

# **Excluded Subjects**

A discourse analysis on (bi)sexuality and ‘sexual orientation’ in  
Swedish asylum case law

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## **Abstract**

This thesis examines how bisexuality get constructed as a distinct sexual orientation category through asylum determination processes in Sweden. With a theoretical focus on the interaction between notions of sexuality and national borders this study also investigates how the assessment of 'sexual orientation' asylum claims contribute to the regulation of the Swedish border. To investigate these two research questions the study draws on a variety of theoretical traditions, such as queer migration studies, feminist, and postcolonial border studies, as well as queer and bisexuality theory. By applying Chantal Mouffe and Ernesto Laclau's discourse theory as the analytical method, this study is able to show that bisexuality is constructed as a highly specific and static sexual orientation, receiving its meaning largely from the notion that sexual orientations are innate. This discursive construction means that most bisexual asylum claimants are assessed as not credible and are, therefore, denied asylum. Furthermore, the analysis illustrates how the discourses that are articulated in the assessment of 'sexual orientation' asylum claims can be seen to interact with the regulation of the Swedish border by interpellating individual asylum claimants into different subject positions that are aimed for either inclusion or, more often, for exclusion.

## **Key words**

*asylum determinations, bisexuality, borders, credibility, sexual orientation*

## **Nyckelord**

*asylbedömningar, bisexualitet, gränser, trovärdighet, sexuell läggning*

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## 1. Introduction

Bisexual asylum seekers' [asylum] rights are violated because they are invisible due to their multiple subordinate-group identities. Positioned at the intersection of different inequality systems, including heteronormativity, homonormativity, monosexism, colonialism, and nationalism, it is hard for them to tell their stories and for their audiences to understand and accept them as their stories do not fit the prototypical normative narratives [of sexuality] (Peyghambarzadeh 2021:25).

The right to asylum is declared as a fundamental human right in the Universal Declaration of Human Rights (UN 1948). In practice, asylum rights are predicated on the transnational allowance and acceptance of individuals to move across national borders, leaving one nation in order to claim refuge in another (Thorburn & Wikström 2016:7). Despite being a universally declared right, the allowance and acceptance of this type of border-crossing is, however, linked to a specific set of individual conditions upon which the right to asylum must be grounded. These conditions, as declared in the UN's 1951 Protocol related to the Status of Refugees, include persecution related to race, religion, nationality, membership of a particular social group or political opinion (UNHCR 2011[1951]:14). Being a declaration, the right to asylum is, however, not legally binding for countries to follow, and individual nation states are therefore free to formulate their own laws related to asylum rights and definitions of refugees.

Up until the 1990s most national, as well as transnational policies regarding asylum rights had generally been organised around the taken for granted heteronormative notion that all migrants and asylum seekers are heterosexual (Luibhéid 2008:169). As such, intersectional understandings of persecution related to sexuality and identity were largely lacking. Since then, however, several countries in the Global North have started acknowledging the existence of queer asylum seekers, by explicitly including gender and sexuality-related persecution as a ground for asylum in their national asylum and migration policies. For example, in 2006 'sexual orientation' was incorporated into the refugee definition of the Swedish Aliens Act, making sexuality-related persecution a legitimate legal ground for claiming asylum in Sweden (UtlL 2005). International research, however, suggest that the formulation of sexuality-inclusive asylum definitions has not equally benefitted all persecuted individuals and/or groups claiming asylum on sexuality-related grounds. On a group level, over time, and across different national asylum and migration jurisdictions which includes 'sexual orientation' as an asylum ground, bisexuals appear to be disproportionately rejected

when compared to their homosexual counterparts (Rehaag 2009, Sin 2015). In these previous studies, this finding has largely been attributed to the widespread notion within bisexual theory that bisexuality is an invisible, erased, and/or questioned sexual identity category (Yoshino 2000), which appear to have made bisexuals into an easy target for exclusion on assumptions of illegitimacy, or non-credibility (Rehaag 2008, 2009, Sin 2015, Peyghambarzadeh 2021). Building on these findings, in this thesis I will further explore the reasons behind the rejection rates of bisexuals in asylum processes, by exploring how 'bisexuality' is allowed to figure within asylum determination processes in Sweden. As such, this thesis means to investigate how bisexuality is constructed as an assessable sexual identity category through these asylum processes, rendering the individual bisexual asylum claimants either legitimate and 'credible' or illegitimate and 'not credible'.

Additionally, a wider focus of this thesis is to investigate how the very assessment of 'sexual orientation' as an asylum ground come to interact with the regulation of borders, and if this type of assessment, in itself, might put bisexuals in a particularly vulnerable position with regards to having their asylum claims rejected. Research focusing on the various connection between notions of sexuality and the regulation of borders is, however, not new, but is a well-established research subject within feminist gender studies, as well as postcolonial studies. Being theoretically situated within these research fields and traditions, this thesis will, therefore, contribute to feminists and postcolonial studies on sexuality and borders by approaching the notions of 'sexual orientation' and 'bisexuality' within asylum processes through an intersectional lens that is attentive to how our ways of conceiving sexual identities, always and inevitably, are interrelated with a range of other socially differentiating power structures, such as nations and citizenship to give one example, that construct and position individual subjects as different, or Other, in various ways.

Despite a strong feminist and postcolonial research interest in gender and sexuality-related migration and asylum in Sweden, there is a lack of studies focused exclusively on how bisexuals fare in Swedish asylum- and border processes, and on how bisexuality is assessed in relation to the asylum ground 'sexual orientation'. This thesis will, therefore, add to the existing body of research by specifically investigating bisexuality within 'sexual orientation' asylum processes in Sweden, and furthermore, how the assessment of bisexuality and 'sexual orientation' come to interact with the regulation of the borders of Sweden.

## 1.1 Aim & research questions

In order to understand some of the reason behind the rejection rates of bisexuals in asylum processes, in this research project I am interested in exploring the ways in which notions of sexual orientation in general, and bisexuality in particular, are constructed within the context of asylum determination processes. The aim of my study is, furthermore, to contribute to feminist, gender-, and postcolonial studies on bordering processes through investigating how discourse on asylum related to ‘sexual orientation(s)’ interact with the regulation of the Swedish border. To achieve this, I have analysed the various discourses that are articulated in the Swedish Migration courts’ assessments of bisexual asylum claimants. The analysis has been guided by the following research questions:

- How is (bi)sexuality constructed in the assessments of asylum claims based on ‘sexual orientation’ by the Swedish Migration courts?
- In what ways do the assessment of ‘sexual orientation’ in these asylum claims interact with the regulation of the Swedish border?

## 1.2 Conceptual discussion & disposition

Before presenting the different parts of this thesis, it is perhaps in place to address the most central concept of this study, namely bisexuality. What do I mean by this word, and what does it ‘do’ in this study? Bisexuality today, and historically, is a word that has had many meanings and definitions (Norrhem et al. 2015:154-9, Halperin 2012:260-2). As with any definition, defining sexuality in general, and bisexuality in particular, one must take several variables into account and make decisions as to what variables are most critical for the concept at hand. Seemingly, but not exclusively, with bisexuality, as with all sexual categorisations, these variables include the orientation of attraction, or ‘object choice’ (sexual and/or emotional), sexual and/or emotional behaviour, experience and intention, at present as well as over time (past and expected futures), potential individual identities as well as collective understandings of all these different variables.

As it appears, then, (bi)sexuality is not just one thing, but several things combined. By marking (bi)sexuality with the signifying ‘bi’ enclosed in brackets, as I just did and have done in my research questions, my aim is precisely to ‘visualise’ that the word (bi)sexuality, when referring to a specific sexual category, is just one way of combining and enclosing all these potentially shifting and highly subjective sexual variables, forcing them into a neat and fixed sexual ‘type’ one step (or more) removed from lived experiences of sexuality. As such, I wish

to hint at an understanding that bisexuality, and all other sexual categories too, when instead thought of as lived experience is much more fluid than what can be enclosed in a categorical definition (Norrhem et al. 2015:159). Therefore, on an epistemological level, I differentiate between (bi)sexuality (the identity category), and bisexuality (the lived experience connected to that identity category). At the same time, however, I acknowledge that such a separation has been difficult to sustain entirely. Nevertheless, with this understanding and explanation, I, as a researcher, will make no further attempts at offering a privileged definition to rule this thesis. But as you will come to see, definitions will still be abundant.

On a personal level, I relate to (bi)sexuality as a sexual identity marker that I, somewhat hesitantly, have adopted, wary of the confinement that inevitably comes with categorically defining oneself, but longing for a sense of community that the co-identification with an external category can offer. My personal affiliation with this group is largely what has propelled my research interest in bisexuality, which in combination with my academic and political interest in struggles for migration and asylum has culminated in this thesis. In this thesis, however, my aim, as a researcher, is not to further dwell on the sense of belonging that can come with categorical co-identification. In fact, my aim is almost the opposite; to investigate how the categorical group-identity associated with bisexuality can come to interact with highly regulatory border processes that exclude most bisexual asylum claimants from such a group-based sense of belonging – both sexual and national – as their lived experiences differs from the definitions that circulate in the Swedish asylum determination process.

Before moving on, I also want to briefly address two other words or concepts that I have deployed in somewhat specific ways throughout this thesis; namely the words/concepts ‘queer’ and ‘sexual fluidity’. Similar to ‘bisexuality’, both ‘queer’ and ‘sexual fluidity’ harbours multiple meanings. In this thesis the word ‘queer’ will be employed in two specific ways; firstly, to represent a non-specified collective of ‘non-heterosexuals’ or the sexually non-normative, and secondly to refer to a specific branch of academic thought which focuses on the constructedness of gendered and sexual identities and categorisations. The concept ‘sexual fluidity’ on the other hand, is harder to pinpoint precisely in this thesis – which is also *the* point precisely. Using the concept ‘sexual fluidity’ my aim is to hint at an understanding of all sexualities as subjectively lived experiences that, more or less, evades, or challenges the validity of rigid categorical definitions. As such, I do not think of bisexuality as inherently more fluid than any other sexuality, but I *do*, however, see bisexuality as particularly well-

equipped starting point for highlighting sexual fluidity, and for deconstructing universal and rigid notions of sexuality.

This thesis is divided into six chapters. In the next chapter, **2. Mapping the field: Queer migration research**, I position my study within the field of queer migration – a multifaceted body of research which has informed my own study. The chapter presents the findings of a number of studies related to asylum determination processes of sexual minorities across the Global North, however, highlighting specifically the findings of two Swedish studies which are highly relevant for my own study. The chapter also delve into the small body of research particularly focused on bisexual migration and asylum.

In **3. Theoretical framework**, I draw on a variety of authors and theoretical traditions such as postcolonial and critical border theory, as well as queer theory, to develop a framework for how to approach the topic of borders and sexuality. The main focus of the chapter is to map out a critical, and deconstructive, understanding of borders as discursive struggles over national signification which generate and differentiate subjects for inclusion or exclusion in a variety of ways. The chapter approaches the topic of (bi)sexuality in asylum processes by presenting three separate discursive struggles that in different ways position (bi)sexuality as Other to ‘the nation’.

In chapter **4. Methodology**, I present my method for analysis – discourse theory – by presenting the main conceptual tools that I will use when dissecting and analysing the empirical material. I also present and discuss the process of collecting and selecting the material, and the ethical considerations that come with ‘using’ this particular material.

In chapter **5. Analysis**, I apply the tools of discourse theory to explore and analyse the empirical material in relation to my research questions. Lastly, in **6. Concluding discussion**, I discuss the results of the study.



## 2. Mapping the field: Queer migration research

A research field specifically concerned with ‘queer migration’ has been steadily growing since the 1990s (Mole 2021:3), highlighting among other things the heteronormativity of border processes and, furthermore, exploring “the multiple conjunctions between sexuality and migration” (Luibhéid 2008:169). In investigating how notions of sexuality interact with national border processes to regulate migratory movements of bisexual asylum seekers, my research will draw on, and become part of, the field of queer migration. To my knowledge however, there are only a small number of previous studies that have focused specifically on bisexuality in migratory contexts such as asylum, none of which have been conducted in Sweden. This chapter will, therefore, start off presenting a more general exploration of non-heterosexuality in asylum processes, mapping some particularities of the Swedish context which my own research is situated within. Before moving on to my theoretical framework I will also present what the small pool of bi-focused queer migration research has said on the matter.

### 2.2 SOGIE asylum determination processes

In accordance with current UN refugee standards, individuals who have fled their country of origin due to persecution on account of their non-normative sexual orientation or gender identity and expression (SOGIE) are eligible for refugee status and asylum (Rehaag 2009:416). The type of persecution that sexual minorities face, and seek asylum from, can be multifaceted, and is often perpetrated by civil and state actors alike (Gröndahl 2020:26, ILGA 2020). However, sexual orientation, gender identity or gender expression is neither defined nor included in the Convention Relating to the Status of Refugees (UNHCR 2011[1951]:14). In international human rights law SOGIE asylum seekers have instead generally come to be seen as meeting the refugee definition through reference to the persecution they face due to their membership of a ‘particular social group’; an open category that is included in the refugee convention’s definition (Thorburn & Wikström 2016:115). In internationally influential case law, the category ‘particular social group’ has in relation to SOGIE claimants been defined either as

- (1) groups defined by an innate or unchangeable characteristic; or
- (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association (Rehaag 2009:418).

In human rights and legal scholarship, definition (1) has long been the dominant one (Rehaag 2009:420, Sin 2015:420) and has come to be known as the ‘immutability defence’ – a term

which I will elaborate further in my theoretical framework (see [3.2.3 Hetero/homonormativity: the epistemological border](#)). In recent years, however, a growing consensus in the field of international refugee law has led to a heavier endorsement of the second definition for sexual minority asylum claims (Rehaag 2009:420). This shift has happened largely due to critique raised against the first definition for being ill-founded and based upon ahistorical essentialist understandings of sexuality, pointing to a problematic (Eurocentric) universalism inherent to, or made possible by, the presumption of sexual orientation and identity as innate and unchangeable (Rehaag 2009:419, Akin 2017:459).

The processing of asylum applications and refugee determinations in Sweden is performed by the Migration Authority. The Migration Authority's decisions regarding refugee determinations can, however, be appealed to the Migration courts, and the Migration Court of Appeals (Thorburn & Wikstöm 2016:22). Since the individual conditions of any asylum claim, i.e. the actual risk or lived experience of persecution, can rarely be proven, all asylum determination processes largely rest on a so-called *credibility assessment* of the presented individual conditions (Wikström 2014:210). Assessing a sexual orientation asylum claim in Sweden is a two-pronged legal process determining first whether the feared or experienced persecution is *sufficient* for granting asylum, and second whether the claimant's avowed membership of the 'particular group' is *credible* (Gröndahl 2020:30), which in the case of bisexuals claimants would mean the group 'bisexuals'. The credibility of a claimant's group membership is determined based upon an assessment of the information given by the claimants themselves during interviews. The sufficiency aspects regarding persecution are determined in relation to available 'country-information' retrieved from a database to enable an 'objective' assessment (Rydberg-Welander 2021:234). Previous research has, however, shown that reliable country-information regarding the situation and treatment of people with non-normative sexual orientations and/or gender identities in 'sending countries' is often severely lacking, and especially so in relation to bisexual, lesbian, trans and/or intersex groups. This lack of information, therefore, results in more emphasis being put on scrutinising the personal credibility of such individuals (Mulé 2020:211-12).

These types of credibility assessments have been heavily criticised by activists and scholars alike for giving large discretionary power to individual adjudicators assessing the case (Luker 2013, Sin 2015, Gröndahl 2020, Powell 2020, Mulé 2020) and have prompted a lot of research into SOGIE asylum determination. One way of assessing credibility that is often found, and problematised, in this body of research is the practice of assessing the *internal*

*consistency* of a claimant's narrative. Internal consistencies are found to be important in relation to both temporal information and details about the experience of persecution, but also in relation to the claimant's sexual orientation. However, according to the research, the underlying normative understanding, and expectation, that sexual identity formation is a linear and consistent process is often not appropriate for understanding, and assessing, the identities of SOGIE asylum claimants (Akin 2017, Gröndahl 2020, Liinason 2020, Mulé 2020, Powell 2020). Instead, these assumption and expectations about linear subjectivation processes mirrors Western preconceived notions about sexuality. Therefore, as Nick Mulé (2020) argues

The unique challenge for SOGIE asylum seekers and refugee claimants is the need to prove their SOGIE [...] according to Westernized notions of SOGIE (2020:217-18).

Under this normative 'burden of proof' SOGIE asylum claimants have been found to adopt, (re)shape and narrate a strategically readable and westernised sexual identity during their asylum determination processes, by necessity, to pass as credible and have a chance at receiving legal refugee status (Akin 2017). As such 'sexuality' and 'identity' emerges as temporal contingencies in SOGIE asylum contexts. The previous research, therefore, shows that sexual subjectivities should not always be expected to pre-exist their 'discovery' at the borders of receiving nation-states (Luibhéid, in Akin 2017:461).

A recent study on SOGIE asylum case law in Sweden, by Aino Gröndahl (2020), have found that credibility assessments of sexual orientation group membership, as well as individual experiences of persecution, are consistently based upon the notion that sexual minorities are naturally very risk conscious. As such, Gröndahl's findings reveal a taken for granted 'Swedish expectation' that sexual minorities adhere to a self-imposed sexual discretion, precisely due to the imminent risks of persecution. Asylum claimants who had not practiced such sexual discretion were, instead, assessed as having behaved "too risky" and were, therefore, *not* considered credible. (2020:11). By contrast, in several other national contexts, the practice of 'discreet living' has, instead been found to regularly be assessed as proof *against* the SOGIE claimant's credibility (Klesse 2021, Akin 2017, Sin 2015, Rehaag 2009). Contrary to Gröndahl's findings, Christian Klesse (2021:122), for instance argues that "living openly' is a core requirement for getting recognised as a refugee on the grounds of sexual orientation". This expectation of 'living openly' has, however, also been shown to lead to exclusionary consequences for bisexual asylum claimants who are, or have been, in a cross-sex relationship (Sin 2015:431). Therefore, as Peyghambarzadeh (2021) notes, "asylum

activists and lawyers may advise bisexual applicants to ‘perform’ gayness in their asylum application to increase their chance of being recognised as a ‘refugee’” (2021:24). As such, Peyghambarzade’s argument, can be seen to further illustrate the notion that ‘sexuality’ and ‘identity’ emerges as mere temporal contingencies during asylum determinations processes (Akin 2017:461).

However, returning to the particular Swedish context, Gröndahl’s findings regarding credibility being assessed in relation to preconceived notions of risk, and expectations of discreet behaviour, have also been mirrored in Hanna Wikström’s (2014) research investigating the understandings of ‘culture’ in the credibility assessments of Swedish asylum applications. The findings of Wikström’s study show that the credibility of a claimant is dependent on how well their narrative of identity and behaviour corresponds to the adjudicators’ (pre)conceptions of ‘the culture’ in the claimant’s country of origin (214). As Wikström argues “conception of culture is portrayed as governing what emotions can occur, how strong they can be and whether it is likely one would act on them” (214). By utilising ‘culture’ as an indicative measure of plausibility, the claimants’ deviations from dominant cultural norms regarding sexuality are frequently assessed as unlikely, and therefore not credible (2014:214). This systematic favouring of static and essential understandings of ‘foreign cultures’ over the claimants’ accounts of their own situation, is what Wikström calls the “epistemic injustice” (2014:210) inherent in the credibility assessments themselves.

Moreover, beyond the epistemic expectations regarding how one *can* (or should) *live* as a LGBTQIA+ person, Gröndahl’s (2020:9-10) research regarding SOGIE asylum claims, also singles out four overarching thematic areas related to preconceptions about subject formation, and what it means to *be* LGBTQIA+. According to Gröndahl’s findings, to be conceived of as credible the SOGIE claimant must be able to account for their own assumed shameful process of becoming in a way recognisable to the Swedish adjudicators carrying out the credibility assessment. Lacking any recognisable feelings of negative difference, or simply and positively asserting to having been ‘born this way’ will instead be understood by the adjudicator to disprove the claimant’s avowed group membership as well as their SOGIE asylum claim (2020:10-11). As such, Gröndahl’s analysis show that the SOGIE asylum process in Sweden is largely de-sexualised and tainted by an essentialised and common-sensical understanding of what it means to *be* LGBTQIA+, based on understandings of a shared inner processes of *becoming* LGBTQIA+ in a specific – but assumed universal – way that is understood to always be shaped by feelings of negative difference.

### 2.3 Bisexual asylum and boundary-crossing

Despite a growing Swedish academic interest in the asylum determination process of various sexual minority groups (see for instance Thorburn & Wikström 2016, Hedlund & Wimark 2018, Liinason 2020, Gröndahl 2020, Ouis 2021), there exists no representative, nor segregated statistics on SOGIE asylum claims in Sweden, and therefore, there is no way of knowing the proportion and acceptance/rejection rates of SOGIE asylum claims in general, nor in relation to distinct SOGIE groups such as bisexuals. When it comes to international empirical data and research on the specificities of bisexual asylum claims, the output is, also, rather meagre (Klesse 2021:115). Bisexuality is often only “nominally invoked” (Klesse 2021:115) in research into queer migration and asylum. For instance, several researchers and theorists have suggested that bisexual asylum claimants *may* be particularly vulnerable to refusals on injunctions to so-called ‘discretion reasoning’ (Klesse 2021:122, Powell 2020: 149) – i.e. reasoning that queer people can avoid persecution by being discreet about their sexuality. As such, it has been suggested that bisexual claimants *may* be rejected as they *may* be seen by adjudicators as “equally competent” at handling cross-sex and same-sex relations and might, therefore, be expected to “just choose” to live discreetly by acting straight (Sin 2015:431). To my knowledge no previous research has actually investigated this hypothesis. It has also been suggested in previous research that bisexual claimants may be rejected because they are assumed to merely be in a phase, as indicated by their previously heterosexual relationships and/or that they have children (Peyghambarzadeh 2021:28). Both these types of reasoning could, of course, be used to reject *all* groups of queer asylum claimants.

A few single-focus bisexual studies do, however, exist (Rehaag 2008, Rehaag 2009, Sin 2015, Gross 2018). One such study is Sean Rehaag’s (2009) analysis of refugee claims based on bisexuality in Canada, the US and Australia. In the study Rehaag (2009:421) analyses published decisions in asylum cases as well as different types of statistical data available in the three countries. When examined together Rehaag’s research indicated that bisexuals generally had a lower success rate in asylum cases when compared to their homosexual counterparts, indicating a difference of between 25-39% approvals in total for bisexual asylum claims compared to 49-58% for homosexual claims in Canada, 5% compared to 17% in the US, and 0% compared to 22% in Australia (421). The conclusions drawn from this data is that; (a) bisexuality is largely absent in the receiving nations’ refugee jurisprudence, which means that bisexuals might face more difficulties claiming their rights, resulting in; (b) that

bisexuals generally face extremely low refugee claim success rates (420). Rehaag attributes these conclusions to a general *bisexual invisibility* stemming from the pervasive and essential understanding of human sexuality as an either-or phenomenon, meaning that one is either naturally heterosexual or naturally homosexual (424) – a belief which is manifested in several of the published case decisions examined in Rehaag’s 2009 (425-8) study and also found in all the other studies on bisexual asylum claims (Rehaag 2008, Sin 2015, Gross 2018).

Side-stepping the context of asylum for a moment to give a brief background of broader bisexuality research; writing extensively about the topic of bisexual invisibility in legal and political discourse, Kenji Yoshino (2000) explains bisexual invisibility to be a phenomenon not of bisexual absence or non-existence, but one of social and political erasure (2000:361). Different from the type of moralising attempts at erasure that affects all public inferences to sexuality to varying degrees, Yoshino’s research shows that bisexuality face extensive erasure in everything from legal and academic texts to news and popular media, even in comparison to homosexuality (368-9). According to Yoshino’s hypothesis, bisexuality face erasure because of a widespread, but mostly unconscious, assumption among the dominant sexual identity groups in which he includes heterosexuals and homosexual, that bisexual visibility would constitute a normative challenge to both hetero- and homonormative interests of identity and legitimacy which are predicated on the ‘naturalness’ of the sexual binary. While bisexuality has been largely left out of the analysis of the sexual binary in most of the canonised works of queer theory (Alexander & Anderlini-D’Onofrio 2012:5), bisexuality theorists have, however, argued that bisexuality, indeed, has the potential to “disrupt the positioning of homosexuality and heterosexuality as polar opposites and trouble the persistence of sexual binaries because of its sexual fluidity” (Sin 2015:415). Taking these critical understandings of bisexuality into account in his research, Sin Ray (2015), then, argues that it becomes important to ask *how* social institutions end up disciplining this type of (bi)sexual fluidity into normativity, and thus erasure (416), which in asylum or immigration processing might lead to a higher risk of rejection.

So, returning to the context of migration and asylum, to answer this question Sin ventures to examine how bisexuals has fared in immigration policy contexts over time in Canada and the United States, where normative assumptions about sexual binaries long has held exclusionary, as well as inclusionary, decisive powers. Contrary to the hopes of bisexuality theorists, but still strengthening Yoshino’s hypothesis, Sin’s results reveal that bisexual immigrants had utterly failed at dissolving the sexual binaries that informed immigration policy and practice

in these two countries (Sin 2015:422). Instead, the sexual fluidity of bisexuals got co-opted by the institutional logic of exclusion, and helped to maintain, rather than question, the legitimacy of sexual binaries. Shedding some light on why this seemed to be the case Sin argued that

the ambiguity of sexual fluidity provide[d] an opportunity for immigration authorities to strategically shift between coupling and decoupling bisexuality with homosexuality in order to justify ongoing exclusionary practices (422).

The shift between coupling and decoupling that Sin refers to corresponds to specific legal shifts related to the status of homosexuality that took place in North American immigration policy in the last half decade. By the adherence to the “one-drop rule of homosexuality” (425) of early and mid-twentieth century immigration legislation banning homosexuals from entry, bisexuals were according to Sin’s findings considered “gay enough” and, therefore, got coupled with homosexuals for exclusion. As such the institutionalised one-drop rule of sexuality, which predicated sexual identity on sexual behaviour, effectively curtailed the disruptive potential represented by bisexuals (425). After the explicit ban on homosexuals in North American immigration policies was removed, and the refugee definitions subsequently was expanded to include sexual minorities in the 1990s this coupling of bisexuals with homosexuals, however, ended as bisexual asylum seekers were no longer seen as ‘gay enough’, but rather ‘straight enough’ to evade persecution (431). In the light of Sin’s findings, the sexual fluidity of bisexual asylum claims can, thus, be understood to continuously having been disciplined, and thus erased, through its forced complicity in the reinforcement of the hetero/homo divide as well as the legitimacy of exclusionary practices of immigration policy.

In investigating the particular exclusionary logics that bisexual asylum claimants face empirical researchers such as Sin (2015) and Rehaag (2008, 2009) have mostly scrutinised the hetero- and homonormative legal yardsticks against which bisexual refugees are measured. However, as argued by Eithne Luibhéid (2008), who is a distinguished researcher in the field of queer migration, sexuality in migratory contexts must always be viewed as constituted “within multiple, intersecting relations of power, including race, ethnicity, gender, class, citizenship status, and geopolitical location” (2008:170). With this in mind, seemingly less attention has been paid to these other constitutional aspects of sexuality and how they might interact with the overarching logics of national border practices and the national regimes of inclusion/exclusion within which the legal and normative yardsticks found in the previous research have been shaped. The theoretical aim of my study is, therefore, to more explicitly

interrogate the ways in which both hetero- and homonormative notions of sexuality always intersect with other socially differentiating power structures that together assemble and strengthen the exclusionary framework and logic of national borders – often, as it appears, to the particular detriment of bisexual asylum claimants.

### 3. Theoretical framework

In order to interrogate how the assessment of ‘sexual orientation’ can become an intersectional extension to the framework of national borders it becomes imperative to first understand what a border *is*, and more importantly, what a border *does*. Therefore, drawing on theorisations from the field of critical border studies, I will briefly sketch out a theory of borders. After this introduction, I turn to interventions offered by feminist and postcolonial scholars highlighting the intersectionality of borders in order to create a specific framework for theorising how notions of sexuality, when situated *within* the framework of national borders and asylum, construct and constrain (bi)sexuality within multiple intersecting relations of power.

#### 3.2 Borders

A cornerstone of the current organisation of the world is that of nation states (Sharma 2015:107) and the generally hailed notion that the nation as a legal and socio-political entity holds the right to sovereignty – a right which is not to be violated by external actors i.e. non-nationals (Thorburn & Wikström 2016:7). The notion of national sovereignty, and the territorial aspect of its inviolability, is, arguably, what is most often imagined and illustrated through lines – *borders* – on maps. As such national borders can be understood as the imagined boundaries of a nation and the territorial demarcations of the nation’s claim to sovereignty. In the ‘real world’, however, these national borders are seldom present in the form of a visible boundary. The border and sovereignty of a nation is, instead, manifested and upheld through different types of territorial enforcement measures such as border patrols, entry visa and passport requirements for individual entering national territories, or constructed boundaries like walls or fences, all meant to restrict and/or exclude, non-national border-crossers. Social control over different peoples’ mobility across national territories, and the physical restriction and/or social exclusion of unwanted non-nationals can, therefore, be seen as central to the practice and function of borders (Balibar 2004:23).



Fundamentally, then, what national borders do is to create a social distinction between people, marking them as either nationals or non-nationals (Anderson & Hughes 2015:1). This social distinction is 'materialised' as those deemed 'nationals' of a particular nation state are allowed more or less unrestricted territorial access and are, furthermore, offered a set of exclusive rights, guaranteed by the nation state, through civic inclusion into the particular national community, while those deemed 'non-nationals' are denied the same rights and gets expelled or sees their movement restricted. Globally this distinction of peoples, thus, legitimates the differential treatment of individuals based upon one's status in relation to a particular nation state (Balibar 2004:23). According to Nandita Sharma (2015), the hegemonic organisation of the global community of people, divided into nations that are separated by borders, therefore, "has embedded within it a set of discriminatory practices against 'non-nationals' that are regarded as legal" (Sharma 2015:98). The legitimacy of these discriminatory practices stem, precisely, from the hegemonic narrative of a national social contract which relies on a naturalised understandings of national borders (Yuval-Davis 2011:153), rather than an understanding of borders as a social phenomenon.

National borders, and their function of differentiating people can in part be seen to have emerged in order to safeguard the territorial sovereignty and rights of groups/collectives, that have later come to be defined as nationals and/or citizens. As such, borders, and their corresponding national collectives, were 'traditionally' imagined as spatially bound (Yuval-Davis 2011:96). However, as highlighted by Etienne Balibar (2004:1), the theoretical conceptualisation of borders has undergone a profound change. Borders are no longer understood as merely "situated at the outer limits of territories". Instead, Balibar argues, borders "are dispersed a little everywhere, wherever the movement of information, people, and things is happening and is controlled" (2004:1). As such borders can be conceptualised as something more similar to a dispersed net of simultaneous inclusion and exclusion.

Although emerging from different geopolitical contexts, Balibar's theorisation of borders as *dispersed* is somewhat similar to Suvendrini Perera's concept of the 'borderscape' (in Mezzadra & Neilson 2013:12) which tries to conceptualise the "simultaneous expansion and contraction of political space" in relation to its corresponding territorial place, and the people who reside within it. This type of dispersion, and simultaneous expansion and contraction of national borders can, for instance, be seen in the political extension of certain rights such as marriage equality to same-sex couples, explicitly extending the political community, or space, of a nation to include (some) sexual minorities. At the same time, however, the political space

of the very same nation might contract, as racialised and/or indigenous groups are discriminated against in various ways which effectively excludes them from participating on equal terms in the national political community. Viewed through an intersectional perspective, this means that certain groups and individuals at the intersection of these different groups will be simultaneously included and excluded from the political community, or space, of a nation. Attempting to capture this dynamic social relationship, borders can now be understood as a set of “practices and discourses that ‘spread’ into the whole of society” (Paasi, in Mezzadra & Neilson 2013:13) differentiating people in a myriad of ways in relation to the concept of the nation. What these types of social conceptualisations of borders attempts to highlight is a more conflictual notion of borders understood as several continuous and shifting social, or *discursive* struggles over “the opposite movements of inclusion and exclusion” (Balibar 2004:2-4) of groups, or even individuals, that happens simultaneously in relation to the idea of the nation.

Through understanding borders in this ways, as discursive struggles over inclusion and exclusion which brings continuously shifting and highly differentiating material and social consequence, the ‘traditional’ understanding of borders as devices that serves to merely exclude non-nationals, or non-citizens, become lacking as it does not grasp the flexibility of borders as an institution (Mezzadra & Neilson 2013:7, 19). According to Sandro Mezzadra and Brett Neilson, borders should, instead, be seen equally as “devices of inclusion that select and filter people [...] in ways no less violent than those deployed in exclusionary measures” (2013:7). Investigating borders mainly in relation to labour migration, Mezzadra and Neilson manages to show how contemporary border regimes function not only to exclude migrants, but rather to filter, govern and *multiply* labouring *subjects* in relation to the needs of the neo-liberal capitalist state, a filtering process which in different ways leads to highly gendered patterns of migration (104-105). However, as the authors observe, the logic of this type of multiplying border regime does not only relate to labour migration but “increasingly shape the transformation of asylum and the mobility of refugees as well” (174), which therefore, “has prompted innovation in governmental modes of administration, making border policing a more complex polymorphous, and heterogenous affair” (187).

The understandings presented by Balibar’s conceptualisation of borders as dispersed social, and discursive struggles, and Mezzadra and Neilson’s understandings of borders as ‘filtering devices’ of *both* inclusion and exclusion that engenders, or multiplies, ‘its subjects’ in relation to the situated and contextual needs and wishes of the nation, are both highly relevant for this

thesis. With these notions of borders in mind, I will now proceed to investigate three discursive struggles, or ‘filtering devices’ that, in different ways, come to play a big role in asylum determination processes of bisexual claimants, by multiplying, filtering and governing different subjects in relation to Sweden and its borders and, thereby, aiding the decisions regarding whom to include or exclude. The first of these three is concerned with humanitarian definitions of ‘the refugee’ and will be explored below in **3.2.1 Refugee status: the sexual humanitarian border**. The second is concerned with transnational relationships between the so-called ‘West’ and ‘the Muslim world’ and will be developed in **3.2.2 Queer liberation: the homonationalist border**. Lastly, in **Hetero/homonormativity: the epistemological border**, I explore norms about sexuality itself, and how these norms have emerged in order to include and exclude different groups and people in relation to the concept of the nation.

### 3.2.1 Refugee status: the sexual humanitarian border

Human rights discourse of asylum, or refugee humanitarianism, is often understood as a challenge to state sovereignty and the overall concept of national borders because it is “purportedly motivated by a sense of obligation and responsibility to ‘humanity’ that goes beyond the responsibility one feels for fellow citizens” (Nyers 2006:124). However, as Didier Bigo argues, “discourses concerning the human rights of asylum seekers are de facto part of a [border] process if they play the game of differentiation between genuine asylum seekers and illegal migrants, helping the first by condemning the second and justifying border controls” (Bigo in Mezzadra & Neilson 2013:187). Similar to Mezzadra & Neilson’s argument about borders, what Bigo highlights here is, precisely, how humanitarian discourse multiplies and filters the very subjects that it concerns for either inclusion or exclusion, by marking and differentiating subjects as either genuine asylum seekers or as illegal migrants.

Differentiation of people can be seen as a fundamental part of humanitarian discourse on asylum, and it originates in the very definition of the status of refugees, as it was declared by the UNHCR, which defines the refugee as an individual fearing or having experienced persecution because of their “race, religion, nationality, membership of a particular social group or political opinion” (UNHCR 2011[1951]:3). As such the humanitarian discourse on ‘the refugee’ effectively excludes subjects experiencing other types of human insecurity such as dispossession and poverty (Nyers 2006:130). Furthermore, the refugee status, and its accompanying right to international humanitarian protection, is restricted to individuals who have managed to leave their country of nationality or residency (UNHCR 2011[1951]:3) – a requirement which respects notions of national sovereignty and leads to differential access to

the status along contextual as well as intersectional lines such as age, gender, class and able-bodiedness. For long this definition has meant that refugees were considered “male almost by default” (Valji et al. 2003:61). As such, human rights discourse on asylum has, and continues to, discursively bar many – by definition – from ‘rightfully’ obtaining refugee status. As put by Peter Nyers

What emerges from this definition is a type of human that is not so much a universal as a restrictive category that can be employed to exclude, to produce difference and to reinforce social and political hierarchies (2006:xvii).

Moreover, according to Judith Butler (2016), to recognise someone as a specific type of subject, such as a refugee, is never a neutral or universal act but is “dependent on norms that facilitate that recognition” (2016:4). As such, the recognition of a refugee is not an inherent possibility of a persecuted ‘being’ but is contingent upon *recognisability*; a term which refers to those broader normative conditions that act upon and craft a ‘being’ into a subject that is recognisable to others (5). In relation to the refugee subject, this means that recognition of an individual as a ‘refugee’ is contingent – beyond those conditions stipulated by the refugee definition itself – also, on the norms and logics set up by humanitarian discourse about ‘the refugee’.

As Peter Nyers (2006) has shown through his influential investigation of the ‘refugee figure’, the humanitarian understanding of the ‘refugee’ is steeped in discourse on ‘exceptional suffering’. As such, both the ‘refugee’ and the ‘refugee phenomenon’ gets constructed as a ‘crisis’ in binary relation to ‘normalcy’. The humanitarian solution to the ‘refugee crisis’, therefore, becomes focused on returning the suffering victims (ie. the refugees) into the fold of ‘normalcy’ through (re)securing nation state protection (2006:42) – thus, inadvertently lending legitimacy to the “*national* order of things” (Malkki, in Nyers 2006:9 emphasis added). Furthermore, as argued by Calogero Giametta (2016), the ‘logic of suffering’ in humanitarian asylum discourse about refugees creates a moral economy centred on understandings of ‘proper’ victimhood as exceptional, and often individual. According to Giametta, this framing of victimhood emerges from a “humanitarian logic that posits the suffering body as a common denominator of the human condition” (57). What this means in the context of asylum, as I argue above, is that only certain ‘exceptionalised’ types of suffering leads to recognition of victimhood in the humanitarian moral economy, and thus the possibility of being afforded refugee status, while the majority of human suffering is viewed as a normal aspect of being human. As such, the logic of normative suffering can become a

“legitimizing tool for the control of undesirable migrant groups” (57), and a ‘device’ for filtering out subjects for exclusion.

In the context of asylum seeking related to ‘sexual orientation’ this has given rise to what Giametta refers to as *sexual humanitarianism* (57) which, while supposedly aiming to protect all individual vulnerable to persecution due to their sexual orientation, only succeeds in protecting those groups and individuals recognised as *exceptionally* vulnerable, while ‘the rest’ can be recognised as (at best?) not vulnerable enough, or (more often) as ‘bogus’ refugees, meaning ‘economic migrants’ disguised as queers (61). Of course, these types of subject categorisations do not rely on ‘true’ pre-existing identities but are produced by the immigration officers very search for them (Hucke 2021:22). Herein, Giametta argues, “the perversity of the logic of sexual humanitarianism is apparent; namely, the sudden shift from a discourse of social protection to the practice of border control” (58).

As such, the differential distribution of recognition and exceptional victimhood afforded by sexual humanitarianism can here be seen to lead to a multiplication of border subjects, and also appears to have what Mezzadra and Neilson calls a “stratifying capacity” (2013:7) in that the subjects that are produced by sexual humanitarianism are positioned in a hierarchal relation with regards to inclusion. As such, sexual humanitarianism can be seen as a dispersed border that includes and excludes, by differentially distributing recognition of the refugee status, thereby producing different and hierarchically positioned subjects that are filtered for either inclusion or exclusion, such as the exceptionally suffering sexual minority individual and ‘the non-exceptional rest’, as well as the previously mentioned ‘bogus’ queer and/or the economic migrant. Here it is important to mention, again, that by sexual humanitarian recognition of subjects I do not mean to imply that only those subjects that are *recognised* can, or does, exist, nor that recognition necessarily corresponds to the lived subjectivity of the ‘being’ in question. What I, instead, want to show is how sexual humanitarian discourse functions like a border that filters subjects for both inclusion and exclusion, through deploying a dispersed set of definitions and normative logics controlling the conditions of refugee recognisability.

### 3.2.2 Queer liberation: the homonationalist border

In recent decades, the political space, or ‘borderscape’ to borrow Perera’s concept (in Mezzadra & Neilson 2013:12), of Sweden can be seen to have expanded through the domestic political recognition, legislative equal inclusion, and relatively widespread social acceptance, of (some) queer people in Sweden. This inclusion of queer people in the political community

of Sweden must, arguably, be acknowledge as the fruits of a long and tireless struggle for equality of queer social and political activist (Norrhem et al. 2015:176). In relation to the arena of transnational political relations, however, the expansion of the political space, or borders, of Sweden must, also, be understood in relation to a broader ongoing process known as *homonationalism* (Puar 2017[2007]).

Coined in 2007 by Jasbir Puar, homonationalism refers to a process whereby a nation “comes to believe in its own superiority and its own singularity” (Puar 2017:5) through an identification with a specific ‘narrative of excellence’ that has emerged across the so-called ‘West’ in relation to Western nations’ support of ‘queer-friendly values’. However, as argued by Momin Rahman (2014), these homonationalist narratives of Western exceptional queer-friendliness are not merely self-referential but must be understood as the result of a transnational political triangulation of identitarian values between Western nations and, mainly, Muslim nations (2014:275), in-between whom so-called ‘queer-friendly values’ have become mobilised as a political wedge, or a bat. Transnationally speaking then, the legal inclusion of (some) queers has become a marker that discursively differentiate, or borders, between the self-proclaimed queer-friendly West, and the imagined queer-hostile Muslim world’, creating sentiments of ‘us’ and ‘them’ (Puar 2017:43). In the West, this differentiation has fuelled a sense of Western superiority and has, furthermore, legitimised the discursive (and material) exclusion of Muslims from Western nations (2017:43), as all Muslim, according to homonationalist imaginaries, are anti-queer. As such, homonationalist discourse can be viewed as a discursive border struggle, and a filtering device, simultaneously concerned with the (symbolic) national inclusion of queer people, and the (physical) national exclusion of Muslims.

Moreover, as highlighted by Verona Huckle (2021), in relation to the context of ‘sexual orientation’ asylum determinations, Western homonationalist discourse tend to “frame the migration of queer subjects as one from oppression to liberation” (2021:25), describing the West as a safe haven where queer people can finally be free(d) from the shackling threats of ever-looming hate and violence. The inclusion and liberation offered by Western homonationalist discourse is, however, generally conditioned upon the adherence of these migrating queer subjects to highly Westernised and normative notions of both queerness and liberation. As such, rather than simply accepting and welcoming all queer asylum claimants, homonationalist discourse can be seen to engender, or foster, highly normative queer subjects (Puar 2017:51), generally meaning cis-gendered, monogamous, and normatively ‘out’ queer

subjects, while all other less normative queer subjects remain disregarded, and, thus, get filtered out for exclusion.

Furthermore, as highlighted by Puar (2017:41), the specific to-be-liberated queer subject that is engendered for inclusion through homonationalist discourse can be viewed as directly related to Islamophobic, and anti-terrorist sentiments, as the broader ongoing process of homonationalist itself was largely sparked by the 9/11 attacks in the US. As such, the normative queer subjects of homonationalist discourse, is generally imagined as the quintessential opposite to the Western portrayal of Muslims, and the Islamic terrorist in particular, whom homonationalism discourse imagines as a distinctly *sexual* Other – a homophobic, polygamous, ‘failed heterosexual’ (25). This juxtaposition of the homonationalist ‘normative queer subject’ to ‘Muslims’, therefore, produce all Muslim subjects as, if not terrorists, then as essentially heterosexual. As such homonationalist discourse can be seen to multiply and filter subject for inclusion, or (mostly) exclusion, along both normatively sexualised and racist/racialised lines simultaneously.

In the light of these Western homonationalist discursive narratives, the incorporation of ‘sexuality orientation’ in Swedish asylum law must, therefore, not be read, solely, as an expansion of the political borders of Sweden that filters out queer people for inclusion into the national community. This homonationalist discursive struggle over inclusion and exclusion must, arguably, be understood, simultaneously, as a new form of Western political and normative governance of the non-national to-be-liberated queer refugee subjects at the border, and as a device for symbolically and physically filtering out Muslims for exclusion from the Swedish national political community. As such, similar to the sexual humanitarian discursive border the homonationalist border, therefore too, produce a stratified variety of sexual subjects as the legal recognition and inclusion of ‘to-be-liberated’ queer refugee subjects can be seen as contingent on the rejection and exclusion of those that challenge the homonational narratives, such as Muslims and/or those assumed to be heterosexual. As such, homonationalist queer inclusion must be understood to also create exclusion, and can, therefore, be seen to exist on “a continuum with exclusion, rather than in opposition to it” (Mezzadra & Neilson 2013:7).

### 3.2.3 Hetero/homonormativity: the epistemological border

So why, then, are bisexual asylum claimants, more often than not, found on the exclusion-end of the continuum of inclusion/exclusion, seemingly ‘not worthy’ of neither the humanitarian nor homonationalist so-called queer-inclusive protection of Western nation states? To

understand this conundrum, it now becomes imperative to, lastly, theorise the *epistemological border* of sexuality itself, and how the boundaries between normative and non-normative sexuality gets constructed in the context of national bordering.

When I talk about sexuality as constructed, I draw on queer theoretical arguments that refuses any notion of essence or transnational and historical universality (Luibhéid 2015:130), and instead sees sexuality, and by extension sexual identities, as continuously produced through a variety of social and discursive practices, shaped within different and intersectional relations of power. The distinction between *normative* and *non-normative* sexualities are, therefore, not a matter of an essential or fixed hierarchal difference, but instead a situated and temporal relationship of hegemonic dominance and subordination which could be shifted. As Eithne Luibhéid argues, sexuality and differential and hierarchal sexual categorisations must always be seen as social configurations that are

burdened by legacies that must be interrogated, do not map neatly across time and space, and become transformed through circulation within specific, unequally situated local, regional, national, and transnational circuits (Luibhéid 2008:170).

As such, the notions of normative and non-normative sexuality must be analysed as an “axis of power in its own right” (Luibhéid 2015:130). This line of argument mirrors Michel Foucault’s influential work on the history of sexuality which highlights how Western knowledge, or shall I say *epistemology*, about sexuality emerged discursively largely through the formation of the nation state and in relation to its economic and political will to govern the ‘national population’ (Foucault 2002:50). According to this view, which have been explored further by feminist postcolonial theorists such as Nira Yuval-Davis (1997), heterosexuality as a distinct sexual orientation was socially constructed in large part through discursive processes of nation-building and became the favoured norm due to its capacity for biological reproduction. As such, *heteronormativity* emerged as a hegemonic and heavily gendered social pattern that, when channelled into patriarchal forms of marriage and family-life, was meant to uphold the interests of the dominant class and racial group of the nation (Luibhéid 2015:130).

By contrast, *non-normative* and/or *queer* sexuality (i.e. everything that is not heterosexuality) became the shunned sexual anti-theses of the nation. Notions of both ‘normative’ and ‘non-normative’ sexualities can, therefore, be said to have materialised in relation to each other, to act as important devices for organising the national bordering processes of (classicist and



racialised) inclusion/exclusion, by functioning as a measure of both class and racial difference (Loomba 2005:157). For these reasons, discursive border struggles regarding asylum and immigration processes must be read as, always already, burdened with the normative *sexual* anxieties of the nation state, or its dominant groups, regarding the control over the national community (Luibhéid 2015:129, Sharma 2015:103).

However, as evidenced by both sexual humanitarian and homonationalist discourse, these sexualised border struggles appear to have become somewhat shifted, as non-national queer subjects are now explicitly welcomed (albeit under highly restrictive conditions). Luibhéid attribute this shift to the current context of neoliberal globalisation in which sexual norms have become partly reconfigured and “harnessed to serve the state and nation in new ways” (Luibhéid 2015:128). Similarly, Lisa Duggan (2003:50) identifies this neoliberal shift regarding sexual norms as part of a ‘new’ *homonormativity*, which, however, does not displace, nor contest, dominant heteronormative discourse and institutions that position and appoint sexual subjects as normative or non-normative. In fact, Duggan argues, homonormativity “upholds and sustains them” (50). What is ‘new’ about homonormativity, as compared to heteronormativity, is mostly its affiliation with discourse on sexual ‘diversity’ and ‘equality’ (44). According to Duggan, this affiliation is, however, only rhetoric and is centred on queer assimilationism as the appropriate political strategy for equality (44). Homonormativity should, therefore, not be seen as replacing heteronormativity as a hegemonic social pattern, but as an emergent call for queer ‘equal inclusion’ within the already established white heteronormative institutions of (national) society. As such, homonormativity produces a sense of acceptance, perhaps even ‘normality’, and promises a type of sexual citizenship (Peyghambarzadeh 2021:22, Monro 2015:142), for the “politically mainstream portions of the gay population” (Duggan 2003:44) who easily, and willingly, assimilate with the white middle-class heteronormative sexual norms and assumptions that ‘serve the state and nation’. Homonormativity can, therefore, be seen to essentially underpin homonationalist discourse on the normative queer.

Through the lens of the nation-state, the normative/non-normative distinction marking the hetero/homo divide should, therefore, no longer be viewed as markers of a ‘true’ opposition. Instead, the normative/non-normative sexual divide has shifted, as homonormativity along with its close companion homonationalism, has re-Othered those disenfranchised, racialised and/or radical queers who are either unable or unwilling to conform to the normatively prescribed white, middle-class notions of ‘respectable’ sexualities and identities that ‘equal

inclusion' in Western nations is modelled upon (Monro 2015:142). As such, hetero/homonormativity can be viewed as a dispersed border that pose a problem for queer nationals and asylum claimants alike, who become sexually marginalised and/or risk deportation, if they challenge the hetero/homonormative notions of sexuality, and how to experience and organise it.

This type of sexual marginalisation is what Kenji Yoshino (2000) identifies in his theorisation of bisexual erasure, that I mentioned in the section on previous bisexuality research (**2.3 Bisexual asylum and boundary-crossing**). Describing this marginalisation and/or erasure as, first and foremost, *epistemic* (2000:362), Yoshino argues that bisexuals are symbolically excluded from society as the visible existence and mainstream acknowledgement of bisexuals would lay bare a different way of *understanding* or *knowing* human sexuality which would trouble the hegemonic hetero/homonormative ontological assumptions about sexuality as innate and unchanging. As such, by troubling this assumption bisexuals pose a challenge to the interests of both the heterosexual mainstream and the dominant factions of the queer community, by challenging the legitimacy of their normative privilege in society, or as I have argued, in relation to the nation state.

According to Yoshino, the symbolic exclusion, or erasure, of bisexuals is upheld epistemically largely though what he calls the 'immutability defence' (Yoshino 2000:362) which I briefly mentioned in the introductory parts of this thesis (see **2.2 SOGIE asylum determination processes**). Yoshino uses the term to point to the shared investment of both heterosexual and homosexuals in defending the narrative of sexuality as an innate and unchangeable, or immutable, trait. For heterosexuals this investment comes from their interest in further strengthening their privileged position in society currently secured by heteronormativity. For queers the immutability defence has been mobilised as a homonormative call for legitimacy, legal equality, and social inclusion, though what Yoshino describes as the "exonerative force [...] of the widely held belief that it is abhorrent to penalize individuals for matters beyond their control" (405). Bisexuals, however, trouble this type of 'ontological defence' no matter whether bisexuality, too, is viewed as innate and immutable, since the admitted existence of bisexuality inevitably makes the static and innate identities of heterosexuals and homosexuals impossible to prove (405). As such, Yoshino argues, bisexuals/bisexuality is discursively, and/or epistemically, marginalised and denied legitimacy within both hetero- and homonormative contexts, by being either outright denied,

viewed as a phase, or by being heavily stigmatised and, thereby, disciplined into invisibility (395-6).

As previous research has shown, while having become increasingly criticised (Rehaag 2009:419, Akin 2017:459) this immutability defence and truth narrative has figured heavily in asylum determination processes related to the asylum grounds 'sexual orientation' by offering a definition for SOGIE membership of a 'particular social group' (Rehaag 2009:420). As such, the 'sexual orientation' asylum determination process can be viewed as an *epistemological* power/knowledge regime about sexuality that produces a specific ontological narrative about sexuality through the very assessment of 'sexual orientation' asylum claims. Using Trish Luker's concept, the asylum determination process related to the asylum ground 'sexual orientation' can, therefore, be said to produce its own self-fulfilling "truth effects" (Luker 2013:507), through utilising, and reenforcing, a preconceived epistemology of sexuality as innate and static when assessing the claimant's sexual orientations – "rather than using facts in the form of 'evidence'" (507) which in the case of bisexuals might often suggest something different.

As such, these 'truth effect' does not only produce an epistemology of sexuality as immutable. Additionally, these 'truths' about sexuality produce a reality where the only sexual subjects, or subjectivities, that can truly exist are innate and static. Those queer asylum subjects who fail to narrate this 'truth' about their own sexuality will, therefore, become unrecognisable as sexual subjects and their asylum claims will likely be assessed as illegitimate. From a bisexual, or wider sexually fluid 'perspective' it, thus, becomes increasingly clear that the dominant notion of sexuality that is applied during 'sexual orientation' asylum determination process can, in itself, be viewed as an epistemological border, and a device that ultimately filter out bisexuals and/or sexually fluid subjects for exclusion from the national community, not only on an epistemological level but also on a physically level through deportation by rendering all sexually fluid asylum subjects unrecognisable and non-credible in terms of their sexualities, which thereby renders them illegitimate as queer refugees. So, to conclude, hetero- and homonormative notions about sexuality can be viewed as a border struggle and a filtering device that both multiplies and governs sexual/racialised subjects in relation to the nation, and additionally, as an epistemological filtering device that produces both recognisable and unrecognisable sexual subjects along the discursive axis of the immutability narrative.

Lastly, despite my textual separation of the different discursive border struggles that I have presented in this theoretical framework (the sexual humanitarian border, the homonationalist border and the hetero/homonormative border) I want to acknowledge that the discursive struggles regarding all of these are largely interlinked and, furthermore, emphasise that heteronormative understandings of sexuality can be seen as essential to all three. A heteronormative assumption about sexuality is not only present at the heart of homonormativity, but it also bleeds into the previously mentioned sexual humanitarian notion of the normative suffering of queer people. Moreover, it must, arguably, be seen as fundamental to the Western homonationalist narrative of moral superiority regarding the so-called friendly attitudes towards those that are thought of as ‘sexual minorities’. As such, the separation of these discursive struggles in this thesis has been done mostly for the sake of achieving a theoretical and textual structure. This theoretical and textual structure has also guided me in my analytical work with the empirical material, and will, therefore, return in chapter **5. Analysis**.

Before moving on to the analysis, however, in the next chapter, **4. Methodology**, I develop the methodology of this thesis by presenting a brief introduction to the poststructural view of knowledge which underpins my research project. Thereafter, before jumping to the analysis, I present the most central aspects of my analytical method, the selection of empirical material and sampling, as well as a brief discussion regarding ethical consideration and self-reflexivity.

## **4. Methodology**

A study’s methodology generally reflects what can be referred to as “the ‘data-theory-method triangle” (Boellstorff 2010:216). In practice, this means that there must be a convergence when it comes to epistemology between the different parts of the ‘research puzzle’ that, when put together, makes up the whole study (Mason 2018:189-190). The data-theory-method triangle of my study, meaning my methodological points of departure, are all rooted in a poststructural epistemology, encompassing my research questions, theoretical choices, my choices concerning data, and the method I have used to analyse it; discourse theory (which will be presented on the next page).

The poststructural epistemology is a social constructivist one, meaning that reality is seen as socially produced. According to poststructuralism, our access to reality is always mediated through language, through which we create and express representations (knowledge) of the

world, and our place within it. As such, knowledge and representations are never mere reflections of an already existing external reality, but instead contribute towards creating it (Jørgensen & Phillips 2002:8). Reality, and our knowledge of it, is therefore fundamentally dependent on social processes and linguistic categorisations, or what in a poststructural tradition is often referred to as *discourse* (2002:5). With this view of knowledge/reality, a poststructuralist epistemological approach is fundamentally concerned with exploring, troubling and deconstructing “the ways in which the real is constituted” (Davies & Gannon 2011:314). As such, a poststructuralist research approach challenges the notion that reality (which includes phenomena like sexual orientations, bisexuality and borders), and our knowledge of it, is universal, and instead engages with an “unstable or flexible notion” (Leavy & Harris 2019:61) of meaning and ‘truth’. With this type of epistemological view, this study approach both bisexuality (and all other sexual orientations) and borders as socially produced phenomena.

In relation to this epistemological assumption it, therefore, becomes important to acknowledge that I too, through producing meaning and knowledge about this topic, play an active role in constructing the reality of the phenomena I am researching in every step of the process (Davies & Gannon 2005:321), when formulating, theorising, and drawing conclusions about bisexuality and borders. Therefore, the knowledge that is produced in this study can never be fully separated from me as a researcher and the methodological choices I have made as these choices, inevitably, influence what knowledge that will be produced.

#### 4.1 Method: Discourse theory

‘Discourse’ is a term that is highly contested, and so too are the approaches to discourse analysis (Hogan 2003:1, Howarth 2015:4). In this study the term ‘discourse’ refers to the systematic ways that we make sense of reality, through “forms of knowledge or powerful sets of assumptions, expectations and explanations governing mainstream social and cultural practices” (Baxter 2003:7). As such, I understand the term discourse not merely to address concepts and linguistic meanings, but rather how linguistic meaning and social practices are entirely interrelated (Howarth 2015:23). Following this understanding, my method of analysis is inspired by the political philosophers Ernesto Laclau and Chantal Mouffe’s *discourse theory*. However, as Laclau and Mouffe developed their discourse theory mostly through their engaged critique of Marxism (Jørgensen & Phillips 2002) my rendition and practical implementation of discourse theory is drawn and combined from Marianne Jørgensen and

Louise Phillips' (2002), Niels Åkerstrøm's (2003) and David Howarth's (2015) methodological discussions of discourse theory and its analytical tools.

Whether through speech, writing or non-verbal actions, discourse theory defines discourse as the outcome of an *articulatory practice* that links together elements, both social and material (linguistic and non-linguistic) into a relational system of meaning (Howarth 2015:5). Discourse, then, is not itself a practice, and possess no agency of its own, but is the result of the accumulation of social practice (Åkerstrøm 2003:50). Discourse theory jumps off from structuralist linguistics which understands language as a fixed system of meaning that ties concepts to their linguistic signifiers (signs/words). Discourse theory, however, argues that relationships between signifiers (signs/words) and the signified (meanings/concepts) can never be entirely fixed. Instead, the relationship between words and their corresponding conceptual meaning can only ever be partially and temporarily fixed at best (Howarth 2015:5). This partial and temporary fixation of meaning is what is understood as discourse (Howarth 2015:5). As such, meaning is viewed as contingent – possible but not necessary – and discourse (systems of relational meaning) as plural. The aim of discourse theory is, therefore, to analyse

the processes in which we struggle about the way in which the meaning of signs is to be fixed, and the processes by which some fixations [albeit non-permanent] become so conventionalised that we think of them as natural (Jørgensen & Phillips 2002:25-6).

In order to analyse discourse(s) discourse theory conceptualise the internal structure of discourse, i.e. its components and their relation to each other (Jørgensen & Phillips 2002:26). All the differentially related components (signs/words) of a discourse are called *moments*. They are moments because their meaning has been fixed through their difference from one another. One of the most important moments identified in the discourse analysed for this study is 'credibility'. Signs which meanings have not yet been fixed, however, are called *elements*. Because elements have not been fixed, they can take on multiple possible meanings (27). As I will show in the analysis, 'sexual fluidity' can be viewed as an (unnamed) element as its meaning is not fixed by the discourse in the material but appears rather ambiguous and is mostly referred to as an 'inconsistency'.

Discourse attempts to transform elements into moments by reducing their ambiguity (28). Discourse can, therefore, be described as an attempt at establishing a *closure* of meaning. Elements are fixed into moments as their meaning crystallise around the central focus of the discourse known as the *nodal point*; a privileged sign/word which the discourse attempts to

invest with conceptual meaning, and which in turn gives meaning to its surrounding moments (Jørgensen & Phillips 2002:26). In the discourse analysed for this research project, the nodal point is the sign/word 'sexual orientation'. According to discourse theory, the nodal point itself, however, is an ambiguous and "empty" sign/word. This is due to the fact that the meaning of the nodal point is also fundamentally constituted in opposition to what has been excluded; those other *possible* meanings which are *made impossible* by the ways in which the moments of the particular discourse have crystallized around the nodal point.

As such, a discourse is a reduction of possible meanings in relation to its privileged sign, the nodal point (Jørgensen & Phillips 2002:27). All that which has been excluded make up what is called *the field of discursivity* which consists of all those other meanings that have been made impossible in the temporary closure established by the articulatory practice. However, since the established meaning of discourse is always constituted in opposition to what has been excluded, discourse always risk being undermined by a different articulation which establishes closure differently. This condition is why meaning, and discourse, can never be entirely and indefinitely fixed (27). As such, all articulations either reproduce, intervene in or challenge already established discourse(s) (29).

In discourse theory, the concept of discourse does not only refer to articulations in the form of spoken or written language but refers to any and all social phenomena (Jørgensen & Phillips 2002:33), such as group formations, identities, 'society' as well as the regulation of borders. But discourse also extends to what is often thought of as largely non-linguistic 'objectively existing' phenomenon such as sexualities. This is because discourse theory maintains that all social practices must be seen as discursive articulations that draw on previous articulations, linguistic or non-linguistic, and thus reproduce, intervene in, or challenge their previously established meanings, and thereby has the potential to organise social phenomena in different ways (35). In this view all social phenomena are the results of contingent, social/discursive practices/articulations (34). This notion is important for my research as it highlight how phenomena like sexualities must be understood as contingent upon our various attempts to pin down the meaning of sexuality through recurrent, and potentially shifting, linguistic as well as non-linguistic practises/articulations. This is not to say that our sexualities, or desires, are not materially 'real', only that the way we make sense of them is always mediated through discourse. In fact, our desires become 'real' to us, and to others, only through the mediation of discourse.

According to discourse theory, the way that our sexualities and desires, as well as everything else that mark us as individuals, are mediated and made real to us and to others is through discursive processes of individual and collective identity formations that create positions for individuals to occupy as acting (desiring etc.) subjects (Jørgensen & Phillips 2002:41). Discourse theory can, therefore, be seen as a critique of the classical Western understanding of the individual as an autonomous subject, and identity as the constant inner core of the individual's self. Instead, discourse theory views individuals and their identities in terms of 'subject positions' designated by different discourses through interpellation (41). These subject positions come with certain expectation about how the individual should act, through a discursive process called *chains of equivalence*. Similar to how moments are crystalised around a nodal point, chains of equivalence links certain meanings and qualities to the subject position, such as 'effeminate' to the position of 'homosexual man', instructing the individual who identifies as a homosexual man how to behave in order to be identified also by others as a homosexual man. Identities are according to this view entirely social/discursive and, therefore, changeable, just as discourses are (43).

The individual is, however, often interpellated by different discourses, into several different positions simultaneously, such as 'woman', 'student', 'bisexual', 'daughter'. As such, the subject must, according to discourse theory, be viewed as fragmented (Jørgensen & Phillips 2002:41). These multiple positions are often complimentary but can sometimes be conflicting, such as 'masculine' and 'homosexual man', or 'Muslim' and 'queer' (according to homonationalist discourse). In such cases the subject is overdetermined – meaning internally conflicted – which means that one position must override the other.

Related to the theorisation of subject positions is discourse theory's understanding of group formations, or the emergence of collective identities. Group formations happen through the same principles as those that pertaining to individuals (chains of equivalence and interpellation), but in the process that form groups and collective identities only a certain combination of subject positions, or qualities, are held as collectively relevant and are therefore interpellated on a group level, while other positions and/or qualities are ignored. As such, group identities obscure the differences that exist within groups (Jørgensen & Phillips 2002:44). Collective identities can, therefore, be viewed as both social phenomena as well as discursive closures that came about by excluding, and making impossible, other potential combinations of positions and qualities. One example of this can be found in the formation of the 'LGBT collective', that according to homonormative and homonationalist discourse



generally link the LGBT collective with positions such as ‘lesbian’, and ‘gay’, and qualities such as ‘white’, ‘middle-class’, ‘monogamous’ etc, while ignoring or down-prioritising the relevance of other less normative sexual subject positions such ‘trans’ and/or ‘bisexual’ (to only mention two), and qualities such as ‘non-monogamous’, ‘fluid’ (pertaining to both gender and sexuality), or ‘racialised’ for the discursive formation of the LGBT collective.

As I will demonstrate in the next chapter (**5. Analysis**), by using discourse theory as my analytical method I investigate the articulations that are offered by my empirical material by examining what discourse(s) they draw on, what discourse(s) they reproduce, and what meanings that get excluded. I do this by identifying the nodal point of the discourse (‘sexual orientation’), and what discursive closures that are established when the nodal point is defined in relation to the other signs/words and meanings that has crystallised around it, i.e. moments (like ‘credibility’ etc). Furthermore, I identify what positions that are created for subjects to occupy in these articulations and what positions, and qualities or meanings, that are rejected and made impossible by the material’s discursive articulations.

#### 4.2 Empirical material and selection

The empirical material that has been analysed in this research project consists of verdicts in asylum cases where ‘sexual orientation’, and ‘bisexuality’ in particular, has been tried as grounds for asylum. The data that has been analysed in this material is the presented *motivational reasoning statements* on each verdict, where the adjudicators argue for why or why not the claimants’ asylum grounds meet the requirements for receiving refugee status.

The verdicts sampled for this study are all initially rejected applications which have been appeal by the claimants for retrial in one of the four Swedish migration courts. These appealed case verdicts often contain both the initial verdict and motivation reasoning statements presented by the Migration Authority, as well as the Migration court’s reassessment of the case. As such, there is already an initial bias towards rejection in the material, since no initially successful claims has been analysed for this research project. Being mainly interested in analysing the particular exclusionary logics that bisexual asylum claimants face, this however, poses no problems for my research aims. My material will include verdicts decided between July 2016 to December 2021 – the time period immediately following the so-called 2015 ‘refugee crisis’. The time frame is significant as it brought a political shift with regards to immigration policy which resulted in a legal ‘clamp down’ that entered into force in July 2016, restricting Sweden’s previously more generous immigration

policy, effectively establishing a new restrictive standard for accepting refugees (Hovemyr 2021).

The collection of my material was done through a searchable archival service called *Rättsfallsnet – Migration* (JP Infonet n.d), where verdicts from all four Swedish migration courts are published. Running a search using the term ‘*bisexu\**’ I obtained 1053 published verdict during the chosen time period, out of which 35 cases were selected randomly, but on a relevance basis. Relevance here means that the search term was found twice or more in each verdict in direct relation to the claimant. Search hits related to the LGBT acronym being spelled out, such as references to organisations or country-information reports, was not included towards this word count. The sampled cases were then selected at random until the collected material had reached a relative saturation point (Mason 2018:70) with regards to different types of reasonings and assessments outcomes. Lastly, the relevant sections of each sampled case, i.e. the sections of the motivational statement that was related to the asylum ground ‘sexual orientation’ and bisexuality, was imported into a computer program called Nvivo to be thematically coded. The analysis of the motivational statements was then done by hand, using different colour-codes for visualising how different moments, and specific meanings crystallised around the nodal point of the discourse(s) that emerged.

#### 4.3 Ethical considerations

The data analysed for this study contain sensitive personal information of several different kinds. Researching this type of material, therefore, necessarily entails ethical considerations. The often-exclusionary outcomes of the asylum process, however, made asking for consent from the individual claimants who are implicated in my sampled material practically impossible. In spite of this, I decided to keep pursuing this research, due to the acute and, arguably, ethical need for furthering the knowledge around the asylum process related to bisexuality in Sweden.

Court verdicts that are non-classified are generally classed as ‘public documents’ in Sweden according to the Public Access to Information and Secrecy Act (OSL 2009). Accessing verdicts for research purposes like mine is, therefore, possible. Oftentimes, public documents containing sensitive personal information is anonymised before being made available. However, this was not always the case in relation to my sampled verdicts. Moreover, even when already anonymised, highly personal, and potentially identifiable, information was still often communicated in the documents through the courts’ motivational reasoning statements. As such, in analysing and subsequently writing about these motivational statements, the

sensitive information in the documents is moved from one ‘place’, which despite being public is relatively inaccessible, to another ‘more public space’. As the information travels, there is a material risk that the individual claimants are exposed, and potentially ‘outed’, which would be highly problematic since the individual claimants’ very reason for seeking asylum is persecution, or risk thereof, due to their sexual orientation. For this reason, *all* the information in the material that might directly identify someone have been anonymised in the earliest stage of coding, such as case numbers, names of claimants (if not anonymised already), names of adjudicators and/or other mentioned individuals, dates, addresses and/or place names. I have also been careful to edit out references to specific countries or other kinds of information, such as specific events or other testimonials, to avoid indirect identifications. Furthermore, all quotes from the material, which is originally in Swedish, has been paraphrased and translated, making it harder to match the information to the original verdicts or to any individual claimant. However, to ensure ethical research conduct in relation to my analytical work and in relation to academic honesty, the translations of the specific words/moment that I highlight in the analysis have been kept as close to the original as possible to reflect the discursive meanings constructed in the actual verdicts.

Moreover, while acknowledging the inherent researcher privilege entailed in handling and analysing these verdicts without the consent of the claimants, I also want to include some comments on the intersectional limits, and potentially marginalising side effects, of institutionalised ethics, such as GDPR, that became apparent during the process of collecting the empirical material. For reasons of protecting personal integrity the Migration Agency do not file and keep separate or searchable records over cases relating to different asylum grounds (Ivarsson 2021:167), as this would be illegal according to GDPR legislation (FRA 2017). Institutionalised ethics like GDPR legislation that, indeed, are meant to protect vulnerable groups such as sexual minorities, has, therefore, simultaneously made conducting research on representable data related to SOGIE asylum impossible (Hedlund & Wimark 2018:263). In my case this meant that I could only access asylum cases which had been appealed and tried in one of the four migration courts, with no way of knowing the numbers, or outcomes, of asylum cases related to bisexuality handled by the Migration Agency that never got appealed. Therefore, as Mathias Detamore (2010) argues, institutionalised ethics has, in some instances and contexts come to encumber knowledge production related to ‘vulnerable populations’, limiting the social justice possibilities that these forms of knowledge could promote (2010:174). As such, the regulations surrounding my research material

highlights the situatedness of all ethical stances, and the potentially marginalising side effects of certain institutionalised and universalised ethical stances that, as put by Jennifer Mason (2018:84-5) sometimes “operates with a simplistic or patronizing view of how one might protect the rights and interests of people.” As such, in encumbering critical knowledge production related to the bisexual (SOGIE) asylum process which, seemingly often, takes the shape of violent discursive practices of exclusion, institutionalised and universalistic ethics regulations like GDPR appears to protect rather the exclusionary practises of the nation-state, while the precarious situation and legalised marginalisation of vulnerable groups can remain largely invisible. In relation to this realisation, the ethical need for studies like mine appear all the more pressing.

#### 4.4 Reflexivity

In this study I have chosen to sample only asylum cases explicitly related to bisexuality since this group has been shown to be disproportionately disadvantaged in asylum contexts, while simultaneously being side-lined within the field of queer migration. I also feel a personal affinity with this group as ‘bisexual’ is one of my chosen identity labels. However, in making this choice in my research, I am aware that I, discursively contribute towards constructing bisexuality as Other through representing it as such (Åkerstrøm 2003:59), despite my aim to destabilise this sexual Othering entirely. Furthermore, in focusing only on bisexuality in this research project I also discursively ‘restrain’ notions of the Other, effectively leaving out other iterations of those ‘made Other’ at/by the border, such as *any* claimant who end up having their claim rejected.

Moreover, while my chosen focus is bisexuality, it might be so that the assessed ‘bisexual identities’ in the sample have been adopted mostly in lieu of a better alternative, while the claimants themselves perhaps feel no subjective affinity to the label. Reasons for this could be cross-cultural and multiple. Perhaps the identity was adopted as the closest approximation of a different identity that would be culturally un-recognisable to the Swedish adjudicators. As such, the ‘bisexual’ label might, actually, lack intelligibility to the claimant’s themselves, or might be used ‘merely’ as an adjective describing sexual behaviour, rather than identity (Rehaag 2009:416). By not questioning this label, I, therefore, risk reenforcing a type of sexual neo-colonialism making non-Western sexual subjectivities doubly invisible. Therefore, perhaps I should have focused my attention on all narratives of ‘sexual fluidity’ instead, but such a choice would, however, yet again have side-lined the potential particularities of bisexuality in asylum contexts.

So, while acknowledging my sampling choices and subsequent complicities with regards to Western sexual categorisations, problematizing why different categorical labels might or might not be adopted, or subjectively preferred, by an individual claimant is irrelevant for this study. My aim is not to make ‘correct knowledge claims’ about the claimants’ subjective sexual identities, which in itself would contradict my understanding of sexuality and sexual identity as non-static. My aim is instead to investigate how/why subjects claiming bisexuality as their asylum ground are disproportionately constructed as unbelievable/non-credible, or as illegitimate queer refugees at/by the border.

## 5. Analysis

In this chapter I analyse quotes and paraphrases of the discursive reasoning that is articulated in the motivational statements of case verdicts related to bisexual asylum claimants. The chapter is divided into two main sections. In the first section I analyse a handful of much-repeated quotes and passages of reasoning that attempts to establish a universal definition of ‘sexual orientation’ by using the method presented in **4.1 Method: Discourse theory**. Subsequently, I turn to look at how these universal definitions come to have bearing on the assessment of (bi)sexual claimants’ asylum narratives and the particular construction of (bi)sexuality that emerge in the material. In the following section I approach the material in a slightly broader sense, examining how the broader crystallisations related to the notion of ‘sexual orientation’ interacts with the regulation of the Swedish border through constructing a variety of different subject positions for inclusion and exclusion.

### 5.1 (Bi)sexuality: the discourse

In the dominant discourse articulated in the analysed material the construction of (bi)sexuality is fundamentally related to the overarching construction of ‘sexual orientation’ of which (bi)sexuality emerge as a subcategory. What this means analytically is that everything that is constructed as essential for the meaning of ‘sexual orientation’ is automatically transferred as also essential for the meaning of (bi)sexuality. As such, ‘sexual orientation’, and not ‘bisexuality’ can be viewed as the nodal point, and the privileged sign, of the discourse that is articulated in the material. To fully understand how (bi)sexuality is constructed in these verdicts it is, therefore, imperative to start with an investigation of how the nodal point ‘sexual orientation’ get invested with meaning.

In the much-repeated phrases below, the concept ‘sexual orientation’ is constructed as a essential, immutable and/or static, inner quality ‘*of an individual*’, by being placed in direct relation to and, thus, fixed through moments such as ‘*fundamental characteristic*’ and ‘*innate/unchanging*’. Additionally, the moments ‘*established*’, ‘*internationally*’ and ‘*consensus*’ adds formal weight to this particular discursive closure, with the indication of universality and truth.

As Swedish legal practice has established, sexual orientation is a fundamental characteristic of an individual that is either innate or unchanging, and that the individual cannot be required to relinquish or hide.

Internationally there is consensus that sexual orientation shall be considered an essential trait of the individual that can never be demanded that he or she refrain from.

Drawing on this initial discursive closure ‘sexual orientation’ is, thus, constructed as a constant personal inner core that cannot be relinquished. As such, the constructions of ‘sexual orientation’ found in the material is closely related to what Kenji Yoshino (2000:405) has described as the ‘immutability defence’, since ‘sexual orientation’ is here constructed as a matter that at its core is beyond the control of the individual and can, therefore, be viewed as a legitimating factor in the asylum process since the individual should never get persecuted for something that is innate and/or unchangeable.

This construction of ‘sexual orientation’ as an essential and immutable part of one’s inner self has large implications for the assessment of the bisexual claimants’ sexual narratives, and the decisions reached in the verdicts. This can be exemplified by the motivational reasoning paraphrased below which comes from a verdict where the claimant’s bisexual narrative is assessed as *not* credible precisely because it does not conform to the notion of immutability, and that one’s ‘sexual orientation’ is something that is an essential part of one’s inner self.

Your bisexuality is something you describe as having been brought into by a friend. It started as a joke, you looked at pictures together ... You only started reflecting over your sexuality after you met [name] and you have not managed to explain what your thoughts were about later entering into a relationship with him, other than that it was something you just wanted to try to see if you liked it ... Your answers to the questions about how you became aware of your sexual orientation lacks detail and repeatedly focuses on when you looked at homoerotic pictures together, rather than focusing on your inner feelings ... The court find that your lack of reflection is remarkable since a person’s sexual orientation is a very personal matter and has a large impact on life.

The meaning that one can be '*brought into*' one's 'sexual orientation' is here made impossible by the adjudicator's overall assessment which draw heavily on meanings already constructed by moments such as those discussed earlier (*innate, unchanging, essential trait*). The construction of 'sexual orientation' as an essence is, furthermore, reenforced through contrasting the moments '*thoughts*', '*inner feelings*', '*very personal matter*' and '*large impact on life*' to the made impossible meaning constructed by the claimant's own narrative which seems to suggest that one's sexuality is something that can erupt or evolve spontaneously through external triggers and that does not require extensive inner reflection.

This type of struggle over meaning resulting in the 'making impossible', of the claimant's narrative is present in a large bulk of the analysed material. As such, the bisexual claimants' narratives appear to often challenge the migration courts' dominant construction of 'sexual orientation'. How the claimants understand their own bisexualities, or the phenomenon of sexuality in a wider sense, is however impossible to say as their narratives are only voiced in the material through the adjudicators' retelling. Many of these retold or referenced narratives does, however, appear to describe 'sexual orientation', and (bi)sexuality in particular, as something that, indeed, can emerge due to external circumstances which leads them to a gradual revaluation and reidentification with regards to their sexual orientation. This discursive struggle over meaning, where the bisexual claimants' narratives are systematically disbelieved, can therefore be grasped through Wikström's (2014:210) concept *epistemic injustice* and Luker's (2013:507) *truth effects*, which, together, results in the construction of essentialising and universalistic 'true knowledges' about what 'sexual orientation' means, or *is*, that ultimately discredits all other potentially challenging meanings and narrated knowledges.

Turning now to the construction of (bi)sexuality. The fact that the sign 'sexual orientation', and not 'bisexuality', takes the centre stage of the dominant discourse often leads to significant confusion over what (bi)sexuality really is, and a general struggle over the distinctions between different types of sexual orientations. While perhaps often the result of a lack of relevant country-information about bisexuals as highlighted by Mulé (2020:211-12), one example of this is that the sign 'homosexuality' is often invoked instead of 'bisexuality' by the adjudicators when discussing the possibilities for the bisexual claimants of being safely 'out' in their home country. This, however, forecloses the discursive construction of (bi)sexuality as a distinct orientation and experience that is different from homosexuality and homosexual experiences. This confusion, or conflation can, therefore, be viewed as a Swedish

example of Rehaag's (2009:420) previous findings of 'bisexual invisibility' in legal asylum discourse, or an example of a normative coupling of 'bisexuality' with 'homosexuality' in order to discipline instances of fluidity as argued by Sin (2015). Last but not least, it can also be read as what Kenji Yoshino calls (2000:362) an act of *epistemic erasure* of bisexuality as a distinct and legitimate lived experience, here both in relation to 'being out' and in relation to marginalisation or persecution.

In a few places, however, the distinction between (bi)sexuality and (homo)sexuality are established in the discourse, as in the excerpt below when the adjudicator points to a so-called '*inconsistency*' assessed as discrediting of the asylum claimant's narrative, emphasising that bisexuality means desiring both men and women, while being gay, by contrast, means not desiring women.

At the registration interview you stated that your sexual orientation is liking both men and women, that you are bisexual. Later you described yourself as gay and that you are not attracted to women ... The migration court understand this inconsistency to indicate that you have changed your story since your registration ... In light of this, the court assesses that you have not made your sexual orientation probable.

The concept and/or phenomenon of 'sexual orientation' is here constructed as an essentially gender-driven desire that can be divided into at least the two subcategories '*bisexual*' and '*gay*', out of which an individual can only legitimately identify with one. Through articulations such as this (bi)sexuality is, therefore, constructed as a distinct and legitimate 'sexual orientation', fixing it within the discourse with the meaning '*liking both men and women*' by contrasting it to the other category '*gay*' that here, in turn, means '*not liking women*' (i.e. liking only men). Contrary to the suggestions of previous studies about the assessments of bisexual asylum claimants (Peyghambarzadeh 2021:28, Rehaag 2009:424), this indicates that (bi)sexuality is, actually, afforded ontological legitimacy and is *not* constructed as a mere phase in the Swedish asylum determination process. As such, sexuality is neither constructed as a strictly monosexual (hetero/homo) either-or phenomenon, but instead as a three-pronged phenomenon (bi/hetero/homo). The articulation above does, however, reinforce the meaning that sexual orientations are static, since changing one's sexual preference indicates a narrative '*inconsistency*'. As such, the conceptual meaning of 'sexual fluidity' is effectively made impossible.

Despite being constructed as a non-monosexual desire, (bi)sexuality is fixed in the discourse as a rather *static* type of non-monosexuality, as desire is constructed as equally directed towards all men and women, and as something that is *unchanging* throughout life. This



construction of meaning is manifested in the excerpt below which paraphrases the narrative of a bisexual claimant who is assessed/constructed as credible.

In terms of your sexual orientation, you have said that you don't care what a person looks like or if it is a woman, a man or a trans person. You like the person behind the body and value closeness, warmth, and love, which you have found with both women and men. You were very young when you first understood that you are drawn equally to girls and boys ... When you became more aware you noticed that the system distinguishes between the genders, but you could never make up your mind, and instead you have chosen the best of two worlds.

This excerpt actually does open up for a different more fluid and less gender-driven understanding of (bi)sexual orientation(s) through the initial description of the claimant as someone not caring about gender, looks or bodies but, instead, liking qualities such as '*closeness, warmth, and love*'. Furthermore, by discursively establishing the separate existence of trans persons, both gender and sexuality is initially constructed as more complex or multifaceted than what the hetero/homonormative binary constructions of gender and sexuality suggest. Gender as a binary, and (bi)sexuality as a static, and equally divided gender-driven orientation is, however, reiterated at the end of the articulation above through the construction of equally liking boys and girls, not having a preference (*could never make up your mind*) and, subsequently, choosing '*the best of two worlds*'.

The ultimately innate and static (ie non-fluid) construction of (bi)sexuality in the discourse is further exemplified by the paraphrased excerpt analysed below where the bisexual claimant is assessed/constructed as *not* credible as they claim that they are drawn more to one gender than another and, furthermore, describe their sexual orientation as something that shifts over time.

The claimant defines himself as bisexual and is drawn to both men and women, but he does not feel anything for women and sees them as baby machines. During the interview with the migration agency the claimant said that he is passive when it comes to men but active when it comes to women, that he is drawn to all men but only some women. He stated that he does not love women but sees them mostly as intimate friends. At the appeal hearing he said that it was when he was young that he thought of women as baby machines, but he does not anymore. Now he says he is mostly attracted to women ... The migration court finds the way the claimant sees himself inconsistent. He has not made his sexual orientation probable but have overall been inconsistent in his description of what his sexual orientation is.

The reasoning here reiterates the discursively constructed non-monosexual notion that (bi)sexuality means being *drawn to both men and women*. But not being interested in men and women equally over time, nor in the same way, the claimant's shifting sexual orientation is constructed as *inconsistent*, and his bisexuality is, therefore, constructed as *not probable*. As

such, fluidity is, indeed, disciplined into a static normativity in the discourse. The static notion of ‘sexual orientation’ is, also, reenforced through this articulation’s closing questioning statement “...what his sexual orientation *is*” which reenforces the meaning that one’s sexual orientation *is* something beyond what we do with it. Additionally, as the claimants’ expression of negative attitudes towards women is scrutinised further in the verdicts, ‘male (bi)sexuality’ gets constructed as a sexual orientation where sexual attraction for women is assumed to naturally come with a respect, or love, held for women as equals – a type of attitude which is, arguably, not hegemonically expected of male heterosexuals.

To conclude this section, the present analysis of the construction of (bi)sexuality in the assessment of asylum claims based on ‘sexual orientation’ can be seen to largely strengthen the arguments of previous research which has found that bisexuality as a lived experience is often either made invisible, or made impossible, in asylum determination process of bisexuals. In the analysed material (bi)sexuality is, however, afforded both legitimacy as a distinct sexual orientation, as well as some level of visibility. But even so, the dominant overarching and disciplining construction of ‘sexual orientation’ makes it hard for most bisexuals to be assessed as credible. To appear credible as a bisexual the claimant would generally have to describe their ‘sexual orientation’ as innate and static, and furthermore, avoid any mentions of a fluid or shifting understanding of their own desires.

## 5.2 ‘Sexual orientation’ and the regulation of borders

In order to grasp how the assessment of the asylum ground ‘sexual orientation’ can be seen to interact with the regulation of the Swedish border, in this section of the analysis I will approach the material in a slightly broader sense, analysing it both as a *linguistic* articulation of meaning *and* as a non-linguistic *social* practice, by analysing the social and political patterns that emerge across the material, beyond or across individual cases. I have developed the analysis by returning to the three discursive border struggles and filtering devices presented in **3. Theoretical Framework** (the sexual humanitarian border, the homonationalist border, and the epistemological border). In the following three subsections I, therefore, investigate the meanings and patterns, as well as subject positions, that are constructed and interpellated in the material through instances when these three border struggles are being reproduced in the assessment of the bisexual claimants’ ‘sexual orientation(s)’.

### 5.2.1 The *queer* refugee

As argued by Peter Nyers, human rights inspired legislation such as asylum rights is often understood as a challenge to national borders, as it is purportedly motivated by a sense of

obligation to all of ‘humanity’ that goes beyond the responsibility one feels for one’s fellow citizens (Nyers 2006:124). However, as I will show below, this type of sexual humanitarian extension of rights, inadvertently, get intertwined with the discursive practice of border regulation through the act of determining whom is to be recognised as a legitimate ‘queer refugee’.

As theorised by Butler (2016:4), the act of recognising someone as a particular subject is not a neutral or universal act but is dependent on recognisability (Butler 2016:5-4), meaning being constructed in accordance with the discursive norms that facilitate recognition. In the material, and in sexual humanitarian discourse internationally, as highlighted in **2.2 SOGIE asylum determination processes**, the discursive norms that facilitate recognition of a subject as a ‘queer refugee’ is fundamentally tied to being constructed as a persecuted member of a ‘*particular social group*’ – the LGBT community. This condition for recognisability is reiterated in the material by motivational reasoning articulations like these where the subject position of the ‘queer victim’ and thus, the ‘queer refugee’ is linked to being a recognised as a ‘*clear*’ and/or ‘*credible*’ member of the LGBT community.

In situations where persecution finds its grounds in the victim’s sexual orientation it can often be rather clear that he or she belongs to a particular social group.

What the migration court is assessing is if the claimants who invokes sexual orientation as their asylum ground has made their membership to such a group credible ... The assessment of credibility is done by examining personal perceptions of self, feelings and experiences of difference, stigma, shame, and social exclusion, rather than focusing on personal sexual activities.

Through motivational reasoning like these, it is ‘the LGBT membership’ that is constructed as recognisable. In the process of constructing the criteria for recognisability, the subject position ‘queer refugee’ is, therefore, linked to the subject position ‘LGBT member’. The ‘queer refugee’ is also linked, through a chain of equivalence, to a number of other positions and qualities such as being ‘*socially excluded*’ and ‘*experiencing difference stigma and shame*’. However, experiences or positions directly related to ‘sexual activities’ are constructed as of no importance to LGBT membership, and therefore neither to the ‘queer refugee’. In relation to bisexual asylum claimants, this recognisability condition might become problematic as bisexuals have long been marginalised within the dominant factions of the LGBT community in the West (Yoshino 2000:395-6).

However, the marginalising effects that emanates from these seemingly common-sensical discursive constructions of the ‘LGBT member’/‘queer refugee’ must be viewed in a broader light still. This became clear as many of the claimants in the material was not recognised, nor interpellated, as members of the LGBT community despite having experienced severe sexual stigma, and/or social exclusion. These discursive refusals often emanated precisely from the discursive de-linking of the positions of the ‘LGBT member’ from sexual activities or behaviour. As is illustrated by the paraphrased reasoning below, for the claimants who had come to identify as bisexual in relation to their sexual ‘*circumstances*’ – something which is relatively common in the sampled material which includes several asylum narratives of sexual abuse, sex work and trafficking – this discursive de-linking constitutes a problem.

He says he started selling sex to sailors as a teenager as a means to survive since he had no money or food. He got used to it and now he sees himself as bisexual ... It might well be true that he made a living through selling sex to men in [country], and that this was later found out, which forced him to flee the country. But even if that might be true, it does not make his belonging to the lgbt group probable ... Instead of informing us about his feelings and inner thoughts about his sexual orientation he has merely focused on his circumstances. There are, therefore, reasons to doubt his claims about his sexual orientation ... The court find that the claimant has not made his belong to the lgbt group probable. He has therefore neither made probable that he needs international protection.

The claimant is here constructed as a subject who has fled the country after his sexual behaviour was ‘*found out*’. Even so, he is *not* interpellated as a credible member of the LGBT community since he has focused on describing his ‘*circumstances*’ but not his ‘*inner thoughts*’ about his bisexuality. As such he is constructed, recognised and interpellated ‘*merely*’ as a subject who has engaged in (economic) same-sex ‘*activities*’. However, as the discourse articulated by the previous paraphrase made clear, ‘*sexual activities*’ is discursively de-linked from recognition of LGBT membership. As such, the claimant is not interpellated as an LGBT member, and therefore neither as a ‘queer refugee’, but rather an illegitimate or ‘bogus queer’ despite his experiences of sexual stigma and social exclusion which forced him to flee. As such, the only subject that is constructed as a legitimate ‘queer refugee’ in the reasoning above is someone whose subjective identification with the LGBT community is beyond ‘*doubt*’.

The interpellation of only indisputable LGBT members as a potential ‘queer refugees’ in the paraphrase above can, therefore, clearly illustrate Peter Nyers (2006:130) argument that discourse drawing on humanitarian definitions of the ‘refugee’ tend to exclude many other types of human insecurity, such as dispossession or poverty (2006:130), from the list of

conditions that facilitates refugee recognition. In cases like the one above it is, however, precisely these types of insecurities that generates both non-normative sexual practices and non-normative sexual subject positions. In the discourse articulated in the analysed material, these subject positions are, however, excluded from the construction of the ‘queer refugee’ as they are not seen as relevant on a group level for the constructed notion of the LGBT group. The sexual humanitarian discourse articulated in the material, therefore, lead to border processes where many – arguably queer, and stigmatised (!) – individuals, get barred from rightfully and/or successfully obtaining refugee status, as they are not viewed as legitimate ‘LGBT members’.

However, when instead analysing those subjects who *do* get constructed as legitimate LGBT members in the analysed material, it becomes even clearer how sexual humanitarianism interacts with a border enforcing logic. As illustrated by the paraphrase below, the migration court’s assessment can here be seen to draw on what Giametta (2016:57) calls the ‘humanitarian logic of suffering’ where only certain exceptional types of suffering leads to recognition of legitimate victimhood. As such, the court’s recognition of the claimant’s indisputable LGBT membership does not automatically lead to an interpellation of the claimant as a ‘queer refugee’ since their suffering is not assessed/constructed as exceptional.

You regularly got harassed and assaulted because you wore make up and the way you dressed. You have long been severely depressed because of this, but it has been important for you to still dress feminine ... The migration court assess that the claimant has given a credible account about belonging to the lgbt group ... In an overall assessment of the appeal, the migration court do not find the grounds that the claimant has stated to be sufficient to grant asylum, as the claimant has not made probable that there is an individual and concrete threat to him that puts him at a personal risk of persecution in [country]. He is therefore not a refugee.

The claimant in the excerpt above is constructed, recognised and interpellated as an indisputable member of the LGBT community. However, similar to the (relatively few) other recognised (bi)sexual LGBT community members in the material, the claimant is not recognised and interpellated as a ‘queer refugee’, despite being recognised as someone suffering ‘*harassment*’, ‘*assault*’ and ‘*depression*’. Yet, this type of suffering is not constructed as ‘*sufficient*’, or exceptional enough since it is not viewed as an ‘*individual*’ threat or ‘*persecution*’ of him personally.

Following the normative logic of suffering within sexual humanitarian discourse, being regularly harassed, assaulted, and experiencing severe depression, is here constructed as a

normal aspect of being LGBT. As such, through passages of motivational reason like the one above, it becomes clear that the sexual humanitarianism discourse in the material operate from within a highly heteronormative moral economy, where the regular discrimination, social exclusion, and violence towards queers (and sex workers) is a part of ‘normalcy’ and is, therefore, not recognised as a type of suffering that is exceptional enough to warrant refugee status unless it is directed at the individual subject specifically. The sexual humanitarian discourse articulated through the assessment of ‘sexual orientation’, thus, appear to harbour a type of internal contradiction, or conflict, between the rights of the group and the rights of the individual group members. As noted by Giametta (2016:58), it is *here* the border enforcing logic of sexual humanitarian discourse becomes most apparent, as the discourse in the material suddenly shifts from one of social protection on a group level, to one of regulating social and political borders by excluding individuals. The highly differential, and normative sexual humanitarian discourse which is articulated through the assessment of ‘sexual orientation’ can, therefore, be seen to interact with, or contribute extensively to the regulation of borders by constructing the different subject positions ‘queer refugee’, ‘normal LGBT member’ and ‘illegitimate queer/economic migrant’ in a stratified order through which asylum claimants get recognised and interpellated for either inclusion, in case of the former, or for exclusion, in case of the two latter. The sexual humanitarianism discourse found in the material can, thus, be seen as a “legitimizing tool for the control of undesirable migrant groups” (Giametta 2016:57), and, therefore, also as a dispersed discursive border that “reenforce social and political hierarchies” (Nyers 2006:xvii).

### 5.2.2 Queer-friendly Sweden

Moving on from the sexual humanitarian border and the construction of the ‘queer refugee’, in this section I apply the border struggle and discursive filtering device of homonationalism to analyse the construction of national narratives of queer-friendliness or queer-hostility in the asylum determination process related to ‘sexual orientation’. Additionally, I analyse how these national narratives are directly tied to the assessment and construction of *credible* bisexual and/or queer subjects.

As exemplified by the reasoning below, the different narratives found in the material about so-called queer-hostile nations can often be seen as produced in/by the migration court’s assessment of the claimants’ ‘sexual orientation’, rather than drawn from the bisexual claimants’ own accounts about their home countries.

The migration court assesses that you have not managed to account for your thoughts and reflections related to not belonging to, or not being able to live up to, the social norm and the expectations upon men of your age in the culture in which you grew up. You have stated that you have mostly felt confused, but still been at ease and that when you realised that you are bisexual it felt wonderful, and you were happy. The migration court finds your statement to be remarkable considering the negative attitudes towards homosexual persons in [country]. The court does not consider the claimant's account about his sexual orientation to be credible. The claimant has not made probable that he has a sexual orientation that is considered deviant in his home country, where his life and health would be severely threatened if his alleged sexual orientation were to become known.

Rather than investigating the claimant's narrative further, the migration court's questioning of the claimants' credibility here draws on and enforces a national narrative of the queer-hostile 'home country' by repeatedly demanding a specific type of 'reflections' about deviating from cultural norms – a demand which directly couples the claimants' 'home country' and 'culture' with taken-for-granted hostility towards queers. As such, this national narrative can be seen as produced and enforced mainly by the migration court's adjudicator, rather than by the claimant himself. Similar to Wikström's (2014) research findings, passages of motivational reasoning like this, therefore, show that the assessed/constructed credibility of a claimant's sexual orientation is largely dependent on how well their narrative corresponds to the adjudicators' discursive preconceptions of the 'culture' of the claimant's 'home country' (2014:214). Furthermore, illustrating Wikström's argument, in these narratives the cultures of the home country are also "portrayed as governing what emotions can occur" (214), as the reasoning above seems to suggest that the only feelings that a claimant who comes from a queer-hostile country can have about their sexuality are negative ones, rendering any positive feelings non-credible. These types of discursive preconceptions and/or construction about the queer-hostile sending nation can, therefore, be seen to act as a discursive barrier that interacts with the regulation of the Swedish border, as it – ironically – makes it harder for bisexual and/or queer claimants from supposedly queer-hostile nations to be assessed/constructed as credible, if they stray from the narrative of their home country as definitely hostile towards queers.

As highlighted by both Jasbir Puar (2017) and Momin Rahman (2014); at the heart of homonationalist discourse is a sharp narrative differentiation between Western nations and Muslim nations. While this study is too small to draw any larger quantitative conclusions on the matter, the type of reasoning in the paraphrase above does, in fact, appear to be prevalent only in asylum cases where the claimants come from Muslim-majority and/or African

countries. These types of motivational reasoning passages, therefore, appear to make it significantly harder specifically for the Muslim and/or African bisexual claimants in the sampled material to be assessed/constructed as credible, compared to their non-Muslim and/or non-African counterparts. This became clear as none of the Muslim and/or African claimants in the analysed material were assessed as credible, despite representing a large majority of the analysed cases. In the small minority of cases where the claimant comes from a non-Muslim and non-African country, however, all but one is assessed/constructed as credible. This differential distribution, or recognition, of bisexual credibility can, therefore, be seen to confirm Jasbir Puar's (2017:43) argument that the aim of homonationalist narratives about Muslim nations as essentially queer-hostile is to exclude Muslims from Western nations.

Furthermore, the narratives that emerge around Muslim and/or African nations in relation to their cultural and sexual norms, often construct these countries as essentially backwards, by sweepingly referring to them through astonishingly blunt phrases such as '*not a modern country*', or '*not a country of the future*'. By contrast, these types of negative and value-laden descriptions are generally absent, or actively played down, in the narratives constructed about non-Muslim and/or non-African nation, as exemplified by the paraphrase below, which, quite strikingly, refers to a European country widely known for its severe anti-queer social policies.

The migration court does not question that it can be difficult to live as a bisexual in the claimant's home country. But even so, the migration court find no support in the country information that systematic persecution of homosexuals occurs. There are therefore no reasons to doubt that the authorities in the claimant's home country would be able and willing to offer her protection should she face harassment and threats because of her sexual orientation.

Overall, the differing types of national narratives that gets constructed through the assessment of 'sexual orientation' asylum claims can be seen as contributing to hegemonic (Western) understandings of 'us' and 'them' which constructs the West and/or Europe as progressive and queer-friendly and Muslim and/or African countries as backwards and queer-hostile. However, as Rahman (2014:275) argues, this homonationalist discursive differentiation is not necessarily a neutral reflection of reality but must be read as a transnational political triangulation of identitarian values, orchestrated mainly by the West, through which Western nations like Sweden can construct themselves as a morally superior, in opposition to mainly Muslim nations. This homonationalist triangulation and accompanying construction of Sweden as superior is often only implied between the lines in the material. But in some instances, it becomes more overt through motivational reasoning statements such as the one



paraphrased below, where the claimant's '*home country*', and its implied hostility towards queers, is put in opposition to Sweden where it, by contrast, '*is normal*' to be queer, at least if one is to believe the migrations court's constructed narrative about Sweden.

When you arrived, you lacked knowledge of Sweden, and you did not know that it is normal in Sweden. You have said that you did not disclose your sexual orientation until late in the asylum process out of fear that the laws in Sweden was the same. The court finds this explanation remarkable and questions why you then would come to Sweden at all, since you have said that you left [country] to be able to live openly as a bisexual. To the question about what made you finally realise that it is normal in Sweden to be bisexual you answered that you were told so when you first met [name] a few months after your first hearing.

Through the adjudicator's repeated claims that '*it is normal in Sweden*', Sweden is here constructed as a morally superior queer-friendly nation, in opposition to the '*home country*' in which the claimant was not able to '*live openly*' as bisexual. This constructed Swedish national self-image coupled with the circumstance that the claimant had no prior knowledge of 'queer-friendly Sweden' therefore contributes to the negative assessment/construction of the claimant's credibility, both in relation to their asylum narrative and their bisexuality. As such, the Swedish homonationalist self-narrative of moral superiority and singularity can here be seen to act as a dispersed border (temporally, spatially, and politically), stretching far beyond the territorial borders of Sweden, by generating a diaspora of credible, as well as non-credible, queer subjects (for potential inclusion or exclusion) in relation to their prior knowledge of Sweden as a queer-friendly nation.

Moreover, as noted by Verona Hucke (2021:25), central to this self-image is the framing of "the migration of queer subjects as one from oppression to liberation" (25) – a narrative which bolsters the superior self-image of the receiving nation. Therefore, the credibility of the queer refugee subject that is produced and interpellated by the analysed discourse, as in the excerpt above, appear to hinge largely on the claimant's explicit and conscious aim of becoming 'liberated' ('*live openly*') specifically in Sweden. This narrative of liberation is reiterated throughout the material by the interpellating phrase, or claim, that "*one can be open about one's sexual orientation in Sweden*". This statement, however, often appears more concerned with reinforcing the homonationalist progressive self-image of Sweden, through fostering and interpellating the homonormative ideal of 'outness', rather than accepting and also bestowing credibility upon the bisexual claimants' own wishes, that for some in the analysed material is to organise their bisexual lives, and indeed become liberated, in a less public manner. The fostered homonormative subject position of the 'liberated' and 'out' queer refugee subject is,

furthermore, problematic for those bisexual claimants in the analysed material who are currently in, or express a wish to pursue cross-sex relationships, as any mention of future aims for such relationships are met with doubts over the claimant's credibility. Therefore, reiterating the findings of previous studies and theories on bisexuality (Rehaag 2008, 2009, Yoshino 2000), the lack of a visibility of a specifically bisexual narrative about outness can here, clearly, be seen as contributing to a homonationalist and homonormative marginalisation of bisexuals who express cross-sex desires and therefore a non-homonormative type of queerness during their asylum determination process.

As such, to conclude, the homonationalist discourse articulated by the motivational reasoning statements can be seen to interact with the regulation of the borders of Sweden by assessing and constructing the credibility of bisexual claimants, and therefore their chances of inclusion, largely in relation to their narrative adherence to enforced homonationalist discourse both about the claimant's '*home country*' (as more or less queer-hostile) and about Sweden (as definitely queer-friendly). Additionally, the homonationalist discourse in the motivational reasoning statements can be seen to foster a type of homonormative queer refugee subject, by the interpellation of liberated, meaning normatively 'out' queer subjects. This interpellation interact with the regulation of the homonationalist border of Sweden, as all those bisexual claimants that express a lack of determination to live according to homonationalist and homonormative ideals, thus contradicting the homonational self-image of Sweden, are constructed as *not* credible in terms of their (bi)sexuality and, therefore, get excluded.

### 5.2.3 Flexible sexual normativity

In the two preceding sections, I have attempted to show how the credible bisexual refugee subject and the concept of 'sexual orientation' get constructed in the motivational reasoning statements through dominant discursive/social practices related to transnational relations of power channelled through humanitarian and homonationalist discourse. As I have shown, the credible and non-credible bisexual and/or queer refugee subjects that emerge through these discourses must, therefore, be viewed in relation to various intersectional position and qualities related to economic circumstances, nationality/culture and, arguably, ethnicity/race and religion. As such, these 'extra-sexual' meanings that get connected to 'sexual orientation' and sub-categorisations like (bi)sexuality in the material can illustrate Eithne Luibhéid's (2008) argument that sexualities "become [constructed] through circulation within specific, unequally situated local, regional, national, and transnational circuits (2008:170, *transformed*) and must, therefore, always be seen as "burdened by legacies that must be interrogated"

(Luibhéid 2008:170). My aim in this final section of the analysis, is to further interrogate the production and interpellation of credible and non-credible bisexual subjects in the material in relation to the notions of ‘the normative’ that burdens the motivational reasoning statements’ very construction of credibility in relation to ‘sexual orientation’.

I have already called attention to the heteronormative assumptions that are drawn upon in the assessments of ‘sexual orientation’ in relation to the normatively expected suffering of all ‘LGBT members’. Such discursive instances of heteronormative moral logics can, arguably, be viewed as an iteration of a broader assumption, or epistemology, of a normative and universal heterosexuality. This general assumption of heterosexuality is, furthermore, implied in various more places throughout the material, like in the migration courts’ reasoning that “*having been sexually assaulted by someone of the same gender does not mean that oneself is or becomes homosexual*”. While indeed true, the words ‘*is*’ and ‘*become*’ of this truism indicate a taken for granted notion that people in general are *not* homosexual, but something else which in accordance with hegemonic heteronormativity, of course, implies an assumption of heterosexuality. As I will show below, this heteronormative assumption lies at the heart of the construction of ‘sexual orientation’ in the material and is, thus, also constitutive of the credible queer refugee subject articulated by the material, by representing the norm against which queerness differs.

According to discourse theory, the meaning of a particular discourse, and especially its nodal point, is fundamentally constituted in opposition to something else that has been excluded (Jørgensen & Phillips 2002:27). This can be identified in the material by returning to the most immediate crystallisation of meaning in relation to the nodal point ‘sexual orientation’ and its accompanying criteria for assessments of credibility.

The assessment of sexual orientation is a question of credibility. The assessment of credibility must be done [...] by investigating the claimant’s [...] feelings and experiences of difference, stigma, shame, and social exclusion.

In this much-repeated phrase ‘sexual orientation’ is first linked to ‘assessment’, ‘question’ and ‘*credibility*’ which indicates that the phenomenon of ‘sexual orientation’ is something that can be ‘*questioned*’ and ‘assessed’ by others. In turn, ‘*credibility*’ is constructed as having experienced ‘*difference, stigma, shame and social exclusion*’. By receiving its meaning from the fixation of these moments, the constructed meaning of the nodal point ‘sexual orientation’, therefore, emerge as something closer to ‘queerness’, or ‘non-heterosexual orientation’, as having a ‘*credible*’ ‘sexual orientation’ is constructed as a ‘*stigmatised*’ ‘*difference*’ that leads

to a position of *'social exclusion'*. Furthermore, as indicated by the moments *'assessment'*, *'question'* and *'credibility'* the meaning of *'sexual orientation'* emerges as something which is *not* the already taken for granted norm. As such, rather than being a discourse on all sexual orientations, the discourse articulated in the material is, arguably, a discourse on only *non-normative* sexual orientation(s). This meaning is actually articulated, explicitly, in a few places in the discourse, through different versions of the concluding motivational reasoning that *"the claimant has not made probable that they have, or gets ascribed, a sexual orientation that deviates from the norm"*. Following the logic of discourse theory, by constructing the position of *'the credible claimant'* as a position that always deviates from the sexual norm, the interpellation of *non-credible* subjects in the material can, therefore, by contrast be seen as an indirect interpellation of assumed normative – i.e. heterosexual – subjects. As such, heteronormativity can be seen as reinforced by the discursive struggle over queer meanings that is articulated in the assessment of *'sexual orientation'* asylum claims.

However, as highlighted by queer theory, and by Lisa Duggan's (2003:50) concept of homonormativity; the heteronormative distinction between *normative* and *non-normative* sexuality is not a matter of an essential or fixed hierarchal difference but must instead be viewed as a situated and temporal discursive relationship which can be shifted. As such, the notion of *'normative sexuality'* can also be strategically shifted *"to serve the state and nation in new ways"* (Luibhéid 2015:128). This becomes clear in the analysed material as heterosexuality (while indeed constructed as the universal norm) temporarily take on the status of the *'unwanted'* sexual Other in the specific and situated discursive context of sexual humanitarian, and homonationalist border regulation within which the analysed discourse is articulated. The sexual subject position that is normatively fostered in the material is, instead, a highly specific (bi)sexual and/or queer subject. As, such, this temporary *'normative shift'* illustrates how the construct of the sexually normative and/or non-normative interact with the regulation of the Swedish border precisely by being harnessed as a discursive device for constructing and reconfiguring sexual subject positions for inclusion and (mostly) exclusion in a highly flexible manner. This flexibility can, moreover, be seen in the fickle yet highly normative discursive logic that is applied in relation to the two criteria *'LGBT membership'* and *'personal threats and/or persecution'*, as neither *'the recognised personally persecuted sex-worker'* nor *'the recognised LGBT member'* is interpellated as a *'queer refugee'*, as both of their situated sexual subject positions and experiences in different ways get constructed as within the bounds of normalcy.

Additionally, as I have also shown in the previous sections of the analysis, the flexible discursive device of ‘normative sexuality’ appears to be utilised to organise the national bordering processes of inclusion/exclusion along both a classicist, and racialised axis. This became evident as a strikingly large majority (all but one) of the claimants who got excluded due specifically to their *sexual non-credibility*, i.e. their assumed normative heterosexuality, came from Muslim-majority and/or African countries, and had in many cases come to identify as bisexual due to circumstances related to their financial dispossession. The hetero/homonormative notions of sexuality constructed in the analysed discourse can, therefore, as argued by Luibhéid (2015:130), be viewed as an axis of power in its own right that “reenforce social and political hierarchies” (Nyers 2006:xvii) by intersecting with and reinforcing other discursive (social) structures of power and differentiation, such as the discriminatory organisation of the world into nation states and citizens/non-citizens divided by borders, as well as the racist and/or cultural-essentialist (Islamophobic and anti-black etc) segregation of people on a global scale, orchestrated mainly by nations in the West.

Lastly, despite the evident flexibility in which the notion of ‘sexual orientation’ has been harnessed as a normative device for organising national inclusion and exclusion, the essential understanding, or knowledge, of ‘sexual orientation(s)’ that is constructed in the asylum determination process of bisexual asylum claims is, however, strikingly rigid. Throughout the entire sampled material, the concept of ‘sexual orientation’ is constructed in line with the narrative of the ‘immutability defence’ (Yoshino 2000:362), as an *innate* and/or *unchanging* individual trait. Furthermore, different types of sexual desires get constructed and divided into the mutually exclusive and neat sexual orientation subcategories (bi)sexual and gay (or the ever-looming albeit implicit category ‘heterosexual’). These hetero/homonormative epistemological notions of sexuality that get utilised in the assessment/construction of (bi)sexual credibility, therefore, clearly deny the bisexual asylum claimants any discursive flexibility in term of how they themselves describe their bisexualities. Instead, as I showed in the first section of the analysis, the utilised epistemology of ‘sexual orientation’, and the normative (bi)sexual subject that it fosters, ends up rendering the majority of the bisexual asylum claimants in the sampled material inconceivable as (bi)sexual subjects, as their own descriptions of their bisexualities often do not appear to match the migrations courts’. As such, this analysis can illustrate the argument of discourse theory (Jørgensen & Phillips 2002:44) that the construction of group identities often ends up having marginalising effects, as only a small combination of positions and experiences are held as collectively relevant

while other positions and experiences are ignored. So, while the subject position of ‘the (bi)sexual’ is constructed as legitimate in the analysed discourse, the specific condition of (bi)sexual recognisability that emerge end up ignoring and refusing many of the other intersectional positions that many of the bisexual claimants simultaneously is interpellated into. These other ignored and/or refused positions, therefore, end up discursively overriding the bisexual recognisability of most of the claimants.

## 6. Conclusions and discussion

The aim and focus of this research project have been somewhat two-fold. Firstly, my aim has been to investigate how (bi)sexuality is constructed and allowed to figure as a distinct sexual orientation category in SOGIE asylum determination processes in Sweden. This research interest was prompted by the results of previous studies within other national contexts which has suggested that bisexuals are particularly vulnerable to rejections in asylum determination processes when ‘sexual orientation’ is invoked as the ground for asylum. These previous studies have suggested that the high rejection rates of bisexuals can often be attributed to a general bisexual invisibility within national and international asylum jurisdictions stemming from an understanding of human sexuality as a monosexual either-or phenomenon (Rehaag 2009:424). Related to this, others have suggested that bisexuals are rejected as (bi)sexuality is often stereotypically understood as a phase, and that bisexuals, therefore, often have to perform ‘gayness’ to be assessed as legitimately queer (Peyghambarzadeh 2021:24).

By applying an analytical method inspired by Chantal Mouffe and Ernesto Laclau’s discourse theory, my analysis can, in part, be seen to reiterate some of the suggestions of these previous studies as the discourse that is articulated through the asylum assessments generally appear to centre on ‘sexual orientation’ as an all-encompassing concept, rather than centring on (bi)sexuality itself, which means that the particular lived experiences of bisexuals are often left invisible. However, bisexuality is not constructed as a phase. Instead, the particular construction of ‘sexual orientation’ as ‘*innate*’ and ‘*unchanging*’ weighs heavily on the construction of (bi)sexuality which emerge as a surprisingly static type of sexual orientation. In relation to this static construction most of the bisexual asylum claimants in the analysed material are rendered inconceivable as bisexual subjects and are, therefore, assessed as *not* credible which means that their asylum claims are rejected. As such, what this study has revealed is that rather than rejecting bisexuals on grounds that bisexuality does not exist, the

asylum determination process in Sweden actually produces a kind of discursive or epistemological ‘truth effect’ (Luker 2013:507) about what (bi)sexuality means, or is, through utilising, and reenforcing, the predetermined notion of ‘innateness’ among other things, when assessing the bisexuality of the claimants. As such, it is rather the ambiguity and fluidity of the concept and phenomenon of sexuality that is disciplined and made invisible, as the meanings that our sexualities are not fixed but can, and does, change in relation to our circumstances and through our deliberate actions or spontaneous impulses are rendered inconceivable and illegitimate.

In relation to these discursive truth effects the construction of (bi)sexuality that emerge from the asylum determination process can be seen to have both an excluding and a normative effect, as it fosters a highly specific type of bisexual subject for inclusion that has been strictly disciplined to fit in with the immutability narrative. The claimants who challenge this normative notion of (bi)sexuality are, therefore, excluded on non-credibility grounds. As such, while the immutability narrative does lend legitimacy to the construction and inclusion of (bi)sexuals on a group level, it is simultaneously used by the migration court to justify the exclusion of many of the bisexual individuals in the material.

So, by highlighting how (bi)sexuality is afforded visibility and is allowed to figure in asylum determination processes in a discursively limiting, and very exclusive, way this study has contributed both to the body of research on bisexuality and bisexual invisibility/erasure, and to the research on bisexuality in asylum processes. Furthermore, by revealing how this discursive construction of legitimacy and recognisability of (bi)sexual subjects simultaneously adds to the marginalisation and exclusions of bisexual subjects with different sexual narratives, the analytical contributions of this study are also significant for the wider research field on queer migration and asylum, as it highlights the inadvertently marginalising and excluding side-effects that comes with normative queer recognition and visibility within asylum contexts. Moreover, in relation to the Swedish research context the analysis of this study reveals how the notion of immutability is still highly influential in the application of Swedish asylum legislation, despite the growing consensus in the field of international refugee law to move away from it (Rehaag 2009:420) precisely because it is an ill-founded assumption that, as the analysis has revealed, more often than not opens up the opportunity for migration adjudicators to reject and exclude.

The second aim of this thesis has been to investigate how the assessment of ‘sexual orientation’ asylum claims in Sweden interacts with broader processes related to the

regulation of national borders. To analyse this, I have drawn on a variety of critical theories which view the regulation of borders as discursive struggles that construct different subject positions and interpellate individual subjects for either inclusion or exclusion in relation to the idea of the nation state and/or the imagined national community. Additionally, I have combined these theories with theories on sexual humanitarian, and homonationalist discourse, as well as queer and bisexual theories to develop a framework for understanding the regulation of national borders specifically in relation to the construction and interpellation of different *sexual* subjects. Applying this theoretical framework to the context of ‘sexual orientation’ asylum assessments, this study has been able to offer new theoretical perspectives on the logics and principles that guide Swedish asylum determinations processes in relation to sexuality, and how these can be seen as contributing to the regulation of national borders.

For instance, as the analysis reveals, the use of sexual humanitarian discourse in the assessment can be seen as contributing to a particular construction of the subject position the ‘queer refugee’, the ‘LGBT member’ and ‘the normal queer’. The way these are constructed can be seen to contribute to a regulation of the Swedish border by discursively excluding many of the experiences and vulnerable subject positions directly related to sexual victimisation and/or persecution that are common among the bisexual claimants in the analysed material, such as experiences and positions related to poverty and dispossession resulting in engagement with sex work. Instead, the most central component of being recognised and interpellated as a ‘queer refugee’ in/by the analysed sexual humanitarian discourse is the claimant’s indisputable membership of the LGBT community. However, since bisexuals are an often marginalised or invisible subgroup within the LGBT community (Yoshino 2000: 395-6), this type of requirement alone could, perhaps, contribute to the disproportionate rejection of bisexuals in asylum determination processes, as bisexuals in general often fail to be recognised as truly queer both by the dominant factions of the LGBT community and by the heterosexual mainstream.

Moreover, when the victimisation and/or persecution of the claimant is assessed/constructed as connected mostly to their non-normative sexual *activities*, such as having engaged in transactional same-sex sex to get money for food, rather than their (innate) LGBT membership, the claimant’s situation is constructed as beyond the protective scope of Swedish sexual humanitarianism. This sexual humanitarian aim of protecting interpellated LGBT members only, rather than addressing the ‘queering’ side-effects of socio-economic human insecurity – a type of insecurity common among the bisexual claimants in the analysed



material – thus, contribute to a specific construction of *whom* that is a true ‘LGBT member’ and *what* counts as a *queer* ‘sexual orientation’. As such, the sexual humanitarian discourse found in the analysed material can be said to contribute to the discursive construction and reinforcement of LGBT community boundaries. In the specific contexts of queer asylum determination processes this construction of group boundaries come to interact with the regulation of borders as only those that are recognised/constructed and interpellated as an indisputable ‘LGBT member’ can be interpellated as a ‘queer refugee’, while all other subjects are filtered out for exclusion as they are constructed as not truly queer (i.e. bogus queers/heterosexuals) and are, therefore, *not* recognised as ‘queer refugees’.

Interestingly, however, while the discourse articulated in the material appear to mainly construct ‘LGBT members’ as truly queer, and therefore worthy of protection and inclusion, the sexual humanitarian discourse articulated in the assessments of ‘sexual orientation’ simultaneously draw on a highly heteronormative moral logic where most of the everyday discrimination and suffering of LGBT community members is seen as normal. As such, only those ‘LGBT members’ whose suffering can be viewed as exceptional will be interpellated as legitimate ‘queer refugees’. Therefore, the mere recognition and interpellation of an ‘LGBT member’ in the material is seldom enough to secure Swedish sexual humanitarian protection. Instead, the heteronormative sexual humanitarian logic of queer suffering articulated in/by the analysed motivational reasoning statements can be seen to interact with the regulation of the borders of Sweden, precisely by constructing the ‘normal queer’ as a subject whose suffering is, perhaps unfortunate, but yet normative, thereby filtering out most queers for exclusion by discursively denying them the subject position of the legitimate exceptional ‘queer refugee’. As such, the sexual humanitarian discourse articulated in the assessment of ‘sexual orientation’ can, arguably, be seen to regulate, and uphold, national borders, by respecting the sovereignty of other nations states who allow mistreatment of their queer citizens, so long as the mistreatment stays within the bounds of the normal and unexceptional.

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