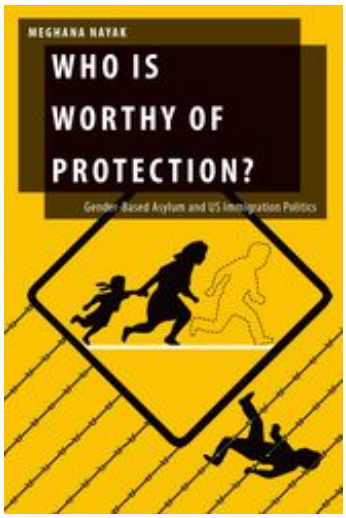
Book Review: Who is Worthy of Protection? Gender-Based Asylum and US Immigration Politics by Meghana Nayak

In **Who is Worthy of Protection? Gender-Based Asylum and US Immigration Politics** *,* **Meghana Nayak** *examines gender-based asylum in the United States, focusing on the narratives through which certain asylees are framed as being more 'worthy' than others. While* **M. Bob Kao** *welcomes Nayak's recommendations regarding how feminist scholars can productively intervene in the asylum process, he nonetheless questions whether all of these arguments can be equally put into practice by lawyers navigating the challenges and constraints of the legal system in their daily working lives.*

Who Is Worthy of Protection? Gender-Based Asylum and US Immigration Politics **. Meghana Nayak. Oxford University Press. 2015.**



Meghana Nayak's *Who Is Worthy of Protection? Gender-Based Asylum and US Immigration Politics* is a valuable contribution to the study and practice of gender-based asylum in the United States. She envisions it as both a scholarly contribution and a useful tool for practitioners who represent asylum seekers in the US. As a political scientist at Pace University, Nayak's work is situated not only in domestic US law, but also in global politics. She argues that how gender-based violence is framed in the asylum process is inextricably tied to how the US positions itself in relation to other countries. The stakeholders in the US asylum process, advocates and government representatives, frame subjects in ways that only allow 'worthy' victims – those who are deemed legitimate and credible – to be granted asylum, which undoubtedly casts other victims of persecution as undeserving of protection because their experiences do not fit the narrative.

Through examining gender-based asylum cases, Nayak identifies and analyses various types of violence. She argues that worthy asylum seekers can be divided into three types: autonomous, innocent and non-deviant. The first is exemplified by female genital cutting and domestic violence cases; the second by trafficking and coercive sterilisation and abortion cases; and the last by cases of sexual orientation and gender identity persecution. These frames, she argues, not only affect who is considered an asylee and who is excluded, but also US domestic and foreign policies. She states:

> *The autonomy frame serves as a way for the United States to shape other countries' policies on women's rights and to create a distinction between civilized and barbaric societies. The innocence frame enables political actors in the United States to strengthen pro-life policies and anti-sex worker policies (135).*

The non-deviance frame allows the US to distinguish itself as a protector of sexual minorities in relation to other countries, but at the same time to disregard the oppression of sexual minorities within its own jurisdiction.

Nayak's three frames offer a neat narrative, but she does not always provide clear explanations. One example is her argument that victims of forced sterilisations or abortions are deemed to be worthier of asylum because they are perceived to be more innocent than victims of less severe coercive practices, such as unwanted gynecological

examinations or the insertion of intrauterine devices. She shows that the government often takes these acts of persecution less seriously through her discussion of cases, but nothing in her explanation indicates that this is a result of their relative lack of innocence. The connection between innocence and severity is unclear, which makes one wonder whether this example does truly fit the innocent victim frame.

Image Credit: US Supreme Court Building (Wikipedia Public Domain)

As a lawyer, I paid particular attention to Chapter Two as it provides the foundational background on US asylum law. While it gives a solid general framework, one should be hesitant to rely on the text here for specific provisions. Understandably, much of Nayak's language and explanations is simplified in order to make sense of the complicated area of immigration law for non-lawyers. In the process, however, nuances and exceptions may have been left out. That she often does not cite specific provisions compounds the problem.

Chapter Six may be the most important part of the book. After identifying the frames and the resulting problems and obstacles, Nayak uses this section to suggest concrete ways to address them. She calls for feminist intervention in asylum cases in two ways: directly through expert opinions, and indirectly through academic publications. As expert witnesses, feminist scholars can directly influence specific asylum cases and tailor their opinions to the facts at hand. As scholars, they can write law journal articles that may affect judges' thinking on more fundamental or broader issues or be incorporated into training manuals. Neither of these, of course, are unfamiliar concepts in other areas of law, but perhaps it is an important reminder in the world of asylum law, where advocates can be overstretched and overworked, that help can be sought from academia. She then suggests ways to challenge the three worthy victim frames: first, by rethinking what it means to be a family; second, by suggesting a new category of forced pregnancy/maternity to complicate the narrative; and third, by challenging the concept of moral turpitude in law to disrupt the narrative on deviance. These strategies would hopefully 'change the discursive climate from which the worthy victim frames emerge' (175).

While these three ways to challenge the paradigm are admirable recommendations for scholars, their usefulness for practitioners may not be as clear. Nayak claims that many practitioners 'perform legal acrobatics to negotiate the difficult line between the need to win the asylum case, and the desire to understand the complexities of country conditions or the nuances of gender persecution' (190), suggesting that lawyers can challenge these frames in their everyday work.

In practice, what are the chances a lawyer would challenge the long-held and deeply engrained beliefs of asylum officers and immigration judges? When the choice is between perpetuating harmful narratives in order to win an individual asylum case and disrupting the frames at the risk of irritating the adjudicator, the responsible lawyer will always opt for the former. That is not to say that lawyers cannot nudge the system and disrupt the dominant narrative when appropriate, but expectations that practitioners have a large role to play here should be tempered.

Instead of focusing on the role of advocates, Nayak should consider more seriously the role of asylum officers and immigration judges. The ways they are recruited and trained as federal civil servants are possible points of intervention for feminist legal scholars. They can use their knowledge to influence Department of Justice officials to consider candidates who are specifically qualified in gender-based asylum and cognisant of the fact that their everyday work can perpetuate frames that influence US domestic and foreign policy and ultimately exclude classes of people deserving of asylum. They can also position themselves to have more direct influence on the education of asylum officers than by writing academic articles with the hope of being cited in training manuals. Given the power that these decision makers have, much more attention should be paid to their appointment and training and the role scholars and advocates can play in these processes.

Nayak has created a blueprint on how to change the entire framework of gender-based asylum in this book. Ultimately, despite my reservations, it is an important contribution. Even if practitioners cannot explicitly disrupt the frames in their everyday work, they should at least understand their role in perpetuating them. To make her work more valuable in practice, the next step for Nayak is to heed her own call. She needs to adapt the book into a law journal article to maximise the influence of her contribution. However absurd it may sound to those outside of law, the realities of US legal academia and practice are such that legal scholars, advocates and immigration judges will take her arguments and suggestions much more seriously if she were to publish in a law review.

M. Bob Kao is a PhD candidate at the Centre for Commercial Law Studies, Queen Mary University of London. He was a public interest lawyer in California and has taught American law in Taiwan and China.

Note: This review gives the views of the author, and not the position of the LSE Review of Books blog, or of the London School of Economics.