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Gender-Based Criteria for Asylum

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POINT/COUNTERPOINT

Gender Asylum Reflects Mistaken Priorities

by Dan Stein

For any nation's political asylum policy to enjoy sustained public support, it must be both practical and administratively feasible. Under this test, the current move to establish "gender-based" asylum policies ultimately fails.

The reasons must be understood outside the volatile and emotional nature of the topic itself. We can all agree that violence of any kind perpetuated against women is an evil in itself to be avoided if possible. When the motive appears

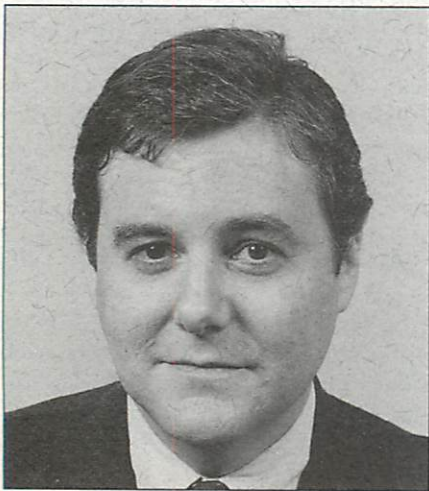


Photo courtesy of Dan Stein

Dan Stein

to be political, based on some sort of retaliation that exploits a woman's particular vulnerabilities, the violence takes on new dimensions.

But the question arises: What is the purpose of political asylum? Is it to provide permanent resettlement for a large number of people seeking to escape regressive cultural and civil norms, or is it a program providing temporary pro-

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Gender-Based Criteria for Asylum

by Gabriel Eckstein and Gregg Epstein

Since the end of World War II, the subject of women's human rights has expanded far beyond its traditional realm. With this expansion, a debate has emerged concerning whether or not the values and mores championed by human rights activists, primarily of Western origin, threaten the cultural integrity of various peoples around the world.

This debate has become especially vehement in the United States where gender-based violence is a contentious issue in the context of asylum. Those who favor gender-based criteria for granting asylum generally contend that violence against women violates human rights and therefore can never be justified by cultural integrity. Those who oppose gender-based criteria argue that regardless of how onerous the violence may be, asylum must be restricted for true political refugees and must not be made available to those fleeing a social order they do not like.

The authors of this issue's Point/Counterpoint consider whether gender-based violence should be used as a grounds for granting asylum. John Linarelli, a graduate of the Washington College of Law, is partner in the Washington, DC law firm of Braverman & Linarelli. He was counsel in *In the Matter of M.K.*, a case of first impression in which a U.S. Immigration Court granted asylum on the basis of forcible female genital mutilation. Mr. Linarelli is also an adjunct professor at Georgetown University Law Center and Catholic University School of Law.

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tection for those seeking positive political change back home?

The statutory definition of asylum in the U.S. calls for granting protection to those in this country demonstrating a "well-founded fear of political persecution on account of race, religion, nationality, membership in a particular group or political opinion." This definition provides permanent asylum to anyone who meets it. In practice, however, the general statutory definition has proved difficult to implement consistently. And it has an impressive breadth, range, and permanence to it that makes it vulnerable to exploitation by broad-based groups seeking to fit within its umbrella.

A strict reading suggests that entire groups — numbering perhaps in the millions — could qualify for asylum under the legal definition. But providing permanent resettlement to millions seeking to leave countries because of broad-based political, ethnic, or religious persecution is clearly far more

than the American public has bargained for. Polls and focus groups suggest that most Americans are proud of an asylum policy that, they believe, provides temporary protection for those working for positive political change back home.

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At all times, there's an implied expectation that most asylum seekers will go home when it is safe to do so, even though actual asylum grants in the United States are effectively permanent.

In actual practice, few asylees ever go home. Groups, such as Haitians,

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