help queer refugees find asylum in Austria will also be interviewed to understand what they see as the main challenges of queer refugees in the Austrian (and EU) legal system. These experiences will be examined through the queer lens of queer refugee theory to understand what structures and binaries are in place queer refugees must navigate through to ensure their human rights are protected in their host countries. This method gives a holistic and layered analysis of how many barriers queer refugees face as they travel to find their place in the state system.

Chapter 3: International Norms

International Norm – Queerness

The first part of this analysis will focus on figuring out if there is an international norm to accept queerness, and if so, how deeply this intent to accept queerness exists. As mentioned before, norms present themselves in various practices of a society, the most prominent in the form of laws. This will be measured by the not only the existence of the 1948 Universal Declaration of Human Rights (UDHR), but its underlying motivations and general impacts on humanitarian law. First, this thesis will examine the context in which the UDHR was written to determine the motivations behind writing the document. Then this thesis will look at key areas relevant to protecting the right to be queer (in other words, the norm of allowing queerness to exist and/or be accepted). The impacts of the UDHR will be discussed by examining the UN Refugee Convention of 1951 and 1967. In this section, this thesis will argue that there were two main “norms” that drove the creation of the UDHR and therefore cemented the “norm” of nondiscrimination against queerness worldwide that still generally exists today.

Norm of Democracy

One major international norm that developed in the Western world was the “norm” of democracy, which promoted values such as individual rights and freedom, and state sovereignty. A common assumption associated with the creation of the UDHR was that it was written in response to the atrocities witnessed during the first, and especially the second World War.¹³⁴ The preamble emphasizes that the “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind...”¹³⁵ This is to a certain extent true, but the UDHR was not the first attempt at codifying human rights into law, and, for the most part, it was non-state actors that drove the creation of such a document.¹³⁶

When negotiating the UDHR, state governments were slow to support a document cementing human rights. Colonial powers in particular were hesitant to touch human rights, as that would require them to admit to their colonial wrongdoings and provide a legal basis

¹³⁴ “Universal Declaration of Human Rights.” *United Nations*, United Nations, www.un.org/en/about-us/universal-declaration-of-human-rights. Accessed 2 June 2024.

¹³⁵ *ibid.*

¹³⁶ Waltz, Susan. “Reclaiming and rebuilding the history of the Universal Declaration of Human Rights.” *Third World Quarterly*, vol. 23, no. 3, June 2002, pp. 437–448, <https://doi.org/10.1080/01436590220138378>.

for their colonies rise up against the colonial powers.¹³⁷ U.S. President Roosevelt used WWII as a chance to move the US forward in the international political world. His four fundamental freedoms speech eventually were written into the UDHR.¹³⁸ Though there was a drive to establish a set of laws governing warfare (eventually becoming the Geneva Conventions) the Great Powers quickly shifted to using human rights as a weapon to shape the world order, and as a sign of democracy against the rising threat of communism.¹³⁹ The U.S., Great Britain, and France banded under the guise of human rights to prove their way of ‘democracy’ promoted human rights, and the USSR’s communism stood in stark contrast.¹⁴⁰ It was a way for democracies to prove they were ‘better’ than any other form of government. In other words, human rights emerged out of the desire to gain power and control, but it did eventually turn into a western norm. After all, any deviations from the norm – from democracy – was free to be punished by those following the norm. In other words, the motivation behind the norm may not have been pure kindness, but it did cause world norms to change from a complete disregard of human rights to a focus on human rights.

Norm of Morality

There was also a new norm of providing humanitarian aid, motivated simply by a new norm of “it is the right thing to do.” WWII was not the only war with gross human atrocities fresh in the collective universal memories. There was also, among other examples, the Spanish Civil War, the invasion of Japanese soldiers into Nanking, China, brutal colonial ruling, and the rise of apartheid South Africa to contend with.¹⁴¹

This norm, however, has deeper roots than just WWII. Prior to the 1940s, there was a western movement towards social changes, including the women’s liberation movement in the US and Europe, as well as the labor movement in the US.¹⁴² The post-war world was seen by many as a chance to establish a new world order, with human rights at the core.¹⁴³ With so much social change, WWII provided a moment where great world powers were shifting,

¹³⁷ Waltz, Susan. “Reclaiming and rebuilding the history of the Universal Declaration of Human Rights.” *Third World Quarterly*, vol. 23, no. 3, June 2002, pp. 437–448, <https://doi.org/10.1080/01436590220138378>.

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ Moyn, Samuel. “The Universal Declaration of Human Rights of 1948 in the history of Cosmopolitanism.” *Critical Inquiry*, vol. 40, no. 4, June 2014, pp. 365–384, <https://doi.org/10.1086/676412>.

¹⁴¹ Waltz, Susan. “Reclaiming and rebuilding the history of the Universal Declaration of Human Rights.” *Third World Quarterly*, vol. 23, no. 3, June 2002, pp. 437–448, <https://doi.org/10.1080/01436590220138378>.

¹⁴² *US Social Movements*, gcdd.org/images/Reports/us-social-movements-web-timeline.pdf. Accessed 2 June 2024.

¹⁴³ Waltz, Susan. “Reclaiming and rebuilding the history of the Universal Declaration of Human Rights.” *Third World Quarterly*, vol. 23, no. 3, June 2002, pp. 437–448, <https://doi.org/10.1080/01436590220138378>.

leaving the world in a state of discord. In terms of queer IR, this discord gave space for new norms to be established, giving marginalized people the chance to voice their desire for change and support. It is, after all, often minorities that gain more rights after times of tumultuous change, and also those that suffer the most during the change.

Smaller states were responsible for implementing fundamental aspects of the UDHR. China and the Philippines, for example, insisted on food and clothing as basic needs, while the Pakistani delegate established full consent of both spouses for marriage at full age.¹⁴⁴ Small states insisted on keeping the UDHR gender-neutral, changing articles from “all men” to “all human beings.” Despite the assumption by male heads of states that using ‘men’ as a general term would not be harmful, it is still incredibly relevant to queer IR in that it prevents discrimination based on gender expression and identity.¹⁴⁵ It does, however, call to question through which perspective are beings considered human. During the Rwandan Genocide, for example, Tutsis were considered less than human. In the queer world, it is not uncommon for people who do not present as one of the two gender binaries (male or female) to be considered subhuman.

In sum, there was a general norm of protecting human rights, which drove the creation of the UDHR. The norm of protecting human rights, of protecting against discrimination as articulated in Art. 2 of the UDHR, which stipulates that everyone (all bodies, including those with queer identities) are entitled to all the rights and freedoms of the document.¹⁴⁶ Though there is much debate surrounding the effectiveness of the document, it is clear there was general consensus to dedicate states to principles of non-discrimination. It is hard to know if this extended as far as actively accepting human rights, including queerness, though protection for queers in particular seemed to be only thought of as the division between man and woman as opposed to non-heterosexual sexualities and gender expression; however, there are indications that there was enough motivation to do so. The UDHR is, after all, simply a declaration with no legal power.^{147 148} This was done to preserve sovereignty, to ensure that ultimately, states had control over their citizens. It simply embodies the supposed desire of

¹⁴⁴ Waltz, Susan. “Reclaiming and rebuilding the history of the Universal Declaration of Human Rights.” *Third World Quarterly*, vol. 23, no. 3, June 2002, pp. 437–448, <https://doi.org/10.1080/01436590220138378>.

¹⁴⁵ *ibid.*

¹⁴⁶ “Universal Declaration of Human Rights.” *United Nations*, United Nations, www.un.org/en/about-us/universal-declaration-of-human-rights. Accessed 2 June 2024.

¹⁴⁷ “History of the Declaration.” *United Nations*, United Nations, www.un.org/en/about-us/udhr/history-of-the-declaration. Accessed 2 June 2024.

¹⁴⁸ Moyn, Samuel. “The Universal Declaration of Human Rights of 1948 in the history of Cosmopolitanism.” *Critical Inquiry*, vol. 40, no. 4, June 2014, pp. 365–384, <https://doi.org/10.1086/676412>.

signatories to, in some fashion, implement these rights into their societies and enforce these norms, these ideals, in their state constitutions.

International Norm – Refugee

This thesis just established there was a general norm in the western world to promote selected, written out human rights, including anti-discrimination practices regardless of sexuality or gender. However, that is only part of the equation. This thesis must also establish if there was a norm (or if a norm emerged) to want to accept refugees. To do so, we will look at what came of Art. 14 of the UDHR, “Everyone has the right to seek and to enjoy in other countries asylum from persecution,”¹⁴⁹ which eventually formed the basis for the UN Refugee Convention of 1951 and 1967 (UNRC). Its historical context also caused a shift in norms to accept refugees that was not as vivid as before the 19th century, which culminated into creating the UNRC as we know it today.

Similar to the UDHR, there was much buildup prior to the first draft of the UNRC. Refugees have existed since the birth of the modern nation state, but were first considered an issue in the early 19th century following the eventual collapse of imperial Europe, beginning with fall of the Russian Empire in 1917.¹⁵⁰ More than 2 million former citizens from the Russian empire, many of them ethnic minorities forced to choose between giving up their identities or fleeing, seeking protection in neighboring counties.^{151 152} The League of Nations and International Red Cross attempted to provide support for the refugees, including help finding work and safe places to resettle.¹⁵³ The end of WWI and reconstruction of nation-state boundaries also reshaped and redefined citizenship, leaving the European continent in a state

¹⁴⁹ “Universal Declaration of Human Rights.”, United Nations, www.un.org/en/about-us/universal-declaration-of-human-rights. Accessed 2 June 2024.

¹⁵⁰ “Revisiting the 1951 Refugee Convention: Exploring Global Perspectives.” *Orfonline.Org*, www.orfonline.org/research/understanding-the-relevance-of-the-1951-convention. Accessed 2 June 2024.

¹⁵¹ “Russian Beginnings: Polish/Russian: Immigration and Relocation in U.S. History: Classroom Materials at the Library of Congress: Library of Congress.” *The Library of Congress*, www.loc.gov/classroom-materials/immigration/polish-russian/russian-beginnings/#

¹⁵² *The Nansen Passport: The Innovative Response to the Refugee Crisis That Followed the Russian Revolution*, University of Manchester, 14 Feb. 2019, www.manchester.ac.uk/discover/news/the-nansen-passport-the-innovative-response-to-the-refugee-crisis-that-followed-the-russian-revolution/.

¹⁵³ “Revisiting the 1951 Refugee Convention: Exploring Global Perspectives.” *Orfonline.Org*, www.orfonline.org/research/understanding-the-relevance-of-the-1951-convention. Accessed 2 June 2024.

of fluctuation and uncertainty.¹⁵⁴ To deal with this uncertainty, steps were taken to create an institution to regulate refugees.

One of the first attempts to control refugee flows came in the form of the Nansen passport, created in 1922 by the first High Commissioner for Refugees for Russian refugees. The passport allowed Russian refugees to move between nation-states till they found a state willing to accept them, and to look for local employment until they could go back to their home state. The League of Nations actively encouraged member states to accept refugees – not as stateless bodies, but as people who have suffered because of their circumstances and external forces (their government) beyond their control, regardless of race or nationality. Nansen calls upon the goodwill of member states, reminding them there is only one race, the ‘human race,’ and they should be helped not only on the basis of deserving help because they are human, but out of fear that if people are not helped, they will act out of desperation in ways that will cost society more than if the state had helped them in their time of need.¹⁵⁵ The League of Nations itself was formed under the premise of humanitarian need, but also for collective security in that the influx of refugees threatened what little stability was left in Europe after a world war and economic depression between them.¹⁵⁶

At first, this passport was available only to former Russian nationals, one of the first recognized stateless peoples, but was soon granted to Armenian refugees and Christians from the Ottoman Empire as well.¹⁵⁷ ¹⁵⁸ As they were fleeing from prosecution from their respective governments, they were seen by the League of Nations – the Great (western) Powers – as ‘deserving’ of a new nationality.¹⁵⁹ This was a hint of the growing humanitarianism (in that the needs of stateless, non-nationals were prioritized over citizens, putting the authority of an international document over national laws) and democratic norm to give refugees special privileges and accept them into society. Queer IR would question if

¹⁵⁴ “Revisiting the 1951 Refugee Convention: Exploring Global Perspectives.” *Orfonline.Org*, www.orfonline.org/research/understanding-the-relevance-of-the-1951-convention. Accessed 2 June 2024.

¹⁵⁵ “The Nobel Peace Prize 1938.” *NobelPrize.Org*, www.nobelprize.org/prizes/peace/1938/nansen/lecture/. Accessed 2 June 2024.

¹⁵⁶ Labman, Shauna. *Looking Back, Moving Forward: The History and Future of Refugee Protection*, 2010, scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1092&context=ckjicl.

¹⁵⁷ “Revisiting the 1951 Refugee Convention: Exploring Global Perspectives.” *Orfonline.Org*, www.orfonline.org/research/understanding-the-relevance-of-the-1951-convention. Accessed 2 June 2024.

¹⁵⁸ Labman, Shauna. *Looking Back, Moving Forward: The History and Future of Refugee Protection*, 2010, scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1092&context=ckjicl.

¹⁵⁹ *The Nansen Passport: The Innovative Response to the Refugee Crisis That Followed the Russian Revolution*, University of Manchester, 14 Feb. 2019, www.manchester.ac.uk/discover/news/the-nansen-passport-the-innovative-response-to-the-refugee-crisis-that-followed-the-russian-revolution/.

these refugees were accepted easier because they were white, Christian, somewhat European, and escaping from an authoritarian regime. They did not go against the European norm. Nansen worded this nicely, addressing the fear of ‘mixing races’, pointing out that there is a difference between the social definition of race and scientific. He points out that in France alone there are three types of ‘races,’ for example, and that it is easier to assimilate refugees that share races, but that the ability of absorption depends largely on the ‘character of the nation concerned, in its intellectual intensity, on the very rhythm in which life is lived.’¹⁶⁰

There was not an immediate acceptance of the refugees. Nansen believed the refugee issue could be resolved within 10 years, as there was much pity for the refugees coming from Russia as well as a need for the labor they provided. However, following his death in 1930, the League of Nations established the Nansen International Office (NIO), charged with the protection of refugees instead of appointing a new High Commissioner.¹⁶¹ As the Second World War approached, more people were forced to become refugees because of Germany’s growing totalitarian regime, economies tightened, and the desire for refugees dwindled.¹⁶² During the era of the Nansen passport, the “Jewish question” was also in full swing. Germany demanded its 700,000 Jews to ‘get out’ of its country.¹⁶³ Anti-Semitism from neighboring countries resulted in Jewish refugees bouncing from neighboring state to another. Poland, for example, stated that over 3 million Jews were dying of starvation in the country, and asked in 1938 for the League of Nations to encourage the Jewish population to settle elsewhere. Refugees changed from humans, to problems, and finally to ‘untouchables’,¹⁶⁴ shoved away by creating a new state for them entirely so they could be forgotten from the European mind under the guise of Jews wanting the state.¹⁶⁵ The fear of accepting Jews – accepting refugees – has transformed into guilt. The principle of non-refoulement (Art. 33) cemented this guilt into law. In 1933, the NIO shifted its focus to almost exclusively refugees coming from Germany, and the Nansen passport was rejected repeatedly from France and Britain to avoid

¹⁶⁰ “The Nobel Peace Prize 1938.” *NobelPrize.Org*, www.nobelprize.org/prizes/peace/1938/nansen/lecture/#not12. Accessed 2 June 2024.

¹⁶¹ Labman, Shauna. *Looking Back, Moving Forward: The History and Future of Refugee Protection*, 2010, scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1092&context=ckjicl.

¹⁶² “Revisiting the 1951 Refugee Convention: Exploring Global Perspectives.” *Orfonline.Org*, www.orfonline.org/research/understanding-the-relevance-of-the-1951-convention. Accessed 2 June 2024.

¹⁶³ “The Nobel Peace Prize 1938.” *NobelPrize.Org*, www.nobelprize.org/prizes/peace/1938/nansen/lecture/. Accessed 2 June 2024.

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid.*

provoking Germany.¹⁶⁶ In other words, refugees even with supposed protection became simply victims of the international world order, accepted only when it was convenient. The newly-established International Labor Organization attempted to match refugees with member states in need of more labor.¹⁶⁷

The more refugees came, the more visible they were, and the larger numbers seemed more dangerous because they seemed overwhelming. A new wave of refugees flooded the European nation-states as WWII commenced, and a series of agreements regarding refugees were established. The High Commissioner's mission then shifted to providing relief for refugees and resettlement in third countries.¹⁶⁸ In 1938, the Convention Concerning the Status of Refugees Coming from Germany was ratified by a few states with the goal of eventually transferring refugees to overseas countries.¹⁶⁹ There was an agreement relating to the issuance of travel documents in 1946 for refugees who didn't benefit from earlier agreements.¹⁷⁰ A 1947 agreement became the basis for non-refoulement.¹⁷¹ More empires crumbled: the Ottoman and Austro-Hungarian Empire, which also destabilized the old world order. When the League of Nations dissolved, responsibility for the refugee problem was transferred to the newly established United Nations. The collapse of previous world powers and League of Nations, however, made room for a new world order. By 1949, the UNHCR was established with the mandate to deal with the refugee problem.¹⁷²

So what did the UNRC provide after it was written? The four main principles are the 1) non-discrimination clause, where provisions of the UDHR are applied without discrimination as to race, religion, or country of origin (this can be seen as guilt for not allowing Jewish refugees to enter neighboring countries); 2) non-penalization for refugees illegally entering or staying in a new host country if they are seeking asylum, which sometimes requires them to break immigration rules; 3) of non-refoulement, where host countries cannot send someone back to a territory that they fear would make threats to life or freedom; and 4) expulsion, where host countries cannot expel refugees from their territory

¹⁶⁶ Labman, Shauna. *Looking Back, Moving Forward: The History and Future of Refugee Protection*, 2010, scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1092&context=ckjicl.

¹⁶⁷ *ibid.*

¹⁶⁸ *ibid.*

¹⁶⁹ *ibid.*

¹⁷⁰ Weis, Paul. *The Development of Refugee Law*, repository.law.umich.edu/cgi/viewcontent.cgi?article=1860&context=mjil. Accessed 2 June 2024.

¹⁷¹ Labman, Shauna. *Looking Back, Moving Forward: The History and Future of Refugee Protection*, 2010, scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1092&context=ckjicl.

¹⁷² "Revisiting the 1951 Refugee Convention: Exploring Global Perspectives." *Orfonline.Org*, www.orfonline.org/research/understanding-the-relevance-of-the-1951-convention. Accessed 2 June 2024.

with the exception of national security or public order. Other similar rights include equal access to the courts (effective remedy), to housing and public relief (adequate standard of living), and to freedom of movement (the right to choose their place of residence, move within the territory, or leave).¹⁷³ In other words, refugees have the right to be treated like a citizen of that country, regardless of origin, or way of existing.¹⁷⁴ Their being as refugees is legitimized by the UDHR.

Similar to the UDHR, there is no international organization that has the power to enforce these written rights given to refugees. Though the UN High Commission for Refugees was created to help implement the UDHR into national-level actors, it cannot force signatories to comply. Therefore, the implementation relies on national-level norms and political willpower, which is often fueled by local elites and their elite constituents. Unlike the UDHR, which no doubt had an influence on the spirit/motivation behind the UNRC, signatories of the UNRC are bound to follow the rights stated in the document. In other words, the UNRC, though the norm of accepting refugees, albeit grudgingly and for reasons such as democracy, growing humanitarianism, and guilt, proves the existence of a norm of accepting refugees. Now signatories have a legal obligation to follow a humanitarian norm.

¹⁷³ “Revisiting the 1951 Refugee Convention: Exploring Global Perspectives.” *Orfonline.Org*, www.orfonline.org/research/understanding-the-relevance-of-the-1951-convention. Accessed 2 June 2024..

¹⁷⁴ Weis, Paul. *The Development of Refugee Law*, repository.law.umich.edu/cgi/viewcontent.cgi?article=1860&context=mjil. Accessed 2 June 2024.

Chapter 4: Regional (European) Norms

European Norm – Queerness

Before the EU existed, the Council of Europe was the main norm-setter in Europe. Therefore, this analysis will briefly examine if the Council of Europe carried down the norms of accepting queers and refugees into Europe established by the UDHR and UNRC, then if the EU carried down the norms. First, this chapter will examine a short, general history of queerness in Europe to analyze contextual acceptance for queers, then a top-down approach starting with the Council of Europe and following this, the EU.

Queer History of Europe

Queerness has existed in Europe before Europe was a concept. Ancient Greece has become somewhat famous for its queer lithology, including polyamorous Zeus, asexual Artemus, Hercules’s “male companions,” and Aphrodite’s appetite for sexual encounters with both males and females.¹⁷⁵ It was not until the spread of Christianity across Europe that homosexuality was criminalized as early as 342 AD, and gay men could receive a death penalty in 390 AD.¹⁷⁶ Men who engaged in homosexual relationships were seen as a threat to society – they gave into their base urges, did not help the nation grow, and were becoming ‘womanly’ – weak, emotional, passive. This became the social norm, and by 1300, queerness was almost completely illegal in most of Europe.

There was a significant change as Louis XVI came into power in 1774, as instead of public executions, those arrested for sodomy were quietly let go again unpunished. The French monarchy was afraid that the constant reminder of the existence of queerness would simply encourage more queers to appear, so queers were silenced instead.¹⁷⁷ Elites often flaunted their homosexuality, while the lower class still were subject to persecution, exemplifying the hierarchical intersectionality between queerness and class.

One of the first records of openly advocating for queerness and gay rights was found in 1836, when the Swiss Heinrich Hössli published an essay demanding the recognition of rights for people who experienced “masculine love.”¹⁷⁸ Other parts of the German-speaking

¹⁷⁵ *LGBTQ+ Greek Mythology*, ieanea.org/wp-content/uploads/2023/04/LGBTQ-Greek-Mythology.pdf. Accessed 2 June 2024.

¹⁷⁶ Johnson, Serena. *Sodomy Laws in France: How the 1791 French Penal Code ...*, 2020, pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1203&context=younghistorians.

¹⁷⁷ *ibid.*

¹⁷⁸ SCHLAGDENHAUFFEN, Regis. “Gay Rights and LGBTQI Movements in Europe.” *Encyclopédie d’histoire Numérique de l’Europe*, ehne.fr/en/encyclopedia/themes/gender-and-europe/demographic-transition-sexual-revolutions/gay-rights-and-lgbtqi-movements-in-europe. Accessed 2 June 2024.

world followed soon after, such as the 12-volume “Research on the Mystery of Love Between Men” and manifesto to create a federation of Uranians (codeword for gay men, often poets) by Karl-Heinrich Ulrichs in the later 1800s. He protested the German penal code 175 that criminalized gay acts, and publicly declared himself a Uranian before German jurists.¹⁷⁹ The most famous of German figures was Magnus Hirschfeld, cofounder of the Institute for Sexual Science in Berlin. Through his institution, he helped changed the earlier Christian mindset of queerness as a sin to a sickness that could be cured.¹⁸⁰ One of the first intersex-identified person was brought to the institution, for example, to be examined. He also protested against the German penal code 175. During this time, while queerness was still shunned, queers were seen as something to pity for being ‘sick’ rather than to blame for ‘their condition.’ They were at least still seen as human.

That mindset changed starting in the 1900s. The outbreak of queerness was quashed, as if in retaliation for the protest for queer rights. As the far right began to gain popularity in the 1930s, any progress towards legitimizing the existence of queers was halted. The 175 penal code, which had started to be amended, was set into full force by the Nazis (interestingly, only gay men were persecuted, as lesbianism, intersex, and genderqueer individuals were presumed not to exist) in pursuit of their eugenic policies. More than 50,000 gay men received severe jail sentences, and 15,000 were sent to concentration camps, marked with an upside-down pink triangle.¹⁸¹ After the war, the penal code still was not amended, and neither Germany nor Austria recognized homosexual prisoners as victims of the Nazis, a prerequisite to not only reparations but state-building.¹⁸²

Still, small pockets of queerness reignited and grew coincidentally following the implementation of the UDHR. Discreet ‘clubs’ formed in the 1950s specifically for queers, though most patrons were gay men. In the Netherlands, the International Committee for Sexual Equality was formed, a radically public institution demanding rights for homosexuals. In 1954, a homophilic association, Arcadie, was formed despite the 1960 Mirguet amendment labeling queer acts “social Scourge” akin to alcoholism. Queerness was successfully

¹⁷⁹ SCHLAGDENHAUFFEN, Regis. “Gay Rights and LGBTQI Movements in Europe.” *Encyclopédie d’histoire Numérique de l’Europe*, ehne.fr/en/encyclopedia/themes/gender-and-europe/demographic-transition-sexual-revolutions/gay-rights-and-lgbtqi-movements-in-europe. Accessed 2 June 2024.

¹⁸⁰ Schlag, Gabi, and Benno Wenz. “Magnus Hirschfeld – Pionier Der Sexualforschung.” *Swr:Online*, SWR Kultur, 29 July 2021, www.swr.de/swrkultur/wissen/magnus-hirschfeld-pionier-der-sexualforschung-100.html.

¹⁸¹ “Gay People.” *Holocaust Memorial Day Trust*, www.hmd.org.uk/learn-about-the-holocaust-and-genocides/nazi-persecution/gay-people/. Accessed 2 June 2024.

¹⁸² Labman, Shauna. *Looking Back, Moving Forward: The History and Future of Refugee Protection*, 2010, scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1092&context=ckjicl.

decriminalized in the UK by 1967 through efforts made by the Homosexual Law Reform Society in the 1960s.¹⁸³ A queer wave gained international momentum especially after the 1969 Stonewall Riot, where police invaded a well-known gay club in New York (in the US, homosexuality was illegal) and patrons fought back. A year later, the first Pride March in NYC took place to commemorate the uprising and continue to protest for gay rights.¹⁸⁴ Several homosexual rights groups formed in 1970: the Gay Liberation Front (GLF) in the US and in London; HAW (Homosexuelle Aktion Westberlin) was created in the West Germany, and FHAR (Front homosexuel d'action révolutionnaire) in Paris. The protests heightened public awareness for queers among them. All these movements were in conjunction with women's rights movements and, in the US specifically, desegregation. The instability WWII had caused in the world order allowed for new norms to form.

Despite the AIDS epidemic, which set the movement back several years (as queers were associated with the disease, and thus, were treated like threats to societies, but simultaneously seen as 'deserving' of their fate as they were homosexuals), the epidemic also was the final push to institutionalize protecting queer rights. Many organizations such as the Terrence Higgins Trust in the United Kingdom in 1982, Deutsche Aids Hilfe in 1983, France Aides in 1984, and U.S.' Act Up in 1989, formed to re-frame queerness as separate from the disease and combat the disease itself. Public hysteria against gays eventually subsided. Recognizing the mobilization, the European Parliament encouraged member states to decriminalize homosexuality starting 1989, and in 1993, the World Health Organization officially moved homosexuality off the list of mental illnesses.¹⁸⁵ Since 1999, the EU claimed jurisdiction to act in cases of discrimination based on sexual orientation through the Treaty of Amsterdam.¹⁸⁶

So how accepted is queerness in Europe today generally? A 2019 study shows that ¾ of Europeans agree queers should have the same rights as non-queers (it was 71% in 2015)

¹⁸³ SCHLAGDENHAUFFEN, Regis. "Gay Rights and LGBTQI Movements in Europe." *Encyclopédie d'histoire Numérique de l'Europe*, ehne.fr/en/encyclopedia/themes/gender-and-europe/demographic-transition-sexual-revolutions/gay-rights-and-lgbtqi-movements-in-europe. Accessed 2 June 2024.

¹⁸⁴ "Research Guides: LGBTQIA+ Studies: A Resource Guide: 1969: The Stonewall Uprising." *1969: The Stonewall Uprising - LGBTQIA+ Studies: A Resource Guide - Research Guides at Library of Congress*, guides.loc.gov/lgbtq-studies/stonewall-era#:~:text=On%20June%2028%2C%201969%2C%20the,of%20gay%20and%20lesbian%20life. Accessed 2 June 2024. .

¹⁸⁵ SCHLAGDENHAUFFEN, Regis. "Gay Rights and LGBTQI Movements in Europe." *Encyclopédie d'histoire Numérique de l'Europe*, ehne.fr/en/encyclopedia/themes/gender-and-europe/demographic-transition-sexual-revolutions/gay-rights-and-lgbtqi-movements-in-europe. Accessed 2 June 2024.

¹⁸⁶ "11997D/TXT." *EUR*, eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11997D%2FTXT. Accessed 2 June 2024.

but the figure varies greatly among member states – 98% of the Swedish population agreed compared to 31% in Slovakia.¹⁸⁷ This may be due to the importance of religion in respective countries – Eastern Europe tends to hold religion as more important than in Western Europe.¹⁸⁸ National laws vary greatly in respect to legal recognition and same-sex unions, and some still outright ban same-sex marriage (Bulgaria, Croatia, Hungary, Latvia, Lithuania, Poland and Slovakia).¹⁸⁹ 43% of queers feel that violence against queers has increased, whereas 1/3 feel it has stayed the same.¹⁹⁰ When asked what the barriers are towards positive improvement, respondents stated the visibility of queers and their participation in everyday life as well as the negative framing of the community by politicians, community leaders, and civil society. A lack of law enforcement and public support by public figures was also mentioned.¹⁹¹ In other words, generally in Europe there has been a grudging acceptance of queers into society.

Council of Europe - Queerness

Following the newly-established UN, the Council of Europe (CoE) was founded in 1949 and remains Europe's oldest intergovernmental organization, carrying down rights established by the international level to European stage such as human rights, rule of law, and democracy.¹⁹² The idea of the CoE began perhaps as a response to the UDHR, and certainly in a similar context. Its creation began in the 1940s and was developed in the hope to prevent states from abusing the rights of its citizens again.¹⁹³ The ten countries who signed the founding treaty, interesting to note, did not include Germany, Italy, Austria, or several eastern European countries. By increasing their dependence on one another, European countries attempted to weaken each other through dependency. The fall of the Berlin Wall in 1989

¹⁸⁷ *The Rights of LGBTI People in the European Union*, [www.europarl.europa.eu/RegData/etudes/BRIE/2023/747896/EPRS_BRI\(2023\)747896_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747896/EPRS_BRI(2023)747896_EN.pdf). Accessed 2 June 2024.

¹⁸⁸ Evans, Jonathan. "How Do European Countries Differ in Religious Commitment? Use Our Interactive Map to Find Out." *Pew Research Center*, Pew Research Center, 5 Dec. 2018, www.pewresearch.org/short-reads/2018/12/05/how-do-european-countries-differ-in-religious-commitment/.

¹⁸⁹ *The Rights of LGBTI People in the European Union*, [www.europarl.europa.eu/RegData/etudes/BRIE/2023/747896/EPRS_BRI\(2023\)747896_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747896/EPRS_BRI(2023)747896_EN.pdf). Accessed 2 June 2024.

¹⁹⁰ *A Long Way to Go for LGBTI Equality*, 2020, fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf.

¹⁹¹ *ibid.*

¹⁹² "The Council of Europe at a Glance - Portal - WwW.Coe.Int." *Portal*, www.coe.int/en/web/portal/the-council-of-europe-at-a-glance. Accessed 2 June 2024.

¹⁹³ "What Is the European Convention on Human Rights (ECHR)?" *Amnesty International UK*, www.amnesty.org.uk/what-is-the-european-convention-on-human-rights. Accessed 2 June 2024.

caused another wave of European countries to join as the CoE helped ex-communist countries transition to democracies.¹⁹⁴ Today, there are 47 member states to the treaty.

One of the main tasks of the CoE is to set standards – to set norms that states can measure themselves by. Several of the standards include fighting against violence against women, child sexual abuse, discrimination, racism, and human trafficking.¹⁹⁵ Queerness is not mentioned though attention drawn to several other marginalized groups.

The CoE drafted and ratified the European Convention on Human Rights, which enshrined the UDHR into the continent.¹⁹⁶ The later establishment of the European Court of Human Rights (ECHR) allows individuals to report abuses of their human rights if all local remedies have failed. This was a significant change from the UDHR – as a treaty, any state that signed meant there was an obligation to implement these human rights at a national level, and if these rights were not protected, a supranational law would override their own courts. In other words, human rights took precedent over any demand for sovereignty or semblance of controlling its citizens. This automatically further strengthened the norm of generally caring for human rights. The ECHR was meant to be a working document, meaning it could change over contexts and time, and over 15 protocols have been added.¹⁹⁷

Similar to the UDHR, the ECHR included the obligation to respect human rights (Art. 2) and the prohibition of discrimination on the grounds of “sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”¹⁹⁸ This differs slightly from the UDHR in that it opens up the different grounds of discrimination beyond those listed above. This is more inclusive than the UDHR, which seems to hint the norm of prohibition against discrimination, regardless of the reasoning, was carried down from an international to regional (European) level.

The CoE created the Framework Convention for the Protection of National Minorities, which, in sum, protects the rights of persons belonging to national minorities and their languages. What the Framework does not do is define what a national minority is,

¹⁹⁴ Lobey, Sophie. “UPDATE: The Council of Europe.” *Update: The Council of Europe - Globalex*, 2023, www.nyulawglobal.org/globalex/Council_of_Europe1.html.

¹⁹⁵ “The Council of Europe at a Glance - Portal - Wwww.Coe.Int.” *Portal*, www.coe.int/en/web/portal/the-council-of-europe-at-a-glance. Accessed 2 June 2024.

¹⁹⁶ “Human Rights in Europe.” *OHCHR*, europe.ohchr.org/human-rights/what-are-human-rights/human-rights-europe#:~:text=The%20EU%20has%20developed%20an,workers%20rights%2C%20and%20more. Accessed 2 June 2024.

¹⁹⁷ *European Convention on Human Rights - ECHR*, www.echr.coe.int/documents/d/echr/convention_ENG. Accessed 2 June 2024.

¹⁹⁸ *ibid*.

giving states the right to define this. This reflects the question of sovereignty. While this margin of appreciation has the advantage that queers can be included as a national minority, it also gives states the chance to be incredibly narrow as to which type of people they allow into their definition of who belongs in their society.¹⁹⁹

The CoE has set up several institutions to promote protection of sexual and gender minorities. In 1981, the Parliamentary Assembly of the CoE established a list of recommendations adding discrimination based on sexual orientation or gender identity would be a ground for discrimination.²⁰⁰ In 2007, the CoE also published a Recommendation regarding the freedom of assembly of LGBT individuals. While much work has been done in the area of gender (or rather, female) equality (such as setting up a Gender Equality Commission), only since 2014 has there been a dedicated body to address human rights issues from sexual orientation or gender identity, called the Council of Europe Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) Unit.²⁰¹ Its purpose is to provide technical support and expertise to member states that request help, guide legal and institutional frameworks, and implement enforcement plans. It made a list of recommendations to member states, such as collecting existing legislation and collecting gendered data, ensuring there were measures to combat discrimination on the grounds of queerness. This shows the willingness of the CoE to support queer issues – the willingness to invest resources – but still depends on initiation from member states. There has been much more attention on women’s protection (as illustrated by the Istanbul Convention in 2011). However, these recommendations are not binding, almost like it’s more of a superficial show for queer rights rather than a desire. Overall, the norm of instilling non-discrimination, including for queers, exists at the European stage.

EU Norm - Queerness

Though all members of the EU are members of the CoE, it is still important to briefly discuss how the EU supports or does not support queerness within its borders. Because the EU is such a complicated institution, only key points will be touched upon, and will focus on the EU post Treaty of Rome, as that is when the EU was created.

¹⁹⁹ “About the Framework Convention for the Protection of National Minorities - National Minorities (FCNM) - Wwww.Coe.Int.” *National Minorities (FCNM)*, [www.coe.int/en/web/minorities/at-a-glance#{%2279030665%22:\[1\]}](http://www.coe.int/en/web/minorities/at-a-glance#{%2279030665%22:[1]}). Accessed 2 June 2024.

²⁰⁰ “Homepage - Sexual Orientation and Gender Identity - Wwww.Coe.Int.” *Sexual Orientation and Gender Identity*, www.coe.int/en/web/sogi. Accessed 2 June 2024.

²⁰¹ *ibid.*

Similar to the UN and CoE, protection for the human rights of queers also stems from antidiscrimination laws. The key difference between the CoE and EU is that many EU laws are binding as opposed to simply recommendations. This means that norms must be put into action.

There are three main sources of anti-discrimination protection: the Treaty of the European Union (TEU), the Treaty on the Functioning of the EU (TFEU), and the Charter of Fundamental Rights of the EU (CFR). According to the TEU, the EU was built on the ideals of respecting human rights and dignity, built on a community in which pluralism, non-discrimination, tolerance, solidarity, and equality between men and women exist (Art. 2 TEU).²⁰² Though grand ideals, they also shut off the existence of any equality of people who do not fit societal norms of either being a man or a woman. There is a mention of respecting the rights of minorities, and this term is left vague, meaning theoretically sexual minorities would also fall under this category.

Article 19 of the TFEU holds the most significance regarding queer rights, as it addresses discrimination based on national origin and sexuality; however, conflicting Court of Justice of the EU case law applies the extent of equality unevenly.²⁰³

The CFR first entered into force in 2009 to legally bind EU member states to the CoE through the Treaty of Lisbon.²⁰⁴ Therefore, it shares many similarities. However, unlike the ECHR, the CFR does not call upon a shared spirit but does call for a collection of common values balanced by respecting the diverse cultures and histories of member states. The EU is built on the balance between member states and the institutions. Several articles stand out, including Art. 21 of non-discrimination based on, among other reasons, sexual orientation or sex, and Art. 23 which guarantees the equality between men and women (again excluding any categories outside of these two genders. There has been much more legislation relating to equality between men and woman than laws supporting queer rights, or at the very least breaking down discriminatory laws like same-sex marriage in member states).²⁰⁵ The CFR

²⁰² “Why Do We Need the EU Charter of Fundamental Rights?” *European Commission*, commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_en. Accessed 2 June 2024.

²⁰³ *The Rights of LGBTI People in the European Union*, [www.europarl.europa.eu/RegData/etudes/BRIE/2023/747896/EPRS_BRI\(2023\)747896_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747896/EPRS_BRI(2023)747896_EN.pdf). Accessed 2 June 2024.

²⁰⁴ “Why Do We Need the EU Charter of Fundamental Rights?” *European Commission*, commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_en. Accessed 2 June 2024.

²⁰⁵ “Lex - 12012P/TXT - En - EUR-Lex.” *EUR*, eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT. Accessed 2 June 2024.

was the first treaty within the EU to explicitly prohibit discrimination against sexual orientation. However, there is no provision against discrimination for genderqueer (or transgender) individuals, meaning that individual member states have the power to decide how much protection they want to offer individuals that change their gender or intersex people.²⁰⁶

As the EU was originally an economic organization, there has been more extensive protection in the realm of employment through the Employment Equality Directive, which bans discrimination within employment since 2003. However, only 18 member states have gone beyond these basic protections.²⁰⁷ Queer people often hide their queerness out of fear of harassment and other forms of discrimination regardless.

EU case law through the EU Court of Justice has expanded these treaty provisions. At first, the TEU provisions were only viable in employment, including sexual orientation. As not many cases have been brought before the Court, the Court tends to have a very high bar when it comes to saying there was discrimination based on sexual orientation or gender expression. The Court has acknowledged that homosexual couples are ‘comparable’ to their heterosexual counterparts in being able to “enter into a stable, committed relationship”, “they are in a relevantly similar situation to a different-sex couple as regards their need for legal recognition and protection of their relationship,” that same-sex married couples are just as capable as different-sexed couples (unmarried) in adopting the child of the spouse, and that a single homosexual is as capable as a heterosexual in their ability to adopt.²⁰⁸ The limited and very specific scope of case law can be interpreted as reluctance to allow for a change in norms regarding queerness at the EU level.

On the other hand, in *Beizaras and Levickas v. Lithuania*, the Court led that attitudes or stereotypes prevailing over a certain period of time among the majority of society members does not justify discrimination against people based only on their sexual orientation or limiting their protections of a private life.²⁰⁹ Different treatment given to people based solely on their orientation are not justified under the CFR. A higher age of consent for homosexual acts compared to heterosexual acts was found to be a violation of Art. 14 and

²⁰⁶ *The Rights of LGBTI People in the European Union*,
[www.europarl.europa.eu/RegData/etudes/BRIE/2023/747896/EPRS_BRI\(2023\)747896_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747896/EPRS_BRI(2023)747896_EN.pdf).
Accessed 2 June 2024.

²⁰⁷ *How EU Law Offers Protection from Sexual Orientation ...*,
fra.europa.eu/sites/default/files/fra_uploads/1227-Factsheet-homophobia-protection-law_EN.pdf.
Accessed 2 June 2024.

²⁰⁸ *Guide on the Case-Law - Rights of LGBTI Persons*,
www.echr.coe.int/documents/d/echr/Guide_LGBTI_rights_ENG. Accessed 2 June 2024.

²⁰⁹ *ibid.*

Art. 8 of the CFR, and national legislation that creates unreasonable barriers when obtaining a residence permit based on family unification also violates the CFR.²¹⁰

EU legislation also becomes manipulated through the interpretation to discriminate against queers. For example, in 2019 Poland began to create “LGBT-free zones” through other Regional Charters of Family Rights where LGBT families were forced to declare themselves not queer. 1/3 of the country had adopted the charter by 2020. It was not until 2024 due to financial pressure from legal actions in front of Polish courts that Poland was forced to rescind these laws.²¹¹

In a similar vein, the CJEU currently has a ruling pending from the Hungarian anti-LGBT ‘Propaganda law,’ which was added last-minute to a series of acts ‘protecting’ families and children by banning queer-related content broadcasted to minors, reflecting laws passed in Russia in 2013.²¹²

In other words, there is an uneven acceptance of queers in the different member states of the EU. However, at the EU level, there have been several steps taken by the EU to decriminalize homosexuality.

European Norm – Refugee

Council of Europe - Refugee

There seems to be a general consensus of accepting queerness in the Council of Europe, as well as institutions to perpetuate and (re)produce the norm. We now turn to observe the norm of accepting refugees at the European stage.

It would be easy to assume that because the Council of Europe was created around the same time as the UNRC, that the CoE would also automatically inherit the norm. However, in the founding treaty of the CoE there is no mention to the right of asylum or caring for refugees. Though the founding Treaty of London united initial signatories under the idea of protecting ‘democracy, human rights, and the rule of law, the wording of the treaty begs the question where these values end.²¹³ The treaty “reaffirms their devotion to the spiritual and moral values which are the common heritage of their people and the true source of individual

²¹⁰ *Guide on the Case-Law - Rights of LGBTI Persons*,

www.echr.coe.int/documents/d/echr/Guide_LGBTI_rights_ENG. Accessed 2 June 2024.

²¹¹ Reillon, Vincent. “Queer You EU: An Evaluation of What EU Institutions for LGBTIQ+ People Fom 2019-2024.” *Forbidden Colours*, 17 Apr. 2024, www.forbidden-colours.com/wp-content/uploads/2024/04/Report-for-EU-elections-April-2024-FINAL.pdf.

²¹² *ibid.*

²¹³ *Statute of the Council of Europe * - London, 5.v.1949*, rm.coe.int/1680306052. Accessed 2 June 2024.

freedom, political liberty, and the rule of law...”²¹⁴ However, there is no consensus what the morals are, and what the common heritage is. This seems incredibly limited, especially considering this erases the multitude of minorities that do not share a ‘common heritage of their people.’ It is also questionable the use of the world spirit, which has some religious connotations and insinuates there is one singular valid religion and set of morals, ‘European’ morals. This also seems to insinuate all non-Europeans would not be included in these protections. Additionally, the treaty calls for unity ‘between all like-minded countries of Europe,’ which also automatically creates in-group and out-group dynamics between European countries (some of which still are not considered European, such as Russia) and reinforces a hierarchy of prioritizing the human rights and democracies of the signatories of the treaty only.

Similarly, there is no mention of the right to asylum in the EHCR.²¹⁵ Though “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as [...] national or social origin [...]” is written in the EHCR, the EHCR seems only applicable to people already in one of the CoE member states.

However, this does not mean the CoE is silent on the issue of refugees. During the 2016 refugee ‘crisis,’ a Special Representative on Migration and Refugees was established to coordinate actions with international partners such as the UNHCR, IOM, UNICEF, and EU.²¹⁶ The Special Representative is tasked with collecting and analyzing information related to migrants and refugees and reporting it to the Secretary General.²¹⁷ It most notably has created the Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe, the most recent covering (2021-2025), which was adopted by all member states. It identifies specific vulnerabilities of migrants and refugees such as abuse and exploitation, and calls for member states to address root causes of migration in countries of origin (such as economic or political instability).²¹⁸ The Committee of Ministers also passed recommendations to support young refugees transition into adulthood, courses for legal professions about refugee and migrant children, and practice tools to promote child-friendly

²¹⁴ *Statute of the Council of Europe* * - London, 5.v.1949, rm.coe.int/1680306052. Accessed 2 June 2024.

²¹⁵ *European Convention on Human Rights - ECHR*, www.echr.coe.int/documents/d/echr/convention_ENG. Accessed 2 June 2024.

²¹⁶ “Mandate - Special Representative of the Secretary General on Migration and Refugees - [Www.Coe.Int.](https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/mandate)” *Special Representative of the Secretary General on Migration and Refugees*, www.coe.int/en/web/special-representative-secretary-general-migration-refugees/mandate. Accessed 2 June 2024.

²¹⁷ *ibid.*

²¹⁸ Council of Europe, 2021, *Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025)*.

approaches in migration.²¹⁹ The CoE also emphasizes integration of migrants and refugees to help manage the flow, based on the right to respect private and family life (Art. 8 ECHR) and prohibit discrimination (Art. 14 EHCR).²²⁰ However, the CoE tries to avoid adding new burdens on member states when managing migration flows, calling for cooperation in taking new actions together in priority areas.²²¹ It seems protecting migrant children is the easiest pill to swallow, though these children may also be queer.

In other words, the CoE does carry on the norm of accepting refugees; however this norm is not particularly strong and focuses more on migration as a whole. Most importantly, it does encourage member states to apply human right protections to refugees, even if it is only in the form of recommendations.

EU – Refugee

There is a clear transfer of norms from the international level to EU level when it comes to the right to asylum through the EU Charter of Fundamental Rights (EUCFR), which came into force in 2000, almost 50 years after the UNRC was signed. To understand the context, there will be a basic overview of EU migration policy to understand the challenges of implementing this international, CoE, and EU norm on the national level. Article 18 specifically states that the right to asylum will be guaranteed through the rules of the UNRC of 1951 and 1967 and in accordance with the TEU and TFEU.²²² Art. 19 relates to Art. 33 of the UNRC non-refoulement clause. Art. 18 of the EUCFR outlines the protection against extradition, removal, or expulsion to a state where there is a serious risk they would be subjected to inhuman or degrading treatment or punishment.²²³

So what happened in these 50 years? What culminated into guaranteeing the right to asylum? One factor was the changing attitudes towards migration. The beginning of the EU's migration policy began with the formation of the European Economic Community in 1957 based on the Treaty of Rome, which provided a legal basis for a shared migration policy. However, these migration policies were developed bilaterally following labor demands

²¹⁹ “Mandate - Special Representative of the Secretary General on Migration and Refugees - www.coe.int.” *Special Representative of the Secretary General on Migration and Refugees*, www.coe.int/en/web/special-representative-secretary-general-migration-refugees/mandate. Accessed 2 June 2024.

²²⁰ *Human Rights Aspects of Immigrant and Refugee Integration ...*, 2019, rm.coe.int/168093de2c.

²²¹ “Mandate - Special Representative of the Secretary General on Migration and Refugees - www.coe.int.” *Special Representative of the Secretary General on Migration and Refugees*, www.coe.int/en/web/special-representative-secretary-general-migration-refugees/mandate. Accessed 2 June 2024.

²²² “Lex - 12012P/TXT - En - EUR-Lex.” *EUR*, eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT. Accessed 2 June 2024.

²²³ *ibid.*

(meaning the demographics were young, healthy males who were not allowed to truly settle and bring families).²²⁴ These types of agreements were solidified during the 1960s oil boom, but required major rethinking following the bust in the early 1970s. In the face of rising unemployment, these temporary work permits decreased dramatically, and xenophobia grew as citizens felt they had to compete on the same job market.²²⁵ However, temporary workers who refused to leave out of fear of not being able to return were left to bring their families through family reunification policies.

Another issue was the sheer number of applicants changed over time. In 1980, there were a total of 149,037 asylum applications submitted in the EU, in 1985 157,000.²²⁶ There was a significant increase to 402,027 in 1990, peaking to 673,947 in 1992, and dipping to 290,570 in 1997.²²⁷ The next and significant peak occurred almost a decade later in 2015, with a total of almost 1.3 million refugees applying for asylum within the EU borders.²²⁸

The 1980s were characterized as a shift away from economic related migration to political. Asylum applications now came from Asia and sub-Saharan countries (previous migration came from Eastern, Southern European, and former colonies).²²⁹ Although an EU Commission report in 1975 stated that there was generally acceptance of migrants in economic and social fields among the public because of historical bilateral agreements, acceptance and equal treatment in the political field was still foreign. Emboldened, in 1985 the Commission attempted to create some sort of coordinated migration policy, but member states felt that this restricted their national sovereignty. Instead, the Council established a policy where non-European migration control would remain with the member states. This indicates the desire for control of member states to be able to push away ‘otherness.’ In 1985, the Schengen Agreement emphasized police and judicial cooperation over abolishing border controls, linking criminality and danger to refugees and migrants. The 1997 Single European Act (SEA) also intended to facilitate the free movement of member state citizens and third country nationals, as well as cooperate in combatting terrorism, drug trafficking, and crime.

²²⁴ Seilonen, Josi. *Fortress Europe – a Brief History of the European Migration and Asylum Policy*, 2016, helda.helsinki.fi/server/api/core/bitstreams/9d0e17cc-9b42-48b2-9288-d2fecdc387/content.

²²⁵ *ibid.*

²²⁶ *Asylum Applications in Industrialized Countries: 1980-1999*, www.unhcr.org/statistics/STATISTICS/3c3eb40f4.pdf. Accessed 2 June 2024.

²²⁷ *ibid.*

²²⁸ “Asylum Applicants by Type, Citizenship, Age and Sex - Annual Aggregated Data.” *Language Selection*, ec.europa.eu/eurostat/databrowser/view/migr_asyappctza__custom_11102126/default/line?lang=en. Accessed 6 June 2024.

²²⁹ Seilonen, Josi. *Fortress Europe – a Brief History of the European Migration and Asylum Policy*, 2016, helda.helsinki.fi/server/api/core/bitstreams/9d0e17cc-9b42-48b2-9288-d2fecdc387/content.

Nothing in the SEE opposed member states from expelling migrants or refugees on the grounds they may be a ‘national security threat’. Combined with the high influx of migrants and refugees, human rights were set to the wayside.²³⁰

One of the first significant pieces of migration legislation was the Dublin Convention of 1990, which aimed to regulate in which country asylum seekers lodged their application, and sniff out “false refugees” or ‘disguised economic migrants.’²³¹ Asylum seekers would travel through Europe to ‘select’ which country they wanted to apply in; this, however, seemed like giving too much control for refugees. EU member states also felt their kindness was being taken advantage of if the refugee fled to Europe because of economic stress. The Convention also allowed member states to turn refugees from ‘safe’ third countries such as central and eastern European countries (though who decided which countries were deemed safe remains a mystery). The collapse of the Berlin Wall and fall of communist regimes catalyzed an explosion of refugees from eastern to western Europe. Simultaneously, as these undemocratic countries suddenly became democratic, asylum applications could be sent to these countries as well, despite the fact the communist countries were homophobic, in major economic struggles, and struggling to rebuild their national identities.

The 1990s can be characterized as an expansion of EU control over migration. The Maastricht Treaty (1992) expanded its third pillar of cooperation in justice and home affairs to include rules to exercise control on crossing external borders, combatting terrorism and illegal substance trafficking, and creating a system to exchange information between national police forces, and creating a common asylum policy.²³² The Treaty of Amsterdam (1997) created new mechanisms to establish asylum application transfers, the minimum reception standards for asylum seekers, measures on illegal immigration. Though little legislation followed it, the Tampere Summit in 1997 called for the rejection of the ‘Fortress Europe’ mentality, reaffirmation to follow the protocols of the UNRC, partnering with countries of origin in combatting common push factors of refugees (such as poverty, conflict, and democratization).²³³ This represents a marked shift away from seeing refugees as simply economic burdens and as people searching for human rights.

There was a rise in xenophobia after 9/11. Though this did not occur in Europe, the terrorist attacks in the EU shifted priorities away from human rights to national security

²³⁰ Seilonen, Josi. *Fortress Europe – a Brief History of the European Migration and Asylum Policy*, 2016, helda.helsinki.fi/server/api/core/bitstreams/9d0e17cc-9b42-48b2-9288-d2feccdca387/content.

²³¹ *ibid.*

²³² *ibid.*

²³³ *ibid.*

(though one could argue security is a human right). Asylum seekers were seen as potential terrorists at worst, and cultural diluters at best.²³⁴ A hierarchy to determine the responsible member state to examine an asylum application was established in the 2003 Dublin Regulation II based on the assumption refugees would be treated equally well regardless of member state. The European Agency for the Management of External Borders (FRONTEX) was created to coordinate the management of external borders and, since 2014, survey the EU's sea borders as well.²³⁵ FRONTEX is now best known for its human rights abuses. Finally, the Common European Asylum System was implemented for the first time, which aimed to max the economic benefits of migration.²³⁶ Asylum seekers found difficulty in fitting into this scheme.

It took until 2010 for a specific office, the European Asylum Support Office, to attempt to unify all asylum processes and provide technical support for the second stage of the Common European Asylum System, which now focused on protecting member states and promoting solidarity.²³⁷ It also heightened standards for internal protection and guarantees for vulnerable groups. The Dublin III Regulation also attempted to fill holes the previous two regulations left, while EURODAC established a fingerprinting system to help track asylum seekers.²³⁸ This policy in particular reflects the growing need for control of refugee influxes, especially after the 2015 'crisis'. The mix of policy reflects the fight between saying the EU wants a democracy and the lingering xenophobia and homophobia in many member states.

It is important to note that the right to asylum does not guarantee the refugee will be granted asylum – that is up to the member states to decide, following the UNRC law. Member states decide the total number of refugees to be admitted, allowing refugees access to the job market, the coverage of their basic needs (such as refugee camps and monthly allowances) and, of course, granting asylum status.

In sum, while there is a base humanitarian idea that refugees should be accepted within the EU, there is a very uneven idea of *how* and *which* refugees. For example, as mentioned in Chapter 3, in the 1900s, refugees largely came from Europe – they were white, Christian, and fit the norms of what a European should be. However, the demographics and number of refugees shifted over time, as did the migration policies dictating where their

²³⁴ Seilonen, Josi. *Fortress Europe – a Brief History of the European Migration and Asylum Policy*, 2016, helda.helsinki.fi/server/api/core/bitstreams/9d0e17cc-9b42-48b2-9288-d2feccdca387/content.

²³⁵ *ibid.*

²³⁶ *ibid.*

²³⁷ *ibid.*

²³⁸ *ibid.*

asylum application would be accepted based on which states felt they could control the influx of 'others,' and which 'others' they were willing to assimilate. A state will choose its citizens over outsiders. But if a state had to choose its citizens, it will choose the most privileged among them.

Chapter 5: National (Austria) Norms

This chapter will dedicate itself to the lowest level of the hierarchy in this analysis: the state-level. Austria was chosen as a case study because it is one of the first countries queer refugees reach that are remotely queer-friendly along the Balkan route (many queer refugees come from the Middle East and North Africa). It sits along the border of acceptance or not acceptance – it teeters on allowing its norms to change or refusing them outright. It showcases a state in transition between homophobic and acceptance. It also allows us to zoom in on the individual queer experience of queer refugees. This chapter will first uncover the queer history of Austria, then its attitude towards refugees. Finally, with the help of a report from a humanitarian lawyer, five interviewed queer refugees, and a queer refugee case worker, this paper will examine how accepting Austria is.

Austria Norm – Queerness

The history of Austria gives clear indication that queerness was not initially accepted. One of the earliest instances of homophobia was the reformation of Article 74 of the Constitution Criminalis Theresiana in 1768 by Empress Maria Theresa, which defined acts of ‘sodomitical sins’ or ‘abominable vice of unchastity against nature’ as acts of sex against the ‘natural order,’ including between same genders, animals, and corpses. These ‘sodomites’ were to be beheaded and burned.²³⁹ It is also interesting to note that having sex with a person of the same gender was seen as just as terrible as having sex with animals – as if these queers were animals themselves, uncivilized creatures not fit to be citizens of their nation. This law and point of view most likely stems from Austria’s history as a Catholic nation that sees these non-heterosexual acts as sins. However, aristocrats like Prince Franz Eugen of Savoy (1663-1736) who was famous for his effeminate mannerisms and affairs with men, were not publicly prosecuted. The father of Maria Therese, Emperor Charles VI, was also a suspected homosexual, as he showed little interest for women and too much interest in Count Michael Johann Althan III.²⁴⁰ It was rare that aristocrats were charged, as this would bring attention to the issue of homosexuality. Instead, it was more common that people of the lower class were punished.

As Napoleon swept through Europe and changed the laws not Napoleonic code, Article 74 was temporarily decriminalized, but in 1803, Emperor Francis II reinstated the

²³⁹ Bateman, Geoffrey. *Austria*, 2015, www.glbtqarchive.com/ssh/austria_S.pdf.

²⁴⁰ *ibid*.

Article. However, he lessened the punishment from death to a prison term of 6-12 months. In response, pockets of queer subcultures began to appear, not just in Austria, but across Europe.²⁴¹

This wave of emergence was quickly smothered. As if in retaliation, Article 74 was rewritten into the Austrian criminal law as 129b, the “Total Prohibition” law. Set in 1852, this law punished any sexual acts (‘fornication’) with animals and with people of the same gender.²⁴² This law was especially unusual for its time because it also punished women who engaged in non-heterosexual acts – Austria was (and for quite a while) one of the few countries that also targeted female queers. After experiencing some sort of freedom, by the turn of the century, pockets of rebellion began to form. Early Austrian feminists chose other women as life partners and wrote scathingly about the role of men in society. Early radical lesbian emerged like Auguste Fickert (1855-1910), co-founder of Vienna’s radical women’s moment and Marie von Najmájer (1844-1904), a Hungarian-descended writer for love between women.²⁴³ By the end of WWI, lesbians had formed organizations such as branches of the Deutscher Freundschaftsverband (German Friendship Association) and Bund für Menschenrecht (Union for Human Rights).²⁴⁴ Gay men in Vienna met at cafes and bars serving queer clientele, or at certain bathhouses or parks and such as the Rathaus Park (City Hall Park) in Vienna.²⁴⁵

Homosexuality in the 1930s and 1940s was seen in Austria as less of a sin and more of a medical anomaly. German-born Krafft-Ebing conducted research in Graz on homosexuality and other sexual issues. By 1886, he published *Psychopathia Sexualis*, which attempted to rationalize the occurrence of homosexuality as something heretical and psychological. He coined terms such as sadism and masochism, where one receives sexual pleasure from giving or receiving pain.²⁴⁶ This echoes the idea that sex and power are closely intertwined. Viennese-born Sigmund Freud introduced to Austrians (and the world) concepts such as fetishes, the Oedipus complex, and penis envy, which sparked much discussion for

²⁴¹ Bateman, Geoffrey. *Austria*, 2015, www.glbqtarchive.com/ssh/austria_S.pdf.

²⁴² *Österreichisches Strafgesetz Über Verbrechen, Vergehen ...*, www.gesetze.li/chrono/pdf/1009001000. Accessed 2 June 2024.

²⁴³ “Frauen in Bewegung 1848–1938.” *Startseite*, fraueninbewegung.onb.ac.at/node/2620. Accessed 2 June 2024.

²⁴⁴ Bateman, Geoffrey. *Austria*, 2015, www.glbqtarchive.com/ssh/austria_S.pdf.

²⁴⁵ *ibid.*

²⁴⁶ Knack, Natasha, et al. *Sadism and Masochism - the Wiley Encyclopedia of Personality and Individual Differences - Wiley Online Library*, 2020, onlinelibrary.wiley.com/doi/abs/10.1002/9781118970843.ch285.

hetero versus homosexuality, and the conflict between the ‘beastly’ and ‘civilized’ sides of people.²⁴⁷

After Germany annexed Austria in 1938, Paragraph 175 was institutionalized prohibiting sexual acts against men. Though technically female queers were ‘safe’ as they were not men, they too were prosecuted and, in 1939, the first groups of Austrian homosexuals were sent to concentration camps such as Mathausen (it was not until 1995 that the first compensations for homosexual victims under national socialism were introduced).²⁴⁸ They underwent torturous medical examinations and experiences, including castration, in a search for the ‘cure’ to homosexuality.

After the war, the criminal law Austria had before its occupation was reinstated, meaning same-sex acts were still strictly prohibited.²⁴⁹ Despite the need for Austria to focus on rebuilding its nation economically and politically – or perhaps because of the need to focus on ‘higher priority,’ homosexuality was still outlawed by the state. It was not until the 1970s when substantial changes took place through a radical change in the composition of Austria’s parliament, where the conservative majority was overtaken by the labor party. A special commission was made to revise the old criminal law. Leader of the labor party, Karl Reinhart, argued that same-sex relationships between two adults was legally senseless and counterproductive.²⁵⁰ However, he also clarified that homosexuality was not welcome in society. As many conservatives argued, homosexuality was and would always be different from the majority and never accepted as part of the catholic society, as homosexuality was still considered abnormal.²⁵¹

Therefore, though the Criminal Law 129b was finally overturned, it was quickly replaced by four new paragraphs in its criminal code: Par. 209 which set the minimum age of same-sex sexual consent to 18 (compared to 14 for heterosexual sex), Par. 210 which prohibited male homosexual prostitution; Par. 220 which banned any advertising and Par. 221 and any association that promoted ‘same-sex fornication.’²⁵² Though these laws were rarely

²⁴⁷ Bateman, Geoffrey. *Austria*, 2015, www.glbqtarchive.com/ssh/austria_S.pdf.

²⁴⁸ Binder, Wilhelm. *Historicize Yourselves! A History of Queer Activism in Vienna*. Queer Museum Vienna Vienna, 2022

²⁴⁹ Goessl, Martin. *The Power of Queerness: The Gay and Lesbian Movement in Austria and the Impact for a New Legislation on Sex (in 2nd Half of the 20th and the 21st Century)*., 2013, https://doi.org/https://www.researchgate.net/publication/328686261_The_Power_of_Queerness_The_Gay_and_Lesbian_movement_in_Austria_and_the_impact_for_a_new_legislation_on_sex_in_2nd_half_of_the_20th_and_the_21st_century.

²⁵⁰ *ibid.*

²⁵¹ *ibid.*

²⁵² Binder, Wilhelm. *Historicize Yourselves! A History of Queer Activism in Vienna*. Queer Museum Vienna Vienna, 2022

enforced, the mere presence stifled the queer rights movement. However, there was still significant progress: in 1975, the gay-focused ComingOut group was founded, followed by the lesbian-oriented Frauenzentrum (women's center) in 1976.²⁵³ Though both groups were under the queer umbrella, gay men tended to have more rights and privileges than queer women as it was still a heavily patriarchal society. In 1997, the ComingOut group organized a protest in Vienna, where gays from German-speaking countries congregated and marched along the Ringstrasse (Ring Street, which circles around Vienna's city center) holding hands to increase the visibility of queers among the Austrian society. Another significant milestone was the founding of the Homosexuelle Initiative Wien (HOSI Vienna) in 1979, which today plays an incredibly influential role in fighting for queer rights in Austria.²⁵⁴

It was not until the 1980s that there were any substantial attitude changes of the general public towards queers. There were several protests the decade following an incident where the City of Vienna tore down a banner from HOSI raising awareness for Par. 220 and 221. This triggered a wave of solidarity and protest in the decade, including a protest on New Year's in 1982, where two naked gay men stormed the stage of the revered New Year's Day concert with the message "Menschenrechte für Schwuele!" (human rights for gays!) on a banner with a pink triangle, harkening back to the days of Nazi persecution of queers. What was once a squatter house turned into the Türkis-Rosa-Lila Villa, a safe haven for queers and now a queer community cornerstone. The first memorial plaque commemorating homosexual victims was erected in Mauthausen because of HOSI's insistence, the AIDS-Hilfe Wien (AIDS Help Vienna) was founded in 1985. Because of the AIDS epidemic, Par. 210 banning homosexual prostitution was lifted in with the argument that no prostitute would ever attend a health examination if it were illegal.²⁵⁵ Because AIDS endangered the elites of the society, in other words, they changed the law in an act of self-preservation.

When Austria joined the EU in 1995, two further paragraphs were erased by the parliament. By this time, the parliament was more diverse in terms of political ideas and parties (including the Greens). An international norm – the EU and its standards for human rights – was beginning to impact the Austrian society. There were several advances in queer

²⁵³ Binder, Wilhelm. *Historicize Yourselves! A History of Queer Activism in Vienna*. Queer Museum Vienna Vienna, 2022

²⁵⁴ *ibid.*

²⁵⁵ Goessl, Martin. *The Power of Queerness: The Gay and Lesbian Movement in Austria and the Impact for a New Legislation on Sex (in 2nd Half of the 20th and the 21st Century)*., 2013, https://doi.org/https://www.researchgate.net/publication/328686261_The_Power_of_Queerness_The_Gay_and_Lesbian_movement_in_Austria_and_the_impact_for_a_new_legislation_on_sex_in_2nd_half_of_the_20th_and_the_21st_century.

rights: homosexuality was deleted as a diagnosis from Austria's classification of diseases;²⁵⁶ LAMDA, a legal committee, was founded to focus on legal equality for queers; the Life Ball which raised money for AIDS occurred yearly until 2019, when it was replaced by the current Diversity Ball; TransX was founded to support trans-rights; the first Rainbow Parade was held in 1996; Par. 220 was lifted; and the first openly lesbian member of parliament was elected in 1999. By 2001, the last paragraph was also revoked, lowering the age of same-sex consent to 14 as well.²⁵⁷ To understand the impact, consider that in 1972, there were 109 investigations regarding the age of consent paragraph, but by 200, there were 24. Those convicted in the 1970s faced a charge of up to 3 years in prison, but by 2000, this was lowered to a year.²⁵⁸

The protests and activism of queers seemed to have paid off by the early 2000s: Europride was held in Vienna, QWIEN – center of queer history was founded, Queer Base was founded, newfound protections against discrimination in employment in the workplace were established, and in 2010, registered homosexual partnerships became legal.²⁵⁹ There were setbacks, such as homophobic attacks on the Villa Vida in 2014, but more and more rights for queers are being allowed in Austria. Most recently, in 2022, after years of pressure from the numerous queer organizations, all queers were allowed to donate blood.²⁶⁰

Certain stigmas are still prevalent within Austria. There is still some negative media surrounding homosexuals, though there is now more representation in general.²⁶¹ Trans people face difficulties finding competent medical care and changing their official documents to match their gender. Only 8% of a surveyed group of queers say they went to the police to report physical or sexual attacks, compared to the 14% at the EU level.²⁶² However, more than half of the group also reported they felt prejudice and intolerance in Austria has dropped since 2015, and a third reported feeling like the government was combatting the prejudice

²⁵⁶ *The Social Situation Concerning Homophobia and Discrimination on Grounds of Sexual Orientation in Austria*, 2009, fra.europa.eu/sites/default/files/fra_uploads/361-fra-hdgso-part2-nr_at.pdf.

²⁵⁷ Goessl, Martin. *The Power of Queerness: The Gay and Lesbian Movement in Austria and the Impact for a New Legislation on Sex (in 2nd Half of the 20th and the 21st Century)*, 2013, https://doi.org/https://www.researchgate.net/publication/328686261_The_Power_of_Queerness_The_Gay_and_Lesbian_movement_in_Austria_and_the_impact_for_a_new_legislation_on_sex_in_2nd_half_of_the_20th_and_the_21st_century.

²⁵⁸ *ibid.*

²⁵⁹ Binder, Wilhelmr. *Historicize Yourself! A History of Queer Activism in Vienna*. Queer Museum Vienna Vienna, 2022

²⁶⁰ *ibid*

²⁶¹ *The Social Situation Concerning Homophobia and Discrimination on Grounds of Sexual Orientation in Austria*, 2009, fra.europa.eu/sites/default/files/fra_uploads/361-fra-hdgso-part2-nr_at.pdf.

²⁶² *LGBTI Survey Country Data Austria*, fra.europa.eu/sites/default/files/fra_uploads/lgbti-survey-country-data_austria.pdf. Accessed 6 June 2024.

(compared to 33% in the EU).²⁶³ In terms of life satisfaction, Austria's general population rated themselves at 7.6 out of 10 while queers rated themselves around 7.1.²⁶⁴

In other words, the negative perception of the Austrian public has changed over time to be somewhat positive. Despite international norms pressuring Austria to change, these changes come more from grassroot movement of the oppressed fighting for international norms to reach Austria rather than Austrian society willing to change for the international norms. Therefore, one can conclude Austria is ambivalent towards queerness. While the society is slowly accepting it, it takes the government a lot longer to match public opinion.

Austria Norm – Refugee

Attitudes Towards Refugees

Migration in general has historically been a contentious subject in Austria since WWII and the rebuilding of the country afterwards. One study argues that the negative perception of migrants – and by extension refugees (potentially worse as refugees are not allowed to access the labor market, meaning they're unable to contribute to the Austrian society, though they receive some state benefits such as housing and language courses) – is negative because refugees faced difficulties in integrating in the 1960s. There was a need in the Austrian labor force for cheap labor, so Austria allowed migrants from abroad to come for work with the intention of returning to their home countries. Similar to the Turkish guest workers situation in Germany, many of these migrants settled in Austria, raising families instead.²⁶⁵

The influx of guest workers in Austria also meant there were more people applying for asylum, which shifted Austria, which had seen itself as a transit country between East and Western Europe. This means that Austria did not anticipate keeping the responsibility of refugees and to become a destination country. Austria accepted nearly half a million refugees from the collapsed Soviet Union, which may have triggered the next wave of restrictive migrant and refugee measures.

There is often a pushback by the host society when a wave of immigrants comes, stemming from the citizen's belief that the state lacks control of the immigrants, and feeling

²⁶³ *LGBTI Survey Country Data Austria*, fra.europa.eu/sites/default/files/fra_uploads/lgbti-survey-country-data_austria.pdf. Accessed 6 June 2024.

²⁶⁴ *A Long Way to Go for LGBTI Equality*, 2020, fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf.

²⁶⁵ RÍVARA, Andrej. "Asylum Seekers and Refugees in Austria: Public Policy and Attitudes." *PDF Viewer*, 2020, www.cceol.com/search/viewpdf?id=1010977.

that immigrants will overwhelm the society.²⁶⁶ A powerful right wing coalition (SPÖ – center left - and ÖVP – center right) brought a radical shift to Austria’s immigration policies.²⁶⁷ Though the Federal Care Act for Asylum Seekers, which stated the obligation of Austria to provide minimum basic care, the requirements for receiving support became increasingly selective, reflecting the overarching EU migration policy of restricting migration. By the 2000s, only about a third of migrants received state support. The military was used to prevent illegal border crossings and “assist” in controlling the borders. The arrival of ‘illegal’ refugees that came to Austria on a tourist visa then applied for asylum also heightened anger within the Austrian society – in one 1991 Gallup poll, strong xenophobic sentiments towards eastern Europeans and Turkish far outweighed the anti-Semitic attitudes.²⁶⁸ The image of immigrants as lazy and refugees as ‘bogus’ spread through the country through the efforts of the right-wing parties.²⁶⁹

The protectionist attitudes of 9/11 in the EU also seemed to penetrate Austria, feelings that intensified under the ÖVP government coalition, which radicalized the anti-immigrant sentiment. The FPÖ, a far-right splinter group, enflamed the migration debate by painting migrants and refugees as individuals burdening the welfare state and threatening the security of the native Austrians, especially after 9/11. The legal provisions for asylum and residency were revised in 2005, aimed to decrease the abuse to the asylum processing system, and to simplify the deportation of those who refused to cooperate, had criminal offenses, or should have been sent to other countries as per the Dublin agreements.²⁷⁰ Security and protection of Austrian citizens became the rhetoric supporting ever-constrictive asylum measures. Further restrictions were implemented in 2011, attempting to create a deterrent for potential asylum seekers. The movement of those that came were severely restricted for the first week of arrival under penalty of imprisonment.²⁷¹

²⁶⁶ Rheindorf, Markus, and Ruth Wodak. “Borders, fences, and limits—protecting Austria from refugees: Metadiscursive negotiation of meaning in the current refugee crisis.” *Journal of Immigrant & Refugee Studies*, vol. 16, no. 1–2, 20 Apr. 2017, pp. 15–38, <https://doi.org/10.1080/15562948.2017.1302032>.

²⁶⁷ *ibid.*

²⁶⁸ RÍVARA, Andrej. “Asylum Seekers and Refugees in Austria: Public Policy and Attitudes.” *PDF Viewer*, 2020, www.cceol.com/search/viewpdf?id=1010977.

²⁶⁹ Rheindorf, Markus, and Ruth Wodak. “Borders, fences, and limits—protecting Austria from refugees: Metadiscursive negotiation of meaning in the current refugee crisis.” *Journal of Immigrant & Refugee Studies*, vol. 16, no. 1–2, 20 Apr. 2017, pp. 15–38, <https://doi.org/10.1080/15562948.2017.1302032>.

²⁷⁰ *ibid.*

²⁷¹ Rheindorf, Markus, and Ruth Wodak. “Borders, fences, and limits—protecting Austria from refugees: Metadiscursive negotiation of meaning in the current refugee crisis.” *Journal of Immigrant & Refugee Studies*, vol. 16, no. 1–2, 20 Apr. 2017, pp. 15–38, <https://doi.org/10.1080/15562948.2017.1302032>.

The next significant wave of refugees appeared in 2015 as part of the Syrian refugee crisis. Never before had Austria seen so many refugees in recent history – there were nearly 90,000 applications, about a third of which were children.^{272 273} The last comparable year had been in 2002, with about 40,000 applications.²⁷⁴ Like the rest of Europe, Austria was unprepared for the sudden influx, leading to a deterioration in the conditions of the camps as well as the quality of asylum process applications. By the end of the summer, 71 refugees were found dead in a trafficker's carriage on the way to East Austria.²⁷⁵

By the end of the year, the rhetoric of the FPÖ had shifted to become increasingly anti-Muslimism, Austria had erected a barrier along its border, implemented border controls on main roads, and created more restrictions to limit asylum seekers to reach Austria.^{276 277} Though there were some protests against the treatment of refugees – one demonstration in Vienna attracted more than 150,00 supporters – overall the relationship between Austria and its refugees deteriorated rapidly, and by 2018, only half of the population saw refugees as assets for the Austrian society.^{278 279} Refugees became part of body and security policy, where the state decided which refugees were worthy of protection, given that the security of their current citizens came first. The rise in refugee population reflects the growing animosity towards refugees, especially those with non-European background. In comparison, the media surrounding the influx of refugees from Ukraine has been largely positive, making one question how Austria decides which refugees are a security threat. The influx of Ukrainian refugees starting 2022 also provided challenges for Austria. However, these refugees were registered the EU-wide temporary residence that allows Ukrainians to stay in Austria for a

²⁷² Asyl-Statistik, 2024, www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asylstatistik_Jahresstatistik_2023_20240325.pdf.

²⁷³ RÍVARA, Andrej. "Asylum Seekers and Refugees in Austria: Public Policy and Attitudes." *PDF Viewer*, 2020, www.ceeol.com/search/viewpdf?id=1010977.

²⁷⁴ Asyl-Statistik, 2024, www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asylstatistik_Jahresstatistik_2023_20240325.pdf.

²⁷⁵ RÍVARA, Andrej. "Asylum Seekers and Refugees in Austria: Public Policy and Attitudes." *PDF Viewer*, 2020, www.ceeol.com/search/viewpdf?id=1010977.

²⁷⁶ *ibid.*

²⁷⁷ Rheindorf, Markus, and Ruth Wodak. "Borders, fences, and limits—protecting Austria from refugees: Metadiscursive negotiation of meaning in the current refugee crisis." *Journal of Immigrant & Refugee Studies*, vol. 16, no. 1–2, 20 Apr. 2017, pp. 15–38, <https://doi.org/10.1080/15562948.2017.1302032>.

²⁷⁸ RÍVARA, Andrej. "Asylum Seekers and Refugees in Austria: Public Policy and Attitudes." *PDF Viewer*, 2020, www.ceeol.com/search/viewpdf?id=1010977.

²⁷⁹ Rheindorf, Markus, and Ruth Wodak. "Borders, fences, and limits—protecting Austria from refugees: Metadiscursive negotiation of meaning in the current refugee crisis." *Journal of Immigrant & Refugee Studies*, vol. 16, no. 1–2, 20 Apr. 2017, pp. 15–38, <https://doi.org/10.1080/15562948.2017.1302032>.

year without going through the asylum procedure.²⁸⁰ This show of solidarity in Austria was unprecedented.

A study was conducted Europe-wide that tested the public attitude of the countries towards refugees. In Austria, the result was clear: refugees that provided no or minor inconsistencies with their testimonials were more likely than those with major inconsistencies. Females are more likely to receive asylum than males. All countries of origin were in the negative, particularly from Afghanistan and Ukraine. Older refugees were less welcome, as were blue-collared or unemployed. Handicapped, with PTSD, and those with no surviving family were less likely than victims of torture to receive asylum, and refugees coming for economic reasons would have been rejected. Muslims were accepted the least (compared to agnostic or Christian) as well as those with broken or no ability in the local language.²⁸¹ The most ideal refugee was one with few testimonial inconsistencies, female, from Europe, around 40 years old, a white-collared worker (i.e. a doctor or lawyer), was a victim of torture, arrived for political, religious, or ethnic persecution, Christian (even far left and left voters tended to be biased towards Christian asylum seekers), and had fluency in the local official language.²⁸²

Other noteworthy immigration policy developments include the introduction of the Federal Office for Immigration and Asylum (BFA) which is responsible for the first instance authority in asylum procedures in 2014. The Federal Administrative Courte (BVwG) is responsible for second instance decisions and appeals.²⁸³ The 2015 Aliens Law Amendment Act transferred local asylum cases processed at the Initial Reception Center to the BFA to ensure applications were processed within five months if they came from a ‘safe country of origin,’ which have no political persecution or inhuman or degrading punishment (‘safe country’ reports are done by Austria itself. NGOs criticized this, especially after Afghanistan was considered a safe country to return to. Afghanistan has been in the top ten countries of origin in Austria for several years).²⁸⁴ The 2016 Amendment Act introduced a quota for the

²⁸⁰ “Information for Ukrainian Citizens.” *Oesterreich.Gv.at - Österreichs Digitales Amt*, www.oesterreich.gv.at/en/themen/menschen_aus_anderen_staaten/aufenthalt/Informationen-f%C3%BCr-ukrainische-Staatsangeh%C3%B6rige.html#:~:text=Displaced%20persons%20from%20Ukraine%20have,the%20time%20they%20enter%20Austria. Accessed 2 June 2024.

²⁸¹ Hangartner, Domonik. *Public Attitudes toward Asylum Seekers across Europe*, ETH Zurich & London School of Economic, 2016, www.oecd.org/.

²⁸² *ibid.*

²⁸³ Josipovic, Ivan, and Ursula Reeger. *Refugee Protection in Austria*, 2019, www.diva-portal.org/smash/get/diva2:1385618/FULLTEXT01.pdf.

²⁸⁴ *ibid.*

annual admission of asylum seekers (37,500 in 2016, 35,000 in 2017, 30,000 in 2018 and 25,000 in 2019), and allowed the government to pass a decree to suspend further processing of asylum applications outside of temporary border control posts.²⁸⁵ The 2017 and 2018 Aliens Law Amendment Act fell in line with the larger EU asylum laws allowing border control agents to use technology such as using the geo-data from the asylum seeker's digital devices when in doubt of their identity, country of origin, or traveling route. Unlike the EU asylum laws, it also allowed agents to withdraw up to 840 Euros of cash from the asylum seeker to contribute to the costs of processing the person. Austria attempted to take over all aspects of the asylum feature in 2019, which would have created a federal agency to replace nonprofits that focus on providing refugees accommodation and legal advice. This law was struck down as civil society organizations argued this would create a closed system where no agency could 'check' the power of the government.²⁸⁶

In other words, from policies alone, Austria is not exactly friendly towards refugees, despite UN, CoE, and EU norms. This can be accredited to the lingering historical norms of Austrians that emphasize nationalism over cosmopolitanism. In general, there is a negative sentiment towards refugees, driven by the sudden influxes of refugees into the country. There is an overwhelming amount of discourse surrounding refugees, but most seem to be divided into two camps: (good) refugees with European background or (bad) refugees of non-European background. Refugees overall do not fit into the Austrian norm of valuing tradition, familiarity, and safety. Refugees counteract these values. Austrian politicians as well – social elites attempting to solicit strong feelings to gain support, votes, and stay in power – distribute the perspective that refugees are like Trojan horses - parasites to the state system, and the only solution is to implement more safety measures and stronger restrictions toward migration.

Processing Refugees in Austria

This chapter will now turn briefly to the processing of refugees in Austria to uncover any other discrimination refugees may face in their host state.

Application procedure: The refugee process begins when a person goes to a police station or office or to a police officer to declare they are seeking asylum. In Austria, the only legal

²⁸⁵ Josipovic, Ivan, and Ursula Reeger. *Refugee Protection in Austria*, 2019, www.diva-portal.org/smash/get/diva2:1385618/FULLTEXT01.pdf.

²⁸⁶ *ibid.*

crossings must occur at given border crossing points.²⁸⁷ The person will have their fingerprints taken to check in the Eurodac database and Visa Information System and national database to see if they have lodged any other applications anywhere, or, if under the Dublin regulations should be sent to another host country, or if they have a registered criminal record.²⁸⁸ An initial interview by the police will take place, plus any evidence the person carries will be secured. Any documents suspected to be forged can also be taken.²⁸⁹ The applicant is usually offered de facto protection against immediate deportation while the BFA is contacted to make a prognosis decision. The applicant will then either be taken to a reception center or distribution reception center run by the government, usually to Traiskirchen in Eastern Austria or Thalham in West Austria.²⁹⁰

In terms of demographics, the majority of refugees tend to be men (40% were women in 2018).²⁹¹ Women often do not have the financial means to travel. 55% of applicants were from Syria, Afghanistan, and Iraq. According to the interviews, many asylum applicants noted their confusion on the asylum procedure itself. At the police station, some refugees were confronted with questions that went beyond what the simple screening process and onto matters that needed to be spoken only with the BFA.²⁹² A majority chose Austria not because it was their plan but because exhaustion stopped them from going further, and it was one of the first countries considered ‘safe,’ as many volunteers and NGOs supported their arrival into Austria.

Admission procedure: At the initial reception centers or distribution reception centers, asylum seekers are told their rights and obligations, and the basic care (accommodation, food, support, and healthcare) until the relevant province (Bundesland) takes over until the process is finished (or, if they are to be sent to another country for further processing under Dublin).

²⁸⁷ Josipovic, Ivan, and Ursula Reeger. *Refugee Protection in Austria*, 2019, www.diva-portal.org/smash/get/diva2:1385618/FULLTEXT01.pdf.

²⁸⁸ “Asylum Procedure.” *Oesterreich.Gv.at - Österreichs Digitales Amt*, www.oesterreich.gv.at/en/themen/menschen_aus_anderen_staaten/asyl-in-oesterreich/Seite.3210002.html#:~:text=People%20entitled%20to%20asylum%20will,fled%20their%20country%20of%20origin. Accessed 2 June 2024.

²⁸⁹ Josipovic, Ivan, and Ursula Reeger. *Refugee Protection in Austria*, 2019, www.diva-portal.org/smash/get/diva2:1385618/FULLTEXT01.pdf.

²⁹⁰ “Asylum Procedure.” *Oesterreich.Gv.at - Österreichs Digitales Amt*, www.oesterreich.gv.at/en/themen/menschen_aus_anderen_staaten/asyl-in-oesterreich/Seite.3210002.html#:~:text=People%20entitled%20to%20asylum%20will,fled%20their%20country%20of%20origin. Accessed 2 June 2024.

²⁹¹ Josipovic, Ivan, and Ursula Reeger. *Refugee Protection in Austria*, 2019, www.diva-portal.org/smash/get/diva2:1385618/FULLTEXT01.pdf.

²⁹² *ibid.*

The applicant must stay in that Bundesland until the final decision. Eventually, the BFA conducts individual interviews on their testimonials, journey to Austria, and the reasons they fled their home country. If necessary, an interpreter (gender up to the applicant) is provided.²⁹³ If during this procedure the BFA finds one of the Dublin regulations applies, or if there is a correlation in the Eurodac database, Austrian authorities have up to three months to reach some sort of decision. Otherwise, the decision must come in 20 days.

From the 2015 peak, there was a shift from open cases from the BFA to BVwG, half of which pertaining to Afghani (15,750) and Iraqis (5,720) and Iranian (2,465). Though there was a stated average of 2.6 months between the first instance and decision, statistics taken at the end of 2017 reached an average of 16.5 months.²⁹⁴ An email to the BFA stated that the average had decreased to 5.5 months long for 2023. However, refugees from different countries had different wait times – Syrians were processed much quicker than those from Afghanistan. There were concerns voiced about the quality of these interviews, but as this was in the height of the 2015 crisis, one can assume this was due to the overworked staff which impacted the quality of work. Of concern were also the quality of the interpreters, whose only qualifications were to be able to speak the language.

During this period, refugees are not allowed to access the labor market; NGOs attempt to restore the sense of control and dignity of these people by offering leisure activities, language courses, and volunteer opportunities.²⁹⁵ This is done to lessen the feeling of isolation and lost community.²⁹⁶ However, refugees find issues when applying for apprenticeships or in sectors where laborers are needed, not because they are underqualified but because there is a general hesitance to employ an asylum seeker.²⁹⁷ Especially after 2018, where the ÖVP-FPÖ-led federal government banned asylum seekers to apply for apprentices to ‘decrease a pull factor for migration,’²⁹⁸ despite interest by companies to take on refugees.

²⁹³ “Asylum Procedure.” *Oesterreich.Gv.at - Österreichs Digitales Amt*, www.oesterreich.gv.at/en/themen/menschen_aus_anderen_staaten/asyl-in-oesterreich/Seite.3210002.html#:~:text=People%20entitled%20to%20asylum%20will,fled%20their%20country%20of%20origin. Accessed 2 June 2024.

²⁹⁴ Josipovic, Ivan, and Ursula Reeger. *Refugee Protection in Austria*, 2019, www.diva-portal.org/smash/get/diva2:1385618/FULLTEXT01.pdf.

²⁹⁵ “Information for Ukrainian Citizens.” *Oesterreich.Gv.at - Österreichs Digitales Amt*, www.oesterreich.gv.at/en/themen/menschen_aus_anderen_staaten/aufenthalt/Informationen-f%C3%BCr-ukrainische-Staatsangeh%C3%B6rige.html#:~:text=Displaced%20persons%20from%20Ukraine%20have,the%20time%20they%20enter%20Austria. Accessed 2 June 2024.

²⁹⁶ Josipovic, Ivan, and Ursula Reeger. *Refugee Protection in Austria*, 2019, www.diva-portal.org/smash/get/diva2:1385618/FULLTEXT01.pdf.

²⁹⁷ Josipovic, Ivan, and Ursula Reeger. *Refugee Protection in Austria*, 2019, www.diva-portal.org/smash/get/diva2:1385618/FULLTEXT01.pdf.

²⁹⁸ *ibid.*

The initial holding facilities (such as Traiskirchen) are touted as having more than sufficient living conditions. However, during COVID-19, because of poor management, the whole facility was put under quarantine for at least a month. When the facility's cap was reached, only outdoor tents were provided to take care of the overflow. Others who had just arrived remained homeless or moved onto other countries. There was an attempt to increase the living standards for these camps, but during the wave of Ukrainian refugees, these standards were then lowered. Some NGOs like Diakonie try to help with the housing situation; however, normal standards include having 8 men sharing one room.²⁹⁹ Reception centers are also often understaffed, with one social worker per 140 clients; however, as social workers often must travel to facilities in remote locations, this is not sufficient. This varies across the country: in Vienna, the ratio is closer to 1:55.³⁰⁰

There is some debate in having the reception centers in smaller villages – the smaller the community, the better the relationship is to refugees, according to the head of an NGO. Societal members can see the similarities between the refugees and community members. In larger cities, where anonymity and unfriendliness reigns, these connections are harder to form.³⁰¹

Decision: The applicant either receives asylum or does not.³⁰²

Appeal procedure: in case of a rejection, appeals can be made within one week to six depending on the appeal.³⁰³ The appeal must be in writing and specific to the issue it is addressing, including the grounds for appeal and actions the applicant wants to see. This goes to the BVwG.

Contrary to national laws, refugees in Austria have been more or less grudgingly accepted by Austrian society, mostly because of international pressure from the EU to implement EU refugee policy rather than the government of Austria's willingness to accept

²⁹⁹ "Conditions in Reception Facilities - Asylum Information Database: European Council on Refugees and Exiles." *Asylum Information Database | European Council on Refugees and Exiles*, 5 May 2023, asylumineurope.org/reports/country/austria/reception-conditions/housing/conditions-reception-facilities/.

³⁰⁰ *ibid.*

³⁰¹ Josipovic, Ivan, and Ursula Reeger. *Refugee Protection in Austria*, 2019, www.diva-portal.org/smash/get/diva2:1385618/FULLTEXT01.pdf.

³⁰² *ibid.*

³⁰³ "Asylum Procedure." *Oesterreich.Gv.at - Österreichs Digitales Amt*, www.oesterreich.gv.at/en/themen/menschen_aus_anderen_staaten/asyl-in-oesterreich/Seite.3210002.html#:~:text=People%20entitled%20to%20asylum%20will,fled%20their%20country%20of%20origin. Accessed 2 June 2024.

refugees. Pockets of Austrian civil society also have supported refugees, both for humanitarian reasons and economic.

Austria Norm – Queer Refugees

Combining these two factors of being queer and being a refugee, this thesis shows that the international norm of accepting refugees has trickled down somewhat to Austria from international and regional norms. Queerness has not fully tickled down to Austria until recently within the last decade. Even then, this acceptance has been led by grassroots organization rather than from trickle-down norms. Queer IR tells us that this makes sense: queers are an internal threat, while refugees are external. There is also more external regulation for migration than queerness, as queerness is protected only under non-discrimination, whereas refugees fall under multiple human rights categories and therefore seem to have more human rights than queers. Both queers and refugees are rejects from their home states. There is a sense that the host state has lost control when queers and refugees emerge.

The UNHCR has published guidelines to help state decide whether or not to accept queer refugees into the state. Highlights are listed below.

UNHCR Guidelines

In the UNHCR guidelines, the UNHCR outlines the best practices and tips for states when analyzing if an asylum seeker is legitimately coming for asylum or not for being queer. It notes that queerness is often only one of several intersecting factors that lead to discrimination and may have played a part in deciding to escape, such as sex, age, nationality, ethnicity, and socioeconomic status. It notes that queer refugees may have issues talking about their traumas and experiences as they may harbor (unconscious) shame carried over from their host countries.³⁰⁴

The queer refugee experience is incredibly diverse, and the guideline warns against using stereotypical notions of what it looks like or how queers ‘should’ behave to interpret if their claims to asylum are legitimate. Gay men, for example, are expected to be more effeminate and flamboyant – ‘obviously’ gay. They tend to dominate in terms of numbers and

³⁰⁴ “Guidelines on International Protection No. 9: Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees.” *Refworld*, 23 Oct. 2012, www.refworld.org/policy/legalguidance/unhcr/2012/en/89548.

visibility in the queer refugee community.³⁰⁵ Bisexuals, on the other hand, are often underestimated or are harder to believe as the stereotypical response would be to simply marry the opposite sex they are. However, multiple case law clearly state that no person should hide their sexuality as this also can be considered a form of abuse, as sexual orientation and gender identity are fundamental aspects of the human identity.³⁰⁶

Another issue queer refugees face is attempting to label themselves for the sake of the interview. Some applicants coming from homophobic countries may not have the language to express themselves because they have not been exposed to it. They may only know derogatory terms for it, which they then use in court, diminishing their chances of a positive decision. Some queers do not like the inflexibility of labels and refuse to use one. Others may change their labels depending on how they feel that day.³⁰⁷

Going through the UNRC's definition of a refugee, the UNHCR legitimizes the right of queer people to apply for asylum. When outlining 'persecution,' the document notes that persecution starts with simply the threat of persecution to rape as a 'corrective' measure, forced institutionalization, sex-reassignment surgery, conversion therapy, and non-consensual medical experimentation as forms of torture, inhumane or degrading treatment. Discrimination can also take many forms, such as difficulties accessing work, bullying in school, criminalization of same-sex marriage. Laws that are applied only to queers, such as loitering, also qualifies as persecution. The UNHCR also specifically notes that the ability of the applicant to 'hide' their sexuality or gender expression is not a reason to expel the applicant under the freedom of expression and association. The circumstances in the home country may become more toxic if sent back. Persecution can also come from state and non-state actors, including families.³⁰⁸ The question then becomes one of refoulement – would sending back the queer refugee be to a place of safety?

Queer refugees must also prove the causal link between their queerness and fear of persecution. The UNRC allows for five reasons, though many could overlap. Queer refugee claims are most likely recognized under the 'membership of a particular social group', regardless of if queers actually are physically together in a group (especially considering queers in queerphobic countries – grouping together is dangerous) but can also be persecuted

³⁰⁵ "Guidelines on International Protection No. 9: Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees." *Refworld*, 23 Oct. 2012, www.refworld.org/policy/legalguidance/unhcr/2012/en/89548.

³⁰⁶ *ibid.*

³⁰⁷ *ibid.*

³⁰⁸ *ibid.*

because they were perceived by society to be queer (whether or not they actually are queer).³⁰⁹ Allies also are in danger of prosecution simply through their association with other queers. The dominant religion of the state may also be the causal link – in Muslim and Catholic countries, homosexuality is often not accepted. Another causal link could be political opinion, broadly interpreted to mean any opinion on any matter in which the machinery of the state, society, or policy can be engaged.³¹⁰ The expression of gender and sexuality is political, as it often challenges conventional views of how society functions, threatening traditional norms and values.

The UNHCR also provided a list of special needs queer refugees may need during the asylum process unique to them, as even in their host countries, being queer may not be totally welcome (the irony of being a queer refugee is escaping from a queerphobic state to land in another queerphobic state). Thus, queer refugees need to have an especially safe environment to present their claims fully and without fear. Deeply internalized homophobia, trauma, and shame may greatly impact their ability to speak about their experiences, especially during the arrival and application process, but also integration into the new society. The interviewer, interpreter, and lawyer must not show any judgement about the applicant's queerness, and self-awareness and specialized training is recommended especially to learn non-offensive terms.³¹¹

The only proof queer refugees often have is their story. Therefore, instead of focusing on their sexual or gender practice, the UNHCR urges states to ask questions about the person's overall life experiences and allow them to self-identify themselves. This is incredibly important as it takes away any thoughts of interpreting their story using stereotypes on how queers should behave or look. Questions about their coming-out experience, for example, may be helpful. It is also important not to assume that simply because they are queer, they will know everything about the queer culture. Therefore, quizzing them on their queer knowledge, especially coming from states that do not allow the propagation or exposure to a queer community, does not help the person explain their situation.³¹² Medical 'testing' of the applicant's queerness is a clear violation of human rights,

³⁰⁹ "Guidelines on International Protection No. 9: Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees." *Refworld*, 23 Oct. 2012, www.refworld.org/policy/legalguidance/unhcr/2012/en/89548.

³¹⁰ *ibid.*

³¹¹ *ibid.*

³¹² *ibid.*

but asking about for example any hormones a trans person may have taken may be relevant to their story.

Asylum Cases in Austria

Now that there is a baseline to which to compare queer refugees to, this thesis will now move onto how Austria accepts queer refugees. Since 1991, under Austrian Asylum law, Austria explicitly says sexual orientation is a base for belonging to a social group.³¹³ This is a compilation of the available data, including three cases available in the European Asylum Database, one interview found from Judith Ruderstaller, a human rights lawyer in Austria, one interview conducted with a case worker at Queer Base, and five interviews conducted with their clients on their experiences of being a queer refugee in Austria: one gay male from Morocco, two from Iran (one lesbian, one gay male), one from Iraq (gay male), and one from Somalia (gay male).

Demographic Data:

The BMF does not publicly post data regarding queer refugees in Austria. They have data broken down by gender, age, and country of origin, but not the reason they applied for asylum.³¹⁴ However, an interview of a human rights lawyer Judith Bauer, reveals there were 21 cases in 2009 and 22 cases in 2010, but she admits to having difficulties finding the statistics as not every instance is published, and neither is the total number of queer asylum seekers.³¹⁵ Of these cases, 10 were of lesbians, 39 of gay cases, 5 were bisexual, 4 were transgender (3 male to female, one female to male), and one intersex. The most common countries of origin were Iran, Nigeria, Iraq, Ukraine, Russia, Gambia, Afghanistan, Georgia, Serbia, and Mongolia.³¹⁶

Arrival: During arrival, many queer refugees were unaware they could apply as a queer refugee. Some applied still as membership of another group, but were not informed they could apply as queer refugees. It is possible refugees lie and say they are queer when they are

³¹³ Jansen, Sabine, and Thomas Spijkerboer. Austria, file:///C:/Users/Charlotte/Downloads/silo.tips_questionnaire-introduction-guidance-to-the-questionnaire.pdf.

³¹⁴ "Bundesministerium Für Inneres." *Statistiken*, www.bmi.gv.at/301/Statistiken/. Accessed 2 June 2024.

³¹⁵ Jansen, Sabine, and Thomas Spijkerboer. Austria, file:///C:/Users/Charlotte/Downloads/silo.tips_questionnaire-introduction-guidance-to-the-questionnaire.pdf.

³¹⁶ *ibid.*

not. This can be confusing as interviewers may take this as their inability to define themselves. The case of one of the Nigerians, for example, remained negative even after an appeal because he first stated he was homosexual, then that he was not, and he could not decide if he liked having a relationship with a woman or a man. This could stem from not knowing bisexuality exists, or lying, or exploring his sexuality. However, it was deemed negative because he showed no concrete proof of his (potential) bisexuality.³¹⁷ Cases from Afghanistan and Iran tend to be more credible because the situation in the countries is assumed to be much more homophobic than in Nigeria. This may also be seen as an opportunity for Austria, which is less accepting of Islamic societies, to prove that Austria is a 'better' country to live in than Islamic countries, reflecting the 'us' versus 'them' mentality.

Admission procedure: As one of the issues of being a queer refugee is the lack of proof (the testimonial is often the only source of proof). Austria claims there is no need for other forms of evidence. However, evidence does not hurt, especially in trying to legitimize a claim. The queers from Afghanistan and Iran received refugee status if they were able to convince the asylum officer they were queer. It is harder for bisexuals as they are often assumed to be able to live in a heterosexual partnership as well. Queers from Russia, Ukraine, and Georgia must prove actual persecution, whereas the queers from Nigeria were all rejected because they were not deemed credible.³¹⁸

The first documented queer case occurred in 1998, when Austria established an independent court of second instance (before 1998, the police were the first instance interviewers, and the Ministry of Interior the second, and appeals were directed to the Court of Administration) where a homosexual man from Iran applied for asylum after living in Turkey for seven years. He was arrested in Iran because of his sexuality, divorced his wife with two children in 1995 and fled to Turkey, where he lived until he applied in Austria for asylum. At first the application was refused as it was believed he would be safe in Turkey or another country he crossed through (notwithstanding countries between Iran and Austria tend(ed) to be homophobic). After an appeal, the Administrative Court repealed the denial

³¹⁷ Jansen, Sabine, and Thomas Spijkerboer. Austria, file:///C:/Users/Charlotte/Downloads/silo.tips_questionnaire-introduction-guidance-to-the-questionnaire.pdf.

³¹⁸ *ibid.*

and gave him status as a refugee in 1998 as he belonged to a social group, and he had a legitimate fear of prosecution.³¹⁹

In another case in 2009, the BMF did not believe the Iranian asylum seeker's homosexuality as he was married to a woman. Though his social worker protested and confirmed his sexuality, she was not believed by the asylum officer as she had 'no medical education' (to confirm/deny his sexuality). Medical 'experts' are not well defined. In one case, experts were considered to be sexual therapists and sexual scientists. Another case had an expert who did not diagnose the emotional sides of relationships but his client's sexual life and preferences. The expert interviewing the client asked if the behavior was a result of a 'lack of women available' or from some sort of trauma experienced during his time in the military. A few cases hinted that proving being transgender was easier, as it tended to be more 'obvious.'³²⁰

In the second instance, they asked the witnesses (sexual partners) the Iranian asylum provided to prove his homosexuality. It was common practice in the early 2000s to ask invasive questions regarding the sex life of these asylum seekers, including the sexual positions and habits, and if they had ever considered having sex with a person of the opposite sex.³²¹

The claim that the gay Iranian had more difficult is supported by the interviewed Iranian from Queer Base, who said even after 7 years of living in Austria, he still has not gotten a positive or negative response from the BFA.³²² The lesbian Iranian from Queer Base, on the other hand, received a positive admission about a month after arrival, which she attributes to her gender identity (of these cases, she is the only Iranian who is biologically female and identifies as such) and that she had tangible proof of her sexuality through intimate text messages she sent to her then-partner.³²³

Some cases were rejected because the asylum seeker said they were queer later in the process. A case in 2008 from a Moroccan declared his homosexuality late during the appeal procedure. He claimed that the Muslim Brotherhood would kill him if he were to return to

³¹⁹ Jansen, Sabine, and Thomas Spijkerboer. Austria, file:///C:/Users/Charlotte/Downloads/silo.tips_questionnaire-introduction-guidance-to-the-questionnaire.pdf.

³²⁰ *ibid.*

³²¹ *ibid.*

³²² Appendix, interview 2

³²³ Appendix, interview 4

Morocco.³²⁴ The BFA did not accept his application because of a procedure prohibiting new assertions after the first interview, except in cases where the applicant proves they were not able to speak about it before. This was ignored.³²⁵ In contrast, the gay Moroccan interviewed from Queer Base applied based on his sexuality, and received a positive decision within two weeks.³²⁶

Austria has a list of internal country reports that decide whether or not a country is “safe”. However, these country reports can be faulty due to a lack of information or not up to date. In one case, a lesbian from Mongolia’s application was rejected because the country report stated homosexuality was allowed since 2002. However, the women’s experiences of being physically maltreated at work by her coworkers was not enough. She was instead encouraged to find a safe city within Mongolia, and that “Homosexuals are not more in danger than other minorities.”³²⁷ In another case, a lesbian Nigerian was refused asylum as the country report noted that there were safe spaces in Nigeria she could relocate to, despite her father, who was part of a secret cult, threatening to kill her if she did not marry his friend.³²⁸ The Moroccan from Queer Base confirmed that because he came from a safe country, his application went through especially quickly (expedited), whereas the applications from Iran, Iraq, and Somalia took longer.³²⁹

Accommodation and assimilation: Accommodation and assimilation of refugees, especially queer refugees, remains a challenge for Austria. Ruderstaller listed three instances where queer refugees waiting for their decisions were put in unsafe accommodation. Usually, queer refugees are placed in small villages, which are also typically homophobic. Problems often arise between the locals, the personnel of the asylum accommodation, or other asylum seekers. Two lesbian Iranian women living in a small countryside town in Tyrol were afraid to be out to their accommodation’s leader who often talked about the dangers of taking men home. In another case, a homosexual man from Iran had issues with his community in his

³²⁴ Jansen, Sabine, and Thomas Spijkerboer. Austria, file:///C:/Users/Charlotte/Downloads/silo.tips_questionnaire-introduction-guidance-to-the-questionnaire.pdf.

³²⁵ *ibid.*

³²⁶ Appendix, interview 1

³²⁷ Jansen, Sabine, and Thomas Spijkerboer. Austria, file:///C:/Users/Charlotte/Downloads/silo.tips_questionnaire-introduction-guidance-to-the-questionnaire.pdf.

³²⁸ *ibid.*

³²⁹ Appendix

accommodation. He was given a separate room, but eventually had to be given a separate apartment.

The interviewed Queer Base queer refugees provided a plethora of experiences: the Moroccan was first transferred to Villach (he did not like the accommodation because he was living with three other people in the room, smoking, and from his interpretation, homophobic) then to Vorarlberg (again, noting that the housing situation was less than ideal, as he was living an Afghani, Tunisian, and Algerian. He came out to them and their attitudes toward him changed immediately to those of suspicion).³³⁰ After reaching out to Queer Base, he was transferred to Vienna and given housing through Diakonie, which he liked much better as it was with other queer refugees.³³¹

Similarly, the gay Iranian was first placed in Traiskirchen before being transferred to a camp in Burgenland. He described the living situation there as not very habitable as he was living with a total of 20 others sharing the same shower, and sharing a room with four straight guys. He did not share he was queer with them.³³²

The gay man from Iraq found private housing and has been content since. The lesbian from Iran also had private housing, as she first arrived in Vienna as a student.³³³

The gay Somalian transferred several times throughout Austria, eventually finding semi-permanent housing in Linz at the family of a social worker moved by his story at one of the camps he was in. However, he expressed dislike for the housing, as it was in a remote village and found the locals homophobic. He found no community there. Eventually through contacting Queer Base, he moved to Vienna as well, finding housing through his partners. When asked to describe gay life in Vienna, and if he felt safe, he said overall yes, but there is still racism and homophobia present in the city, but that it is big enough he finds bars he enjoys going to with friends (though they are often not gay bars due to the racism he faces).

It is clear to see that housing and accommodation is not sufficient in meeting the needs of queer refugees. The two interviewed queer refugees that found their own housing were much more satisfied with their housing and were able to integrate more quickly into their cities.

³³⁰ Appendix, interview 1

³³¹ Appendix, interview 1

³³² Appendix, interview 5

³³³ Appendix, interview 4

Assimilation: Another issue unique to queer refugees is what comes after a positive decision: integration into the community. The interviewed Queer Base refugees all seem to concluded that larger cities were more queer-friendly – and refugee-friendly – than rural areas. Coincidentally enough, refugee camps in Austria tend to be in rural areas, away from public eyes. As all live permanently in Vienna, Vienna was especially praised for being queer-friendly. The only major instance of contention came from the gay Somalian who hinted that other Somalis in Vienna rejected him for his queerness, and local queers rejected him for his skin color.³³⁴ No other instances were brought up by the other interviewed queer refugees.

In sum, Austria as a land in transition away from old norms regarding queerness and refugees is exemplified in their grudging acceptance of queer refugees. Though the sample size was small, the interviewed refugees seemed overall unsatisfied during the asylum procedure, but once they received the positive (or were still waiting, but in Vienna), they were satisfied by their new host country. The uneven application, at times seemingly arbitrary decisions of asylum officers, reflects the struggle international norms have in permeating into the individual level. From multiple transfers to different refugee camps throughout Austria, to settling into private housing, each queer refugee experience is unique, facing individual challenges in navigating the Austrian asylum procedure. It is only because of the higher authority of the UN though its guidebook regarding queer refugees, and the norms of accepting queerness and refugees from higher authorities, plus much grassroots efforts especially regarding queer rights in Austria, that Austria is beginning to accept and accommodate for the acceptance of queer refugees in its population.

³³⁴ Appendix, interview 3

Chapter 6: Conclusions

This thesis aimed to analyze the question if queer refugees are discriminated against in the state system, and if so, how and why. A simple answer would be: yes, they are discriminated against, simply because they do not fit in the current state system expectation of what a refugee should be. They are discriminated against, as often their only proof is their testimonials, and are vulnerable to the stereotypes held against them during their interviews with state authorities.

Queer international relations is an upcoming field of study that has significant implications on the study of international relations as a whole. Though it has roots in current fields of study such as feminist international relations and structuralism, queer IR is unique in that it examines the discourse intersectionality causes within the state system, and the consequences of finding these gaps in the state system.

This paper began by outlining what, exactly, queer theory is, explaining that queerness is a performance against a set of given gender and sexual orientation norms, applied to international relations theory. It is different from the lens found in feminist international relations in that it focuses not just on the binaries of woman/man but on all types of genders and sexualities, attempting to account for all existences that lay in between the binaries. The paper discussed international norms and norm building, concluding that queerness is a protest against these norms. The process of norm-building begins with identifying the current norms within a certain context. Any variations of the norm result in punishment by those practicing the norm. Eventually norms will change when the cost of upholding the norm is more than the benefits. Who decides which norms take hold are often determined by those in power to ensure they stay in power. It is easier for norms to take hold when there is a higher authority willing to enforce the changed norm, and uses its authority as a sign of legitimacy that the new norm is acceptable.

The traditional refugee definition was also discussed and criticized for its narrowness and dependence on “membership of a particular social group” to automatically mean queerness as well. The paper moved on to describing traditional refugee theory, talking about the impact of the idea of citizenship, how refugees were the by-product of building nation-states and state identity, and positive and negative discourse surrounding refugees, which influenced their likelihood of finding a new place within a traditional state system.

Although the lens of post-structuralist IR refugee theory was almost sufficient to truly understand the intersectionality of refugees, it left out the complexities of gender identity and

sexual orientation similar to feminist IR. This led the paper to come up with using queer IR as a better lens through which to view refugee theory.

Current queer IR refugee theory was then defined as a collection of empirical case studies from various European countries documenting the different discrimination queer refugees faced when it came to travelling to new host countries, their arrival, accommodations, trial, and attempts to assimilate.

The paper then offered up the theory that it was more likely for a queer refugee to be accepted by the host state if they matched with the norms of the host state, including their expectations of how queer people – queer refugees – should act. The norms of the host country should reflect the norms of higher authorities at the supranational and international level. A hypothesis was stated: if there is an international norm to accept queerness and refugees, there is a regional norm to accept queerness and refugees. If there is a regional norm to accept queerness and refugees, there is a national norm to accept queerness, refugees, and queer refugees. Norms are diluted the further down they are transferred. All of these norm transfers are connected through the normalization theory- states are more willing to accept the norm if there is a higher authority already implementing it because the authority also gives the norm authority.

Austria was selected as a case study as is at a tipping point when it comes to the accepting queerness and accepting refugees. Additionally, its geographic location on the European continent – between east and west Europe, tied to the EU presently, but tied with the East block historically – gives this thesis the perfect location to ‘average out’ the European experience. As Austria was our case study, this thesis first had to examine all of the layers of norms affecting Austria to see if Austria is a likely candidate to accept queer refugees. First, the thesis began at the highest level, examining the Universal Declaration of Human Rights to see if there was a norm for accepting queerness, and the UN Refugee Convention to uncover if there was a true desire for accepting refugees. Once both norms were confirmed, it moved onto the regional level – one for Europe, for the Council of Europe, and for the EU.

At the European level, this thesis examined the Council of Europe, an institution with the mandate of setting human rights recommendations and an influential norm-setter, to see if it also had developed the norm of accepting queerness and accepting refugees. Both were confirmed, albeit grudgingly, through examining the general history of queer rights in Europe and the European Declaration of Human Rights. At the EU level, a combination of discussing

the Treaty of the European Union, the Treaty on the Functioning of the EU, and the Charter of Fundamental Rights of the EU, as well as certain case law from the EU Court of Justice.

Finally, this thesis turned to the case study of Austria. Given that there is the norm of accepting refugees and accepting queerness at both the international and regional level, there will come a point where all states underneath EU will accept queerness and refugees, and Austria indeed was in the process of accepting both queerness and refugees. The interviews with queer refugees also confirmed this finding.

The generalizability of these results is subject to certain limitations. The paper was limited in its scope in that it did not touch on all of the institutions affecting norms, nor was there an established measurement of where the tipping point is to change a norm. This experiment would have to be repeated in many regions of the world for the theory to be firmly established. Secondly, quantitative data on queer refugees, not only in Austria, but around the world, is extremely hard to unearth and therefore difficult to properly quantify. Finally, this paper did not fully address other intersectionalities queer refugees have, such as ethnicity, age, or income. The participants in the interview all eventually settled and spent most of their time in Vienna; experiences in other cities within Austria were not thoroughly explored. Intersectionality is incredibly complex to study, as different parts of one's identity has different impacts on each other and how one is perceived by the world.

In conclusion, as the social worker aptly put it, "Like, if being queer is more accepted in society, it does make sense that queer refugees would have a higher chance of getting asylum. I think it does. Because I think the more... Because it really all depends on the society. The more you are accepted by the society, I think BFA is coming from the society. Those people who are working in the BFA offices, like, they are normal Austrian people. I mean, the interviews happening in Vienna is very different than the same interview happening in all over Austria. Like, people are more open [here]. The more open the society will be, it will be more helpful for the queer refugees to get asylum, because it's more accepted somehow."³³⁵

However, Austria is one country among many that will encounter queer refugees. As queerness becomes more visible around the world, the number and frequency of queer refugees will increase, forcing states to face their own identities in the presence of people who, simply by their existence, challenge pre-established and pre-conceived notions of what it means to be human in the state system.

³³⁵ Appendix, interview 6

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Appendix: Summaries of Interviews

All interviews were in-person in spring of 2024. All interviewees wished to remain anonymous.

1. Gay from Morocco

The interviewed Moroccan was aware he could apply as a queer refugee. He traveled to Austria because he believed it to be a democratic country with respect for human rights, especially queer rights. First, he flew to Turkey, where he stayed for seven months, four months longer than his legal allotted time. He then decided to move on, travelling with a group along the Balkan route to Austria using a combination of walking and train rides across the border. He finally reached Austria through Hungary, where border patrol agents asked him to cross into Austria to apply for asylum there. The border patrol called the police, and he was taken to a local police station where they stayed the night and were fingerprinted in the morning. He was then taken to Villach, near the Italian border, spending his time at a German course. When asked if he could work, he said they were allowed to work at the camp, cleaning and cooking and serving food. They were paid about two euros an hour. He mentioned he did not like the accommodation because he was living with three other people in the room, smoking.

He found out about Queer Base by a stray poster on the wall, so he reached out to contact them. 20 days later Queer Base had given him a train ticket from Villach to Vienna. As he came from a “safe” country, he was given a green card showing that his case could be processed quickly, but because he had the green card, Queer Base could not transfer him to Vienna without a white card. He was moved to Vorarlberg, where he stayed for about 2.5 months. He did not give a reason why. The housing situation there was also not ideal – he was living with an Afghani, Tunisian, and Algerian. After a representative from the BFA came, they confirmed he was applying for asylum on the status of queerness, and asked if he would prefer to have a male translator. He did, so they gave him a second appointment.

By that time, he had a white card and Queer Base was able come to Vienna, where he was given housing by the NGO Diakonie. He expressed much more happiness with the living situation, as he was living with other queer refugees as well. He also visited a German course through another NGO (supported by the City of Vienna) called Volkshilfe to pass the time waiting for his next interview, or hung out with other queer refugees.

About 5 months later, under Queer Base's instruction, he reached out to the BFA to get his second interview. About two weeks later he got the appointment. He asked for friends to write letters proving his queerness (stating for example he had taken part in queer events around the city).

During the interview, the interviewer asked a few questions. He started with basic information, and then transitioned to his reason for coming to Austria (Morocco was a Muslim country despite no laws against homosexuality), his coming-out story including his relationship with his ex-boyfriend, and why he was afraid to go back to Morocco (he was afraid for his life, and he would go back to jail). The interview lasted 40 minutes, though it was expected to last up to 4 hours. In ten days, he received a positive. He would have to stay in Austria for three years, take German to reach B1, and then could stay in Austria for the rest of his life. He also talked about police and civil society using the app Grindr to find homosexuals and rat them out, and that his integration into Austria has been positive so far – he has enjoyed the gay scene.

2. Gay from Iraq:

He flew into Turkey from Iraq and stayed for about three weeks. He looked for paths to Europe, and eventually took a boat, landing again in Turkey but making his way eventually across the Balkans, through Serbia and Croatia. He was with a group of about 60 other migrants. He did not describe exactly what happened, just that it was a catastrophe. Somehow, he made it to Austria and asked for asylum and has been waiting for the decision ever since. He did not know anyone in Austria when he came. He told about his time in the Iraqi army, and how he believes that played a role in how long his asylum was taking. He talked about how his family has totally ostracized him, and if he were to ever come back, they would kill him. He described the hardships of arriving in Austria without any documents, no visa, no papers. He is still waiting for the BFA to give him a decision after living in Austria for 7 years. He seemed, however, happy to be in this state of limbo as he has made many connections not only to other queer refugees, but to other Viennese and migrants. He is able to do what he wants – he loved to work out, and helping others work out too. He was learning German, and was proud of the fact that he was able to have the interview in German as well.

3. Gay from Somalia

He comes from Mogadishu, the capital of Somalia. He decided to seek asylum not only due to his sexuality in a Muslim country, but also because of the 1991 civil war. He was born in 1994. In 2015, he started his journey. He did not even know Austria was a country when he took a boat from the capital to Yemen, then to Iran, Turkey, a boat to Greece. They were turned around in Greece and were forced back to Turkey, where his group spent five days in jail. In a smaller boat, they went to Greece again, then by walking, then car, they went along the Balkans through Serbia. His smugglers eventually announced they were in Austria. Some of his group went on to Germany, France, and Sweden, but because of his poor health at that point, he decided to apply for asylum here.

He was arrested and sent to a refugee camp for a week, then to another camp. He was put in a German language course. The instructor at some point pulled him away and complimented him on his dress, and he told her he was gay. She expressed her love for gay people and offered to let him move in with her parents. Despite the language barrier, he enjoyed his life there and the family apparently treated him like their own son. Eventually though, the small town near Linz he lived in was too much (It was homophobic and racist. The n-word was said to him).

After a year, he found Queer Base. He visited Vienna and found the city to be much better than the country. After 3 months, he officially moved to Vienna and stayed in housing with other queers. He moved in with his boyfriend from 2016-2019, but after that did not work out (he was thrown out), he stayed with a friend for a time. He eventually found his own place separate from housing provided by Vienna.

He had to wait three years for his first interview in 2018 (he suspected because of the Syrian refugee crisis), but a week later he got a positive decision. The interview he described as long and very detailed, asking questions like what color his boyfriend's toothbrush was, on which side of the bed he slept. His interview lasted 1.5 hours.

When asked to describe gay life in Vienna, if he felt safe, he said overall yes, but there is still racism and homophobia present in the city. But that the city is big enough he finds bars he enjoys going to with friends (and they are often not gay bars due to the racism he faces).

When asked if he would have liked to stay in Somalia, he did not even hesitate. He said that his family was actually accepting of his queerness, but not his extended family. He was once assaulted by other Somalis in Vienna because of his queerness.

4. Lesbian from Iran

In 2021, she flew with a student visa, then asked for asylum about a month after she arrived in January. She chose Austria somewhat on a whim – she planned to follow her brother who lived in Germany (he is also queer - transgender) and follow her ex-girlfriend who planned to move to Vienna with her. There was also family pressure to marry, and she didn't want to especially because she had been with her girlfriend for four years at that point and it was getting too difficult to hide from friends. Leaving was not an overnight decision – it took almost a year of planning.

First, she talked to a lawyer before turning herself into the police. Once she was fingerprinted, she was allowed to go back home because she was still on her student permit living by herself in student dorms. She got her white card as well to allow her to stay in Austria. She said she decided not to follow her brother because the asylum process was quicker than Germany's.

After a month, she received an invitation to be interviewed at the BFA. By this time, she had contacted Queer Base and had a lawyer with them. She said the interview was around four hours, and stated with asking simple questions like how many siblings she had. Both her and the lawyer were surprised when the questions turned to religion, and she replied she was born a Muslim but didn't consider herself Muslim. This was risky because her application was based on her being queer not being Muslim. She provided pictures of her ex-girlfriend in Iran for proof.

The girlfriend never came to Vienna. She was apparently rich and didn't care to be openly queer, and now she even denies it. She said the questions felt incredibly personal and that they were meant to put her into a male/female relationship (in that one of the women in the relationship took on a male role). When asked if she felt she needed to be more 'lesbian' than usual, she said no, but that bisexuals had to be clear they were indeed attracted to the same sex. Sometimes the questions were repeated.

She got a positive after the first interview about a month later. She said this was extremely quick considering she comes from an 'unsafe' country. She contributed it to her nonthreatening physique (in comparison to the gay man from Iraq, she was petite and nonthreatening).

After the decision, she took a class on computer science through Diakonie, so she stopped university and did the course full time.

5. Gay from Iran:

He arrived in 2019 though the Balkan route (mostly in cars in hidden compartments), initially not planning to go in particular to Austria, he just wanted to go to Europe. Austria just happened to be the country his smuggler left him in. He thought he would end up in Germany. He did not find out he was in Austria until he went to the police and asked for asylum. He laughed as he explained the police were very confused at first because he just said he was gay, and the police were the ones that asked if he were trying to apply for asylum. He was taken to another place for the initial interview, emphasizing he was handled gently and respectfully.

He was transferred to Traiskirchen, also emphasizing how nice the police had been, waiting for him while he moved in. They had even taken his money for safekeeping till he got there and gave it back. They urged him to contact them in case he was in any danger at the camp.

He was transferred to a camp in Burgenland which he described as not very habitable as he was living with a total of 20 others sharing the same shower, and sharing a room with four straight guys. He did not share he was queer with them.

He was found by Queer Base also through a social worker from Diakonie who was working at the Burgenland camp. He had his first interview there, but his interpreter was racist and homophobic, making fun of the photos he had taken with him for evidence, throwing a pencil at it. He called Queer Base and they cancelled his appointment to get a new one later. He got a female interpreter after that. Queer Base paid for his train ticket to Vienna, and after an interview there, he was transferred to Vienna and lived with other queers in an apartment. He had another interview to make up for the cancelled one. His interview he described as smooth, where he explained about being gay in a Muslim country. His positive was sent about a week later.

6. Social worker interview:

When asked if there were any strategies for getting a positive, he said there were not, and that it mostly depended on the interview and how openly the client is to talking about their experiences. There are some people who can express it well, and some that can't. The more details the better. Physical evidence helps, but it mostly depends on the talk, but it also depended on the officer's willingness to listen and piece together the puzzle.

Another factor is when the client is in the process of coming out, as the person isn't usually open to talking about their sexual orientation.

Another factor is how 'outwardly' gay the refugee is. Refugees who 'seem' gay have a higher chance as being recognized by the officers as gay. They fulfill the stereotypical gay idea.

"I mean, like, it wasn't long back before Queer Base, like, it was an Iranian guy who got negative because of the officer in the BFR asked, what are the meanings of the colors of a rainbow flag? And it was really Queer Base [who] went public and went like, I think it's all over, like, the efforts of Queer Base really tried so hard to explain what is happening in, like, queer lives and how's the asylum process for queer refugees. And we were, I think, in, like, three or three years ago, it was not really thought about that a queer asylum seeker from Russia would get asylum. That's three years, okay. It's not that long that we were not having so many positive asylum seekers because of just, like, being queer. So, our legal team, our team really worked really hard because of it."

"Like, if being queer is more accepted in society, it does make sense that queer refugees would have a higher chance of getting asylum. I think it does. Because I think the more... Because it really all depends on the society. The more you are accepted by the society, I think BFA is coming from the society. Those people who are working in the BFI offices, like, they are normal Austrian people. I mean, the interviews happening in Vienna is very different than the same interview happening in all over Austria. Like, people are more open [here]. Like, the more open the society will be, it will be more helpful for the queer refugees to get asylum, because it's more accepted somehow."