

Saving Brown Women from Brown Men? “Refugee Women”, Gender and the Racialised Politics of Protection

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ABSTRACT

White feminist scholarship in the Global North has drawn attention to the challenges facing women seeking protection under international refugee law (IRL). Whilst these efforts have improved outcomes for *some* women, they have largely failed to reconfigure the ways in which gendered experiences of persecution are conceptualised and represented. Drawing on postcolonial feminist scholarship, this article suggests that white feminist scholars have been largely complicit in a script that essentialises the experiences of women originating from the Global South. Where gender is taken into account, women from the Global South are typically understood and represented through a neo-imperial frame as disempowered, helpless “victims”, or as “Exotic Others” who need to be rescued from their “backward” cultures. The framing of “Refugee Women” as a homogenous and undifferentiated category ignores the complex intersections of race and gender shaping both women’s experiences and the racialised politics of protection. Moreover, because white feminist approaches have a colonial “blind spot”, they ignore the ways in which the international refugee regime is deeply entangled with the history of colonialism. In so doing, they replicate and reinforce racialised representations of Black and Muslim men as perpetrators of violence against women.

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1. INTRODUCTION

The failure of the international community to protect asylum-seeking women from gender-specific and gender-related forms of persecution is well documented.¹ Whilst the 1951 UN Convention relating to the Status of Refugees (the Refugee Convention) and its 1967 Protocol are ostensibly gender-neutral, the dominant interpretation of refugee law has evolved through an examination of male asylum applicants and their activities. In this context, white feminist scholars have sought to mitigate bias in the interpretation of the refugee definition by making women's experiences of persecution more visible. They have drawn attention to the ways which the persecution of women, often at the hands of individuals within the family and community, has been rendered invisible. Focusing in large part on Europe, North America and Australia, they have highlighted the failure of asylum systems to protect women as "victims" of male violence, as well as the use of rape and sexual violence as a weapon of war.² They have also emphasized the structural dimensions that shape violence against women within the family and community of countries in the Global South, drawing attention to oppressive cultural and ideological norms and practices that contribute to the harm experienced by women and which, they argue, should be identified as violations of women's human rights.³

I have previously expressed concerns that the framing of gender-based asylum claims in relation to a woman's membership of a Particular Social Group (PSG), positions women primarily as "victims" of male (often sexual) violence rather than situating gender-based violence within the broader political (and other) contexts in which this violence takes place.⁴ In this article I go further, arguing that white

1 See, for example, D. Indra (ed.), *Engendering Forced Migration: Theory and Practice*, Oxford, Berghahn Books, 1999; P. Campbell, "Gendered Human Rights: The International Community's Failed Response to the Persecution of Women", *Politics and Policy*, 29(1), 2001, 121–145; H. Charlesworth, C. Chinkin & S. Wright, "Feminist Approaches to International Law", *American Journal of International Law*, 85, 2001, 613–645; H. Crawley, *Refugees and Gender: Law and Process*, Bristol, Jordan Publishing, 2001; A. Edwards, "Transitioning Gender: Feminist Engagement with International Refugee Law and Policy, 1950–2010", *Refugee Survey Quarterly*, 29(2), 2010, 21–45; N. Oswin, "Rights Spaces: An Exploration of Feminist Approaches to Refugee Law," *International Feminist Journal of Politics*, (3), 2010, 347–364; J. Millbank & C. Dauvergne, "Forced Marriage and the Exoticization of Gendered Harms in United States Asylum Law", *Columbia Journal of Gender and Law*, 19(3), 2011; G. Firth & B. Mauthé, "Refugee Law, Gender and the Concept of Personhood", *International Journal of Refugee Law*, 25(3), 470–501, 2013; E. Arbel, C. Dauvergne & J. Millbank (eds.), *Gender in Refugee Law: From the Margins to the Centre*. Abingdon, Oxon, Routledge, 2014; J. Freedman, *Gendering the International Asylum and Refugee Debate*, 2nd ed. Basingstoke, Palgrave Macmillan, 2015; A. Anderson & M. Foster, "A Feminist Appraisal of International Refugee Law", in C. Costello, M. Foster & J. McAdam (eds.), *The Oxford Handbook of International Refugee Law*, Oxford, Oxford University Press, 2021.

2 See, for example, Edwards "Transitioning Gender"; Freedman, *Gendering the International Asylum*; Anderson & Foster, "A Feminist Appraisal of International Refugee Law".

3 Oswin, "Rights Spaces"; Anderson and Foster, "A Feminist Appraisal of International Refugee Law".

4 Crawley, *Refugees and Gender: Law and Process*; H. Crawley, "Women and Refugee Status: Beyond the Public/Private Dichotomy in UK Asylum Policy", in D. Indra (ed.), *Engendering Forced Migration: Theory and Practice*, Oxford, Berghahn Books, 1999; H. Crawley, "Engendering the State in Refugee Women's

feminist scholars and advocates,⁵ have been largely complicit in a script that essentialises the experiences of women originating from the Global South, with important consequences for those seeking protection in the Global North. "Refugee Women" are understood through a neo-colonial frame which serves to "flatten out" the complexity and diversity of women's experiences, in turn decontextualizing and depoliticising the specific circumstances under which violence and other threats occur.⁶ The emphasis is firmly on women's victimhood and the correlate stereotyping of "women" as passive victims, as objects rather than subjects of law. This framing reinforces the naturalized moorings of sex/gender, and supports concomitant conceptions of women (and men) that justify protective and imperial, rather than rights-based, responses to women's human rights violations.⁷ In so doing it also creates a problematic hierarchy of oppressions, leading to various forms of "exclusionary inclusion".⁸

This article reviews white feminist legal scholarship on gender and IRL through the lens of postcolonial feminist scholarship. White feminist writing on the failures of the asylum system in the Global North to protect women from the Global South must be considered in the context of the global hegemony of Western scholarship i.e., the production, publication, distribution and consumption of information and ideas. Drawing on the work of Mohanty,⁹ Spivak,¹⁰ Yorgun,¹¹ and other postcolonial feminist scholars,¹² I want to suggest that the construction of "Refugee Women" as a singular monolithic subject, represents a certain mode of appropriation and codification

Claims for Asylum", in S. Jacobs, R. Jacobson & J. Marchbank (eds.), *States of Conflict: Gender, Violence and Resistance*, London, Zed Books, 2000; H. Crawley "(En)gendering International Refugee Law: Are We There Yet?", in: B. Burson & D. Cantor (eds.), *Human Rights and the Refugee Definition: Comparative Legal Practice and Theory*, Leiden, Brill, 2016, 322–348.

- 5 The term "advocate" is used in this article to refer to a person who publicly writes or speaks about something they believe in and/or puts a case on someone else's behalf. This includes, for example, those working in international and civil society organisations as well as legal representatives advocating for individual women or in relation to women's asylum claims more generally.
- 6 Otto, *International Human Rights Law: Towards Rethinking Sex/Gender Dualism and Asymmetry*, Melbourne Legal Studies Research Paper No. 620, 2013.
- 7 C. Oxford, "Protectors and Victims in the Gender Regime of Asylum", *NWSA Journal*, 17(3), 2005, 18–38; Edwards, "Transitioning Gender"; Otto, *International Human Rights Law: Towards*; Freedman, *Gendering the International Asylum*.
- 8 S. Kneebone, "Women within the Refugee Construct: 'Exclusionary Inclusion' in Policy and Practice – the Australian Experience", *International Journal of Refugee Law*, 17(1), 2005, 7–42.
- 9 C.T. Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses", *Feminist Review* 30, 1988, 61–88.
- 10 G.C. Spivak, "Can the Subaltern Speak?", in C. Nelson & L. Grossberg (eds.), *Marxism and the Interpretation of Culture*, Chicago, University of Illinois Press, 1988, 271–313.
- 11 S.L. Yorgun "Other' Women in Flight: Sexual Minority and Polygynous Women", thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy in the Faculty of Graduate and Postdoctoral Studies (Law), The University of British Columbia (Vancouver), 2020, available at: <https://open.library.ubc.ca/soa/clrcle/collections/ubctheses/24/items/1.0394731> (last visited 13 Jan. 2022).
- 12 See, for example, H. Afshar (ed.) *Women and Politics in the Third World*, London and New York, Routledge, 1996; M. Yamani (ed.), *Feminism and Islam: Legal and Literary Perspectives*, Reading, Ithaca Press, 1996; N. El Saadawi, *The Nawal El Saadawi Reader*, London, Zed Books, 1997; N. Yuval Davis, *Gender & Nation*, London, Sage Publications, 1997; R. Lewis and S. Mills, *Feminist Postcolonial Theory: A Reader*, Edinburgh, Edinburgh University Press, 2003; R.K. Mishra, "Postcolonial Feminism: Looking into within-beyond-to-Difference", *International Journal of English and Literature*, 4(4), 2013, 129–134.

of “scholarship” and “knowledge” about women in the Global South which takes as its primary point of reference the concerns and interests of white feminism as articulated in the Global North. In this formulation, refugee protection becomes a mechanism for “saving brown women from brown men” in “backward” and “primitive” societies.¹³ Postcolonial feminism, in contrast, examines women’s lives, work, identity, sexuality, and rights in the Global South in the context of colonialism and neo-colonialism. It seeks to understand and interpret the everyday lived experiences of women living in the Global South through a postcolonial lens, de-centring the white, western, Eurocentric experience. Understanding the experiences of refugee women through a postcolonial feminist lens requires us to engage with the intersections of colonialism and neocolonialism with gender, nation, class, race and sexualities in the different contexts of women’s lives.¹⁴ It moves us away from a discussion of how issues of gender have been neglected in IRL to the terms on which issues of gender have been *incorporated*.

I use the term white feminism in this article to reflect the fact that those writing about the need for IRL law to take account of the experiences of women from the Global South, are mainly located in the Global North. Whilst most, although not all, are white, the term “white feminism” is not about skin colour *per se*, but about racial privilege.¹⁵ White feminism as a worldview speaks to a set of entrenched assumptions and behaviours that centre whiteness and see Western values as superior: Western women are the reference point for modern, educated, sexually liberated womanhood. Zakaria argues that the universalization of white feminists’ concerns as being those of *all* feminists has been successfully exported globally, and that the consequences have been particularly devastating for Black women around the world.¹⁶ The goal of white feminism is not to alter the systems that oppress women – patriarchy, capitalism, imperialism – but rather to succeed within them. This ideology is fundamentally exclusionary. The problem is not white feminism’s blindness when it comes to issues of race, but rather a failure to grasp the centrality of race in shaping women’s lives and experiences, and its transformative intersections with other identities in political and social life.¹⁷ This failure has rendered white feminists active participants in advancing white supremacy, capitalism, and imperialism.¹⁸

13 Spivak, “Can the Subaltern Speak?”, 296.

14 Coined by Kimberlé Crenshaw in 1989, the term intersectionality has become the key analytic framework through which feminist scholars in various fields talk about the structural identities of race, class, gender, and sexuality. See K. Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies”, *University of Chicago Legal Forum*, 1, 1989, 139–167.

15 For a detailed discussion of white feminism see: R. Hamad, *White Tears/Brown Scars: How White Feminism Betrays Women of Color*, New York, Trapeze, 2020; K. Beck *White Feminism: From the Suffragettes to Influencers and Who They Leave Behind*, New York, Simon & Schuster, 2021; R. Zakaria, *Against White Feminism: Notes on Disruption*, New York, WW North and Company, 2021.

16 Zakaria, *Against White Feminism*.

17 D.G. Moon and M.A. Holling, “White Supremacy in Heels”: (White) Feminism, White Supremacy, and Discursive Violence”, *Communication and Critical/Cultural Studies*, 17(2), 2020, 253–260.

18 While there are many examples which could be provided to illustrate this point, the situation in Afghanistan is one of those most cited. It is notable, for example, that when the US first started bombing Afghanistan in October 2001, following the 9/11 attacks, then first lady Laura Bush gave an address to in which she stated that the fight against terrorism was also a fight for the rights and dignity of women. In other words, women’s rights were used to justify US military intervention. The “liberation” of Afghan women by the West was

The purpose of this article is not to review the effectiveness or otherwise of these approaches in securing protection for individual women. I accept that *some* women have benefitted from white feminist scholarship, including through the development of case law which has presented, tested, and refined the articulation of women's protection needs.¹⁹ Rather, its purpose is to question the terms on which these gains have been made. The article begins with some reflections on the history of the Refugee Convention, arguing that this history is deeply entangled with colonialism,²⁰ and is reflected in the racialised politics of refugee protection which characterize the asylum systems of the Global North today. I then turn to the ways in which issues of gender have been incorporated into IRL, arguing that this incorporation reflects a particular conceptualization of "Refugee Women" as "victims" and/or "Exotic Others" who need to be rescued from their own "backward" cultures – and brown men.²¹ Finally, I want to suggest that the dominant framing not only shapes the terms on which women are able to secure protection but also relies upon, and in turn reinforces, deeply racialised representations of Black²² and Muslim²³ men as perpetrators of gendered violence.

2. REFUGEE LAW AND THE LEGACY OF COLONIALISM

There is remarkably little discussion of colonialism, postcolonialism, or decolonisation in studies of gender and IRL.²⁴ Indeed, as noted by Mayblin and Turner, there

subsequently used to justify 20 years of military occupation. See M. Cooke, "Saving Brown Women", *Signs*, 28(1), 2002, 485–487 and L. Abu-Lughod, "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and its Others", *American Anthropologist*, 2002, 104(3), 783–90. The use of white feminism to justify nationalism and imperialism is elaborated further by S.R Farris, *In the Name of Women's Rights: The Rise of Feminationalism*, Durham, North Carolina, Duke University Press, 2017.

- 19 D. Anker, "Legal Change from the Bottom Up: The Development of Gender Asylum Jurisprudence in the United States", in E. Arbel, C. Dauvergne & J. Millbank (eds.), *Gender in Refugee Law: From the Margins to the Centre*, London, Routledge, 2014, 46–72.
- 20 L. Mayblin, "Colonialism, Decolonisation, and the Right to be Human: Britain and the 1951 Geneva Convention on the Status of Refugees", *Journal of Historical Sociology*, 27(3), 2014, 423–441; E. Elsheich & H. Ayazi, *Moving Targets: An Analysis of Global Forced Migration*, Haas Institute, 2017, available at: haas-institute_moving_targets_globalmigrationreport_publish_web.pdf (berkeley.edu) (last visited 13 Jan. 2022); L. Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking*, London, New York, Roman & Littlefield International, 2017; U. Krause, "Colonial Roots of the 1951 Refugee Convention and its Effects on the Global Refugee Regime", *Journal of International Relations and Development*, 24, 2021, 599–626; Mayblin & Turner, *Migration Studies and Colonialism*.
- 21 Spivak, "Can the Subaltern Speak?", 92.
- 22 In this article, Black with a capital "B" is used in its broad political and inclusive sense to describe people with a shared history who have suffered colonialism and enslavement in the past and continue to experience racism and diminished opportunities in society today. Black is a political construct rather than a reflection of race or skin colour per se. I have chosen to lowercase white because it does not represent a collective identity and history in the same way that Black does and because capitalizing white is also a longstanding practice of white supremacists. It should also be noted that whilst Spivak used the term "brown" when referring to people who are not white, for the purpose of this article Black includes those who have been described as "brown" or "coloured" in other contexts and at other times.
- 23 Whilst many Muslims are also Black, the two are not synonymous. I explicitly refer to Muslim women and men in this article where appropriate in recognition of the ways in which religion has become deeply politicised, and is associated with Islamophobia in much of the Global North, as well as some parts of the Global South.
- 24 There are, however, some notable exceptions. See, for example, Millbank & Dauvergne, "Forced Marriage and the Exoticization of Gendered Harms in United States Asylum Law"; Oxford, "Protectors and Victims in the Gender"; D. Otto, "International Human Rights Law: Towards".

is a lack of interest in the legacies and continuities of colonialism for contemporary migration governance and the experiences of migrants and refugees in migration studies more generally.²⁵ It is the consequences of this dynamic that interest me, not because most women claim protection in the Global North – on the contrary, the vast majority of refugees, including women, move between the countries of the Global South²⁶ – but rather because the articulation and representation of their experiences provide a window into the ways in which IRL, like all international law, can serve to perpetuate global inequalities. As noted by Mayblin,²⁷ any critique of the contemporary refugee regime is incomplete if it does not address the ways in which the legacies of empire shape inequalities in access to protection. These legacies are both direct and indirect.

First, colonialism fundamentally shaped the drafting of the Refugee Convention which forms the basis of contemporary IRL.²⁸ Although the Convention is viewed by refugee scholars as a key moment in the development of a system of international refugee protection, it was actually very limited in scope, applying only to those displaced *in Europe* before 1951.²⁹ The Convention was drafted at a time when membership of the UN was heavily skewed towards the Global North, when much of the Global South remained under European colonial rule, and when European countries were preoccupied with assisting those displaced during the Second World War.³⁰ Whilst there was resistance to the geographical limitation from many delegates,³¹ this resistance was ultimately unsuccessful and millions of refugees living outside Europe were excluded from its provisions.³² The Convention offered no solution, for

25 L. Mayblin & J. Turner, *Migration Studies and Colonialism*, Cambridge, Polity Press, 2021.

26 Yorgun “Other” Women in Flight”.

27 Mayblin, *Asylum after Empire*.

28 Mayblin & Turner, *Migration Studies and Colonialism*; Krause, “Colonial Roots of the 1951 Refugee Convention and its Effects on the Global Refugee Regime”; E.O. Abuya, U. Krause & L. Mayblin, “The Neglected Colonial Legacy of the 1951 Refugee Convention”, *International Migration*, 59(4), 2021, 265–267.

29 This Eurocentrism is reflected in the final definition. As noted by Abuya, Krause and Mayblin, “[w]hile Europe is made central, all other parts of the world are simply “elsewhere” (2021, 266).

30 B.T. White, “How Eurocentric is the 1951 UN Refugee Convention—and Why Does it Matter? *Refugee History Blog*”, available at: <http://refugeehistory.org/blog/2021/1/14/how-eurocentric-is-the-1951-un-refugee-convention-and-why-does-it-matter>

31 For more information see E. Odhiambo-Abuya, “A Critical Analysis of Liberalism and Postcolonial theory in the Context of Refugee Protection”, *King’s Law Journal*, 16(2), 2005, 263–91; P. Banerjee & R. Samaddar, “Why Critical Forced Migration Studies has to be Post-Colonial by Nature”, in A. Bloch & G. Donà (eds.), “Forced Migration Current Issues and Debates”, London, Routledge, 2018, 44–56; J. Ramasubramanyam, “Subcontinental Defiance to the Global Refugee Regime: Global Leadership or Regional Exceptionalism?”, in *Asian Yearbook of International Law* 24, 2018, 60–79; E.T. Achiume, “Race, Refugees, and International Law”, in C. Costello, M. Foster & J. McAdam (eds.), *The Oxford Handbook of International Refugee Law*, Oxford, Oxford University Press, 2021.

32 For a detailed discussion of India’s resistance to the Eurocentric focus of the Refugee Convention, both during the drafting process and subsequently, see Ramasubramanyam, “Subcontinental Defiance to the Global Refugee Regime”. Other delegations also voiced their opposition: at the UN General Assembly (UNGA), for example, the delegate of Chile called the proposed refugee definition focusing on Europe “unfair and lamentably short-sighted”. For a detailed discussion of the drafting process and the approaches taken by different UN Member States, see Krause, “Colonial Roots of the 1951 Refugee Convention and its Effects on the Global Refugee Regime” and White “How Eurocentric is the 1951 UN Refugee Convention—and Why Does it Matter?”.

example, to the millions displaced by The Partition of India in 1947, which divided British India into India and Pakistan, resulting in mass displacement across newly created international borders – Hindus and Sikhs to India, and Muslims to Pakistan.³³ Meanwhile an entirely separate UN agency, UNRWA, was set up to support the 700,000 Palestinians displaced by the creation of the state of Israel in 1948.

The exclusion of refugees living in the Global South from the Refugee Convention was not accidental. International law, including IRL, was critical to imperial expansion by creating a hierarchy of international norms and institutions that subordinated the interests of those living in the colonies.³⁴ This was further embedded as the international refugee regime evolved through what Chimni describes as a "myth of difference",³⁵ in which both the nature and character of refugee flows from the Global South were represented as radically different from those in Europe: "an image of a "normal" refugee was constructed – white, male and anti-communist – which clashed sharply with individuals fleeing the Third World."³⁶ The definition of a refugee was thus racialised, by design and effect.³⁷ Although the 1967 Protocol removed the temporal and spatial limitations to the Refugee Convention, many States in the Global South remain disillusioned with the Convention even today.³⁸ Some have refused to become signatories while others have adopted regional agreements to address perceived protection gaps.³⁹

Given this history, we need to be wary of the benevolent narrative of IRL which positions the countries of the Global North (and, specifically, Europe) as acting in the interests of refugees without acknowledging both the violence inflicted on those living in the Global South by those in the Global North, and the ways in which refugees and the idea of international protection has been instrumentalised by states as a means of securing authority in the realm of human rights.⁴⁰ The insistence of powerful (colonial) nations that the Refugee Convention should be limited to European refugees reveals how they deliberately subordinated, marginalized, and even entirely ignored refugees outside of European states – particularly (de)colonized ones.⁴¹ From the very beginning, non-Europeans seeking

33 Ramasubramanyam argues that the Partition of India should be understood as a global event akin to post-Second World War reconstruction of Western Europe that also resulted in mass displacement across newly formed nation-states.

34 Mayblin, *Asylum After Empire*.

35 B.S. Chimni, "The Geopolitics of Refugee Studies: A View from the South", *Journal of Refugee Studies*, 11(4), 1998, 350–374.

36 *Ibid.*, 351.

37 Achiume, "Race, Refugees, and International Law".

38 Ramasubramanyam, "Subcontinental Defiance to the Global Refugee Regime".

39 For example, despite signing the Refugee Convention, members of the African Union (then Organization of African Unity) adopted the Convention Governing the Specific Aspects of Refugee Problems in Africa in 1969, thus only two years after the Protocol. As noted by Abuya, Krause & Mayblin, this text is considered an expression of anti-colonial and anti-imperial movements in African states.

40 E. Bruce-Jones, "Refugee Law in Crisis: Decolonizing the Architecture of Violence", in M. Bosworth, A. Parmar & Y. Vázquez (eds.), *Race, Criminal Justice, and Migration Control: Enforcing the Boundaries of Belonging*, Oxford, Oxford University Press, 2018, 176–193; Banerjee & Samaddar, 2018.

41 Mayblin, *Asylum After Empire*; Krause, "Colonial Roots of the 1951 Refugee Convention and its Effects on the Global Refugee Regime"; I.S. Patel, *We're Here Because You Were There: Immigration and the End of Empire*, London, Verso, 2021.

protection have been required to comply with Eurocentric assumptions about the “backward” nature of society and culture in the Global South and depict their countries of origin in accordance with European stereotypes: as places of cruelty, violence, and human rights violations. This approach conveniently ignores the fact that violent and extractive colonial relations were sustained so that life within the Global North could become – and remain – secure and prosperous.⁴² Notably, Europe had generated millions of forced migrants in the Global South through the slave trade,⁴³ and had been a significant driver of migration between the countries of the Global South during the colonial period. This way of understanding the Refugee Convention leads us to a very different place, one that positions the Global North states as complicit in maintaining “the pressure cooker of border control”, and which is associated with the use of borders as a global system of regulating movement and the global conditions of violence.⁴⁴

This takes us to the second legacy of colonialism, namely its implications for contemporary forms of mobility and immobility.⁴⁵ Many of those writing about forced migration, white feminist scholars included, tend to portray the persecution of refugees as a function of local or regional circumstances, rather than as being embedded within global historical structures, including colonial histories of violence and accumulation which have been enacted and extended through neoliberalism.⁴⁶ As noted by Sharpe, there is a tendency to speak of contemporary refugee flows through the language of “crisis”, which keeps the position of the refugee, and the status of refugee law, in the realm of the exceptional.⁴⁷ However, contemporary refugee flows are not exceptional, and they are not only the consequence of recent events: rather they demarcate the “wreckage” left from colonial endeavour. As an ongoing system of global power, inequality and racism,⁴⁸ colonialism continues to shape the dynamics of migration, including in relation to forms of violence, conflict, and associated displacement seen today. Colonialism is alive and well, Fonkem⁴⁹ suggests, because it produced the conditions for contemporary refugee flows:

Living conditions in many postcolonial countries remain to this day an extension of colonial rule in that in many of the former colonies the people and the places were renamed, redefined and continue to be controlled. In many such societies, repression, bad governance, fratricidal wars, insecurity and misery for the local people continue to force out many people from the postcolonial countries.⁵⁰

42 Elsheich & Ayazi, *Moving Targets: An Analysis of Global Forced Migration*.

43 Mayblin, “Colonialism, Decolonisation, and the Right to be Human”.

44 Bruce-Jones, “Refugee Law in Crisis”.

45 Mayblin, *Asylum After Empire*.

46 Elsheich & Ayazi, *Moving Targets: An Analysis of Global Forced Migration*.

47 C. Sharpe, *In the Wake: On Blackness and Being*, London, Durham, North Carolina, Duke University Press, 2016, cited in Bruce-Jones, “Refugee Law in Crisis”.

48 Mayblin, *Asylum After Empire*.

49 A. Fonkem “The Refugee and Migrant Crisis: Human Tragedies as an Extension of Colonialism”, *The Round Table*, 109(1), 2020, 52–70.

50 *Ibid.*, 56.

Finally, colonialism continues to exert its influence through the ways we understand, write, and think about the experiences of those living in the Global South. It is more than two decades since Chimni highlighted the role of the Global North in shaping not only the international refugee regime but also knowledge production regarding that regime within the field of refugee studies.⁵¹ His concern, and mine, is that the "myth of difference" is being reproduced and reinforced by academic scholarship. There is, as Spivak suggests, epistemic violence inherent in "the remotely orchestrated, far-flung, and heterogeneous project to constitute the colonial subject as Other",⁵² not least because a whole set of knowledges have been disqualified as inadequate to their task or insufficiently elaborated. Nowhere, she argues, is epistemic violence more evident than in relation to the legal project which, in the context of colonisation, was undertaken exclusively in English. Dominant narratives are dependent on what Spivak calls "sanctioned ignorance" of the actual history of refugees in the world.⁵³ In the absence of serious engagement with history, these narratives have gone largely uncontested.

So why does this matter? It matters because the ways in which issues of gender have been incorporated into IRL have, for the most part, failed to engage with, or problematize, the colonial legacy despite, ostensibly, providing a compelling critique of its workings. Decolonisation is not just a metaphor: it shapes the ways in which we see, know, and understand the world.⁵⁴ If we are serious about challenging the exclusionary underpinnings of refugee law, then it is important and necessary to investigate the interconnectedness of historical configurations that continue to shape our present, examining global power structures not only in terms of geography or capital but also in terms of epistemology.⁵⁵ In particular, we need to acknowledge that the bodies and stories of women from "Other" places were used by the colonisers and their agents in the production and projection of difference, between the white and the non-white, the barbaric and the civilised, the spiritual and the rational, the passive and the strong.⁵⁶ As will be demonstrated later in this article, white feminists scholars who fail to engage with this history risk "contributing, however inadvertently, to racist constructions of the Other". First though, I want to reflect on the centrality of race in this colonial history and on the ways in which race – and racism – shapes the contemporary politics of protection. The racialised politics of protection forms the context within which the framing of refugee women's experiences must be understood.

3. INTERNATIONAL REFUGEE LAW AND THE RACIALISED POLITICS OF PROTECTION

Colonial history has played a powerful role not only in shaping patterns of migration but also contemporary race politics, including in relation to asylum and migration

51 Chimni, "The Geopolitics of Refugee Studies: A View from the South".

52 Spivak, "Can the Subaltern Speak?".

53 Spivak, 1999, cited in Mayblin & Turner, *Migration Studies and Colonialism*.

54 Mayblin & Turner, *Migration Studies and Colonialism*.

55 Bruce-Jones, "Refugee Law in Crisis".

56 J. Syed & F. Ali, "The White Woman's Burden: From Colonial Civilisation to Third World Development", *Third World Quarterly*, 32(2), 2011, 349–365.

policies.⁵⁷ According to Mahmud, the assignment of racial classifications was essential in managing the heterogeneity presented by the colonized.⁵⁸ In the Indian context, for example, the colonial administration introduced the notion of “racial difference” between the people of the plains and the hills.⁵⁹ The racialisation of identity has also been documented in the African context.⁶⁰ These categories were then mobilised to maximise the extraction of both labour and commodities:

[i]deas of race shaped who could move, where and under what conditions, whether through projects of settler colonialism, enslavement, genocide or indentured labour. Just as forms of colonial rule, violence, dispossession and accumulation forced people from their land, colonialism has created economic dependencies and wealth inequalities within the capitalist system which conditions contemporary patterns of movement today.⁶¹

Moreover, Mahmud argues that it was in order to reconcile colonial domination with the ideals of freedom and equality, that a modern discourse of racial difference and hierarchy gained hegemony.⁶² In this discourse, capacity and eligibility to freedom and progress were deemed biologically determined, and colonialism was legitimised as the natural subordination of lesser races to higher ones.

Importantly for the purpose of this article, ideas of race and the associated political and economic interests of the colonisers, were also institutionalised through international human rights law, leading to what Bradley has described as “human rights racism”.⁶³ Just as international law reflects and reinforces patriarchal privilege, it also serves as a medium for the creation and perpetuation of racialised hierarchies. Bradley argues that an accurate view of the history of human rights and international law requires recognizing the history of those people who contributed to its development, even as the law perpetuated the very abuses it proposed to eradicate – namely slavery, colonialism, and apartheid – upon them. International law, including IRL, is not racially neutral, rather it is intricately related to the histories of slavery and colonialism. As noted above, the foundations of the refugee regime are deeply racialised,

- 57 H.S. Bhui, “The Place of ‘Race’ in Understanding Immigration Control and the Detention of Foreign Nationals”, *Criminology and Criminal Justice*, 16(3), 2016, 267–285.
- 58 T. Mahmud, “Colonialism and Modern Constructions of Race: A Preliminary Inquiry”, *University of Miami Law Review*, 53, 1998–99, 1219–1246.
- 59 D. Ashigbor, “Race and Colonialism in the Construction of Labour Markets and Precarity”, *Industrial Law Journal*, 15(4), 2021, 506–531. The racialisation of identity has also been documented in the African context. See, for example, J. Palmer, *Entanglements of Modernity, Colonialism and Genocide: Burundi and Rwanda in Historical-Sociological Perspective*, London, Routledge, 2018 and K. Pillay, “The Coolies Here: Exploring the Construction of an Indian “Race” in South Africa”, *Journal of Global South Studies*, 3(1), 2017, 22–49.
- 60 See, for example, J. Palmer, *Entanglements of Modernity, Colonialism and Genocide: Burundi and Rwanda in Historical-Sociological Perspective*, London, Routledge, 2018 and K. Pillay, “The Coolies Here”: Exploring the Construction of an Indian “Race” in South Africa”, *Journal of Global South Studies*, 3(1), 2017, 22–49.
- 61 Mayblin & Turner, *Migration Studies and Colonialism*, 196–7.
- 62 Mahmud, “Colonialism and Modern Constructions of Race: A Preliminary Inquiry”.
- 63 A. Spain Bradley, “Human Rights Racism”, *Harvard Human Rights Journal*, 2019, University of Colorado Law Legal Studies Research Paper No. 19-24, available at: <https://ssrn.com/abstract=3423611> (last visited 13 Jan. 2022).

reflected in the exclusion of millions of displaced Black people in the Global South from the Refugee Convention.⁶⁴ Kyriakides et al. argue that this story goes back further still.⁶⁵ Noting that the international institution that predated the UN, the League of Nations, rejected a Racial Equality Proposal tabled by Japan,⁶⁶ they argue there is an intimate relationship between racialization and refugee regimes:

To refer to the geopolitics of refuge as a "Global Refugee Regime" unwittingly falls into the trap of missing the centrality of racialization as an embedded system of oppression in the West, and to which we offer the counter-designation – the Racialized Refugee Regime.⁶⁷

It is clear then, that the experiences of refugees, regardless of gender, are heavily mediated by race and ethnicity.⁶⁸ Whilst formal decolonization has occurred in most of the world, "race persists as a *neo-colonial* structure, one that still allocates benefits and privileges to the advantage of some and the disadvantage of others – largely along the same geopolitical and racial lines that characterized the European colonial project".⁶⁹ Tendayi Achiume's description of race as structure is critical here. My criticism of white feminist legal scholarship in the Global North is not that it entirely ignores race, but rather that issues of race, where these have been considered, tend to be viewed as an attribute of individuals or groups (and argued in relation to the Convention grounds of race and nationality) rather than being seen as a way in which power is organised, symbolically represented, and *exerted* over others. As a result, white feminist scholarship on gender and IRL often reinforces representations of gendered harms rather than drawing attention to the intersecting structures of racism and patriarchy. These structures come together to shape how the experiences of women seeking protection are represented in IRL.

4. "REFUGEE WOMEN" IN THE IMAGINARY

Representations of the refugee – and who is, and is not, recognised as "deserving" of protection under IRL – are deeply rooted in the traditions and narratives of the Global North.⁷⁰ They are embedded in, and shaped by, the colonial legacy outlined

64 Mayblin and Turner, *Migration Studies and Colonialism*; Achiume, "Race, Refugees, and International Law".

65 C. Kyriakides, D. Taha, C.H. Charles & R.D. Torres, "Introduction: The Racialized Refugee Regime", *Refugee*, 35(1), 2019, 3–7.

66 The Racial Equality Proposal tabled by Japan had cast a spotlight on the connections between racialized oppression in the domestic contexts of Western powers, their empires, and imperialist rivalries. The first draft was presented to the League of Nations Commission on 13 February 1919 as an amendment to Article 21 and stated that: "**The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord as soon as possible to all alien nationals of states, members of the League, equal and just treatment in every respect making no distinction, either in law or in fact, on account of their race or nationality.**" The proposal received a majority vote on the day but was opposed by the countries which has colonised other parts of the world and was overturned by the chairman, US President Woodrow Wilson. See N. Shimaz, *Japan, Race, and Equality: The Racial Equality Proposal of 1919*, London and New York, Routledge, 1998.

67 *Ibid.*, S.

68 Kyriakides, Taha, Charles & Torres, "Introduction: The Racialized Refugee Regime"; E. Tendayi Achiume "Race, Refugees, and International Law" in *The Oxford Handbook of International Refugee Law*, 2021.

69 E.T. Achiume, "Race, Refugees and International Law", 45 (emphasis in original).

70 Firth and Mauthe, "Refugee Law, Gender and the Concept of Personhood".

above. As noted by Johnson, these representations are fundamentally political, and they matter:

[T]he representation of the refugee is a key component of how we write refugee policy, and how that policy is interpreted, supported and contested. This understanding of representation calls attention to the ways in which the social world of symbols and signs constructs particular knowledges that enable or disable processes of dominance and resistance. How we imagine particular categories of people determines how we engage with them, who we accept as legitimate political actors, and who is able to participate in our world.⁷¹

Importantly, these representations are not only racialised but also deeply gendered.⁷² Within white feminist scholarship, refugee women are most often represented as “victims” or “Exotic others” who need to be rescued. As noted by Abu-Lughod, the rhetoric of salvation is deeply problematic: “Projects of saving other women depend on and reinforce a sense of superiority by Westerners, a form of arrogance that deserving to be challenged.”⁷³ The sections that follow do just that.

4.1. “Third World Women” as “victims”

Images of women and girls living in the countries of the Global South often show them with downcast eyes and sad, helpless expressions.⁷⁴ They are also in queues waiting for food or medical aid, with aluminium or plastic mugs and bowls, inanimate objects that amplify the stories of deprivation and difference. These representations of “Third World Women” intricately reproduce a range of colonial images and practice while sidestepping the deep connected histories that shape current global inequalities.⁷⁵ They are often reflected in white feminist scholarship that seeks to ensure that IRL is responsive to gender-based asylum claims made in the Global North. This happens in a number of ways.

First, there is the tendency to equate gender with “sex” within human rights theory and advocacy, including that directed specifically towards IRL.⁷⁶ Despite the emancipatory possibilities opened up by the language of gender (for women, men, and those who are non-binary), it remains common for those advocating for

⁷¹ Johnson, “Click to Donate: Visual Images, Constructing Victims and Imagining the Female Refugee”, 1017.

⁷² N. Dogra, “The Mixed Metaphor of ‘Third World Woman’: Gendered Representations by International Development NGOs”, *Third World Quarterly*, 32(2), 2011, 333–348; C. Abraham, “Race, Gender and “Difference”: Representations of ‘Third World Women’ in International Development”, *Journal of Critical Race Inquiry*, 2(2), 2015, 4–24.

⁷³ Abu-Lughod, “Do Muslim Women Really Need Saving?”.

⁷⁴ Dogra, “The Mixed Metaphor of ‘Third World Woman’: Gendered Representations by International Development NGOs”.

⁷⁵ Abraham, “Race, Gender and “Difference”: Representations of “Third World Women” in International Development”; Dogra, “The Mixed Metaphor of ‘Third World Woman’: Gendered Representations by International Development NGOs”.

⁷⁶ Crawley, “Women and Refugee Status; Beyond the Public/Private Dichotomy in UK Asylum Policy”; K. Calavita, “Gender, Migration and the Law: Crossing Borders and Bridging Disciplines”, *International Migration Review*, 40(1), 2006, 104–132.

women's rights in the refugee context to use gender as a synonym for "women".⁷⁷ This undermines the idea that gender is a social and relational category and threatens to reduce women, once again, to biology.⁷⁸ One of the clearest examples of this is the now well-documented case of *Shah and Islam*,⁷⁹ which involved two women who originated from Pakistan but whose experiences were actually very different.⁸⁰ Whilst Mrs Shah was turned out of her marital home by her violent husband and feared that she would be accused of adultery when she became pregnant, Mrs Islam trained as a teacher and was beaten by her husband after she intervened in a fight involving young people from rival political factions who made accusations of infidelity against her. After the cases were refused, they were combined and heard together by the House of Lords in 1999. The case essentially hinged on whether the women could be recognised as "members of a particular social group" of "women in Pakistan" on the basis of their shared experience of violence from which the Pakistani state had failed to protect them. In a split decision, the House of Lords concluded that they did.

As noted by Honkala, the case of *Shah and Islam* was groundbreaking in its acceptance of gender as a protected characteristic under the Convention: the House of Lords demonstrated not only a willingness to take women's rights seriously but, more broadly, the non-discriminatory objective and purpose of the Refugee Convention.⁸¹ Since *Shah and Islam*, courts have accepted arguments that persecutory actions towards a PSG may be a relevant factor in determining the visibility of that group in a particular society. Women fleeing domestic violence from China, Ethiopia, Iran, Kenya, Moldova, Sierra Leone, Somalia, Albania, Afghanistan, and Ukraine have been recognised as refugees on the basis of entrenched discrimination and lack of state protection.⁸² Moreover, the judgements in *Shah and Islam* have been used to secure protection for women fleeing other forms of gender-based persecution, not only domestic violence but also practices such as forced marriage, female genital mutilation, and serious punishment for transgressing social mores.

But there is also an important – and neglected – downside to *Shah and Islam*. The framing of the case, and the decision that followed, required the experiences of women, in this case women from Pakistan, to be generalised when they are not, in fact, generalisable. The judgment starts by acknowledging that "[g]eneralisations about the position of women in particular countries are out of place in regard to issues of refugee status" but goes on to conclude that "women in Pakistan" constitute

⁷⁷ Otto, *International Human Rights Law: Towards*.

⁷⁸ H. Charlesworth, "Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations", *Harvard Human Rights Journal*, 18(1), 2005, 1–18.

⁷⁹ *Islam v. Secretary of State for the Home Department; Regina v. Immigration Appeal Tribunal and Another Ex Parte Shah [1999]* INLR 44, (Conjoined Appeals), available at: <https://publications.parliament.uk/pa/l199899/ljudgmt/jd990325/islam01.htm> (last visited 13 Jan. 2022).

⁸⁰ For a more detailed discussion of this case see Crawley, *Refugees and Gender: Law and Process*, 74–77.

⁸¹ N. Honkala, "Islam v Secretary of State for the Home Department, R v Immigration Appeal Tribunal and Another, ex parte Shah", in E. Rackley and R. Auchmuty (eds.), *Women's Legal Landmarks: Celebrating the History of Women and Law in the UK and Ireland*, Oxford, UK, Hart Publishing, 1999, pp. 497–504.

⁸² R. Bacon and K. Booth, "The Intersection of Refugee Law and Gender: Private Harm and Public Responsibility: Islam; ex parte Shah Examined", *University of New South Wales Law Journal*, 23(3), 2000, 135–163.

a PSG by virtue of their inability to secure protection from male violence. In this way, “Third World Women” are constructed as a homogeneous “powerless” group often located as implicit victims of particular cultural and socio-economic system.⁸³ This framing ignores the complexity and fluidity of gender relations in the countries of the Global South (as in the Global North). Women from Pakistan are not automatically oppressed. Indeed, if a woman is from a powerful class or family, she may have more power and agency than a working-class woman or even a man in “the West”.⁸⁴

Secondly, in attempting to make visible the experiences of women seeking protection, and increase the possibilities of protection, white feminist scholars and advocates alike have tended to emphasise women’s *vulnerability*.⁸⁵ As noted by Freedman, vulnerability is often reduced to a simplistic and essentialised categorisation, which is also highly gendered and racialised.⁸⁶ Women are thus categorized as “vulnerable” *a priori*, without real consideration of the structural and contextual causes of this vulnerability. At the same time, violence perpetuated against women in the Global North is downplayed or ignored. Thus, the “white saviour complex” intersects with feminism resulting in white women taking on the task of “speaking for” raped and brutalised “Other” women, positioning themselves as the rescuer.⁸⁷ Although being classed as “vulnerable” can increase the possibilities of securing protection, it also results in what Freedman describes as “symbolic violence” by reducing women’s agency and autonomy.⁸⁸

Thirdly, it is important to acknowledge the role of the international organisations such as UNHCR and the “refugee sector”, broadly defined, which, in the absence of political space in which complex discussions of gender and gendered power relations can gain traction, has often been complicit in an asylum process that requires “Refugee Women” to act to a particular “script” in order to be “saved”. Although women are increasingly included in policies and guidelines, including those of UNHCR, they have historically been included as a broad and undifferentiated category of victims, lacking agency and unable to determine their own futures.⁸⁹ This positioning of women has played an important role in the discourses of victimisation and depoliticisation to reduce the threat perception of refugees and generate support for humanitarian aid.⁹⁰ Whilst this construction of the “Refugee Woman” as victim has proved to be useful as a tool for the mobilisation of support behind humanitarian intervention and refugee work, it reproduces and reinforces the idea that women from the Global South are powerless and lack agency. This has contributed to the

⁸³ S.M. Akram, “Orientalism Revisited in Asylum and Refugee Claims”, *International Journal of Refugee Law*, 12(1), 2020, 7–40.

⁸⁴ Mohanty, “Under Western Eyes: Feminist Scholarship and Colonial Discourses”.

⁸⁵ Edwards, “Transitioning Gender”.

⁸⁶ J. Freedman, “The Uses and Abuses of ‘Vulnerability’ in EU Asylum and Refugee Protection: Protecting Women or Reducing Autonomy?” *Papeles del CEIC*, 2019(1), papel 204, 2018, 1–15.

⁸⁷ Zakaria, *Against White Feminism*.

⁸⁸ Freedman, “The Uses and Abuses of ‘Vulnerability’”.

⁸⁹ Bains, *Vulnerable Bodies: Gender, the UN and the Global Refugee Crisis*; Johnson “Click to Donate: Visual Images, Constructing Victims and Imagining the Female Refugee”.

⁹⁰ Bains, *Vulnerable Bodies: Gender, the UN and the Global Refugee Crisis*; Freedman, “The Uses and Abuses of ‘Vulnerability’”.

development of a dominant narrative through which women's experiences are evaluated and understood, and which can serve to feminize or even infantilise those seeking protection.⁹¹ This point is made most explicitly by Berger who, in her analysis of the *Matter of RA* (discussed above) and other Latina women seeking asylum in the US, argues that in order to establish the merits of the case, advocates almost invariably position the countries from which women come as "uncivilized" countries that fail to "protect" women, in turn implying that refugee-receiving states are "civilized" countries within which women are protected.⁹² She suggests that "[t]his discursive merry-go-round bolsters the paternalistic international hierarchy among countries and sets the stage for depoliticised solutions that ignore power inequalities".⁹³

Importantly, issues of narrative and representation are not just academic: they have real consequences "on the ground", not least because advocates may push women towards claims that they believe will be more "acceptable". Citing the example of a woman who said she would kill her husband if forced to return to him but whose account was changed by her lawyer to say that she feared that her husband would kill *her*, Oxford argues that IRL provides few opportunities for women to voice outrage or agency. In presenting a claim for protection it becomes necessary "to position the asylum applicant as an abject victim, powerless in the face of coercive powers of state or non-state actors".⁹⁴ Returning to this theme ten years later, Oxford argues not only that the law fails to hear women's narratives of gender-related harms but that claimants themselves censure, edit or redraft their narratives to fit within legal categories and expectations of how a "Refugee Woman" should be.⁹⁵ Over time, women may come to realise the power of stories of "victimhood" and reappropriate them in order to secure access to resources and rights.⁹⁶ Reduced to her victim identity, she may secure protection but in the process lose her sense of personhood.⁹⁷

4.2. Rescuing the "Exotic Other"

As noted earlier, the international refugee regime reproduces an important divide between "them" and "us", between refugee-receiving states which are depicted as civilised, superior and law abiding, in opposition to the backwards, rights-violating, refugee-producing states of the Global South.⁹⁸ Add to this list "gender-oppressing" and it becomes easier to see how the protection of "Refugee Women" serves an important role in maintaining this divide. This is reflected in a growing body of evidence that women are much more likely to secure protection where they experience

- 91 A. Szcepániková, "Performing Refugeehood in the Czech Republic: Gendered Depoliticisation through NGO Assistance", *Gender Place and Culture*, 17(4), 2010, 261–477.
- 92 S.A. Berger, "Production and Reproduction of Gender and Sexuality in Legal Discourses of Asylum in the United States", *Signs: Journal of Women in Culture and Society*, 34(3), 2009, 659–685.
- 93 *Ibid.*, 671–672.
- 94 Oxford, "Protectors and Victims in the Gender Regime of Asylum".
- 95 Oxford, "Where are the Women?".
- 96 Freedman, *Gendering the International Asylum*.
- 97 Firth and Mauthé, "Refugee Law, Gender and the Concept of Personhood".
- 98 E. Arbel, "The Culture of Rights Protection in Canadian Refugee Law: Examining Domestic Violence Cases", *McGill Law Journal*, 58(3), 2013, 729–771; L. Bassel, *Refugee Women: Beyond Gender Versus Culture*, London, Routledge 2012.

“exotic” forms of harm – most notably FGM, forced marriage, honour killings, and dress codes including the enforced wearing of hijab⁹⁹ – that can be associated with the cultural “Other” against whom women (and “Western” society more generally) need to be protected.¹⁰⁰

Within white feminist critiques of IRL, then, certain types of violence and discrimination against women in the Global South have become key “markers of difference” between the values of refugee-producing and refugee-receiving states. Spivak argues that this is because “the protection of women . . . becomes a signifier for the establishment of a *good* society Imperialism’s image as the establisher of the good society is marked by the espousal of the women as *object* of protection from her own kind”.¹⁰¹ Through reference to the history of how the practice of *sati*¹⁰² was understood, and ultimately legislated against, by British colonisers in India, Spivak argues that the figure of the “Third World Woman” (and, I would argue, that of the “Refugee Woman”) has been essentialised: “[b]etween patriarchy and imperialism, subject-constitution and object-formation, the figure of the woman disappears, not into a pristine nothingness, but into a violent shuttling which is the displaced figuration of the “third-world woman” caught between tradition and modernization.”¹⁰³ In other words, in the context of IRL, race and gender come together in narratives of “civilization” versus “barbary” to legitimise the protection of women fleeing certain types of harms whilst simultaneously excluding others.

This can clearly be seen in case law and practice relating to the experiences of women from countries in the Global South who make claims for protection in the countries of the Global North. On the one hand, cases involving “everyday” violence against women, including violence at the hands of intimate partners and other family members, are viewed by judges as being universal and therefore outwith the protection potentially available to women under IRL.¹⁰⁴ Because these cases resonate strongly with the experiences of all women, they threaten the self-identity of host states as progressive and as protectors of women’s human rights.¹⁰⁵ For example, in the context of the US, McKinnon notes that in *The Matter of R-A*,¹⁰⁶ the Board of Immigration Appeals (BIA) reversed the immigration judge’s decision to grant

99 Millbank & Dauvergne, “Forced Marriage and the Exoticization of Gendered Harms in United States Asylum Law”.

100 Arbel, “The Culture of Rights Protection in Canadian Refugee Law: Examining Domestic Violence Cases”; Bassel, *Refugee Women: Beyond Gender Versus Culture*, London, Routledge 2012.

101 Spivak, “Can the Subaltern Speak?”, 298–299 (emphasis in original).

102 *Sati* or *suttee* is a Hindu practice, now mostly historical, in which a widow sacrifices herself by sitting on her deceased husband’s funeral pyre. According to ancient Hindu customs, sati symbolised closure to a marriage. It was a voluntary act in which, as a sign of being a dutiful wife, a woman followed her husband to the afterlife. The British colonisers believed that women were often forced to burn themselves to death by relatives who wanted to inherit the man’s property.

103 *Ibid.*, 306.

104 S. Mullally, “Domestic Violence Asylum Claims and Recent Development in International Human Rights Law: A Progress Narrative?” *International and Comparative Law Quarterly*, 60, 2011, 459.

105 S.L. McKinnon, “Positioned in/by the State: Incorporation, Exclusion, and Appropriation of Women’s Gender-Based Claims to Political Asylum in the United States”, *Quarterly Journal of Speech*, 97(2), 2011, 178–200.

106 See Center for Gender and Refugee Studies, “Matter of R-A”, available at: <https://cgrs.uchastings.edu/our-work/matter-r-a-> (last visited 13 Jan. 2022).

protection to Rody Alvarado, a Guatemalan woman who had suffered a decade of brutal violence at the hands of her husband, a former soldier, by firstly depoliticising the domestic violence she experienced as linked to the state, and then invalidating Ms. Alvarado's social group membership by fragmenting it into what she describes as "disparate, uncommon, unexceptional identities".¹⁰⁷ Although Ms Alvarado was eventually granted asylum more than 25 years after her case was first considered, her experiences were too close, too threatening and too reflective of women's experiences in the US to risk incorporation without a fight. The violence experience by Ms Alvarado was effectively depoliticised by focusing on the fact that it was not directly at the hands of the state. In this way patriarchal violence against women is normalised.

In contrast, a racialised series of exotic assumptions are articulated in relation to violence only or mostly experienced by "Other" women. Oxford, for example, has found that although women's accounts of persecution in the US often did not centre on the act of FGM, this frequently emerged as the primary basis on which they were granted protection under IRL.¹⁰⁸ Drawing on the work of Spivak, she suggests that these dichotomies play out in scepticism about whether women should be protected against domestic violence because of the fear that "everyone will want to come". Conversely, there is a *prima facie* case where the harm feared is perceived to be "exotic", signifying a cultural backwardness from which "Other" women can be rescued.¹⁰⁹ A cultured discourse of fear, she argues, "creates a hypervisibility to exotic practices such as female circumcision and decreases visibility of less exotic practices such as political activism, torture and detention in the asylum application",¹¹⁰ such that "[w]omen from countries that practice female circumcision must subordinate narratives of political activism, detainment and torture to hegemonic tales of exotic harm".¹¹¹

A similar point is made by McKinnon, citing the *Matter of Kasinga*,¹¹² involving a woman from Togo who was said to fear FGM. In this case, as in many others, "[t]he rhetorical marking of Togo as 'then and there' in its treatment of its women citizens functions to legitimize US modernity as one that is both absent of patriarchy and hospitable to women".¹¹³ In this way, McKinnon argues, Kasinga's claim and its treatment in the asylum process functions as rhetoric that bolsters the United State's image of itself. Whilst Kasinga herself gained protection, she only did so in terms that framed her as the "Other": in the words of Spivak, a brown woman who needed to be rescued from brown men. Continuing this theme, Millbank and Dauvergne¹¹⁴ suggest that successful gender asylum claims involving forced marriage all similarly

107 *Ibid.*, 187.

108 Oxford, "Protectors and Victims in the Gender Regime of Asylum".

109 *Ibid.*

110 *Ibid.* 29.

111 *Ibid.* 35.

112 See Center for Gender and Refugee Studies, "Matter of Kasinga", available at: <https://cgrs.uchastings.edu/our-work/matter-kasinga-1996> (last visited 13 Jan. 2022).

113 McKinnon, "Positioned in/by the State: Incorporation, Exclusion, and Appropriation of Women's Gender-Based Claims to Political Asylum in the United States", 187.

114 Millbank & Dauvergne, "Forced Marriage and the Exoticization of Gendered Harms in United States Asylum Law".

fit into the pattern of “othering” or “exoticising” women refugee claimants, with legal representatives presenting them as victims of distant or backward “traditional” cultural practices. Where forced marriages are the site for other kinds of harm (for example, FGM or sexual violence/rape) they may be viewed as sufficiently non-normative or “Other” to form the basis of a successful asylum claim. Such claims are less likely to be successful where the risk is “only” domestic violence.¹¹⁵ In other words, because marriage is the foundation of relationships in Western as well as non-Western contexts, it may be more difficult for decision-makers to see the harm. In this way, human rights violations more commonly experienced by women are once again normalized.

It is clear, then, that cases involving “exotic harms” are more acceptable to asylum decision-makers in the Global North because they do not pose a threat to dominant patriarchal structures and narratives.¹¹⁶ Women are much more likely to be successful if they are cast as the “cultural” or “Exotic Other” because the problem becomes other countries and cultures rather than patriarchy.¹¹⁷ The focus on “backward cultures” that are oppressive to women renders invisible the particular (colonial and postcolonial) contexts of gendered violence and discrimination. It also allows refugee-receiving countries to maintain a narrative of protecting “Other” women from backward and traditional patriarchal societies.¹¹⁸ Because women who do not conform to an acceptable legal discourse of persecution may jeopardize their chances of gaining asylum, it is always in their interests to conform to the hegemonic narrative of persecution.¹¹⁹ Whilst this may provide access to protection for *some* women who can legitimately be rescued from “Other” men and cultures, it can also have exclusionary consequences for those whose experiences are not consistent with this racialised narrative and instead require refugee-receiving countries to look inwardly at gendered power relations within their own societies. Moreover, as noted by Oxford, “this conformity has serious consequences for reproducing a structural dynamic of inequality through the subordination of subversive stories to hegemonic narratives of gender and persecution that may undermine gender justice”.¹²⁰

¹¹⁵ See also Arbel, “The Culture of Rights Protection in Canadian Refugee Law: Examining Domestic Violence Cases”. Arbel found that Canadian adjudicators rarely recognise domestic violence as a rights violation in itself but, instead, demonstrate a general predisposition toward finding domestic violence persecution in cultural difference. In other words, adjudicators tend to recognize domestic violence claimants not as victims of persecutory *practices* but rather as victims of persecutory *cultures*. This approach erects legal and conceptual barriers for women who cannot authentically narrate their experience through the script of cultural vulnerability or who cannot present as “victims of culture”.

¹¹⁶ See also G.A. Simm, *Exotic Others: Gender and Refugee Law in Canada, Australia and the United States*, 2005, University of British Columbia, available at: <https://open.library.ubc.ca/collections/ubctheses/831/items/1.0077630> (last visited 13 Jan. 2022); N. Fernando, “The Discursive Violence of Postcolonial Asylum in the Irish Republic”, *Postcolonial Studies*, 2016, 19(4), 393–408.

¹¹⁷ Oswin, “Rights Spaces”.

¹¹⁸ McKinnon, “Positioned in/by the State: Incorporation, Exclusion, and Appropriation of Women’s Gender-Based Claims to Political Asylum in the United States”.

¹¹⁹ Oxford, “Protectors and Victims in the Gender Regime of Asylum”.

¹²⁰ *Ibid*, 35.

5. THE CONSTRUCTION OF MASCULINITY IN INTERNATIONAL REFUGEE LAW

I have argued in this article that whilst there have been significant shifts in law and policy over the past 30 years, white feminist scholars and advocates have overlooked the intersectionalities between gender, class, race, and religion that complicate efforts to "make sense" of gender-related harms in different geographical and socio-political contexts. White feminist scholarship laments the failure of "gender" as a category to deliver improved outcomes for the majority of those claiming asylum on this basis, but it rarely situates this failure within the racialised politics of asylum outlined earlier. MacKinnon, in contrast, unpicks, unpacks, and elaborates how sex/gender systems in both the countries from which women originate and where they seek asylum intersect with other systems of power to explain how "gender" is constructed and reproduced as a legal category.¹²¹ What McKinnon describes as the "fixing" of gender means that women (and men) who do not conform to dominant assumptions about gender roles and identities continue to be viewed as "misfits" in asylum law and policy and are therefore unable to benefit from the protections available under the Refugee Convention. Not only is the category of gender contingent, McKinnon suggests, but it is also segregated from other aspects of identity and experiences, most notably those associated with race and religion. McKinnon's account reveals the deeply racialised processes by which those claiming asylum on the basis of gender are "differently coded" as worthy (or otherwise) of refugee protection, concluding that gender, as a legal category in the asylum context, racialises certain forms of harms experienced by women.

Taking McKinnon's argument further, I want to suggest the ways in which gender has been "coded" within IRL also feeds into racialised discourses which serve to undermine access to protection for Black and Muslim men. There is a growing body of research that explores the ways in which men and refugee masculinities are represented in the Global North.¹²² Refugee men are represented as perpetrators of violence and discrimination,¹²³ and as rapists or terrorists.¹²⁴ Symbolically, these narratives of "dangerous masculinities" produce discursive structures that demarcate a specific subjectivity while materially, this demarcation informs formal regulation through law, policy, and policing, reflecting the idea that refugee men need to be controlled.¹²⁵ Events such as those that took place on New Year's Eve 2015 in Cologne, Germany, when refugee and migrant men were accused of sexually assaulting a large number of women, serve only to reinforce – and justify – these

121 S.L. McKinnon, *Gendered Asylum: Race and Violence in US Law and Politics*, University of Illinois Press, 2016.

122 K. Wojnicka and P. Pustulka, "Research on Men, Masculinities and Migration: Past, Present and Future", *NORMA*, 14(2), 2019, 91–95.

123 E. Olivius, "Refugee Men as Perpetrators, Allies or Troublemakers? Emerging Discourses on Men and Masculinities in Humanitarian Aid", *Women's Studies International Forum*, 56, 2016, 56–65.

124 J. Walker Rettberg and R. Gajjala, "Terrorists or Cowards: Negative Portrayals of Male Syrian Refugees in Social Media", *Feminist Media Studies*, 16(1), 178–181.

125 G. Yurdakul and A.C. Korteweg, "Boundary Regimes and the Gendered Racialized Production of Muslim Masculinities: Cases from Canada and Germany", *Journal of Immigrant & Refugee Studies*, 19(1), 2021, 39–54.

narratives.¹²⁶ As suggested by Walker Rettberg and Gajjala, these framings often come to the surface in times of crisis, but they are not new:

Discourse about the Middle-Eastern male as non-masculine is not new, and is based on a history of colonial framing of Middle-Eastern men as simultaneously effeminate (in comparison with Anglo-Saxon men) and threatening to women (as potential rapists of white women and abusers of brown women).¹²⁷

The resulting processes of gendered racialization portray white identity (and white women) as profoundly threatened by men who are racialized as other than white.¹²⁸ De Hart argues that European images of “black” and migrant male sexuality are built on colonial images of black sexuality, that travelled to the European metropole and were reproduced in countries such as Germany. In other words, these images are part of a larger historical pattern in which the masculinity of racialised others has been perceived as a threat to European culture and European women.¹²⁹ Colonial logic genders and separates peoples such that men are the Other and women are civilizable: “To defend our universal civilization we must rescue the women. To rescue these women we must attack the men.”¹³⁰ In the context of IRL, this attack can be seen most clearly in relation to Muslim men.

The history of Islamophobia, like the history of racism more generally, is deeply rooted in relations between the Global North and South. Anti-Muslim sentiment has long been instrumentalized by political and religious elites in the Global North, establishing the foundations for what became colonialism, racism, Orientalism, and, ultimately, Islamophobia in the current period.¹³¹ As noted by Clark, the “Muslim woman as victim” story pervades much of English Romantic literature, personified in the Byronic tale of the white man rescuing the Turkish harem girl from her Muslim-male oppressors.¹³² Gender is central to this narrative, with women’s rights and women’s progress represented as incompatible with Islam.¹³³ In the contemporary period, a critical mass of scholarship has similarly documented how politicians have

126 There was extensive media coverage of the attacks. See, for example, <https://www.independent.co.uk/news/world/europe/cologne-new-year-s-eve-mass-sex-attacks-leaked-document-a7130476.html>

127 Walker Rettberg and Gajjala, “Terrorists or Cowards”, 180.

128 Yurdakul and Korteweg, “Boundary Regimes and the Gendered Racialized”.

129 B. de Hart, “Sexuality, Race and Masculinity in Europe’s Refugee Crisis”, in *Migration on the Move: Essays on the Dynamics of Migration*, Brill, 2017, 27–39.

130 Cooke, “Saving Brown Women”, 485–486.

131 While the term Islamophobia became prominent in political parlance and academic discourses in the aftermath of the 9/11 terror attack, it is firmly rooted in the images, ideas, and epistemology of its precedent system, Orientalism. For further discussion see D. Kumar, *Islamophobia and the Politics of Empire*, Haymarket Books, 2012 and K.A. Beydoun, “Muslim Bans” and the (Re)making of Political Islamophobia”, in C.C. Choudhury & K.A. Beydoun (eds.), *Islamophobia and the Law*, Cambridge, Cambridge University Press, 2020, 113–131.

132 S. Clark, “Female Subjects of International Human Rights Law: The Hijab Debate and the Exotic Other Female”, *Global Change, Peace and Security*, 19 (1), 2007, 35–48.

133 Bassel, *Refugee Women: Beyond Gender Versus Culture*; A. Ahmed “The Gender of Islamophobia”, in C.C. Choudhury and K.A. Beydoun (eds.), *Islamophobia and the Law*, Cambridge, Cambridge University Press, 2020, 249–260.

mobilized the image of marginalized Muslim women and sexual minorities to signal the backwardness of Islam. In this imagined world of "bad Muslims" and "good Americans", the US emerges as a bastion of freedom and liberty, particularly for women and for lesbian, gay, bisexual, transsexual, queer and intersex (LGBTQI) people, while Muslims are represented as backward, primitive, and misogynistic.

The Muslim woman as "Exotic Other" is replicated in white feminist critiques of IRL which imply that all women seeking asylum from the Muslim world have the potential to be Convention refugees because Islam is inherently persecutory of women.¹³⁴ Akram notes that certain stereotypes about Islam appear repeatedly in the presentation and defence of women's asylum claims by advocates.¹³⁵ These stereotypes reflect Western myths that there is a single "Islamic tradition" and a monolithic "Islamic law". Whilst the harms that women face – forced marriage, severely enforced dress codes, restrictions on movement or punishment for violating moral codes – clearly constitute a violation of human rights, Akram takes issue with the characterization of these harms as stemming from "Islamic law" or "Muslim mores". Rather, she argues:

The sources of persecution in these cases are the singular interpretations of Islam enforced by patriarchal, male-dominated societies in a way that reinforces male power structures and the political hegemony of the dominant political/religious elite. Because it is not just the threat to male dominance but also to the dominance of the particular regime in power that is at issue, claims related to Islam are not confined to women refugees alone.¹³⁶

In other words, the violence and human rights abuse experienced by women seeking protection arises not from Islam *per se* but from a patriarchal – and deeply political – interpretation of Islam, often as a form of resistance to the colonial project. As I have argued previously,¹³⁷ many anti-colonial nationalist projects recover or reinvent "tradition" in order to develop a new nationalist consciousness. As part of this process, national difference is often constructed in cultural terms against the West. Because this difference is often located in the private sphere, in gendered roles and identities, women have been constructed as bearers of an authentic/authenticated culture.¹³⁸ In many parts of the world, women who do not live up to the moral or ethical standards imposed on them by their societies are imputed with a political opinion and as a consequence suffer cruel or inhuman treatment. Refusing to marry, having sexual relations outside marriage, providing unsatisfactory dowry, or even wearing certain dress can result in persecution. Protecting the honour of the woman and the nation therefore gains political significance and will be enforced either

¹³⁴ Clark, "Female Subjects of International Human Rights Law"; S.M. Akram, "Orientalism Revisited in Asylum and Refugee Claims", *International Journal of Refugee Law*, 12(1), 2000, 7–40; McKanders, "Gender, Islamophobia, and Refugee Exceptionalism".

¹³⁵ Akram, "Orientalism Revisited in Asylum and Refugee Claims".

¹³⁶ *Ibid.*, 18.

¹³⁷ H. Crawley, "Gender, Persecution and the Concept of Politics in the Asylum Determination Process", *Forced Migration Review*, 9, 17–20, 2000

¹³⁸ See also N. Yuval-Davis, *Gender and Nation*.

directly through the state – as seen in legislated discrimination and laws regulating women's behaviour – or through a woman's family and community.¹³⁹

In contrast, efforts to fit Muslim women into the Refugee Convention have painted a monolithic picture of women as passive, dependent, vulnerable victims, a representation that Akram argues is implicitly Orientalist. And when there is a victim, there needs to be a perpetrator, in this case the construction of a Muslim male "Other", who is portrayed as the violator of the rights of women. It is not only Muslim men that are viewed as perpetrators. As noted above, refugee men *in general* are represented as, at best, patriarchal and oppressive, and more frequently as perpetrators of violence and discrimination against refugee women.¹⁴⁰ This naming, Olivius argues,

relies on a construction of refugee societies as traditional and backward; refugee men are thus not agents of inequality because they are men, but because they are primitive. Refugee men's masculinities are thereby pathologized and they are constructed as subjects in need of modernization and reform.¹⁴¹

For Muslim men this problem is exacerbated by the development of negative medial and political discourses in relation to Islam, particularly since the terrorist attacks in the US on 11th September 2011.¹⁴² In these narratives, Muslim men are positioned as a threat, not only to Muslim women but also to Western societies with which their values are assumed also to be in opposition. Research by McKanders¹⁴³ analyses the ways in which gender interfaces with xenophobic and Islamophobic bias to exclude young men from Muslim-majority countries from third-country refugee resettlement. In the context of the US, she argues, the positioning of Muslim men as perpetrators, both of rights violations against Muslim women and potentially of harms against Western societies, has led to their exclusion from international protection. Young Muslim men are stereotyped as would-be terrorists who are a threat to a country's national security – a "modern day Trojan horse".¹⁴⁴ This positioning of Muslim men as a threat enables their rights and protection needs to be marginalised, leading to lessened protections under the law.¹⁴⁵ It is important, therefore, to understand the framing of "Refugee Women" and their claims for protection within a wider context of racism which has, over recent years, taken a particular form in relation to Muslim

¹³⁹ See Crawley, *Refugees and Gender: Law and Process* for a detailed elaboration of why political opinion is often the most appropriate ground for cases involving women's resistance to patriarchal social norms and mores, especially where these are institutionalised by the state.

¹⁴⁰ Olivius, "Refugee Men as Perpetrators".

¹⁴¹ *Ibid.*, 64.

¹⁴² See, for example, S. Rezaei, K. Kobari, and A. Salami "The Portrayal of Islam and Muslims in Western Media: A Critical Discourse Analysis", *Cultura*, 16(11), 2019, 53–73. Generally, the Western media's approach to Islam is orientalist with recurring phrases such as "Islamic terrorism" and "Muslim extremists" which are essentialising and denigrating to both Islam and Muslims.

¹⁴³ K. M. McKanders, "Gender, Islamophobia, and Refugee Exceptionalism", in *Arabs at Home and in the World*, Routledge, 2019.

¹⁴⁴ M. Hodson, "Modern Day Trojan Horse? Analyzing the Nexus between Islamophobia and Anti-Refugee Sentiment in the United States", *Islamophobia Studies Journal*, 5(2), 2020, 267–282.

¹⁴⁵ McKanders, "Gender, Islamophobia, and Refugee Exceptionalism".

men and women. The narratives which are used to exclude men originating from Muslim-majority countries, are simultaneously harnessed by white feminist scholars in an attempt to secure protection for "Refugee Women" under IRL.

6. SO WHERE NEXT?

This article has brought white feminist legal scholarship into dialogue with postcolonial feminist scholarship, drawing attention to the ways in which this scholarship has reproduced and reinforced highly racialised assumptions about the experiences of women living in the Global South. Postcolonial feminism calls for a rejection of homogenisation and universalising of women. It calls for an understanding of historical, cultural, and social differences including non-Western forms of political resistance. And it calls on white Western women to observe and combat racism even on the most intimate of levels.¹⁴⁶ Yet after more than 30 years of white feminist scholarship and advocacy, gendered and racialised stereotypes dominate much of the discourse on the protection needs of "Refugee Women".

This failure can be attributed, at least in part, to the tendency of white feminist scholars and advocates to typically advance what Otto has described as a *conservative gender script* that typecasts women – often alongside with children and in the context of "private" familial relationships – as "victims" in need of protection.¹⁴⁷ The framing of "Refugee Women" by international organisations and advocates was intended to be easily consumed by policy makers and decision-makers, highlighting specific issues or incidences of harm at the expense of examining the structural causes of violence and discrimination: "it is easier to intervene to "save" vulnerable women than it is to actually make the effort to understand how gender operates as a power relation in violent conflict and displacement".¹⁴⁸ However, these approaches have failed to deliver protection for women whose experiences do not conform to this script and reinforced the deeply racialised – and racist – structures on which the refugee regime has been built. So where do we go from here?

First of all, we need to develop new theoretical approaches in relation to gender-based asylum claims by bringing into dialogue three main areas of academic thinking: feminist legal studies, postcolonial feminism, and intersectionality. Like much of migration studies, white feminist scholarship on IRL has colonial "blind spots".¹⁴⁹ Bringing together these areas of academic endeavour should inform, shape, and guide the next generation of research on gender-based asylum claims, ensuring that women in the Global South are considered first and foremost as agents, rather than actors in the "culture versus gender" script.¹⁵⁰ As scholars and advocates, we need to avoid a simple, reified view of culture as a set of ideas and norms belonging to a group or nation, and instead understand "culture" as a messy, complicated and often contested process of meaning making.¹⁵¹ Complicating "culture" – rather than assuming a

146 Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses".

147 Otto, *International Human Rights Law: Towards*.

148 Bains, *Vulnerable Bodies: Gender, the UN and the Global Refugee Crises*, 158.

149 Mayblin and Turner, *Migration Studies and Colonialism*.

150 Bassel, *Refugee Women: Beyond Gender Versus Culture*.

151 K.M. Anderson-Levitt, "Complicating the Concept of Culture", *Comparative Education*, 48(4), 2012, 441–452.

static, oppressive monolith – would challenge the legal framing and construction of “Refugee Women” primarily as victims of “exotic” forms of harm, a framing which reinforces gendered and racialised stereotypes potentially limiting, rather than opening up, opportunities for international protection. Take, for example, the example of Muslim women wearing the hijab, which from the perspective of white feminism, is often viewed as a sign of sexist, enforced female subservience and a violation of women’s rights. Whether this is actually the case depends on the context and the choices that women are, or are not, able to make. For many Muslim women, the hijab is a symbol of their religious identity: they choose to wear hijab as a marker of their Islamic faith and their conviction that it is through modest dress alone that women are truly freed from exploitation by and enslavement to men.¹⁵² For these women, the wearing of the hijab frees them from the sexualisation of female identity seen in Western contexts. In other words, the hijab and other dress codes should be understood as part of a broader complex of efforts aimed at both sexes in order to manage a community’s sexual and other relations.¹⁵³ As Abu-Lughod suggests, we need to work against the reductive interpretation of the hijab as the quintessential sign of women’s unfreedom, even if we object to the State imposition of this form, as seen for example, in Afghanistan and Iran. And we must take care not to reduce the diverse situations and attitudes of millions of Muslim women to a single item of clothing.¹⁵⁴

Second, we need to better understand the experiences of women in the Global South as being embedded in systems and structures, inequalities and oppressions, rather than focusing primarily, or even exclusively, on their identities as women. Postcolonial feminists invert the assumption that we need to start with an analysis of patriarchy by instead starting with the uneven structuring of the world through colonialism and imperialism and how gender systems are intertwined with these processes. Working towards societal transformation and transnational feminist solidarity will require white feminist scholars in the Global North to consistently address the intersectional racist, postcolonial, classist, and patriarchal structures within which today’s globalized capitalisms operate.¹⁵⁵ This complicates gender by moving the analysis away from discrete monolithic categories of “men” and “women” towards an understanding of the structural, historical and contingent inequalities associated with violence and other threats to human security.¹⁵⁶ It acts as an important counterbalance to the dominant discourse of the “Refugee Woman”, opening up new opportunities to protect women (and men), whilst avoiding the essentialising and

¹⁵² For more see L. Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate*, 1992, Yale University Press; L. Abu-Lughod, “Do Muslim Women Really Need Saving?”, S. Al-Mahadin, “The Social Semiotics of Hijab: Negotiating the Body Politics of Veiled Women”, *Journal of Arab & Muslim Media Research*, 6 (1), 2013, 3–18.

¹⁵³ B. Honnig, ‘Complicating Culture’, *Boston Review*, 1997.

¹⁵⁴ L. Abu-Lughod, “Do Muslim Women Really Need Saving?”.

¹⁵⁵ K. Wommelsdorff, “Whose Womanhood? Feminist Postcolonial Approaches to Law”, *Völkerrechtsblog*, 13 January 2020, available at: <https://voelkerrechtsblog.org/whose-womanhood-feminist-postcolonial-approaches-to-law/> (last visited 13 Jan. 2022).

¹⁵⁶ Crawley, *Refugees and Gender: Law and Process*; Edwards, “Transitioning Gender”; Firth and Mauthé, “Refugee Law, Gender and the Concept of Personhood”.

depoliticising discourse that dominates so much of contemporary scholarship and is reflected in policy and practice.

Thirdly, we need to recognise the centrality of race in the workings of IRL, both in terms of its history and in relation to contemporary policy and practice. As noted above, this is partly about doing more work in applying intersectional theory to refugee law.¹⁵⁷ Understanding the intersection of gender with other dimensions of identity and the larger political projects of nation states is crucial to understanding the ways in which women's experiences are framed by individual refugee-receiving countries within the international refugee regime more generally. However, whilst intersectionality offers some useful insights, it does not always engage sufficiently with the colonial critique.¹⁵⁸ Race and gender do not just "intersect", rather they are mutually bound together. Indeed, the very concepts of gender and sexuality are derived from colonial systems of knowledge.¹⁵⁹ In order to make sense of the ways in which claims for protection on the basis of gender have come to be framed within IRL, we need to better understand the deeply political ways in which race shapes the representation and analytical characterisation of women living in the Global South.¹⁶⁰ This means recognising that refugee law is not only deeply gendered but also deeply racialised – and racist. Nationalism and nation-building are intimately linked to racialised border control.¹⁶¹ Situating gender-based asylum claims within the exclusionary politics of asylum also enables a broader engagement with questions surrounding citizenship, governance and belonging, as deeply gendered (and gendering) processes.

Refugee scholars and advocates must, as Tendayi Achiume suggests, contend with a structural and power-based understanding of race because this is a fundamental way in which race impacts refugees. In this context, the "solution" to the difficulties facing "Refugee Women" seeking international protection does not just lie in "complicating" dominant understandings by adding other variable such as race and poverty into the analysis. Rather we need to engage with the history of colonisation and the racist politics of protection within which representations of those seeking asylum are embedded. As Mayblin and Turner suggest, we should be asking not how are policies on asylum gendered, or how are women and men affected differently, but rather how colonial categories of gender are reproduced and systematized in asylum policies^{162,163}

This brings me to my final point, namely the need to challenge the ways in which white feminist scholars, myself included, have thought about and conceptualised the experiences of women in the Global South and, in turn, the ways in which these have been represented in the asylum processes of the Global North. White feminism

157 Calavita, "Gender, Migration and the Law"; Anderson and Foster, "A Feminist Appraisal of International Refugee Law".

158 Mayblin and Turner, *Migration Studies and Colonialism*.

159 Bassel, *Refugee Women: Beyond Gender Versus Culture*.

160 *Ibid.*

161 Bhui, "The Place of 'Race' in Understanding Immigration Control and the Detention of Foreign Nationals".

162 Mayblin and Turner, *Migration Studies and Colonialism*.

163 Spivak, "Can the Subaltern Speak?", 296.

needs to critically reflect on itself as another ethnocentric and partial knowledge system, constrained by certain conceptual and cultural limitations.¹⁶⁴ Moreover, by effectively erasing Black women and failing to hold white women accountable for the production and reproduction of white supremacy, white feminism manifests its allegiance to whiteness, and in doing so commits “discursive violence”.¹⁶⁵ Moon and Hollig argue that recognizing white feminism’s discursive violence is contingent on “seeing race” in white feminist discourse and its reliance on white epistemology.¹⁶⁶ It does this by failing to recognise the concerns of gendered-racial populations unless they are framed in ways that align with white ways of knowing.

An important first step then, is to place colonialism, race, and history at the centre of white feminist thinking about IRL.¹⁶⁷ As noted by Bassel, this is not about casting aside the dangers of violation and ignoring the very real forms of violence, domination, and oppression experienced by women in the Global South. Rather it is about acknowledging that dominant white feminist approaches instrumentalise or render invisible the experiences of women in or from the Global South:

The analytical first step is to remove the lens through which we are accustomed to reading these phenomena, and to take note of the ways in which women and men participate in and act within, in between and instead of this highly mediated agenda. This means going beyond noticing (and recasting, rereading) the problems that it has been decided [refugee] women face, to instead recognize the existence of a frame in which voices which speak outside of the recognised grammar are often instrumentalised or inaudible.¹⁶⁸

Unless and until refugee women’s experiences are understood *on their own terms*, rather than with reference to a white feminist understanding of gender roles and relationships, Global South women seeking protection in the Global North will continue to be seen as a deviation from the standard, as an exception to the rule, and as somehow not quite fully human.

¹⁶⁴ Syed and Ali, “The White Woman’s Burden”.

¹⁶⁵ Moon and Holling, “White Supremacy in Heels”.

¹⁶⁶ “White epistemology” is defined by Moon and Holling (254) as being “grounded in a way of knowing and understanding the world that colludes with and/or rationalizes systemic processes that uphold and reproduce racial inequality and white supremacy”.

¹⁶⁷ Mayblin and Turner, *Migration Studies and Colonialism*.

¹⁶⁸ Bassel, *Refugee Women: Beyond Gender Versus Culture*, 161.