

# Book Review: The Concealment Controversy

Janna, Wessels. 2021. *The Concealment Controversy. Sexual Orientation, Discretion Reasoning and the Scope of Refugee Protection*. Cambridge (UK): Cambridge University Press. 304 pp., £ 23.99.

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Although sexual orientation and gender identity are legally accepted grounds for asylum claims of lesbian, gay, bisexual, transgender, and queer (LGBTQ) people, acquiring refugee protection remains difficult for these individuals due to the so-called “discretion” or concealment reasoning. This widely used concept in refugee law studies refers to the way courts may reject an asylum claim if they assume that the claimants behaved or will behave discreetly in their country of origin, thereby making it unnecessary to offer them protection. The controversy around it is referred to as the act/identity or discretion/disclosure dichotomy, that is, whether courts should focus on persecutors’ actions or on the discretion of persecuted individuals when examining asylum claims.

To find out what this controversy reveals about the limits of refugee protection and why concealment reasoning is difficult to eliminate in refugee status determination, Janna Wessels focuses her book *The concealment controversy* on sexuality-based asylum claims, in which sexual orientation is the ground used to seek protection, in selected European civil law jurisdictions. Drawing from the legal literature on asylum claims, she examined 97 court decisions in France, 75 in Germany, and 77 in Spain. She adopted the act/identity and discretion/disclosure dichotomies from queer theory as her analytical lenses, thereby mobilizing the law studies literature that is most often overlooked in mainstream queer migration studies.

Wessel’s book is organized into two parts. The first part comprises an Introduction (Chapters 1 and 2) that lays out Wessel’s epistemological and methodological foundations and sketches the institutional and temporal contexts of concealment reasoning. Chapter 3 observes how the divergences in the way European Union (EU) member states deal with refugee issues, specifically whether to focus on discretion or disclosure,

widened due to several reasons: the establishment of a Common EU Asylum System; the transposition of the Qualification Directive in 2006 retaining EU member states' "substantial discretion to establish procedures for granting and withdrawing protection" (p. 63); the extension of the Court of Justice of the European Union (CJEU) to "matters of asylum law," leading to the EU states' loss of "final interpretative authority" (p. 64) in those matters; and the rejection of the "'reasonable requirement' to be discreet" in three high-level judgments: one in the United Kingdom and two in the CJEU. Despite the latter development, Chapters 4, 5, and 6 show that the countries studied in the book display differing contours of concealment reasoning in refugee status determination: whereas Germany emphasizes claimants' identity and "internal suffering" through its "victimhood" requirement, France and Spain focus on claimants' acts through "martyrdom" and "distinctiveness" requirements respectively.

The second part of Wessel's book reveals the uncertainties around the way "refugee" is defined in different legal and national contexts. To start with, Chapter 7 examines political opinion, notably the distinction between protected groups and persecuted groups. Then, Chapter 8 investigates the notion of a "particular social group" and highlights two possible approaches to define it based on "protected characteristics" or "social perception." Last, Chapter 9 reviews the major scholarly trends regarding the complicated relations between human rights and refugee law. Together, these three chapters show that there are different ways to conceptualize the 1951 Refugee Convention grounds.

The book concludes that concealment reasoning reflects the perduring uncertainties about the definition of "refugee" and the scope of refugee protection. Given the tension between the fundamentality principle on the one hand, according to which "no one should be required to hide, change or renounce" (p. 238) their characteristics, and the argument of severity on the other hand, which considers that refugee laws only provide protection against "serious harms" (*ibid.*), there is no general solution to the question of where to draw the lines of refugee protection. To promote inclusive asylum procedures despite this issue, the book proposes three strategies: focusing on both act and identity in sexuality-based asylum claims, increasing the possibilities for each claimant to obtain refugee protection, and finding a balance between the fundamentality principle and the severity argument.

Considering its original data and innovative approach, Wessels' book will be of interest to scholars of international migration, specifically in the fields of refugee and queer migration studies.<sup>1</sup> It provides answers to why sexuality-based asylum claimants feel pressured to conform to Western sexual identity models when demanding protection. It will be interesting to analyze in future studies how the recent societal challenges — the massive arrival of asylum seekers in Europe, the COVID-19 pandemic, and the wars in

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<sup>1</sup>See <https://www.migrationdiversity.nl/blog/discovering-the-other-side-of-the-mirror> for additional information regarding the book's empirical, theoretical, and methodological contributions.

Ukraine and Sudan — have affected the procedures of sexuality-based asylum claims. Outside academia, the book will provide guidance to nongovernmental organizations, social workers, and other stakeholders working for the rights of LGBTQ+ asylum seekers, specifically regarding how to respond effectively to the legal exigencies for asylum claims in the three studied jurisdictions.