

[DRAFT: NOT FOR CIRCULATION OR CITATION]

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*Interpreting victimhood in asylum narration and documentation: Ethnography of  
protracted citizenship*

*Opening Scene*

The non-profit, domestic organization of Human Rights First in New York City, through their “Refugee Protection Program,” offers assistance to asylum seekers to attain legal status in the United States. The program started in 1978<sup>1</sup> to protect “the rights of refugees, including the right to seek asylum.”<sup>2</sup> It primarily supported cases of torture survivors, providing pro bono legal representation—from initial writing of affidavits to asylum proceedings and courtroom hearings. Since the political events following *September 11, 2001*, the program has seen significant increase in the number of asylum applications. As a result, the organization has expanded and branched out into various subsidiary programs, including the “Asylum Legal Representation Program.” The organization now works closely with some of the most prestigious private law firms in the city offering pro bono legal representation and language interpretation to asylum claimants. I spoke with Cynthia,<sup>3</sup> a human rights lawyer, who has been overseeing the program for almost a decade. Cynthia

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<sup>1</sup> Two years later, the United States adopted the Refugee Act of 1980 codified by the U.N. Refugee Protocol’s definition of the refugee, including provisions for asylum. Under §208 of the Immigration and Nationality Act (INA) law, a refugee is defined as an “alien displaced abroad who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” The law also defined “asylees” as people in the United States or at a port of entry who meet the definition of a refugee.

<sup>2</sup> Human Rights First: <http://www.humanrightsfirst.org>

<sup>3</sup> This is a pseudonym

explained that she had spent a number of years screening and interviewing potential asylum claimants before admitting them to the program and locating pro bono legal representation. She also said that most cases that came through the organization were not voluntary but that she regularly visited detention centers in Manhattan and New Jersey to *identify* potential asylum claimants, who were detained and/or under deportation proceedings. She said years of evaluating individuals as potential asylum claimants had allowed her to combine her legal expertise and interests in human rights law, in particular.

Cynthia has worked on hundreds of asylum claimants and the agency has 99% success rate in winning asylum claims. When asked what factors contributed or determined success rates of the asylum cases under her supervision, she mentioned the importance of providing detailed, vivid, and descriptive images of violent incidents from the past that ultimately facilitated in the writing of a moving affidavit. “Two things matter most once the case is in front of the judge: one is luck—some judges are compassionate and known to grant asylum and others are not—and the other is claimant credibility—it is okay to forget specific date and details due to stress or pressure in front of the judge but one should not provide conflicting information,” Cynthia quickly added. Claimant’s own words, she elaborated, established his/her credibility:

The story has to be told in claimant’s own words in whatever language they speak. You see, I can write their stories but the words and the voices have to be theirs [claimants’]. Everyone knows that asylum seekers won’t be using big words or adjectives...they do not speak English. Their native language and authentic voice will be very different from legal terminology or phrases and sentences we write. And it is not always easy for asylum clients to discuss their violent past with strangers. But we have to obtain detailed descriptions before we can make the story coherent and put it all together in the affidavit.

[...]

Crafting an “authentic” asylum story, according to Cynthia, depended on making claimants’ words visible and voices audible in the affidavit. Having attended a workshop on “Asylum Law” and several follow-up conversations with human rights and legal experts, I know that she, like other human rights and immigration lawyers, is trained to look for signs of sheer vulnerability of potential claimants, delineated by *messy* and *inconsistent* stories of past persecution, and to consider “culturally-specific” and untranslatable elements in their accounts. She looks for incoherence and hesitancy in their asylum stories, fragmented thoughts and disjointed *words*, trembling *voices*, disconnection--signs of fear and anxiety. The training sessions also educate pro bono lawyers, human rights experts and caseworkers to be receptive to other’s suffering—to assess victimhood as a site of authentication, one that, while it may not necessarily tell the whole truth, has nonetheless power to build trust between claimant and lawyer, ultimately resulting in the construction of asylum narrative and documentation to be filed with the U.S. Citizenship and Immigration Services (USCIS).

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### *Context and the argument*

In an era where people seeking asylum and the use of legal documentation is on the rise in the United States as in most of the rest of the ‘West’—what “actually happens” in the asylum interviews in private law firms, human rights organizations, or Immigration Courtrooms and Asylum Offices is not well understood. Asylum system or asylum seeking *process* is often merely regarded as instances of immigration enforcement in the U.S. In official political discourse, they are presented as the proper and natural response of the liberal state to those who have established their “credibility” as asylum seekers on two political grounds: experience of “past persecution” and “well-founded fear of persecution” in the country (may or may not be home) from which the claimants are seeking asylum.

Such perceived naturalness is reflected in the fact that the asylum system as an organizational structure to administer the entry and disciplining of residents labeled and perceived as ‘foreigners’ and ‘aliens’ increasingly prevail over other forms of administration. Criticism, political, activist or academic revolves mainly around the conditions under which growing number of individuals are deprived of their freedom and “human rights” in the United States and liberal democracies but the actual asylum system, and, in particular, the experiences of those seeking asylum and protection in the modern state’s boundaries is portrayed as the unfortunate but inevitable consequence of undesirable immigration.

This paper is part of a larger ethnographic project—documentation of asylum system pre-and-post-production of legal documents and various stages accompanied in the asylum process—contributing to the burgeoning scholarship on asylum studies (Monnier 1995; Blommaert 2001; Welch and Schuster 2005; Coutin 2000; Williksen 2004; Fassin and d’Halluin 2004 and 2005; Fassin 2012; Good 2007; Ticktin 2011; Kelly 2012). These studies are indicative of the significance of studying asylum system in the U.S. and Europe and broader implications for anthropology and related fields in the humanities and social sciences, thereby opening important analytical spaces. Demystifying asylum procedures and judgments during courtroom hearings in the context of the United Kingdom, Tobias Kelly has writes, “there is little of the grand oratory of courtroom drama” involved in asylum and human rights cases (2012: 65). While this may be the case in the asylum tribunals, there is plenty of elaborate and extensive legal “drama” prior to reaching the courtroom steps and the asylum offices. Indeed, my study suggests quite the opposite. The fact that each asylum case, once private law firms accept it and pro bono lawyers are assigned to it, circulate for anywhere from 8 months to 2 years attest to the inevitability of drama of some kind. Interpretation sessions for the asylum procedure are arresting encounters of intense

engagements, moments of awkward silences and unexpected interruptions, featuring not simply the production of asylum documentation and their “social life” (Cabot 2012) thereafter. Rather, I illustrate that they become the very *ground* for negotiating and laying out rules about the asylum seeking process and beyond.

For a person seeking political asylum under the UN Convention Against Torture, the first step is locating lawyers, non-profit and human rights agencies to assist in the filing, documentation, and submission of asylum claims, including the form *I-589 Application for Asylum and for Withholding of Removal*<sup>4</sup> (I-589 form, hereafter) and affidavit, a 200-300-page witness statement, to the USCIS. This legal documentation requires claimants to gather information easily verifiable evidence of specific incidents of past persecution and individualized account of political violence in the country from which the claimant is seeking asylum. This information is then corroborated by country-condition experts, including anthropologists, policy makers, and professionals considered experts of political violence on the ground and familiar with socio-cultural realities in those countries (Good 2004; McGranahan 2012). Other steps for claimants involve being interrogated periodically by medical experts and psychiatrists, who can substantiate claimant’s poor physical, emotional, or mental health as a result of the said violence in the past. These interviews result in the writing of the medical reports and testimonies (Good 2007, 2008; Fassin and d’Halluin 2005) that accompany claimant’s affidavit. Legal experts and practitioners, human rights workers,

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<sup>4</sup> The I-589 form, available online, is endorsed jointly by the Department of Homeland Security (DHS) under U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of Justice, which is one of the first legal papers introduced to asylum claimants by lawyers. While all legal documents related to asylum claims are important, Form I-589 and client's affidavit, among other witness affidavits and expert reports, are perhaps most critical for the asylum case to be read closely and considered by the immigration judge. In a different paper, I consider in some detail asylum documentation practice and interpretation sessions associated with filing of I-589 application form along with visual and interpretive aspects of certain pages. I do so to illuminate the process—actual participation of lawyers and claimants--through which the form I-589 transforms into “the document.”

medical doctors, social scientists and cultural experts all collaborate in the asylum process, often sharing important component of a claimant's individualized account of past persecution that each is able to gather in an effort to contribute to the legal context of asylum claims and not necessarily understanding of the larger context of their current lives in the United States.

Taking each component of the asylum seeking process as a different strategy for transforming individual claimants into "asylum seekers" and legal non-citizens, this paper examines the intersection between practices of language and legal interpretation and liberal forms of citizenship. Claimants must go through several institutional (and non-institutional) settings to be considered "credible" victims and their asylum claims legitimate. By analyzing how the institutional language and legal understanding of "victims" of persecution frame asylum narrations, I unfold the respective assumptions about obtaining citizenship in liberal democracies. I argue that, in contemporary US, the different practices of (prolonged) citizen-making are inscribed in complex processes of interpretation, and that the figure of the "asylum seeker" has a purpose—what Wendy Brown has called an "injury-forming identity" (1995)—of revealing the contradictory, and often silenced, aspect of the very institution of citizenship.

My paper has two theoretical strands. I show that the process of seeking asylum--narration and documentation—reveals the contradictory conceptions of victimhood and its intricate connection to the contemporary practices of US citizenship. When it comes to claiming asylum based on political violence, becoming a legal-subject is configured by legal and social institutions that emphasize the condition of victimhood. On the one hand, asylum narration and documentation of victimhood are not only critical for bureaucratic and judicial procedures informing the work of asylum lawyers, officers, and judges, but they have

increasingly become the core of il/legalization patterns and practices for “non-citizens” in the U.S. In this sense, the citizen-making practice that I observed (and participated therein) emerging from the asylum context is highly contingent on legal production of what Christina Giordano (2008) has called a “victim narrative.”<sup>5</sup> Legal recognition of political asylum claimants in the U.S. is granted on the condition that individuals provide evidence for “past persecution” and “well-founded fear of future persecution.”<sup>6</sup> This will begin legal paperwork for the asylum process.

On the other hand, legal production of a “victim narrative” is not without intermittent interruption, misinterpretation, and constant renegotiation between claimant and his/her respective legal representative or human rights expert of what actually counts as persecution, violence and suffering. As a result, a different understanding of victimhood simultaneously emerges out of the actual encounters between claimants and lawyers during asylum interview, interpretation, and documentation processes. Here, reactivating claimant’s own “cultural” (read: authentic) narration and understanding of “past persecution” and victimhood is emphasized, even desired. Rather than converting a claimant into a universally acknowledged “victim of political violence,” it is about maintaining a fine balance between a universal victim-subject and culturally inscribed victim through his/her own voice and words.

Reexamining Louis Althusser’s concept of interpellation (1974) and Judith Butler’s notion of subjectification (1997), Didier Fassin (2008) has proposed a vivid perspective on the contemporary, humanitarian logics governing refugees and asylum seekers within the

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<sup>5</sup> In the Italian context, Giordano has argued that seeking residency permit in Italy for female migrants involve recognition by the state as “victims of trafficking” through “the production of a victim narrative [the act of *denuncia*, filing criminal charges against their traffickers], and the commitment to being socialized in what is recognized as the ‘Italian way of being’ of the female citizen” (2008: 589)

<sup>6</sup> UNHCR (1992)

context of Israeli-Palestinian conflict, and more specifically on the dual process of “political subjectification.” The questions he wants to address are the following: “What does it mean to bear witness to violence using the language of trauma?...What is the significance of a politics of testimony that substitutes its own truth for the truth of those in whose name it is deployed?” Fassin is interested in the intersection of compassion and politics, or “compassionate politics,” that drives the works of humanitarian agencies and organizations that collect, witness, and assess testimonies of violence. He writes,

What counts is not that the facts be stated, but that they be experienced. It is not the event itself that constitutes the proof, but the trace it leaves in the psyche or the mark it makes in the *telling*. In the testimony brought to the world's consciousness, affect is present both as that which testifies (the suffering of the people) and that which is produced by the testimony (the public's compassion). The truth sought is not the *objective* truth of the events themselves, but the *subjective* truth of the experience of them (2008: 539, *emphasis mine*).

Exploring a distinct but complementary method of gathering witness testimonial in the asylum process, my purpose is to unfold the everyday practices in the US institutional spaces when it comes to narration, assessment, and subsequent victimization of asylum claimants. This assessment is not simply about recognizing “subjective truth” of asylum claimant's experience of suffering and violence, but it is one that is full of intermediation (language and legal) from all parties involved, of intense engagements and critical interaction throughout the process. Strong opinions, beliefs, and values are expressed and debated in the process of legitimizing asylum claims and screening for credibility—claimants are repeatedly questioned about their past, speculative present, and their future, and about their obligations as legal non-citizens.” At the same time, grave silences and complete breakdown of communication occur halting or redirecting asylum interview procedures. The question I want to consider then is more general: what purpose does extracting asylum testimony based on claimant's



own voice and words—in a language that is seldom understood by lawyers, judges, and human rights experts—serve if granting of asylum is arbitrary and depends on judge’s discretionary power, as Cynthia and other private lawyers unanimously agreed? Second, how does the legal space provide the condition of possibility for producing not only an asylum “victim narrative” but also for rationalizing the coherence of such logic? To foreground my ethnographic research analysis of the asylum seeking process, I too take inspiration from Butler’s notion of “subjection.” The crux of Judith Butler’s argument in her seminal piece *The Psychic Life of Power* is that power not only formulates the subject but it is also, paradoxically, what “we depend on for our existence” (1997: 2). Butler elaborates on Foucauldian “subjectification” to show that a subject is never simply fixed in place but it “is the occasion for a further making” (99) through constant reiteration, which far from enabling stability and coherence, comes to constantly reinstate incoherence. From this perspective, legal-political space is itself an instance of state power at large that, in the asylum process particularly, prescribes a certain framework: its (legal) language for filing claims produces a peculiar form of subjectification that is imposed on claimants, but through which their claims and they themselves also become visible legally.

I make my second, and related, point in the paper by commencing with a detailed discussion of the interconnection between subjectification and institutional practices of making (and unmaking) citizen in liberal democracies. In so doing, I contextualize my claim that the asylum system is at once central to the debate on liberal forms of citizenship that advocates for protection of minority legal-subjects (claimants of political violence in this case) only so far to reinforce the victimhood-status of “asylum seekers” and the production of asylum claims as part of what I call *protracted citizenship*. Here, I examine the literature on liberal forms of citizenship and show that the asylum process and citizenship are related in

two critical ways. First, I argue that the asylum system—the alleged aim to protect “victims of political violence”—emerges as machinery by which liberal state manages its non-citizen subjects through legal subjectification. It is not merely a strategy, if completely accidental, by which the state reproduces its legal non-citizens as victims and simultaneously an ideal type of *probable* citizens. The conditions of the contemporary asylum seeking process that manage, discipline, and govern claimants is what I am referring to as “protracted citizenship.” This notion intersects and interacts with the similar but distinct notion of “deportability,” developed by Nicholas de Genova.<sup>7</sup> As such, it can be seen in the opposite direction: the condition of possibility for a few to obtain US citizenship so that many may ultimately remain legal non-citizens as “asylum seekers.”

Second, and consequently, it is increasingly private citizens in liberal states —human rights workers, lawyers, judges, and asylum officers—acting as gatekeepers to determine the eligibility for asylum claimants to be on a putative path to obtaining citizenship. It is, thus, “protracted citizenship,” and not actual citizenship per se, that has rendered perceived legal non-citizens of all kinds as distinctly vulnerable commodity. The possibility for social (and political) membership and belonging cannot be separated from the legal production of this “protracted citizenship.” Expanding the understanding of citizenship from its conventional basis on legal status and political membership risk creating a surplus of characteristics tied to citizenship in the end may leave the term without its analytical and explicative power. With this critique in mind, I situate my research of the asylum process in the US within the broader scholarly debate on liberal citizenship.

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<sup>7</sup> Nicholas De Genova (2002, 2005) writes, “it is *deportability*, and not deportation as such, that ensures that *some are deported in order than most may remain* (undeported)—as workers, whose pronounced and protracted legal vulnerability may thus be sustained indefinitely.”

In this paper, I follow one Nepali asylum claimant—Tshering—through the processes of asylum narration, interpretation, and documentation: initial asylum interview at the human rights organization where he filed asylum claims; asylum documentation, including I-589 form and affidavit at the private law firm; and witness testimony or merit hearing at the Immigration Courtroom in front of the asylum judge. As anthropologist Joao Biehl points out, “Following the plot of a single person can help one to identify the many networks and relations...in which regimes of normalcy and ways of being are fashioned and, thus, to capture both the densities and the rawness of uniqueness” (2004: 478). In following this line of style in ethnographic writing, I approach asylum narration, interpretation, and legal documentation of an individual’s story as a collective reflection, and not necessarily the unique expression, of experiences that are inscribed in, produced within, and productive of a larger asylum context in the U.S.

Toward these ends, I am not interested in highlighting if and how claimants’ accounts of past persecution and violent events match “what they say happened” with “what really happened,” nor is it to represent the ‘truth’ about Nepali asylum seekers. Rather, it is to highlight the victim-subject position that Nepali claimants, like Tshering, once marked as “asylum seeker” within the U.S. state, must occupy and the asylum stories they produce to reconstitute themselves in a particular socio-cultural and legal settings (private law firms, humanitarian agencies, immigration courts and asylum offices). Judging the ‘authenticity’ of claimants’ account and subsequently, distinguishing ‘real’ victims of political violence from allegedly ‘fake’ ones is then irrelevant. The emphasis is on understanding the logic and the dynamics of privileging a specific type of “victim narrative” generated within the asylum context that has broader socio-political consequences in contemporary US. The individual

case I follow is part of a larger research<sup>8</sup> on asylum narration, interpretation, and documentation experiences of Nepali claimants and/as migrants: the production of depoliticized victim-subject is not an unintended consequence of but the very foundation to legal recognition as asylum seekers and the broader politics of citizenship in the US, where manageable non-citizens and deportable workers emerge.

***Part Ia. Asylum narration: The victim-subject verbalized***

*I am sitting in Cynthia's office at the human rights agency in mid-town Manhattan. I am here to provide Nepali-English interpretation for Tshering, a Nepali man in his late 30s who is filing asylum claims for the second time, upon being rejected by the Asylum Offices in New Jersey.*

In the spring of 2009, Tshering applied for asylum within four months of his arrival to New York City. He came on a religious visa, otherwise known as R-1, and supposed to have landed in California for teaching Buddhist art and painting at a Buddhist monastery in San Francisco. Describing himself as a Buddhist monk and a religious person, Tshering said

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<sup>8</sup> Over the course of two years, I spent many hours in private law firms, human rights agencies, immigration courtrooms, asylum offices, sitting and speaking with and *for* Nepali asylum claimants as a participant-interpreter. The majority of the claimants were working-class, migrant workers, arriving to the US from anywhere between one to nine years ago from Nepal. Unlike many anthropologists studying asylum system in liberal democracies, I entered the asylum scene neither as 'expert' witness during asylum hearings nor consultant to legal experts for providing country condition reports on Nepal. Rather, I was asked to play the part of an informant—a distant but informed insider—to lawyers at the human rights organizations, private law firms and asylum offices. The irony presented by this continuous switching from being a 'native' ethnographer researching among Nepalis to becoming a 'native' informant translating and interpreting, and essentially, speaking for and (on behalf) of Nepalis was too viscerally uncomfortable and surreal to simply dismiss my own accidental insertion into a convoluted process of seeking asylum in the US. My responsibilities neither began nor ended with providing legal interpretation per se. Although I primarily provided Nepali-English language 'interpretation' assistance and, at times, translated documents, it was often the beginning of a highly complicated, if convoluted, asylum process that I inadvertently became part of. Or, rather, it became part of me.

he had been a target of Maoist violence in Nepal during the peak (2001-2004)<sup>9</sup> of the decade long (1996-2006) civil war between Nepali state and the Maoist rebels. He filed asylum claims on the ground that he was targeted because of his religious opinions, activities, and refusal to support the Maoist party, politically and financially. He submitted I-589 asylum application with the assistance of a friend. Tshering was given a screening interview and the asylum officer who interviewed him did not ask him any questions related to the Maoist violence Tshering had suffered in Nepal. Instead, the officer focused on a set of questions related to his religious life and work prior to leaving Nepal, giving no space to address, let alone explain, what is generally thought to be most relevant questions for making political asylum claims—“past persecution” and “well-founded fear of future persecution.” He received a letter two weeks after his interview from USCIS. Tshering was denied asylum on the basis that he was not a Buddhist monk that he claimed to be. However, I would only learn about his religious background and reasons for denial of his asylum claims at the private law firm, months later our meeting at the human rights agency. Tshering’s case is still unfolding and there has been a quick turnover of lawyers working on it. The ones with whom Tshering first discussed his case is no longer representing him but different ones assigned by the firm.

*After being denied for asylum the first time, people in his social network in New York City recommended that he resubmit his asylum claims with the assistance of human rights lawyers. Cynthia has a reputation for “being sympathetic to asylum claimants and knowledgeable about Nepali claims, in particular,” which I came to know after assisting with several asylum interpretation cases at the agency. She has earned this reputation upon assisting with several Nepali asylum cases over the years mainly because of*

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<sup>9</sup> The years coincided with the post-September 11, 2001 event, primarily bringing Nepal into the limelight of international media and international human rights and humanitarian assistance for initiating co-lateral and multi-lateral dialogue between the Nepali government and the Maoist rebels.

*her keen interest in overseeing each case through its completion even after being transferred to pro bono litigators in private firms and until the final hearing either in the Immigration Courtrooms or Asylum Offices. Cynthia believes that Tsbering qualifies as a “victim of political violence”—which will eventually put him in the path toward legal procedures for resubmitting his asylum claims. However, Tsbering looks flustered and disoriented. Neither he nor I have met each other before this asylum interview. We both look somewhat confused and attempt to find out if either of us knows exactly how the interview will proceed.*

*I am there neither to act as an advocate for Tsbering nor an assistant to Cynthia. I am asked by Cynthia to sit next to Tsbering. Cynthia also has a legal intern next to her taking notes. Cynthia asks questions in English, I translate questions into Nepali, Tsbering answers in Nepali, which is then translated back to Cynthia, while the intern silently takes notes.*

*“You have to recall two or three incidents of your encounters with the Maoists in Nepal. Remember to describe in vivid details, so the judge can imagine and picture what happened to you. You see no one remembers their past, especially a traumatic incident or torture coherently or chronologically,” Cynthia says.*

*Cynthia forms her questions very broadly, presumably to give Tsbering space to respond and expand on his testimony. The most common types of questions are ones beginning with “who”, “what”, “when”, “where”, “why”, and “how”, giving Tsbering maximum space to elaborate.*

*She asks series of questions almost without interruption: very particular questions related to Tsbering’s journey to the US; home addresses in Nepal; reasons for seeking asylum; specific dates of the Maoist encounters in his village in Solukhumbu, followed by repeated death threats, phone calls resulting in his abduction, and narrow escape to Kathmandu and then to the US. Cynthia asks no questions related to Tsbering’s religious life as a monk in Nepal. She asks questions that are very specific to the details of the events that led Tsbering to fear for his and his family’s lives. The questions eventually manage to elicit the following asylum narration, which I paraphrase here:*

*Tsbering is a 38-year old male, monastic painter, citizen of Nepal. He should be granted asylum in the United States because the Nepali Maoists persecuted him on account of the following : a) his*

*anti-Maoist political opinions; and b) his membership in the particular group of Buddhist monastic artists. Before his escape to the United States, Mr. Tshering endured repeated persecution and intimidation from the Young Communist League (YCL), the subsidiary political group under the Maoist political party. Mr. Tshering is entitled to asylum in the United States because he has a well-founded fear of further persecution, in the form of physical violence, brutal assaults, abduction, and extortion, if returned to Nepal. The Nepali state authorities were and remain unwilling to protect Mr. Tshering, as the Maoists play a significant role in Nepali government today and the police turn a blind eye to the Maoists violence and continued use of torture, extortion, and murder. Since his escape from Kathmandu, Nepal, Mr. Tshering has been living in New York City and holds a steady job at a local grocery store.*

[...]

The initial interrogation and the writing of the asylum narration lasted six hours. Tshering's hesitance to speak of his past experiences of persecution in the hands of the Maoist in Nepal or his stuttering and off-tangent statements or questions were not included in the notes taken by Cynthia's intern. I did not have access to the document that resulted from this initial interrogation. However, it was clear from Cynthia's declaration of the acceptance of Tshering's case for further asylum assistance that Tshering had just performed the very act of being interpreted as a "credible victim of political violence," granting him access to legal assistance and allowing him to become a visible legal subject in the United States.

What this initial interrogation for potential asylum claimant and the institutional interpretation of a claimant into a "victim of political violence" demonstrates is the limit and the possibilities of legal institutional language pertaining to the asylum system: the visibility of a claimant as an "asylum seeker" rests in the production of a "victim narrative." Asylum narration itself is an act of interpretation in which claimants learn to discipline themselves as "victim subjects" as they ceaselessly attempt to navigate the legal bureaucracy related to asylum procedures. This is a process better shown than explained.

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*Asylum interpretation for Tshering, March 2011*

As we entered through the large, tinted, glass doors in the law office, one of the three pro bono lawyers working on Tshering's asylum greeted us. "How are you doing Tshering?" she inquired, as always, before beginning the asylum interview session.

*"Babini, dberai gabaro po hundo rabecha. Ghar chodeko jhandai teen barsa bhaisakyo. Budhi ra nani ko ta dberai samjhana aunchan"* ["Younger sister, things are quite difficult. It has been almost three years since I left home. I miss my wife and daughter a lot."] Tshering responded in a muffled voice to what was obviously a polite greeting indicating formality that is not intended to evoke a detail, let alone emotional, response.

"I am doing fine," I *interpreted* rather plainly.

The three lawyers exchanged silent glances; then all of them turned toward me, indicating their apparent dissatisfaction with my short, abrupt, and inadequate translation of Tshering's rather lengthy response.

"What Tshering said has *nothing* to do with either his asylum claims or his well-being," I clarified with annoyance. For the last two years I had been interpreting for Tshering I was repeatedly instructed (by the lawyers) *not to let* Tshering wander off and discuss what would be considered "irrelevant" details to his political asylum claims. Naturally, I had come to assume the role of an *interpretation police*. I had also become a "professional" legal interpreter: I was now trained to do what I could not make myself do just two years ago--to remove the so-called "irrelevant," and ultimately unnecessary, details and descriptions from the asylum claims.

The three lawyers seemed quite content with my added explanation, which still had *nothing* to do with Tshering's actual response. Yet somehow it did not matter. The lawyers went on to explain to me, to be interpreted to Tshering, current progress regarding the case and their continued effort in contacting and ultimately gathering supporting documents, including medical experts and country experts' reports and testimonies.



Sitting next to me, Tshering had a vacant look on his face. Both he and I had been sitting in the law office on the 34th Floor in midtown Manhattan for almost an hour. While waiting in the building lobby earlier, Tshering had shared with me his long and difficult work schedule that started every morning at 3 am and ended around noon. He worked as a deliveryman, driving truck and delivering bakery goods for whole food grocery stores in Upper West Side and midtown, not very far from the law office we were having our meeting.

He had described to me how the buildings and the neighborhood looked starkly different during his work hours. He also worked in an Indian restaurant nearby in the evenings, and had mentioned to me, on several occasion, how difficult it was to take days off from the restaurant on short notice to come to the law firm for the asylum interpretation meetings. He was worried that he would get fired any day.

I wondered if the lawyers noticed the vacuous look that Tshering had the entire time; but at the same time, I worried that they would interpret his expressionless face as him not taking the interview “seriously.”

Then one of the lawyers announced: “Okay then, let’s just move on to our asylum topic for today, shall we? Now tell us again what happened to you Tshering in the fall of 1999.”

Trying my best to imitate the lawyer's solemn voice, I interpreted for Tshering. He looked at me, paused for few seconds, and responded: “I think I started painting for the *Gumba*<sup>10</sup> in Bouddha, Kathmandu,” he said cheerfully, reclining back in his chair.

The lawyer seemed surprise by Tshering’s response. She looked at her senior colleagues, seated adjacent from her, who exchanged silent glances. Judging from their facial expressions, I elaborated the question in Nepali for Tshering: “*Hoina dai, 1999 ma Maoisti tapain ko buwa-aama ko ghar ma pahilo choti aayeko hoina ra?*” [“No older brother, didn’t the Maoist visit your parents’ house for the first time in 1999?”]. Obviously, I was way too familiar with *his story*. All of us were. The latest version of (the draft of) the affidavit was circulated few weeks before the meeting.

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<sup>10</sup> *Gumba* means a Buddhist monastery in Nepali.

"*Ohh tyo...bo ta ni! Maobadi gharma aye ani aama-buwa lai dhamki diye,*" ["Oh that...yes that's true! Maoists came to my parents house and threatened them"] Tshering admitted, as though it was some kind of trick question, when all along it was *his story* from which the lawyers had been asking questions for almost two years. They were simply trying to fill in the gaps with detailed descriptions and vivid images, ensuring consistency and flow of the narrative before filing the complete, refined, and final version of the affidavit to the Immigration court in a couple of weeks.

I looked at Tshering, simply raising my eyebrows, indicating that the lawyers were expecting him to say more in response to that question. After two years of interpreting for Tshering, he and I had obviously developed, what Michael Herzfeld has called, “cultural intimacy.”

"*Aama-buwa ko man ma dar pasyo ni tyas pachi ta...*" (Literally: "Fear entered into my mom and dad's hearts after that...") As he spoke these words, his face turned red as though he was somehow being transported back into Solukhumbhu village in Nepal. I was, however, relieved to see that Tshering had finally caught up with (the game of) invoking right kind of *emotion* demanded by that specific question during the interview. Yet his eyes failed to express the mixture of moderate shock and excitement that his voice seemed to be communicating; they simply remained dazed refusing to further collaborate.

Tshering's non-verbal cues somehow managed to create what could be interpreted as an emotionally detached ambiance in the conference room. The severity of the subject matter—Maoist's first visit to Tshering's parents' house—seemed to be undermined, if temporarily, by the way Tshering was (and not) *communicating*.

It was a Friday afternoon, and all of us in the conference room were tired. Noticing that Tshering and I, his interpreter, seemed disengaged from the serious matter being raised and discussed, the senior counselor and the primary appointee for the case Elizabeth leaned forward.

Clearing her throat, Elizabeth interjected: “Okay, perhaps we should move on to the part where you suffered violence in the hands of Maoists in Kathmandu then.”

I interpreted for Tshering, trying to replicate her stern voice to translate the perceived urgency of the matter at hand. Tshering suddenly fixed his composure, sat upright, and tried to stay alert.

“Can you please describe in detail the pain you suffered and continue to suffer as a result of the Maoist attack in November 2004?” Elizabeth asked.

This time I interpreted for Tshering, without adding my own explanation or providing any context. For I knew that he knew it was the most important part of his asylum claim—the part with which he was most familiar. He had not only learned to describe the violence and pain he suffered in such vivid detail, but he had also mastered the art of successfully framing his experience within the larger context of his asylum narrative.

Tshering began (re)telling his story, starting with the Maoist’s initial visit to his parents’ house in Solukhumbu in 1999, followed by his first physical encounter with Maoists in Kathmandu in 2001 that ultimately led to the attack in 2004. He provided background with vivid images and description, and even offered a nice chronological order to every incident leading up to the actual attack: starting with the Maoist visit to the parents’ home, the repeated (verbal) threats he received on the phone and in the letters, the final warning letter from the YCL, followed by their last visit to his place in Boudha, Kathmandu. He painstakingly described the beatings he received from the Maoists: the pain he suffered in his back, chest, arms and right hand as a result of this “life threatening” attack. He unbuttoned his shirt and started pointing to all the scars (and injuries) in his chest and leg, where Maoists allegedly stomped on him, repeatedly beat him, and hit him with the bottom of the gun. Two years ago, he would hardly speak of his injuries. He showed signs of discomfort in having to undress in front of the people in the room. And here he was. Two years later into the asylum interview process, he had trained himself to become familiar (and comfortable) not only talking about his pain but also voluntarily showing all the physical signs (or evidence, as lawyers kept telling us) of “past persecution” and suffering.

While buttoning his shirt, he started talking, or rather complaining, about a severe, ongoing pain in his knee and left foot. *“Maile katti doctor lai dekhai saken yahan, tara ghooda dukne ta kaam hoina jhan badhto po rabecha. Maile pain killer haru pani liyen, bengay lagaayen dukheko thaaunma, ra ani aru dherai anshadi haru pani liyen doctor le diyeko. Kboi kebi asar bhayena tara...”* He talked for almost 20 minutes about his knee pain and fell silent in the middle of his sentence.

I interpreted for the lawyers, word for word, and in the same manner Tshering described his intense pain to me: “I have gone to doctors many times, but instead of diminishing, the pain in my knee keeps intensifying. I have taken painkillers, applied ointments to the sore parts of my leg, and have also taken many other medications prescribed by the doctors here. Well, nothing seems to have any affect...” As I was uttering these sentences, I realized this was new information that he had decided to give us after two years into the asylum process.

The lawyers looked at me, just as surprised by this unsolicited information as I was. One of the lawyers asked for clarification, “So all this pain is from the Maoist attack in November 2004 in Nepal?”

I had barely finished interpreting it in back into Nepali when Tshering started to laugh. “Oh no, not the severe knee pain that I have had for so long. It is from working at the Indian restaurant here for last three years, having to stand on my feet everyday for six days a week,” he and I both nonchalantly responded. I joined Tshering in his laughter until we both realized that our laughter was completely out of place; for the lawyers started to sift through their notes and papers, looking utterly concerned and annoyed at the same time.

Tshering, on the other hand, seemed wistful, lost in his own thought. Instead of talking about his past experiences of persecution and the Maoist attack—the subject matter of *his* asylum interview—he started telling me how he seemed to be understanding less English than he did in Nepal. *“Khai ke garne babini, ma ta America aayera laato jastai bhayen. Yeti dherai barsa America basi saken, English ta birsen jastai lagcha jhan. Baru Kathmandu mai English bolin thiyo*

*school maa padaaun da. Yahan ta English ko naam ma bolne nai 'Sir, would you like chicken tikka masala or chicken korma?'...ani kaaban ko English bolnu ya practice hunu ho America ma?!*"

[Translation: "It is really strange, but I feel like I have become dumber now that I have lived in the US for this long. I thought I used to understand some English back home when I used to teach in a government school in Kathmandu. I speak less and less English here. All I have to say now is 'Sir, would you like chicken tikka masala or chicken korma?'...how (or when) do I get to practice or speak English in America?"]

By this point, I had stopped obsessing about following (hidden) rules of interpretation. I just *let* him talk. In a way, I failed to redirect Tshering from "wandering" off and prevent him from volunteering "irrelevant" information during the interview. In retrospect, I wonder if I could have possibly changed anything. He had decided to change the subject matter abruptly and for no particular reason. Perhaps, for Tshering, the story about his past experiences in Nepal and his current situation in America were not disconnected. Or perhaps, he deliberately decided to stop talking about the past and focus on the present. Or he was simply exhausted. One could only speculate.

As soon as he stopped talking about his past experiences of persecution, I, too, stopped being his interpreter. The interview/meeting ended early that day. The lawyers asked me to instruct Tshering to do his homework, study the Nepali version of his legal statement, particularly those sections that discussed the Maoist attack and the pain specifically related to particular incidents that he continued to suffer for our next interview session. They also mentioned that the interview did not go as well as they had hoped for and that they would need to (re)visit some of the questions not adequately answered by Tshering that day.

I communicated lawyers' dissatisfaction to Tshering, who simply looked relieved that the meeting had come to an end for the day. We were given a new date and time to come back for follow-up interview. Tshering and I left the law office to get coffee and continued talking about things *irrelevant* to his asylum claims.

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*Part Ib. Asylum documentation: victim-subject interpreted*

The story about Tshering reveals the encounter between lawyer and asylum claimant as a space shaped by anticipation and negotiation of what counts as “persecution”—the basis of claiming political asylum.<sup>11</sup> Such a space then forces us to look beyond the question of what counts as “truth” claims from allegedly “fake” ones and, instead, focus on the actual interaction and intense encounter between lawyer and claimant throughout the asylum process. Indeed, focusing exclusively as an issue of authenticity or truth claims that claimants produce leaves intact the parochial and, rather unimaginative logic, reinvigorating the debate about “authentic” vs. “suspicious” victims through the discursive lens of problematic dichotomies, namely victim-agent, subjugated-liberated, and vulnerable-resistant. As such, I want to suggest looking at the way the claimant’s *voice* and “*own words*” become the main source of establishing victimhood throughout the legal production of asylum narrative for claimants like Tshering. Many people have participated in producing and reproducing this “victim narrative,” Tshering and his lawyers just a few among them. In this logic, while Tshering may be not able to produce a legal account of his experience of past persecution, his words and voice remain the origin of and the necessary component for asylum narrative—it is what makes his account legitimate, after all.<sup>12</sup>

Within matter of months, Tshering was, in a way, dispossessed by his version of fragmented past experience and moments of silence that accompanied in remembering a story that, for the most part, he did not want to remember, let alone share. The practice of filing asylum claims takes place by means of language interpretation and legal mediation, and

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<sup>11</sup> Two grounds of seeking political asylum are evidence for “past persecution” and “well-founded fear of future persecution”: “Foreign nationals seeking asylum must demonstrate a *well-founded fear* that if returned home, they will be persecuted based upon one of five characteristics: race, religion, nationality, membership in a particular social group, or political opinion.”

<sup>12</sup> For other work on how the voice and words function as a site of truth claims, particularly in the case of asylum claimants or refugees see Peter Loizos (1981) and Williksen (2004).

it represents the moment in which claimants enter into a pact with the state through assistance of private law firms and human rights agencies for legal recognition. Although the asylum document silences many aspects of the claimants' lives, their stories constitute the content of actual "words" and claimants' "own" understanding of their experiences of "past persecution" before it can successfully become the official asylum story. In this process, Tshering occupied the position of credible victim, through language interpretation that I provided, and ultimate legal interpretation that lawyers crafted in the smooth writing of the affidavit. Most of these statements sound similar, devoid of any confusions or complexities that the claimants often show when interrogated repeatedly for same detail, vivid, information to file asylum claims. More accurately, it is not simply about claimants' own words, but those that specifically refer to his account of persecution; account that is inconsistent, interrupted repeatedly, irrelevant details added, although not entirely anticipated. The legal space, therefore, allowed Tshering to perform a speech act that enabled him to become a legal subject of the US state. Although his voice seemed "lost in translation," his position as a legal subject was already pre-figured and constituted within the process of interpreting his verbal account into a coherent asylum narrative about victimhood and into the legal text of the asylum document.

Looking at Tamil Asylum-seekers from Sri Lanka in Norway, Oivind Fuglerud has argued that the concept of "asylum seeker" connotes "illegitimate protection needs" (2005: 301). Following Fuglerud, the legal category of "asylum seeker" requires a person to narrate, with appropriate emotion, the circumstances of the violence that one experienced several years prior to his/her arrival to the US. This narrative is reproduced again and again with sufficient detail of pain and suffering to be considered effective. This victim narrative of an "asylum seeker" is not without a projected temporal logic. The necessary repetition of the

same story, as we saw in Tshering's case, must always be about a very specific event in the past – the event that enables one to claim political asylum. But when the present intervened—as it did in Tshering's 20-minute digression about his intense knee pain made worse due to working in the Indian restaurant or his current memory of his family left behind in Nepal at the beginning of the interview—the lawyers quickly (re)directed him to focus on the factual (read: “real”) reason for seeking political asylum. Still his momentary outburst, soliloquies, and abrupt silences related to the everyday experiences of living and working in the city became a useful way to identify him as a “migrant worker.” The narrative of the present then did not replace his narrative of the past. Instead, they ran parallel for Tshering. If under the legal category of asylum, the past loomed large, the present, though at times receded to the background, never completely disappeared.

Tshering got caught in the messy space between the legal production of asylum narration based on “political violence” in a distant place and the everyday lived realities of “deportability” (De Genova 2002, 2005) in the US. However, it is unclear when Tshering's victim narrative of “political violence” renders the “economic violence” and, essentially, his migrant identity *irrelevant*, and when they bleed into each other? To be sure, asylum narration and documentation are resource that must be used strategically in this messy space; Tshering assumed on the popular knowledge that his legal status—as an asylum seeker—was also his locus of ultimate reality as a non-citizen worker. The point here is not to establish whether the Nepali claimant is an “authentic asylum seeker” or an unruly migrant worker, but to acknowledge how he is *assumed* to occupy a particular (social) position within the space of the US nation-state, and even positions himself, alternately as one and the other. Legal experts, human rights workers, and interpreters are then not simply observers in this matter, but they are also active participants and *interpreters* of the institution of US citizenship. In



other words, if for asylum claimants, (performance of) victimhood is desirable and even central in the recognition of economical worth as legal non-citizens, the human rights experts, lawyers, and judges are key players and co-constructors of this reality. In the next section, I extend the ethnographic observation and analysis of the asylum process as legal subjectification to point out its broader significance in the context US citizenship, drawing particularly on anthropological engagement and critique of liberal forms of citizenship.

### *Part II: Protracted citizenship and the paradox of legal subjectification*

Understanding of American citizenship within and beyond the classical, right-based argument to a consideration of socio-cultural membership and belonging has been a subject of intense debate among scholars for quite some time. While the proponents of classical liberal theories<sup>13</sup> insist that institutional means of legalization and the protection of minority rights lead to uniform citizenship, critics have shown that the liberal conditions to citizenship is inseparable from the larger “politics of recognition.”<sup>14</sup> Wendy Brown cautioned more than a decade ago the conceptual traps of “rights debate” that is intrinsically paradoxical. In her seminal work *States of Injury*, Brown has forcefully argued that the proliferation of citizenships and the political processes of identity making in liberal democracies is ultimately based on “social hurt” or “woundedness” of legal-subjects. For Brown, this liberal logic ultimately leaves intact and even reinforces the actual measures of victimization through which liberal states maintain their control. She writes,

While the effort to replace liberalism’s abstract formulation of equality with legal recognition of injurious social stratifications is understandable, what such arguments

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<sup>13</sup> See Kymlicka (1995) on “multicultural citizenship” that broadly asserts that the realization of “rights” depends on mutual respect for “cultural difference”

<sup>14</sup> Taylor, *et al.* (1994)

do not query is whether legal ‘protection’ for a certain injury-forming identity discursively entrenches the injury-identity connection it denounces. Might such protection codify within the law the very powerlessness it aims to redress? Might it discursively collude with the conversion of attribute into identity, of a historical effect of power into a presumed cause of victimization? (1995: 21).

Brown’s critique primarily rests on the non-emancipatory framework of the rights-based debate that is already “always historically and culturally circumscribed” operating on, what she sees as, “an ahistorical, acultural, acontextual idiom: they claim distance from specific political contexts and historical vicissitudes, and they necessarily participate in a discourse of enduring universality rather than provisionality or partiality” (97). Brown’s otherwise incisive critique of liberal citizenship has generated most interesting debates for anthropologists.<sup>15</sup> Engaging with Foucault’s concept of “governmentality” and Weber’s emphasis on American ideal of liberal citizen-subject that is embedded in its practical, bureaucratic-state rationale, Aihwa Ong (2003) proposed the emergent neoliberal citizenship: “the most worthy citizen [in the US] is a flexible homo economicus...the figure of entrepreneurial prowess [who] is increasingly multiracial, multicultural, and transnational” (9). Drawing particularly on Cambodian experiences in the United States, Ong contends that citizenship cannot be considered simply as a “bundle of rights—a legal condition” (79) but as a “social process of mediated production of values concerning freedom, autonomy, and security” (xvii). Ong’s proposes radical interrogation of what she calls “everyday citizenship in America” that is based on material “effects of the multiple rationalities [state

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<sup>15</sup> In engaging with Brown’s incisive critique, anthropologist Renato Rosaldo (1997) has proposed “cultural citizenship” as “the right to be different” in terms of ethnicity, race, or native language with regards to the norm of the dominant national community. Anthropologist Aihwa Ong (2003) argues that the analytical category of “culture” remains “insufficiently problematized” and under-theorized in both sides of the debate about liberal forms of citizenship, whether conceptualized in terms of rights-based, political membership or socio-cultural belonging.

and non-state institutional bureaucratic procedures] that directly and indirectly prescribe techniques for living for independent [neoliberal] subjects who learn to govern themselves” (15). From this perspective, citizenship has as much to do with engagement, interaction, and management of social relations among people as with legal relations with the state. It also offers a vital supplement to, and an expansion of, the classical liberal, rights-based debate about citizenship.

My ethnographic engagement and data show that the asylum system is one of the many sites where the management of social relations, or rather behaviors of legal subjects, and the everyday practices of US citizenship occur. First, the practices rely less on subject’s technique of self-governance but on the indefinite reiteration of their non-citizen subject position. In this sense, emphasis on asylum claimants’ own words and voices to retell *their* stories—filled with disjointed thoughts and fragmented memories—occupy an important realm in the very identification and reiteration of “victim narrative” for subjectification. To be sure, this legal subjectification, based on “injury-forming identity” (Brown 1995) at large, is neither fixed nor pre-determined in advance. The contradictory conceptions of victimhood—as a universally recognizable and simultaneously a culturally “authentic” victim—at work in the legal institutional space would suggest that victimization cannot be seen a putative goal to obtaining citizenship whether in terms of rights-based claims or socio-cultural membership and belonging. Instead, I have been arguing throughout the paper that the process of legal subjectification is an important dimension to renegotiating the legal status as non-citizen or protracted citizenship.

Second, both the state and non-state institutional spaces of encounter and enmeshment—in the legal practices directed at asylum claimants and their interpreters, and the mutual, if awkward and measured, interactions among all parties—is where everyday

meaning and exercise of citizenship take shape in concrete. The local authorities and private professionals— asylum officers, immigration lawyers, litigators, judges, human rights workers, medical doctors, and country condition experts—who *interpret* the workings of the US state into everyday encounters and operations of citizenship exist. Nicholas Rose has called these “experts of subjectivity,” or professionals “who transfigure existentialist questions...and the meaning of suffering into technical problems about the most effective ways of managing malfunction and improving ‘the quality of life’”(1999:142). The role of these professionals, as discussed in some detail in the encounter between claimant and human rights officer and private lawyers above, is to discipline claimants to be subjective beings who develop new ways of thinking about their asylum stories, narrative of suffering and victimhood, and in a particular performance of their asylum victimhood that can help them become legally visible. Bruno Latour has identified an array of power dynamics intrinsic to a command that “results from the actions of a chain of agents each of who ‘translates’ it in accordance with his/her own projects” (1986: 284). Legal and local authorities are in positions in which they not only mediate relations but also translate and interpret dominant ideologies and debates that forms the basis of seemingly mundane, bureaucratic practices that allocate, classify, and reify categories to fit people perceived as non-citizens—refugees, undocumented, asylum seekers, alien. Categories make things happen. In particular, when categories are employed in the contemporary US political context of “the Homeland Security State” (De Genova 2007), it can have real and devastating consequences for those enmeshed in legal procedures indefinitely. Far from being the product of abstract and overarching state institutionalized and non-governmental programs, the asylum seeking process in the US is deeply tied to the everyday making and unmaking of legal non-citizens.

### *Concluding thoughts*

In exploring the legal production of contradictory conception of victimhood within the asylum context, I have shown its potential usefulness in expanding the debate about liberal forms of US citizenship and redirecting questions previously unexplored. Analyzing ambivalent stories of claimants' past punctuated by their present conditions of suffering, as well as spaces of encounters where and how the stories are evoked, narrated, and performed may contribute less to the scholarly debate about social memory, political violence, and the tragedy of victimization rhetoric—themes central to scholarly analyses of asylum seekers and refugee—than to the real and practical questions about structural continuities and discontinuities where private citizens play active role in the everyday making and unmaking of citizens. Seen this way, asylum system is then at once an expression of liberal benevolence bestowed upon the most wretched population and simultaneously a part of a whole array of mechanisms that promise to identify and discipline those marked as “vulnerable” population into rightful, individual, legal subjects fit to be properly governed indefinitely by the liberal state.

I am not suggesting that asylum seeking-process as a whole is politically and legally bankrupt, or that the asylum bureaucratic procedures necessarily (re)traumatize individual claimants as legal non-citizens. However, my contention arises out of the fact that people categorized as “asylum seekers” and, as such, expected to behave, perform, and imagine according to the shifting and prevailing understanding of violence, persecution, and suffering, individuals and collective, to establish their ‘credibility’ through their own words or voice need critical rethinking and more self-reflexive approaches more generally. Tshering’s story is still unfolding. After four years of navigating the asylum bureaucracy, his future is still uncertain. Apparently, the immigration judge found him not a “credible” claimant—not

necessarily illegitimate “victim-subject”—on the basis that his was a case that resembled that of an “economic migrant” rather than an “asylum seeker.” Thus, the legal production of his “victim narrative” made the asylum bureaucratic procedure move until the “public secret” about his condition as a migrant subject surreptitiously came to the forefront...

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