A Feminist Analysis of Gender- and Sexuality-Based Asylum Claims by Unaccompanied Minors

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1. Description of grant-supported activity

In the United States, few areas of the law are characterized by as much controversy and contradiction as the adjudication of asylum claims. Most recently, the influx of unaccompanied children from Central and South America has once again challenged the narrowly defined boundaries of who qualifies as a refugee/asylee. While some critics suggest that these children are illegal immigrants in search of a better life, others insist that at least some of these unaccompanied minors are fleeing from persecution and might indeed have valid claims for protection.

My research project is focused specifically on gender-based asylum claims by unaccompanied minors from the Northern Triangle (Honduras, Guatemala and El Salvador). Even though the majority of unaccompanied alien children (UACs), as they are formally known, consists of teenage boys between the ages of 14 and 17, there is an increasing percentage of girls that are forced to flee their homes. Even more importantly, there is also an increasing recognition that, while many girls are subjected to some of the same forms of violence and neglect, the particular type of persecution that they experience is oftentimes defined by their gender.

However, very few of those cases have made it into the upper courts yet. There is very little systematic research on gender-based asylum claims by UACs and many of these cases are still progressing through lower courts and are thus not included into legal databases. Rather than limiting my search to published cases, I was specifically interested in how discussions over gender, eligibility and deservingness played out in the lower courts.

Before I embarked on my data collection, I did not realize how time-consuming the search for these cases would be. I ended up spending the first few weeks of my summer in meetings with the research librarians at the University of Notre Dame’s Law Library and developing a strategy to locate case materials. While some of the cases were available online, the websites of the lower courts are only searchable by case number and/or name of the defendant and not by subject or type of case. Finding cases that involve gender-based claims by UACs thus required me to browse through hundreds (if not thousands) of cases.
Furthermore, quite a few cases are settled outside of the courts and while the UACs don’t receive political asylum, they are eventually granted the right to stay. These cases are unpublished. However, I strongly suspected that these proceedings would reveal an interesting insight into the struggles of redefining the limits of our well-established asylum/refugee categories. I thus contacted some of the lawyers that represented the young women in these cases and was able to get some of the case materials as well as information about other relevant cases.

The initial data collection resulted in over 50 mostly unpublished cases that involved gender-based asylum claims of UACs. Due to the wide variety of situations and legal arguments, I decided to limit my analysis specifically to gang-based claims. Despite many harrowing cases of gang members targeting young girls with everything from lewd remarks to physical violence and gang rape, my initial review showed that judges have been reluctant to recognize that these claims do indeed fit the traditional definition of a refugee.

Since the initial literature search that I conducted during my sabbatical in fall 2014 wasn’t specifically focused on gang-based claims, I spent another two weeks collecting additional sources on gang activity in Central and South America. This allowed me to gain a better understanding of the social conditions that UACs were fleeing from and helped me put their claims into perspective.

Afterwards, I began coding the cases and identifying some of the major legal arguments and discursive strategies. The last few weeks of my summer were spent writing the actual article.

2. Were you able to complete the project? Describe any difficulty you had.

At this point, the majority of the article is written and I anticipate that I will be able to send out the completed manuscript early in 2016.

In addition to the time-consuming search for relevant cases that put me behind schedule, I never anticipated that the summer of 2015 would be marked by an unprecedented refugee crisis in Europe. While the arrival of over one million mostly Syrian refugees did not have a direct impact on the adjudication of asylum claims of unaccompanied minors in the US, the ensuing debate has certainly influenced the way that we think about asylum claims in the US. Public concerns over how we can manage risk and weigh our desire for homeland security against a commitment to humanitarian values dominate the debate now more than ever.

I will need a few more weeks to develop an analytical framework to connect the US asylum discourse and the cases that I have collected and analyzed to these larger global developments. I believe that this will not only make the article more relevant and timely, but will also increase its chance of being published in a competitive journal.

3. Did, or will, the project result in a specific product?

Yes, my research will result in a journal article that will hopefully serve as the basis for a larger research project.