



# ASY FAIR

FAIR AND CONSISTENT ASYLUM  
ADJUDICATION IN EUROPE?



European Research Council  
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# A CRITICAL, MULTI-METHODOLOGICAL AND INTERDISCIPLINARY STUDY OF ASYLUM ADJUDICATION IN EUROPE

‘Consistency’ is regularly cited as a desirable attribute of border control, but it has received little critical social scientific attention. This inter-disciplinary project, at the inter-face between critical human geography, anthropology, border studies and law, will **scrutinise the consistency of European asylum adjudication** in order to develop richer theoretical understanding of this lynchpin concept. It will move beyond the administrative legal concepts of substantive and procedural consistency by advancing a three-fold conceptualisation of consistency – as **everyday practice, discursive deployment of facts** and **disciplinary technique**. In order to generate productive intellectual tension it will also employ an explicitly antagonistic conceptualisation of the relationship between geography and law that views law as seeking to constrain and systematise lived space.

The project will employ an **innovative combination of methodologies** that will produce unique and rich data sets including **quantitative analysis, multi-sited legal ethnography, discourse analysis** and **interviews**, and the findings are likely to be of interest both to academic communities like geographers, legal and border scholars and to policy makers and activists working in border control settings.

In 2013 the **Common European Asylum System (CEAS)** was launched to standardise the procedures of asylum determination. But as yet no sustained multi-methodological assessment of the claims of consistency inherent to the CEAS has been carried out. This project offers the opportunity **to assess progress towards harmonisation of asylum determination processes in Europe**, and will provide a new conceptual framework with which to approach the dilemmas and risks of inconsistency in an area of law fraught with political controversy and uncertainty around the world. Most fundamentally, the project promises to debunk the myths surrounding the possibility of fair and consistent border controls in Europe and elsewhere.

This project is hosted by **University of Exeter** and has received funding from the **European Research Council (ERC)** under the European Union's Horizon 2020 research and innovation programme under grant agreement No. **StG-2015\_677917**.

## RESEARCH OBJECTIVE

How can an understanding of consistency as everyday practice, discursive deployment of facts and disciplinary technique open up new insights into the challenges of achieving consistency in asylum appeal adjudication?

ASYFAIR aims to deconstruct and critique dominant notions of consistency and inconsistency in legal studies, border studies, legal geography and anthropology, and to offer a richer lexicon with which to describe and assess legal systems.

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# Research Objectives

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'Fairness' is often largely subjective and is routinely in the eye of the beholder. In recognition of this, a common legal approach is to emphasise consistency - especially procedural consistency – based on the assumption that standardisation is possible. We would all like to think that wherever our case is heard in an independent court, the same procedures and standards of fairness will be applied. But sometimes things differ between hearing centres. Perhaps these differences have little bearing on the case. But if factors related to the fair running of an asylum appeal differ between centres or countries this could be problematic.

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**ASYFAIR examines whether consistency (defined as treating like cases alike) is possible given the disruptions that everyday life introduces to systems of control, and will raise the question of whether a fair, European asylum adjudication system actually exists. In this way ASYFAIR will critically reflect on the notions of 'fairness' and 'consistency' that circulate in political, public, legal, media and academic debates. It will also provide an innovative lens through which to critique and inform policy and legislation during a crucial period of consolidation in Europe (CEAS).**

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The study will focus on the process of appealing against initially negative asylum decisions in different countries in Europe in order to see if processes are consistent. But rather than focusing on substantive consistency – in outcomes and decisions of asylum appeals – ASYFAIR will examine the **consistency of legal procedures**.

Although consistency and fairness are routinely utilised by legal scholars and policy makers to evaluate legal systems, this runs the risk that consistency as a concept becomes detached from the concerns of migrants, activists and policy makers and is reduced to little more than a system parameter rather than a principle of law. **This project will inject new life into the study of consistency** by attending to the on-the-ground happenings in courts, the multiple forms of arbitrariness in asylum adjudication, and the disciplinary uses to which understandings of consistency have been put.

## WHAT IS CONSISTENCY?

The EU, the UNHCR, and the Council of European Immigration Judges have issued **detailed procedural instructions** about how judges, representatives, applicants, interpreters and witnesses should conduct themselves in asylum hearings. This project will open new horizons in research into legal studies by employing a three-fold conceptualisation of what consistency is, that goes beyond approaches that valorise decisions, outcomes and legal results. Doing so will subject the lynchpin concept of procedural consistency to **sustained, multi-methodological social scientific scrutiny** for the first time.

### CONSISTENCY AND EVERYDAY PRACTICE

ASYFAIR will examine **everyday happenings in court room settings** by employing multi-sited, international ethnography of appeal courts in different countries. The objective is to explore the often **intangible, administrative and uncodified differences in texture, feel and 'atmosphere' of asylum appeals**, and to ask to what extent it is possible to talk about consistent asylum appeal procedures.

Rooted in the assumption that there is a **gap between the law that is written down and the law that is practiced and experienced**, ASYFAIR aims to identify the happenings in asylum appeals that are disruptive and antithetical to achieving 'consistency', but are **uncodified in legal discourse**, potentially **un-addressable** through policy initiatives and that **vary** from case to case, such as the time and length of the hearing, the outcomes of previous hearings that day, the presence of other parties; key characteristics of the applicant including their nationality, language, gender, dress, non-verbal behavior and language ability, as well as other influences such as the remoteness and accessibility of hearing centres, differences in the local supply and quality of legal representatives, and popular cultural references made in the hearings.

## LEGAL GEOGRAPHICAL SCHOLARSHIP: THE TENSIONS BETWEEN SPACE & LAW

ASYFAIR explores everyday life as a sphere that is differentially resilient to the intrusions of legal order, systematisation, planning and bureaucratization.

Employing a geographical perspective to examine a legal concept sheds light on contradictions, and provokes intense, productive discussion about which differences 'matter' and why.

## CONSISTENCY AND DISCURSIVE DEPLOYMENT OF FACTS

Judges and legal professionals are required to form judgements based on scant and sometimes non-existing evidence, making the **credibility of the applicant** central to the process. Unlike in other areas of law that attempt to determine what has already happened, they are required to make **predictions** about what will happen in the future by considering if there is a well-founded fear of persecution should an applicant be returned.

But rather than focusing on divergent outcomes, ASYFAIR assesses the (in)consistency with which adjudicators within and across national contexts **utilize similar facts and knowledge from similar sources to reach different conclusions**, and the extent to which this form of inconsistency varies across civil and common law contexts, and thus examines **the degree to which inconsistency is resistant to factual knowledge**.

## CONSISTENCY AND DISCIPLINE

Consistency also figures in asylum appeal hearings as a **disciplinary device** when asylum seekers are expected to act in particular ways in order to demonstrate the validity of their cases. But inconsistencies in procedure (e.g. timings, translations) may be a potential barrier to justice to the detriment of sensitivity to particular cases and contexts.

ASYFAIR also examines the **ways in which consistency is experienced**, and **compares different standards of consistency expected** from judges and applicants. The research explores the ways in which legal practitioners reflect upon the **pressure to be consistent in their practice**; and if and how they **reject consistency**, unearthing everyday forms of dissent among legal practitioners. ASYFAIR also provides asylum seekers with an opportunity to **reflect upon disciplinary consequences** of the pressure to be consistent, and 'speak back' to the legal profession and policy makers about the **experience of being disciplined through the process of asylum appeal determination**.

## ASYFAIR EXPLORES:

- The extent to which everyday life is irreducible to procedures in asylum adjudication.
- The everyday effects of administrative and uncoded inconsistencies.
- The manifold administrative differences across space and time which can be expected to introduce significant difference in the way appeals function and proceed.
- The hypothesis that judges' behaviour in a hearing is statistically significantly correlated with extraneous factors that should not influence legal procedures.



# Methodology: Data Collection through Multiple Methods

ASYFAIR employs **an innovative combination of methodologies** that will produce unique and rich data sets including **multi-sited legal ethnography**, **discourse analysis**, **interviews**, and **quantitative analysis**, and will be situated in multiple EU countries, such as Germany, France, the UK, Greece and Hungary.

## LEGAL ETHNOGRAPHY

ASYFAIR researchers will conduct **observations of asylum appeals at hearing centres** in France, Germany and the UK, as these fieldsites will allow comparisons of centralised and dispersed systems, and comparisons of common and civil law systems. Ethnographic researchers will **observe different appeal courts in different countries**, in order to develop 'thick' descriptions of the happenings in contextual sites, and provide the conditions for rich comparative observational material.

ASYFAIR builds upon the existing work of the PI Dr. Nick Gill, during which a survey instrument has been developed that will be used in the various fieldsites, in order to facilitate **meaningful statistical comparison of judicial behaviour** in situ.

To assess the extent to which judges vary in terms of key behaviours - which are important if the applicant is to enjoy procedural consistency - the ethnographic researchers will note **key features**



**of the case** including the time of day, the length of the hearing, the direction of previous hearings that day, the gender of judge and applicant, the presence of other parties and key characteristics of the applicant (ethnicity, language, type of claim, dress, etc.). ASYFAIR will compare cases that we would most expect to be **uniform within rather than across national systems**, in order to be able to demonstrate procedural inconsistency.

## CRITICAL DISCOURSE ANALYSIS

ASYFAIR will analyse an estimated 50 **written decisions by immigration judges from each country**, and compare them across countries, in order to assess and build theories about the **influences over (in)consistent reasoning** among adjudicators. This method will also foreground **relationships of power** and the ways in which linguistic constructions and social power hierarchies are co-constructed.

By examining the differential role of facts in metaphoric and rhetorical linguistic constructions, ASYFAIR explores the way in which **similar facts are used to convey different messages, support different reasoning and reach different conclusions**. Critical discourse analysis allows us to examine the extent to which cases from the same nationality and based upon the same type of claim (e.g. persecution on the basis of ethnicity or sexual orientation) are reasoned about differently. ASYFAIR will also examine how ‘facts’ relating to these types of cases, for example in country guidance information, are deployed inconsistently, and therefore accounts for cultural and societal influences that form the contextual backdrop of the reasoning and linguistic constructions.



## INTERVIEWS

ASYFAIR will examine **the way hearings are experienced by different groups** including **appellants** and **legal professionals** by means for **in-depth interviews**. This will allow different actors to reflect critically upon their practices and experiences of either **exerting discipline or being disciplined** through the imperative for consistency. By interviewing at least 60 legal practitioners and 60 current or former asylum seekers in various EU countries, the study reflects the **diversity of asylum appeal determination systems**.

## ETHICS

The PI of ASYFAIR, Dr. Nick Gill, has produced detailed **ethic assessments**, which were approved by both the ERC and the University of Exeter's Ethics Committee. Further details on request.

## Research Team

### PRINCIPLE INVESTIGATOR (PI)

**Dr. Nick Gill**

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[http://geography.exeter.ac.uk/staff/index.php?web\\_id=Nick\\_Gill](http://geography.exeter.ac.uk/staff/index.php?web_id=Nick_Gill)

Dr. Gill is a political geographer, teaching Human Geography at the University of Exeter. He conducted groundbreaking research on justice and injustice in asylum adjudication in the UK, which impacted directly on the UK's migration and asylum policy and legal procedure. His previous research and methodology forms the foundation of ASYFAIR.

### POSTDOCTORAL RESEARCH FELLOW

**Dr. Nicole Hoellerer**

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Dr. Hoellerer is an anthropologist, with extensive research experience in migration and refugee studies. Her ethnography on refugee resettlement in the UK laid bare the practice-policy gap in the UK's migration service provision. As a native German speaker, she will be responsible for research conducted in Germany.

## CONTACT ASYFAIR

**We are looking for  
research participants  
and collaborators.**

**Please contact the  
research team or at  
[asyfair@exeter.ac.uk](mailto:asyfair@exeter.ac.uk)**



# ASYFAIR

**ASYFAIR is hosted  
by the University of  
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## POSTDOCTORAL RESEARCH ASSOCIATE

### **Dr. Daniel Fisher**

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Dr. Fisher is a human geographer concerned with the increasing mobility of state borders and their creep into the spaces of everyday life. His previous research, conducted while a PhD student at the University of Edinburgh, consisted of multi-sited ethnographic work in the UK, Poland, mainland Spain and Ceuta. His work has focused on the 'messiness' of border enforcement in these diverse spaces, despite the availability of high-tech border control technologies and near real-time communication systems. His main responsibility in the ASYFAIR project is to analyse UK data, and publish on asylum adjudication.

## RESEARCH FELLOW

### **Dr. Jessica Hambly**

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Dr. Hambly has a background in law. Her PhD was a socio-legal study of UK asylum appeals, with a specific focus on the work of lawyers. Alongside her PhD, Dr Hambly worked as a research associate on the Citizenship and Law Project at Bristol University and taught constitutional and administrative law. She has volunteered for a number of years with local refugee advocacy and solidarity groups, and prior to starting work with the ASYFAIR team she worked as an adviser with Legal Centre Lesbos. As a French speaker, she is responsible for research conducted in France.

## RESEARCH ASSISTANT

### **Amanda Schmid-Scott**

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Amanda is a PhD candidate in Human Geography at the University of Exeter, researching the seemingly banal administrative systems that govern daily life for those seeking asylum in Britain. Her work focuses on those geospatial controls imposed on asylum seekers, in the form of immigration detention and reporting practices, inherited within many people's experiences of seeking asylum. Prior to her PhD studies, Amanda worked with Somali refugees in Ethiopia, and with Praxis, a charity working with vulnerable migrants in east London. Amanda's role in the ASYFAIR team includes the analysis and coding of UK data.