I INTRODUCTION

Although the assessment of credibility is a critical component in refugee status determination processes, the highly individual and inadequately comprehensive perceptions of credibility make it an exceptionally flawed tool to verify whether a claimant genuinely requires protection. This essay will begin by briefly describing credibility and its centrality in refugee status determination. It argues that the significant role that credibility plays is highly dangerous in its current form and fatal to valid asylum claims, by discussing why it is highly problematic. It will go on to describe why credibility determinations are particularly injurious in assessing women asylum seekers’ claims. It will also put forth a small number of meaningful recommendations in response to the inaccuracy of such determinations, and conclude with a discussion of the persisting challenges to improving credibility assessment in the current system of refugee status determination.

II CREDIBILITY AND ITS ROLE

Credibility is a nebulous concept without a simple definition, and the Refugees Convention is silent on procedures for refugee status determination (RSD).1 As refugees can rarely prove their experiences, the truthfulness of their testimony is generally the only basis on which a asylum decision-maker may ground their evaluations,2 making RSD an ‘intensely narrative mode of legal adjudication’.3 Elements impacting credibility include internal and external consistency, detail, plausibility and demeanour.4 Although credibility is not necessary for


refugee status, in Australia and other Western states such as the US and UK (whose RSD processes this essay will predominantly discuss), credibility is often the crucial element in RSD. In Australia, credibility assessment has been held to be necessary and legitimate, and as the Refugee Review Tribunal (RRT) is inquisitorial and unbound by evidence rules, has a wide latitude surrounding credibility assessment. Similarly, since 2005, US immigration judges (who determine credibility) have had greater license to decide claims on the basis of credibility alone. However, credibility assessment is exceedingly difficult, a frequent source of adjudicator error, and generally unreviewable. Despite the grave consequences of incorrect assessments, there are numerous problems with credibility determination, which make its critical role in RSD procedures highly inappropriate.

III PROBLEMS WITH CREDIBILITY ASSESSMENT

Currently, credibility determinations are unconducive to accurately determining asylum claims, and this essay will discuss the following: the effect of mental illness upon the ‘credible’ presentation of claims, the dilemma of ethnocentrism within an intercultural environment, and the personal inability of decision-makers to assess credibility accurately.

7 Randhawa v MILGEA (1994) 52 FCR 437, 451 (Beaumont J); Selvadurai v MILGEA (1994) 34 ALD 347, 348 (Heerey J)
8 S 420(a) Migration Act 1958 (Cth); Coffey, above n 1, 384, 395; Luker, above n 1, 509-10.
11 Millbank, above n 3, 2.
Mental illness

When determining credibility, decision-makers often fail to take into account effects of trauma and mental illness upon the presentation of an applicant’s claim, or worse, attribute such effects to being disingenuous. Assessments are based upon a fundamentally flawed supposition that a person may recall memories about her life quickly, accurately, reliably and consistently. However, there are many general barriers to presenting a ‘credible’ claim: memory problems with the lapse of time, natural and mounting errors in story-telling with each iteration, or memory’s synthetic and malleable nature.

The trauma and persecution experienced by the asylum claimant majority presents even greater obstacles to a finding of ‘credibility’. Such experiences can manifest in repression, discomfort, fear, shame, memory loss, or an inability to present a chronological or consistent narrative, all of which tend towards findings of non-credibility in RSD. Mental illnesses caused by trauma such as Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD) can also cause dissociation and fragment memory. Differing parts of memories may be recalled at various stages in the RSD process, depending on the triggers provided, particularly with a long interval between opportunities to give testimony. This is problematic, as for example, the RRT, though technically undertaking de novo review, often uses information provided at the immigration department stage to draw negative credibility determinations from inconsistencies with testimony given at the hearing. Claimants suffering PTSD may also exhibit avoidance, which can appear as evasiveness to trauma-related questions, or dissociation. Dissociation may even have occurred peritraumatically (at the time), meaning that a claimant may be unable to remember the event as she was

14 Luker, above n 1, 504
15 Luker, above n 1, 504; Forman, above n 10, 224; Mighetto, above n 12, 13, 17.
16 Forman, above n 10, 224; Mighetto, above n 12, 13, 19.
17 Luker, above n 1, 513.
18 Mighetto, above n 12, 14-5.
psychologically not present. Yet, despite the RRT’s inquisitorial design, decision-makers are under no obligation to undertake any psychological assessment to determine how a claimant may be disadvantaged in presenting her case.

Also, applicants may not be able to translate their traumatic experiences into a narrative understandable by the decision-maker, who may in turn be unable to overcome the applicant’s otherness partially caused by the trauma. Such profound pain may resist or destroy expression, making attempts to describe it ineffectual, leading to a negative credibility determination. Despite extensive research regarding trauma survivors, memory and presentation, and relevant guidelines for asylum decision-makers, negative credibility assessments continue to be based upon simplistic and false assumptions, and precisely the evidentiary traits of applicants who have endured persecution.

B Ethnocentrism

Claimants must convince decision-makers of their credibility while their story filters through layers of language, cultural assumptions, racism, and an under-acknowledged Western lens. Although both applicants and adjudicators are ‘prisoners’ of their culturally-determined worldviews, only the group facing possible return to persecution bears the deleterious impacts of this. Western ethnocentrism leads decision-makers to be unaware of the deeply embedded and implicit biases, perceptions and assumptions that they are socialised to hold, which invisibly but perceptibly guide their determinations. In such a context, credibility determinations are bound to be incorrect.

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19 Mighetto, above n 12, 14-5.
22 Durst, above n 10, 149-50.
25 Thomas, above n 2, 85.
Qualities that convey credibility are ‘culturally contingent’, and Professor Walter Kälin provided five aspects of the intercultural RSD experience which lead to inaccurate credibility assessments: the way in which a claimant expresses herself; interpretation problems; the cultural relativity of concepts including ‘self’, ‘me’, ‘politics’ or ‘country’; differing notions of time; and the cultural relativity of lies and truths. Furthermore, cognitive processes are not universal; Western cognition is ‘analytical’ and privileges causal reasoning, consistency and formal logic, whereas, for example, East Asian cognition is ‘holistic’, favouring experience- and context-based learning over abstract logic, and more readily accepting of contradiction. This intimates that Western decision-makers by their very cognitive nature are incapable of accurately evaluating persecution narratives which are ensconced in context and contradiction. Furthermore, Global North decision-makers are instilled with Western neoliberal conceptions of unrestricted choice and rationality and are thus unable to conceive of ‘environments of limited choices’. This mask of privilege makes observable a harrowing tendency to blame claimants for their persecution, poverty or failure to fight back.

Also, a crucial element within credibility determination is plausibility, which attempts to assess whether the happenings the claimant relies upon could in fact have happened. This treacherously simple idea disguises inherently culturally-loaded assumptions of human behavior and interactions. Most decision-makers can have no frame of reference to imagine the experiences described in RSD, leading to erroneous and unsupportable assessments. Three such determinations from the US, UK and Australia respectively were that soldiers’ motive for raping family members of politically active men was in fact ‘sexual desire’ and

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27 Kälin, above n 24, 231-3; see also Luker, above n 1, 504.
28 Kälin, above n 24, 233; see also MRT-RRT, above n 12, 5, see also Anker, above n 6, 509-12; see also Luker, above n 1, 504.
29 Kälin, above n 24, 234-6.
30 Kälin, above n 24, 236-7; Durst, above n 10, 155.
31 Kälin, above n 24, 237.
32 Durst, above n 10, 153.
33 Durst, above n 10, 164.
34 Anker, above n 6, 517.
35 Durst, above n 10, 168.
36 Luker, above n 1, 529.
37 Mighetto, above n 12, 21-2; Kälin, above n 24, 236.
not political opinion, that a person could not have fallen in love after meeting somebody three times, or regarding a family’s seemingly ‘implausible’ decision of who to support to flee the country. Faced with decisions, adjudicators will choose the version of the truth more familiar to them. The ‘white male presumptions’ many decision-makers hold include beliefs in democracy and governmental legitimacy, meaning an applicant who failed to report persecution to local authorities (despite existent State persecution at all levels) may face incredulity. For instance, an applicant who asserted that they had been continually sexually abused and raped by a Salvadoran army official was confronted for not reporting the abuse to police. Despite the above, 58% of a study sample of RRT cases cited implausibility as a relevant consideration (often without reference to relevant supporting information), and in the UK, the Independent Race Monitor established that a ‘significant number’ of claimants are disbelieved as their stories are analysed according to Western assumptions.

Lastly, the intersection of classism and racism burdens applicants’ chances of being found credible. A significant but understated indicator of credibility is speaking ‘well’, ‘articulately’ or ‘intelligibly’. Those who do not or cannot conform to Western linguistic norms risk disbelief, while educated, upper-class and well-travelled claimants are favoured. Speaking with accented or no English, or differently to the ‘paradigmatic educated white male witness’ adds to perceptions of reduced honesty and intelligence. This assessment also relies upon ideas of who the desired ‘citizen-subject’ is: generally a mentally healthy, upwardly mobile and self-supporting individual. Evidently, credibility determinations are infected with ethnocentric and classist assumptions which exclude the realities of many asylum claimants.

38 Campos-Guardado v INS 809 R.2d 285 (5th Cir. 1987); Macklin, above n 26, 136-7; see also Durst, above n 10, 161.
40 Unreported, RRT, V01/12514, 14 May 2001, 19-20; Coffey, above n 1, 391.
41 Durst, above n 10, 161.
42 Durst, above n 10, 161.
43 Anker, above n 6, 519.
44 Anker, above n 6, 519.
45 Coffey, above n 1, 390, 392.
47 Mighetto, above n 12, 18; Durst, above n 10, 165; McKinnon, above n 9, 211.
48 McKinnon, above n 9, 206; Kagan, above n 5, 395.
49 Durst, above n 10, 165-6.
50 McKinnon, above n 9, 206, 217.
C Decision-makers’ personal inability to assess credibility accurately

RSD demands decision-makers who have immense levels of knowledge and skill, including of the socio-political landscape of the claimant’s country, international and domestic legal frameworks, conducting hearings in an inquisitorial and empathetic manner in an intercultural context, psychological expertise, and the capacity to cope with vicarious traumatisation and the stress of making determinations with potentially severe repercussions.  

However, many decision-makers rely heavily upon instinct, despite contrary instructions. RRT members were confident in their ability and experience in detecting lies instinctually based on their subjective impression, however, studies conducted with Swedish Migration Board officers and police demonstrated that their competence at discovering deceit was no greater than that of untrained control groups. Similarly, although Australian, US and UK decision-makers appear to eschew demeanour evidence due to its unreliableness in intercultural fields, they nonetheless often rely upon it in credibility determination. Guy Coffey suggests that such evidence should be discounted from asylum decision-making, by requiring decision-makers to ask themselves ‘whether and how’ they were influenced by the claimant’s demeanour. Each decision-maker has her own history and perceptions, making credibility determination heavily dependent upon personal judgement, and empirical studies have demonstrated high disparity within asylum adjudication which is attributable to

51 Luker, above n 1, 515; Durst, above n 10, 128, 145.
52 Melloy, above n 4, 641; Luker, above n 1, 527; Kneebone, Susan, ‘The Refugee Review Tribunal and the Assessment of Credibility: An Inquisitorial Role?’ (1998) 5 Australian Journal of Administrative Law 78, 89; MRT-RRT, above n 12, 3, 7; Re Refugee Review Tribunal; Ex parte Aala (2000) 176 ALR 219, 221 (Gleeson CJ); Coffey, above n 1, 378; see also Kälin, above n 24, 239.
53 Luker, above n 1, 518.
56 Coffey, above n 1, 387-8, 414.
credibility assessment.\textsuperscript{57} Such unsettling conclusions demonstrate that credibility is too susceptible to individual vagaries to play such an important role in RSD.

Also, adjudicators experience vicarious traumatisation through constant exposure to narratives of persecution including torture, rape and detention, leading to psychological self-preservation mechanisms being triggered. Firstly, such exposure can cause ‘compassion fatigue’ and lead to widespread organisational cultures of disbelief.\textsuperscript{58} Decision-makers may also directly avoid hearing a persecutory story, such as in the US case of a Mexican applicant, where the adjudicator stated ‘[t]he details being described, torture and all that, I don’t want to hear that’.\textsuperscript{59} When pressed on their centrality to the claim, she replied ‘[m]aybe he experienced it; maybe … I don’t need that’.\textsuperscript{60} She later rejected the applicant’s claim for lack of credibility.\textsuperscript{61}

Another common reaction is to trivialise the persecution, or to display increasingly uncontrollable emotional responses such as anger or frustration.\textsuperscript{62} Disbelief is also a coping mechanism used by decision-makers, as people ‘reject narratives that teach us fear and destroy the natural order of things.’\textsuperscript{63} In such instances of paralysis it is easiest to not act and thus side with the persecutor, who ‘appeals to the universal desire to see, hear, and speak no evil’, whereas the claimant asks for action and for the adjudicator to share her pain.\textsuperscript{64}

\textbf{IV COMPOUNDED PROBLEMS WITH CREDIBILITY ASSESSMENT IN WOMEN’S CLAIMS}


\textsuperscript{59} Rousseau, above n 58, 58; see also Mighetto, above n 12, 27.

\textsuperscript{60} Rousseau, above n 58, 58.

\textsuperscript{61} Rousseau, above n 58, 58.

\textsuperscript{62} Rousseau, above n 58, 59.

\textsuperscript{63} Durst, above n 10, 161; see also UNHCR ‘Beyond Proof: Credibility Assessment in EU Asylum Systems’ (Brussels 2013) 40.

\textsuperscript{64} Durst, above n 10, 178-9 citing Herman, Judith Lewis, ‘Trauma and recovery’ (1997) \textit{New York: Basic} 7-8.
Credibility assessments are clearly fraught with issues, but these are exceptionally magnified in the claims of women asylum seekers, who experience the additionally disadvantaging intersection of sexism along with racism. This essay will discuss the increased disbelief of women, claims relating to sexual violence, and culturally- and socially-dictated expectations of women, and how this makes credibility determinations even more problematic.

A Disbelief of women

A widespread culture of disbelief of women’s evidence exists in legal structures, where less credence is given to evidence simply due to its source being a woman. This is a symptom of patriarchal cultures in which men’s stories about women, including rape myths and stereotypes, have assimilated into how the law interacts with women, and also affects both women’s and men’s perceptions of women’s credibility.

‘Credibility’ is also biased towards male attributes. For example, speech patterns and manner more commonly used by women, such as high pitch and smiling, or words or phrases that intensify (‘so’), fill (‘um’), or hedge (‘sort of’), are associated with powerlessness and decreased credibility (with the converse being true of male verbal traits). Men use numerical specificity more frequently than women (but with lesser accuracy), and speak assuredly even when wrong or unsure (whereas women speak hesitantly even when certain). Though neither of these masculine traits reflect accuracy, they bolster credibility. The case of Togolese Afi Apouviepseakoda exemplifies this. Although receiving her testimony translated, the immigration judge became irritated with Apouviepseakoda’s quiet speech and exclaimed:

[Y]ou have to speak up so I can hear your voice. Today passiveness and demureness is not the regiment of the day. Today aggressiveness and loudness is the regiment of the day …

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65 Mighetto, above n 12, 3.
67 Mack, above n 66, 329.
70 Mack, above n 67, 330.
71 Mack, above n 67, 330.
So, if you force me repeatedly to ask you to raise your voice I will not be pleased. … If you’re really strong in your convictions you’ll express it in a strong manner. If your answers are weak the Court may believe that you’re claim is also weak so conduct yourself accordingly.\textsuperscript{72}

Aside from his aggressive, threatening manner, the judge also evinced his strong preference for male speech patterns. Such gender biases negatively affecting women tend to be veiled but potent, given the sizeable role of demeanour evidence discussed above.

B \textit{Gendered violence}

Women whose claims involve gendered sexual violence confront a further socio-legal barrier to a credibility finding, and as Sara McKinnon claims, constitute the group most affected by the dynamics of credibility.\textsuperscript{73} For example, in the US, a woman can be found non-credible if she did not raise rape or sexual assault at the earliest stage, despite deep cultural, social and psychological barriers to do so.\textsuperscript{74} Despite the prolific provision of gender guidelines, asylum adjudicators often proceed without appropriate regard to how experience of sexual abuse may affect a woman’s presentation of her claims. In the case of Lorraine Fiadjoe, who claimed asylum in the US after experiencing child sex slavery and ongoing parental sexual and physical abuse in Ghana, the immigration judge dealt with her story’s inconsistencies in a manner which led her to experience ‘memory loss, blocking, dissociating and breakdown’.\textsuperscript{75}

Q: Ma’am, you can cry, that’s fine, but your not making any sense, and the tears do not do away with the fact that your not making any sense to me. Now, rather than crying, just answer the question. You said, your father raped you at age seven and he would beat you, correct?
A: Yes, but I didn’t tell anybody.
Q: I don’t care if you did or not. At age seven, how long did this go on that he was raping you and beating you?

\textsuperscript{72} \textit{Apouviepseakoda v. Gonzales} No. 05-3752. U.S. Court of Appeals for the 7th Circuit. 2 February 2007, 28; see also McKinnon, above n 9, 215.
\textsuperscript{73} Feder, Ben, ‘A credible judge of character: A psycho-legal analysis of credibility assessments for asylum applicants with a history of sexual violence’ (2010) 24(4) \textit{Journal of Immigration, Asylum and Nationality Law} 295, 305-6; McKinnon, above n 9, 205; see also Melloy, above n 4, 655.
\textsuperscript{74} Melloy, above n 4, 655-6.
\textsuperscript{75} \textit{Fiadjoe v Attorney General}, 411 F.3d 135, 139 (3d Cir. 2005), 154; Melloy, above n 4, 639-40.
A: In fact, he was doing that to me when I cried to my auntie, I want to -
Q: Ma’am, I don’t like it when someone beats around the bush, okay, when they don’t answer me. Another thing I don’t like is when somebody makes sounds as if their crying and their eyes stay dry, all right. It’s a form of histrionics, … I don’t like that. I want straight answers and I want straight answers right now. You said, your father beat you and raped you at age seven … 76

After a confrontational and psychologically insensitive hearing, the immigration judge assessed her as non-credible which determined her claim negatively, which was later overturned on appeal at the Third Circuit.77 Women who claim asylum on the basis of sexual violence attempt to be heard, and have their stories believed and acted upon, which threatens (legal) cultures which presume and enforce women’s subservience.78

C Social and cultural expectations of women

Lastly, women are burdened with the requirement of complying with social and cultural expectations of their behaviour and their persecution in order to be found credible. Although UNHCR guidelines instruct decision-makers not to consider the ‘type and level of emotion displayed’ by women due to trauma and cultural variances,79 women’s behaviour is policed, and any deviations from expectations surrounding a woman’s actions are highly detrimental to her credibility.80 For instance, when a woman has a family, her behaviour towards her husband and children is scrutinised, and non-conforming actions (such as leaving family behind) tend towards non-credibility, whereas actions agreeing with traditional Western women’s behavioural norms (such as grieving for lost male family members) are rewarded with findings of credibility, and described with ‘almost literary skills’ by the adjudicator.81

77 Melloy, above n 4, 639-40.
78 Mack, above n 67, 328; Mighetto, above n 12, 22-3.
79 UNHCR Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees) (para 36(xi)).
80 Durst, above n 10, 152; see also Shuman and Bohmer, above n 55, 942.
Women are also additionally disadvantaged if they suffer from mental illnesses, due to expectations surrounding emotionality. Common illnesses in asylum claimants such as PTSD and MDD can cause applicants to display ‘flat affect’, which can present as appearing numb, detached or withdrawn, and people who have experienced sexual violence (who are overwhelmingly women) display heightened symptoms of dissociation and avoidance. Expression of flat affect can include failing to cry or display emotion while recounting experiences of torture or rape, or the kidnapping of a child, which can seem suspicious to a Western decision-maker, and reduce a claimant’s credibility. Yet, when a woman claimant displays too much emotion, she risks being categorised into the stereotype of the ‘hysterical woman’, as she must also demonstrate enough rationality to be deemed credible.

While all people affected with such mental illnesses may display flat affect, when a woman’s emotional response strays from what the adjudicator expects, it can be more detrimental to her credibility than a man’s. This is because in the West, women are associated with communicating through emotions and men through concepts, and thus men’s inappropriate emotional responses are more often excused. This also overlaps with cultural assumptions (and disbelief) of women, as demonstrated by a male RRT member flippantly discussing claimants from a particular country:

[Y]ou can almost guarantee [they] will be sobbing uncontrollably and wailing hysterically and banging their heads on the table, from the moment you come in. Having seen quite a few of these, I’ve formed the view that that demeanour is quite deliberate and … doesn’t reflect any genuine anguish at all.

Furthermore, because gender is not recognised explicitly as a form of persecution for which one can claim asylum, women must formulate their claims to fit into ‘more elusive’ categories that may only faintly accommodate the persecution endured. This can make it

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82 Melloy, above n 4, 653.
83 Mighetto, above n 12, 14-15.
85 McKinnon, above n 9, 215.
86 Melloy, above n 4, 653-4.
87 Luker, above n 1, 528; see also McKinnon, above n 9, 214.
88 McKinnon, above n 9, 207.
89 McKinnon, above n 9, 207.
more demanding for women to be assessed as credible as they may be required to frame the persecution vastly differently to how it occurred.\textsuperscript{90} Moreover, non-Western women are essentialised, in that ‘exotic’ harm (such as honour killings or female genital cutting) is hypervisible whereas women’s experiences of more ‘regular’ forms of persecution such as torture or detention for political activism are made less visible.\textsuperscript{91} This conceals alternate narratives of women’s political agency, meaning that women who do express anger or a desire for their persecutors’ punishment risk being assessed as less credible, as they fall outside of the strict dichotomy of the gendered asylum regime of protectors and victims by not presenting themselves in the terms of the persecuted.\textsuperscript{92}

Lastly, gendered persecution mostly associated with Other cultures is unthinkable and exemplifies backwardness,\textsuperscript{93} whereas other significant and grave gendered violence which bridges cultural divides, such as family violence and rape, are not viewed as seriously and present greater challenges to obtaining asylum.\textsuperscript{94} This also impacts women’s credibility, as when the gendered violence claimed is also existent in Western cultures, women RSD officers tend to assume a better ability to assess credibility by presuming the universality of women’s experiences.\textsuperscript{95} For example, an American immigration official, based on her own experience of sexual assault, stated that she did not believe ‘that is the way that a woman who has been raped acts’,\textsuperscript{96} evincing her ethnocentric belief in her superior ability to assess the actions of a survivor of rape.

\textbf{V RECOMMENDATIONS}

Given the extraordinary hurdles to overcome and inherent problems with credibility assessment, this essay calls for a presumption of credibility, rebuttable only by unambiguous evidence of material and factual falsifications.\textsuperscript{97} This would align with ‘unchallenged

\textsuperscript{90} McKinnon, above n 9, 207.
\textsuperscript{91} Oxford, above n 6, 29.
\textsuperscript{92} Oxford, above n 6, 29, 30; Shuman and Bohmer, above n 55, 952.
\textsuperscript{93} Oxford, above n 6, 24.
\textsuperscript{94} Shuman and Bohmer, above n 55, 952; see generally Oxford, above n 6, 23.
\textsuperscript{95} Oxford, above n 6, 33.
\textsuperscript{96} Shuman and Bohmer, above n 55, 950 citing Oxford, above n 6, 34.
\textsuperscript{97} Luker, above n 1, 502, 516; Durst, above n 10, 127-8; Kagan, above n 5, 373-4, 403; see also Melloy, above n 4, 673
medical, psychological, literary, historical, cultural, and experiential evidence\(^{98}\) and
counterbalance gendered and institutional cultures of disbelief and fraud detection, and
insufficiently trained adjudicators. To analogise with the similar presumption in the criminal
law, it is preferable to welcome an ‘untrue’ refugee than return a person to face possible
persecution.\(^{99}\) Although Australian courts have called for a ‘liberal approach’\(^{100}\) in RSD, and
the UNHCR suggests a ‘benefit of the doubt’ recommendation (which only activates after
satisfaction is reached regarding credibility),\(^{101}\) the presumption must work beyond this.

Also, neither guidelines nor judicial directions have incentivised adjudicators to appropriately
assess credibility,\(^{102}\) thus sanctions must be introduced for decision-makers who stray
unacceptably from credibility guidelines, such as those relating to non-intimidating
engagement with applicants, and culturally-, psychologically- and gender-appropriate
hearings.\(^{103}\) Under this recommendation, adjudicators such as those who presided over the
cases of Lorraine Fiadjoe and Afi Apouviepseakoda would be held accountable for their poor
credibility assessments and retraumatisation they caused to the applicants.

More abstractly, Trish Luker has proposed incorporating into asylum decision-making
elements of theories of feminist epistemological responsibility, by according values
conventionally associated with women, such as concern, care, charity and trust the same
emphasis as justice and impartiality.\(^{104}\) When a ‘power/privilege differential’\(^{105}\) as vast as in
asylum adjudication exists, such values must inform decision-making to avoid continuing to
perpetuate racism, sexism, classism and other such oppressions.

\(^{98}\) Durst, above n 10, 128.
\(^{99}\) Durst, above n 10, 175.
\(^{100}\) Randhawa v MILGEA (1994) 124 ALR 265, [21] (Beaumont J); see also MRT-RRT, above n 12.4.
\(^{101}\) UNHCR Handbook, above n 2, [203]-[204]; Kagan, above n 5, 372; Durst, above n 10, 131; see
also Kneebone, above n 52, 89.
\(^{102}\) Coffey, above n 1, 379; Thievendram v Minister for Immigration and Multicultural Affairs
(unreported, Federal Court of Australia, Spender, North and Merkel JJ, 9 March, 1999) [9]; Melloy,
above n 4, 637; Kagan, above n 5, 409.
\(^{103}\) Melloy, above n 4, 673.
\(^{104}\) Luker, above n 1, 508; Code, Lorraine, Rhetorical Spaces: Essays on Gendered Locations
(Routledge 1995) 60, 63; Amaya, Amalia, ‘Justification, Coherence, and Epistemic Responsibility in
\(^{105}\) Code, above n 104, 63.
Furthermore, many of the problems experienced by women attempting to establish their credibility are entrenched and rooted in gendered roles and cultural assumptions. A number of Western countries have formulated gender guidelines for assessing women’s claims but they are often disregarded in practice meaning something more is needed in regard to better methods to undertake credibility assessments in relation to women. Kathy Mack claims that education is the most successful path to mitigating gender biases in courts, so better education is clearly needed for all officers who interact with (women) claimants, including immigration officers and decision-makers. General presuppositions about women, their believability, behaviour, emotionality and intersecting experiences with culture must also be combated at a societal level. This is clearly difficult to achieve but the only option for enhancing credibility assessments for women.

Much of this essay has discussed the barriers to decision-makers undertaking credibility assessments accurately, and although adjudicators are products of their surrounding socio-politico-legal cultures, they all have an individual responsibility to improve their decision-making. The foregoing sections have illustrated clearly that credibility determination is not about uncovering truth, but making choices. This shifts an onus onto the decision-maker to be critical of their own values, prejudices and perspective which inform their choices about a claimant’s testimony despite radical uncertainty. This involves a great intellectual courage, to consider and investigate alternatives to accepted beliefs, but without both cultural and individual endeavours, lasting change cannot be expected.

VI CHALLENGES TO IMPROVING CREDIBILITY

Although this essay presents recommendations to improve the assessment of credibility, many of the issues discussed regarding the flaws in credibility assessment paint a bleak picture regarding whether the RSD process can, in fact, be improved. Laws are only as

106 Shuman and Bohmer, above n 55, 951.
107 Mack, above n 67, 350.
108 See generally Mack, above n 67, 350.
109 Macklin, above n 26, 140.
110 Macklin, above n 26, 140; McKinnon, above n 9, 212.
111 Amaya, above n 104, 306.
effective as those who apply them,\textsuperscript{112} and decision-makers, as the cogs of the asylum regime, disseminate the effects of their ‘state-justified ideational conditioning’.\textsuperscript{113} Poor credibility adjudication is not irregular, but part of an overarching culture of disbelief and ignorance.\textsuperscript{114} Isabella Mighetto powerfully yet disappointedly avers that many functional recommendations have been put forward yet systematically unheeded, because the flaws in the credibility determination element of RSD that produce discomfort and retraumatisation and fail to establish a safe space in which to disclose painful experiences are intentionally manufactured in the hostile refugee climate enacted to legitimate exclusionary politics.\textsuperscript{115} National cultures are central to refugee success, at application stage and beyond, which is clear to see in the case of Canada which has a consistent track record of recognising a higher proportion of applicants as refugees than other Western refugee-receiving countries, but evinces no apparent variations other than in its society and values which its political establishment reflects.\textsuperscript{116} Clearly what is needed is for refugee discourses in other Western countries to be ‘transformed radically and unrecognisably’;\textsuperscript{117} because in current anti-immigration and xenophobic climates, the political will to change refugee procedures is certainly not inclining towards improving fairness and accessibility for applicants.

\textbf{VII CONCLUSION}

This essay has illustrated how credibility assessments within RSD are exceptionally problematic and in their current form, work to exclude those that need asylum most. Due to the many culturally-related reasons for poor credibility assessments, of both national political cultures and an inability to extricate credibility assessment from an ethnocentric Western outlook, prospects of improving credibility assessments appear low, particularly given a current political apparent aversion to dismantling discriminatory refugee systems. However, that cannot justify inaction on the part of those who advocate for and believe in asylum

\begin{itemize}
\item \footnotesize{\textsuperscript{112} Mack, above n 67, 34.}
\item \footnotesize{\textsuperscript{113} Gill, Nick, ‘Presentational State Power: Temporal and Spatial Influences over Asylum Sector Decision-Makers’ (2009) 34(2) Transactions of the Institute of British Geographers 215, 218.}
\item \footnotesize{\textsuperscript{114} McKinnon, above n 9, 217; see also Giday v Gonzales, 434 F.3d 543, 550 (7th Cir. 2006), Posner J.}
\item \footnotesize{\textsuperscript{115} Mighetto, above n 12, 30.}
\item \footnotesize{\textsuperscript{116} Billings, Peter W, ‘A comparative analysis of administrative and adjudicative systems for determining asylum claims’ (2000) 52(1) Administrative Law Review 253, 253, 295.}
\item \footnotesize{\textsuperscript{117} Mighetto, above n 12, 30.}
\end{itemize}
systems which welcome and accept refugees, and provide protection for all who require it.
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