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## Negotiating Uncertainty in the Right to Asylee Status

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### **Abstract**

The asylum system regards asylum seekers as actors with privilege and resources, and expects them to present sound cases documenting their rights to asylee status. However, the asylum system fails to consider the lack of autonomy of asylum seekers, as they must manage trauma, lack of resources, new host societies, and the asylum process. Based on interviews (n=14) with asylum seekers, general findings reveal that inherent barriers within the asylum system position asylum seekers into a context of insecurity that undermines their agency and ability to achieve asylee status. The examination of asylum seekers interacting with the United States asylum system offers a unique vantage point for exploring the relationship between structure and agency. Asylum seekers' agency is theoretically reconfigured in an inclusive abstract action model that validates their negotiation process in mitigating vulnerability from persecution through the asylum process. However, due to asylum seekers limited agency and the structural barriers involved in attaining asylee status, structure is theorized as minimizing agency aims. I propose a revised concept of agency to account for asylum seekers' uncertainty in securing asylee status.

### **Keywords**

Asylum, Claims-Making, Insecurity, Social Agency

Recent asylum statistics reported by the United Nations High Commissioner for Refugees (UNHCR 2012) show that approximately 441,300 asylum claims were filed in 2011, and 74,000 of those claims were filed in the U.S. The UNHCR (2012) also reports that the U.S. "ranks as the country with the highest number of asylum applications" amongst industrialized countries. The U.S. has complied with international law by allowing and examining claims of asylum seekers (see Einolf 2001:xviii). According to United Nations Universal Declaration of Human Rights, 1948, article 14 establishes that "[e]veryone has the right to seek and to enjoy in other countries

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asylum from persecution.” The U.S. is accountable for complying with the 1967 Protocol, and its own Refugee Act of 1980, which under the Refugee and Asylee Adjustment Act (Section 209 (a) (2)) states that “a person who has been physically present in the U.S. as an asylee for an aggregate period of at least one year may apply for adjustment of status to that of LPR [legal permanent residence];” these measures are favorable to refugees/asylum seekers attempting to acquire protection in the U.S. (see UNHCR 2012; USCIS 2011:2; Chan 2006). The UN 1951 Refugee Convention mandate, specifically defines a refugee as

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 his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (see UNHCR 2012).

The UNHCR (2012) defines an asylum seeker as “an individual who has sought international protection and whose claim for refugee status has not yet been determined.” According to the U.S. Immigration and Nationality Act (Section 101(a) (42) (a)): to qualify as an asylum seeker, an individual identifies as

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a

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particular social group, or political opinion” (USCIS 2011:2).

Asylee status is defined as “a surrogate protection granted in response to the State of origin’s inability or unwillingness to provide protection to persons facing persecution” (Bailliet 2007). Through the asylum system, asylum seekers can file for legal protection, which is contingent upon the authenticity of their case. Although the asylum system is structured to offer legal residence status to qualified asylum seekers, the present paper based on qualitative interviews with asylum seekers will demonstrate how the system undermines their ability to authenticate their stories of persecution and secure asylee status.

#### LITERATURE REVIEW

Although the United Nations High Commissioner for Refugees (UNHCR 2012) validates refugees under the conditions of “fear of or actual victimization of persecution,” refugees and increasingly asylum seekers experience difficulty in accessing and securing safety and rights. Despite that refugees/asylees access security through these international policies, the role and implementation of individual nation’s policies (Schuster 2011; Hyndman and Giles 2011; Sales 2005; Mountz, Wright, Miyares, and Bailey 2002; Abeyratne 1999; Uçarer 1989; Loescher 1989), individual responsibility to meet refugee/asylee status (Sarre 1999), potential conflicts/competition with native citizens (Ricoeur 2010; McDonald 2007; Welch and Schuster 2005; Uçarer 1989), and lack of access to resources constituting (in)voluntary returns to the country of origin (Webber 2011; McDonald 2007; Stein and Cuny 1994), serve to place asylum seekers in precarious situations of liminality that undermine their rights to security and safety in a non-conflict setting. An underlying current of negative perceptions of immigrants (mostly toward undocumented migrants) and border policies enacted to regulate the incoming of migrants across the Mexico/U.S. border (see Castenada 2008; Chavez 1997) has contributed to the barriers that asylum seekers encounter in their efforts to secure asylee status (Ricoeur 2010; Kivisto and Faist, 2009; Welch and Schuster 2005; Einolf 2001).

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### *Involuntary Migrant Models*

Theories of immigration and refugee movements have focused on factors that contribute to immigrants moving from their homeland to a host country (Castles 2003; Massey et al. 1993; Lee 1966). The focus on a rational, economically-motivated actor reifies the assumption that actors have the ability to manipulate resources and enact their own economic motives. In response to the economic migrant model, Kunz (1973) and Richmond (1993) emphasize the coercion that is central to refugees' movement and agency process. However, refugees/asylum seekers appear to be held to the standard assumptions of economic migrants with regard to their potential access to resources and their responsibility to "prove" their eligibility for refugee/asylee status (see Sarre 1999). The context of refugees/asylum seekers must be fully acknowledged in order to differentiate their circumstances from "voluntary" economic migrants (see Moore and Shellman 2007; Davenport, Moore, and Poe 2003:32; Schmeidl 1997:302; Hakovirta 1993:43). For instance, existing literature on forced migration acknowledge the lack of autonomy and strategic ability of forced migrants in determining their migration decisions and routes (Riddle and Buckley 1998:237; Kunz 1973:131). Political refugees/asylum seekers are likely to experience increased vulnerability as they attempt to negotiate international migration processes, asylum, and adaptation to a host country (Kissoon 2010; De Jongh 1994:222). As a result, political refugees/asylum seekers seem to be merely escaping one context of insecurity, which becomes replaced with other forms of insecurity and risk.

### *Asylum Deterrents*

At face value, international protection of refugees appears to provide ample security and validation to overcome refugees and asylum seekers' vulnerability since the policy validates the right to freedom from persecution, and protection in the host country from forced return to the country of origin (UNHCR 2012). However the literature on refugees' rights and international refugee and asylum laws indicates that host societies actually work against the establishment of

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refugees' rights to security and safety (Rottman, Fariss, and Poe 2009; Sales 2005; Black 2003; Loescher 1989). Asylum seekers' agency is rendered invalid in at least three significant ways: first, asylum seekers are forced to prove their status in a context in which their vulnerability is high (Ranger 2005; Sarre 1999); second, international policies require asylum seekers to prove their eligibility on the assumption that they are assumed to be making false claims (Welch and Schuster 2005; Black 2003; Abeyratne 1999); and lastly, international policies and deterrent measures further marginalize individuals fleeing from persecution by limiting their decision-making power in efforts to secure the best interests of the host nation-state (Sales 2005; Einolf 2001:xviii; Abeyratne 1999). The last factor is evident in policies that either send asylum claimants back to third "transit" countries, make social, economic, and political resources contingent upon verification of refugee/asylee status, and/or promote repatriation (Schuster 2011; Hyndman and Giles 2011; Barnett 2002; Abeyratne 1999; Loescher 1989; Uçarer 1989). These deterrent policies expose the loopholes in the system in which accountability for the refugees' and asylum seekers' safety is positioned against the vested interests of the host society (Sales 2005; Einolf 2001; Abeyratne 1999). The vast consensus among the literature is that host societies are resisting the larger international policies aimed to grant protection to refugees/asylum seekers in a way that does not directly negate the two basic principles of refugees' rights (Neumayer 2005; Loescher 1989). However, the consequences of these policies exacerbate refugees and asylum seekers' vulnerability by placing them into a liminal zone in which they lack decision-making power, agency, and autonomy. Host societies in particular experience difficulties in resolving the problem of fraudulent claims of asylum due to a potential increase in unsecure borders and the probability that undocumented asylum seekers may be "valid" refugees (Welch and Schuster 2005; Black 2003; Abeyratne 1999:613). According to Crawley (2006:24), host societies determine, based on economic contribution, their preferred incoming migrant as opposed to migrants they restrict. In addition, migration patterns have contributed to increases in asylum seekers causing "an overburdened asylum procedure" (Einolf 2001; Widgren 1987:601), which presents accommodation difficulties for host societies. From this standpoint,

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host nations encounter difficulties in upholding their international responsibility to protect refugees/asylees, and also maintaining security from the illegal entry of “economic” migrants (Black 2003:34; Einolf 2001). Second, the rights that political refugees/asylum seekers have access to are positioned against the lack of open entry of “economic” migrants and their inability to receive protection (Black 2003).

Due to an atmosphere in which different treatment and rights are given to refugees/asylum seekers and economic migrants, identifying who is considered a “legitimate” refugee/asylee becomes a matter of individual responsibility, particularly refugees/asylum seekers’ ability to “prove their eligibility” for protection (Ranger 2005; Schafer 2002; Barnett 2002; Sarre 1999). The emphasis on individual responsibility in providing evidence of eligibility as a refugee/asylum seeker is to be exercised against the backdrop of stereotypical assumptions that the particular refugee/asylum seeker is actually making a false claim in order to hide his or her “economic migrant” identity (Ranger 2005; Black 2003; Schafer 2002). An additional barrier asylum seekers encounter is the one-year deadline to file an asylum claim in the U.S. (Schrag, Schoenholtz, Ramji-Nogales, and Dombach 2010). Schrag et al. (2010:759) find that “18% of asylum applicants” (of their sample between 1998 and 2009) were considered “ineligible because they did not file on time.” The presence of obstacles, such as stereotypes, lack of resources, the inability to obtain evidence, or the deadline to file undermines their ability to justify their need for asylum (Kissoon 2010; Bohmer and Shuman 2007).

Western societies particularly the European Union and the U.S., have implemented specific policies to prevent the illegal entry of “economic migrants” under the label of political refugees/asylum seekers and to even limit the total number of political refugees accepted (Kivisto and Faist 2009; Rottman et al. 2009; Neumayer 2005; Black 2003; Barnett 2002; Mountz et al. 2002; Abeyratne 1999; Loescher 1989). Subsequently, Western societies have criminalized immigration, which tends to limit the entry of economic migrants and increase the barriers to attain asylum (Engbersen and Leerkes 2010:211; Demleitner 2010:229; Kivisto and Faist 2009). Several deterrent policies were mandated to compensate for the increase in refugees and applications of asylum (Uçarer 1989:292). The two most

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common policies exercised by the European Union as well as the United States were the added responsibility of “third countries/transit states,” (referring to countries not involved in granting asylum) and changes made to the asylum application procedure, generally increasing the length of the process and official reviews made by non-official agents (Barnett 2002; Mountz et al. 2002; Abeyratne 1999; Loescher 1989; Uçarer 1989).

*Managing Vulnerability in the Asylum Process*

Although it may be envisioned that asylum seekers access safety by fleeing persecution in their country of origin, the literature in general documents the refugee/asylum process as subjecting individuals to inequalities, poor conditions, lack of communal support, and further violence (Ashford 2008:200; Ahearn and Noble 2004:402; Boersma 2003; Harris 2003). The conditions asylum seekers are escaping from and the degree of trauma they are managing contribute to their vulnerability in negotiating forced migration and the asylum process. Individuals’ eligibility to be an asylum seeker is uncertain because their experiences of victimization have to be legitimized by an outside authority (Visweswaran 2004:490). Several studies reveal that asylum seekers are likely to be invalidated for their claims by authorities (Crawley 2010; Pickering 2007; Stabile and Rentschler [Oxford] 2005; Ranger 2005; Shafer 2002). From this standpoint, entry into the host society is hindered by the inability to present a legitimate claim for asylum and protection. In Ranger’s (2005:415) examination of Zimbabwean refugees asylum claims in Britain, legitimation of asylum claims was often denied based on lack of knowledge of the violence in a particular context and the discrediting of the fear individuals encountered in their country of origin. These findings reveal that asylum seekers are susceptible to being denied asylee status because in some cases their victimization incidences are not automatically met with validation by authorities.

Accordingly, asylum agents tend to require documentation and a sound argument claiming the extent of persecution and need for asylum, however, agents seem to identify “vagueness, contradiction and lack of credibility among some of the applicants” (Bailliet 2007). Although the asylum agents experience weak or unclear claims, these claims may not be fraudulent, but actually signals the lack of agency

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and high degree of trauma, insecurity, and lack of knowledge pervasive in asylum seekers process of securing status (see Kissoon 2010). Correspondingly, Stabile and Rentschler ([Oxford] 2005:17) note that women are encouraged to recite “particular kinds of narratives about their victimization” in order to attain asylum. The problem associated with this action is asylum seekers risk providing a pre-formulated experience that may fail to meet the authorities’ guidelines for asylum, and in doing so, they do not retell their actual victimization. Correspondingly, Pickering (2007:30) argues that “[w]ithin this narrative, asylum-seekers are considered an alien group with no connection to the body politic or to the cultural or social mores of the nation in which they seek asylum.” This space of liminality begets further insecurity, which builds on asylum seekers earlier vulnerable status related to persecution in their country of origin that coerced them to migrate (Kissoon 2010).

Similarly, evidence reveals that asylum seekers encounter skepticism by the agents who are assigned to validate their eligibility (Ranger 2005; Mountz et al. 2002). Particularly, several studies have criticized airline agents and immigration officers for deciding the status of potential refugees/asylum seekers because these agents are not qualified to make such decisions (Rottman, Fariss and Poe 2009; Eades 2005; Abeyratne 1999). These agents may be more likely to devalue the claims of refugees/asylum seekers based on the presumption of the prevalence of false claims made by “economic migrants.” Moreover, several studies have been critical of asylum agents for failing to grant asylee status to “valid” asylum claims due to their own ignorance of the situation (Pickering 2007; Stabile and Rentschler 2005; Ranger 2005; Shafer 2002; Mountz et al. 2002). Additionally, asylum agents may lack cultural knowledge, particularly in authenticating the asylum seekers’ persecution, such as linguistic evidence to determine nationality (Eades 2005). Evidence shows that asylum agents either invalidate the claims because they do not coincide with typical asylum scripts or they automatically assume that false documents indicate economic motives for entry (Bohmer and Shuman 2007; Barnett 2002). However, research has illustrated that asylum seekers may be coerced to obtain false documents to enter due to their precarious situation and limited resources (Ranger 2005). Since asylum seekers’ survival is contingent on securing asylee status,

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they may present typical claims that necessarily do not fit with their own particular circumstances (Shafer 2002). Here, asylum seekers' agency is exerted to directly mitigate discriminatory practices of agents and policies that characterize them as fraudulent and/or as economic migrants.

#### THEORETICAL FRAMEWORK: TOWARD A NEGOTIATED THEORY OF AGENCY

Conceptualizing agency with regard to the experiences of asylees is theoretically challenging. By equating the agency of privileged, rational actors to that of asylees would overlook the oppressive conditions that asylees encounter. Sociological theories of agency and structure have been developed on the assumption that actors' access and perform power in their ability to enact autonomy and utilize resources (Giddens 1984; Parsons 1968). This presumption has been formulated in response to the macro/micro dilemma of exaggerating structural determinants at the expense of agency, and even the utilitarian dilemma. Parsons' (1968:64) theory of action attempted to overcome the utilitarian dilemma which posited that action was either reduced to hedonistic drives or was structurally determined. In both of these perspectives, agency was lacking autonomy, and individuals' action was constrained by other forces predicated on their unconsciousness. In order to overcome this dilemma and resituate agency in a more active role accompanied by the consciousness of actors, theories developed by Parsons (1968), Giddens (1984), Bourdieu (2006), Alexander (1994), and Collins (2008) have sought to account for agency from a context that positions micro and macro as inseparable in a complex and mutually-equal manner.

Parsons (1968:44) constructs a comprehensive form of action that involves an "actor, an end, a situation involving means to facilitate the particular ends, conditions that limit the means to an end, and a normative orientation that influences the particular development of means." This action system acknowledges the process in which actors develop "rational" ends. The significance of the "unit act" is the incorporation of actors' agency in developing means to actualize goals, and the structural influence of norms that guide means and conditions actors' experience in attaining their ends. The focus on the

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means-end centralization with the supplemental role of the normative orientation and conditions disregards how objective structures underdetermine the agency of marginalized individuals. The role of structure in the “unit act” is reduced to a trivial position in which it simply informs the “means-end” relationship, without really playing a significant role. The “means-end” relationship is still dominant because the actor’s agency is positioned in a prominent role based on his or her ability to consult conditions and social norms in the process of engaging in means toward the attainment of a particular set of goals. In extending this model, Giddens’ (1984:9) definition of agency emphasizes power by stating that “[a]gency concerns events of which an individual is the perpetrator, in the sense that the individual could, at any phase in a given sequence of conduct, have acted differently.” Giddens’ (1984:3) theory of “structuration” implies that actors “produce and reproduce structure” based on their “knowledgeability or reflexive monitoring.” This assumption in regard to action acknowledges that individuals have the ability to negotiate and influence structure based on their own use of power. However, this conceptualization of agency has made the error of assuming that actors are equal and capable of exercising autonomy.

Parsons (1968) and Giddens’ (1984), (see also Bourdieu 2006) action models incorporate an element of power or autonomy based on the actors’ ability to overcome structurally constraining conditions. Agency presumes that actors are able to exert their own will and decision-making power to execute action, however, marginalized individuals lack this practice of autonomy (Giddens 1984:9). In order to understand agency from a marginalized standpoint, the challenge is to give structural conditions more weight without necessarily suggesting that marginalized individuals are incapable of agency. The possibility that agency can be granted in action that responds to structural coercion requires a new conceptualization and is useful to apply to asylum seekers lacking autonomy. One of the significant issues accounting for the action processes of individuals is to avoid the dichotomy of agency versus structure (Campbell 2009:408). Rather than supporting that marginalized individuals either lack agency or have less access to exert agency compared to privileged individuals, it is important to redefine agency as a process of negotiation of structural conditions that may include elements of response or

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compliance to structural demands, in addition to “unknown situations and conditions” that reduce the ability to make informed choices (Giddens 1984). For example, the conditions of structure are constituted prior to the actor, in which the actor plays a role of responding to conditions rather than modifying them.

At this stage, marginalized individuals’ action development must focus on the negotiation process, which demonstrates active agency on the part of subordinate individuals interacting with structure even if they lack autonomy to alter the system or structural conditions. Importantly, agency as a negotiation process removes the presumption of power associated with actors’ ability to manipulate structural conditions based on their own means-end motivations by acknowledging the likelihood that for marginalized individuals structural conditions may seem coercive and dominant (Giddens 1984:9; Parsons 1968). As such, agency departs from actors’ positions of power in interactions to be reconceptualized as an active negotiation and response to structural conditions. This change in conceptualization does not negate the ability for actors to make informed decisions and execute action. Simply, the revised conception of agency facilitates the ability to situate actors within structural conditions, and identify and validate marginalized actors as agents, even if they are unable to constitute the conditions of objective structure and social norms. Applying a negotiated agency concept to asylum seekers’ experiences facilitates the ability to comprehend how the structure of the asylum system and assumptions of individual capability to file a sound case contributes to the lack of agency and limited resources encountered by asylum seekers.

*Select Propositions of Negotiated Agency*

- (1) Agency is a negotiated process based on marginalized actors’ active management and response to structural limitations.
- (2) Structure underdetermines the extent in which agency and autonomy is performed characteristic of the particular situation and actor.

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Agency has to be tailored to address the process of action engaged in by disadvantaged individuals and the likelihood that their actions are constituted by the context and structural policies in place. Many scholars have demonstrated the inadequacies of the asylum system due to nation-states regulation of incoming migrants, despite the humanitarian obligation to asylum seekers. However from a sociological action framework, the asylum system's policies are able to capitalize on the vulnerability of asylum seekers by diluting their agency potential. The barriers present within the asylum system prevent asylum seekers from making valid claims, which is then interpreted as failure at the individual level, rather than structural level. As a result, even though asylum seekers are able to file a claim for asylum, ultimately they struggle to secure asylee status because they are unable to modify the structural rules.

In this article, I will argue that the marginalized status of asylum seekers is not solely linked to their experiences of persecution, but that the inherent barriers they encounter in the asylum system compromise their agency potential. Therefore, asylum policies underdetermine their success in developing a sound case claiming their right to asylum. The following qualitative study of asylum seekers securing asylee status in the U.S. applies this proposed negotiated agency concept as a framework for showcasing the detrimental barriers that undermine the success of the claim process as a result of the uncertainty of the decision outcome. Specifically, the research question poses: How does an asylum seeker negotiate the asylum process in order to either advance toward asylee status or secure asylee status in the U.S.? Only a few studies have directly sought to understand the asylum process from individuals attempting to acquire protection (see Shuman and Bohmer 2004; Einolf 2001). The present study extends the work conducted by Shuman and Bohmer (2004) with regard to U.S. asylum seekers' construction of their narratives by examining the structural constraints that coerce asylum seekers into liminal spaces in an effort to understand the complexities surrounding structure versus agency.

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## METHODS

This study identified asylum seekers and asylees' experiences either presently navigating the asylum system or their retrospective experiences having gone through the asylum process in an effort to gain asylee status. The criteria for participation was to be either an asylum seeker who has learned of the decision outcome and was still in the process of securing status, or has already been through the asylum system and either was granted or denied asylee status. Their asylum cases had to have been determined within the past ten years, however, many of the participants had commenced within the past three years. The interview questions focused solely on their navigation of the asylum system necessary in securing protection.

Asylum seekers represent a vulnerable and hard to reach population. In order to further gain contact and build rapport with potential participants, I took part in volunteer work with a few refugee and asylum seeker social service agencies. While working with these agencies, I approached the directors and informed them of my study, and asked for permission to post recruitment flyers in the common areas. The intent was to informally share my study with individuals, and if interested, they could make contact with me via phone or email. Additionally, directors of some of the agencies made initial contact with individuals and provided them my contact information. Each of my recruitment strategies focused on providing information about my study, but allowing the individuals to contact me if interested.

The participants represent a diverse group of individuals from countries in Africa and the Middle East with asylum case processing lengths ranging from 6 months to 15 years. Based on the difficulties reaching this marginalized population, no restrictions were placed on gender. Of the fourteen participants in the sample, ten were female and four were male. Eight of the participants came to the U.S. with the primary motive to apply for asylum. The remaining six participants originally came under a student or work visa, and due to changes in their circumstances with regard to the likelihood of encountering persecution when returning to their country of origin, they filed for asylum to mitigate impending or actual victimization (based on temporary visits to their country of origin). Each participant had successfully progressed through both the application and interview stages, however, their decision outcomes varied. A total of nine

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participants were granted asylum after their interview and in a few cases, second interview. Two individuals received a denial, but were able to receive legal residence status based on economic hardship in one case, while in the other case, an extension of their expired work visa. The other three cases resulted in a denial of asylum, however, each of these participants is currently in the appeals process.

In the written results, participants' identities are protected by the use of pseudonyms and the omission of other identifying information. The pseudonyms connected to the region in an effort for the names to be representative of the asylum seeker, however, most importantly the name and/or meaning does not pertain to any particular country of origin. The following analysis section organizes the data by addressing systematic barriers asylum seekers encounter as they develop their case. The analysis of the data addresses three themes: resources as potential barriers, cultural disconnection, and skepticism of their evidence. Each theme is supported by select excerpts of the participants. The results represent the difficulties overcoming barriers to achieve asylee status.

## RESULTS

The plight of asylum seekers entering a host society to escape persecution in their country of origin involves heightened risks, particularly in the transition toward citizenship. Although many of them express hope in securing asylee status, they also cope with uncertainty and insecurity based on the persecution they have been subjected to and the possible risks involved in applying for asylum, such as being caught, being denied asylum, and/or the possibility of being forcibly returned to their country of origin. Within the context of this study, despite the strategies employed by asylum seekers to develop their case for asylum, they encounter barriers that undermine their chance to be authenticated as a potential asylee. The asylum process may be regarded as incorporating non-deliberate barriers based on the ability for asylum seekers to apply for asylee status. Decision outcomes are based on asylum seekers' case evidence. Thus, challenges encountered in developing a sound case contribute to a greater degree of uncertainty in securing legal residence status.

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*Theme I: Available Resources as Sources of Barriers*

The lack of resources contributes to barriers toward eligibility for asylum. Considering that the asylum system is organized in stages based on developing an application and defending the case in an interview (USCIS 2011:1), asylum seekers must actively seek resources in order to present a sound case with supporting evidence. Resources, such as application guidelines, social and legal organization assistance, and translators are available, but asylum seekers are expected to obtain this assistance on their own. As a result, the availability of resources is contingent upon asylum seekers' ability to find information and use their own resources to access help. Although the lack of some resources appears to be minor barriers to outsiders, for asylum seekers' the inability to obtain information or assistance prevents them from developing a sound case. Significantly, the asylum system assumes that asylum seekers presenting valid claims will be granted asylee status (see Schuster 2011). The problem associated with this system is that when taking into account the liminality of asylum seekers, their ability to develop a strong case is constrained.

In response to the awareness of their vulnerability, there are available resources to mitigate their marginality. The accessibility of services requires persistence and time on the part of asylum seekers, which is difficult to achieve considering the coping of trauma and lack of resources to depend upon. For instance, Cheikh expressed his concern when attempting to contact asylum assistance, by stating that

I could not get through [by telephone]. That was the thing that made me worry, calling like everyday. [. . .] When I am in [a different state] I call the agency [from where I previously was], so they are the ones who give me this center. I think after two months, the guy helping me, I convinced him that I wanted to go the center. [...] They decided to send me to HRI (Human Rights Initiative). I was able to get a hold of them, first they were asking me to explain my story on the phone, by that time I cannot really speak English so I was struggling. [...] After two weeks, they told me to come and sign the contract. It's saying

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that they will provide me a lawyer. They [the social agency] gave me bus passes. [. . .] They said keep waiting, they say they have, how can I say this, they say they have send my case to people, that they will let me know anytime.

Despite the assistance of the agencies, Cheikh had to rely on finding his own resources to attend appointments and take part in continuously recounting his story to various professionals. The process incurred distress and economic insecurities for him, although the organization was able to provide him legal consultation and minimal resources. His lengthy process in filing an application contributed to greater uncertainty in filing the claim on time, conflict with roommates/living arrangements, and limited his ability to access general resources to adapt to the U.S. and secure his livelihood.

In addition to the finding that free legal aid can be a burden to access, there is the possibility that legal aid is not available (Bianchini 2011). Individuals who proceed through the asylum system without a lawyer seem to be at greater risk of denial, unless they are able to utilize other resources to develop a sound case. Furthermore, the availability of legal aid overlooks the limited situation of asylum seekers securing legal consultation. For instance, asylum seekers are expected to take part in multiple consultations in order to sufficiently put together the case. Utilizing legal aid is a challenge, and thus, should not be considered as an automatic or universal privilege in the asylum process. For instance, Layla describes that

Well when I first went there, I met with an attorney and she told me, I went there three times something like that, she asked me, they were busy they didn't have time, they were not taking new clients, she told me to write down exactly what happened to me and bring it, and she will answer questions. She gave me the application packet I would answer questions, if I was unsure of something I would go ask her something you know, that is how we communicated. Sometime you don't understand some legal terms, you don't

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wanna say something when you mean another thing, and they will take it the wrong way you know, I would seek advice if I didn't understand anything at all.

The expertise of a professional is important for some asylum seekers in order to fill out their application correctly and to navigate the unfamiliar process of asylum. Although the application can be filled out independent of an expert, Layla explains that certain legal terms and English grammar rules may be more difficult to address. These types of barriers can be overcome with the help of a professional, however, Layla's case shows that legal assistance may not be able to offer sufficient help. Additionally, the structure of her arrangement with the lawyer placed the responsibility on her to work on the application alone, and then seek help when needed. Since the system is unfamiliar to asylum seekers, they do not have the tools to act as autonomous agents and secure their rights and resources (see Kisooson 2010; Bohmer and Shuman, 2007:612). These types of barriers can serve as both minor and major obstacles to the asylum seeker's experience and ability to successfully navigate the asylum process in order to attain status.

*Theme II: The Interview: Cultural Misunderstandings*

The development of a sound case in the application stage intensifies at the interview stage, when individuals must answer questions, which aim to determine if they qualify for asylee status. Significantly, a dilemma emerges in the interview process based on asylum agents' expectations of what a sound case implies and how the asylum seeker is able to present his or her story. The obstacles to presenting a strong case increase if asylum seekers lack compelling evidence and/or are unable to sufficiently describe their persecution (Kisooson 2010; Bohmer and Shuman 2007). Despite in cases in which asylum seekers have a clear, sound case documented with significant evidence, officers' idea of how a story should be told (see Shuman and Bohmer 2004), their skepticism of false claims (Bohmer and Shuman 2007), and their expectation of written documentation all serve to counter the effectiveness of the asylum seeker's story. For example, Barika was asked to account for why other family members

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were not at risk when she felt that her own safety was compromised in her country of origin. Specifically, Barika describes that she was asked to “justify why I thought [. . .] I was in danger and that I need to remain in America, if your [relative] was in [the country of origin] and he hadn’t been attacked. It basically mean that I could be in [the country of origin] and not be in trouble.” Barika was held accountable for explaining the whereabouts and risk levels of her relatives in order to authenticate her own risks. The asylum officer in this case was unconvinced that Barika was at risk because another family member had not been targeted. This line of inquiry by the agent is problematic because it implies that an asylum seeker’s degree of safety is contingent upon another family member’s choice and likelihood of being persecuted. However, the comparison is flawed when that person’s circumstances are not fully known and/or equally commensurable.

Asylum seekers are also questioned about the level of risk to persecution in their country of origin. For example, in a similar context, Saran felt pressure to explain her lack of safety in response to the asylum agent invalidating her persecution experience. Saran claims that “he [asylum officer] says that he doesn’t see any harm done to me in the past or any harm in the future. [. . .] It was really surprising for me when he said that because I didn’t think I had to go and wait until they harm me before [. . .] they approve the asylum.” Here, her claim to asylum was questioned based on the interpretation made by the asylum agent that she was not at risk. In response, Saran concludes that

what is happening is if you don’t have documentation I don’t think they believe you because how can I, just tell me how can I prove this kind of situation. It wasn’t something they were filming or someone was there to take pictures. [. . .] I wasn’t thinking that anything could happen to me know to keep evidence.

This critique reveals that in some cases evidence may not exist, which limits the likelihood the asylum agent will validate an individual’s right to asylum (Kissoon 2010; Bohmer and Shuman

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2007). Her case, as well as some other participants' cases, exposes the inability to justify the lack of evidence as a result of the cultural misunderstandings on the part of asylum officers. In the situation of Makena, she was denied asylum because the officer told her a law was coming into effect to protect her from impending persecution. Specifically, Makena explains that

he [the asylum officer] say[s] [. . .], my government, the government in my country were doing all the effort possible to come up with a law to ban [the persecution] [. . .], which means I am going back to my country [. . .] and all this was going to be, going to end.

As a result, Makena was concerned that the officer misunderstood the country of origin's conditions by suggesting authorities could offer her protection. In a few other cases, officers made similar interpretations by believing that individuals could seek protection from persecution by filing reports with police in their country of origin. However, many stated in response that the police force was corrupt or that the perpetrators had greater power to override the authority of the police. These examples seem to take a Western bureaucratic approach to determine what evidence should be accessible to prove the need for asylum, and also that policy changes mitigate individual risk to persecution. However, based on the accounts of individuals applying for asylum, their circumstances and risk make it difficult to access valid forms of evidence or overcome future persecution (see Kissoon 2010).

Cultural misunderstandings between asylum agents and asylum seekers disrupt the chances to secure asylee status. Differences in cultural understandings seem to place certain asylum seekers at a disadvantage in being able to efficiently proceed through the asylum process and prove their case. Rather than validate asylum seekers' stories in these cases by understanding the reasons for the lack of written evidence, these select asylum seekers are held responsible for finding a way to show proof of their persecution. Although they strategically attempt to compensate for a lack of evidence through explanation, the asylum officers' expectations and understanding seem

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to characterize their situation as a false claim or that the case can be further proved by taking the time to obtain the evidence (Bohmer and Shuman 2007:604). As a result, the failure to demonstrate proof of persecution hinders the process of attaining asylum and even leads to a denial of asylee status.

*Theme III: Individual Responsibility: Striving to be Persuasive Amidst Skepticism*

In the interview setting, aside from potential cultural misunderstandings that contribute to disadvantages for certain asylum seekers, asylum seekers are also responsible for providing a clear account of the persecution they experienced. According to some of the participants in this study, stating a concise account of their reasons and evidence for asylee status became challenging due to trying to contextualize and describe their experiences in a limited time span and stressful atmosphere. Several of the participants in the study were able to understand the responsibilities of the asylum officers' agenda of asking multiple questions to verify their claims. Despite this awareness, some participants began to doubt the information they were providing and became overwhelmed by the idea that they perhaps could not remember specific details or that they miscommunicated aspects of their story (see Bohmer and Shuman 2007:622). Accordingly, Naledi explains her asylum agent as

kind of aggressive because actually they want to prove, that is how they think they want to prove you are lying to them, you are trying to get status. [. . .] They start talking to you nicely and then there is a shift. [. . .] He started asking me many, many questions at the same time and I felt like I was gonna, I was confused because I was trying to answer a question and think about the other one.

During the interview in which the asylum seeker is aiming to showcase his or her proof for asylum, the series of questions with a limited time to answer each burdens him or her, and generates an uncomfortable interview experience. In Naledi's account, the asylum

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officer asked her multiple questions, in which she had to process, comprehend, and answer individually; however, the setup caused her to feel confused. Moreover, the officer's demeanor of being aggressive and posing several questions at once led Naledi to feeling less confident and unable to sufficiently make her case. Given the power hierarchy between the officer and asylum seeker as well as the unfamiliar setting, she was unable to express her concern and difficulty with the overlapping of questions.

Asylum agents' expectations and verification process fails to take into account asylum seekers' experience and the possible disadvantages they encounter in presenting their case. Importantly, a few of the participants were able to acknowledge the perspective of the officers in terms of what type of information they were attempting to compile to make their decision. For example, Senghor summarizes that "she [the asylum agent] just say 'stop it there, explain' and [...] 'oh, I don't have time for that'" and also acknowledges that "it should be precise and short." However, Senghor expressed difficulty meeting her demands by explaining that

if I can't explain of how the government is linked to my country, my city, how can I answer this question. I know, I have written a book, you cannot just like jump, I am going to talk to this and this is the fact. You have to kind of bring it clearly and then, 'no, you are changing the subject,' [...] I can't just cut it short like this [...].

The account provided by Senghor indicates a miscommunication with regard to determining what counts as sufficient and appropriate evidence. Although Senghor is aware of the need to be clear and concise (see Bohmer and Shuman 2007:605, 616), he was unable to consolidate all his information and evidence into this format. His frustration illustrates the disconnection because he is responsible for providing evidence and knowledge of his country of origin's conditions in a condensed format acceptable to the asylum agent. Granted that some of the information may have been irrelevant to the asylum officer, her decision could have overlooked significant information. Additionally, Senghor may have lost part of his

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confidence and could have poorly answered the questions because he was not permitted to share certain aspects of the conditions and his persecution. Thus, Senghor's complicity with the asylum agent's desire for a concise version increases his risk of providing an insufficient account of the victimization he experienced and consequently impacts his chance for status.

The individual responsibility component of the asylum system surfaces in the interview, in which the asylum seeker is held accountable to meet the expectations of the officer and present a persuasive claim in order to be granted asylee status (Bohmer and Shuman 2007:604). Asylum seekers' exertion of agency is hindered based on the skepticism of officers, the discrediting of certain forms of evidence, and the way the asylum seeker reports his or her story (Bohmer and Shuman 2007). Their initial privilege to take part in the asylum system is reduced to their ability to prove that they are qualified and can meet the system's expectations (Bohmer and Shuman 2007). As such, certain valid claims-makers will be unable to sufficiently be granted status, despite the validity of their claim.

## CONCLUSION

Asylum seekers must exert agency in finding the best strategy in securing protection from persecution. However, a salient issue throughout their asylum process was the constant risk and uncertainty of the decision outcome they had to manage due to the system's structure. The constant exposure to risk required asylum seekers to continuously overcome obstacles. Throughout the asylum process, asylum seekers must find resources and present their stories in order to attain status, which requires them to continuously manage insecurity and uncertainty.

Agency departs from actors' positions of power in interactions to be reconceptualized as an active negotiation and response to structural conditions. This change in conceptualization does not negate the ability for actors to make informed decisions and execute action. Simply, the revised conception of agency facilitates the ability to situate actors within structural conditions, and identify and validate marginalized actors as agents, even if they are unable to constitute the conditions of objective structure and social norms. Despite their efforts to enact agency, ultimately structure limits their

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success. In considering that asylum seekers are unfamiliar with the host society and asylum system, and also must cope with trauma, their ability to exert agency is limited. The negotiated agency conceptualization captures the experiences of asylum seekers as they strive to attain asylee status, but also shows the struggles they encounter when restrictive barriers and structure maintain their power. From this conclusion, marginalized individuals are able to showcase agency, but their agency is weakened by structure. As such, agency can be reconceptualized as negotiating structure, but not necessarily modifying or overcoming structure.

The participants in this study are resilient considering that despite the presence of barriers and hostility they encountered in the asylum system, they continued to make progress and strive to reach their aim of gaining asylee status. I argue that the asylum system can be improved without eliminating the institution or altering the stages that determine eligibility. Based on the experiences of the asylum seekers, I would recommend that the system address these barriers by dispelling the institutionalized assumption that asylum seekers are often making false claims and ending deterrent policies that undermine the agency of asylum seekers' motives and conditions. For example, officers may need to be more respectful and open to cultural differences. They should also realize that evidence may not be obtainable. In taking these issues into account, asylum seekers will have greater opportunities to sufficiently present their cases and access their right to be considered for asylum.

The present research provides the opportunity to develop future theoretical and empirical inquiries on issues relating to: the relationship between limited forms of agency and significant structural barriers; the limitations of a system based on individual responsibility; and the cultural disconnections prevalent in the hierarchies between officers and asylum seekers. The limitation of the present study is the small sample size, which results from the relative inaccessibility of this population. Future studies should attempt to interview asylum seekers to gain a more comprehensive and nuanced understanding of their experiences. Furthermore, studies should also consider the objective of asylum officers and the way in which they make decisions based on the claims of asylum seekers. Overall, this research provides insight into the experiences of asylum seekers as

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they negotiate the asylum system that underdetermines their degree of agency.

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