



Interview

Hilary Evans Cameron

Online via Webex

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Anne Saab (AS):

Thank you so much to Hilary for being with us today and for agreeing to do this interview. I met Hilary many years ago in Copenhagen and we connected around the topic of emotions broadly and then we got in touch again very recently and I'm really delighted that you're here with us today. So let me ask you my first question.

A central focus of your work has been on assessing credibility of refugee claimants. Could you tell us a little bit more about how you became interested in this question and what your journey has been so far?

Hilary Evans Cameron (HEC):

For sure, and thank you so much for inviting me to do this. This is really lovely. It's great to be part of this and I'm just delighted to get to connect with you in this context, Anne, because the work you're doing is really inspiring. Thank you for letting me be part of it.

I was a refugee lawyer for a decade, so representing refugee claimants in their hearings in Canada. So as a refugee lawyer, I would be with my clients in their hearings and trying to help them tell their story to the decision maker. And so my interest in credibility assessment came from my clients' experiences trying to be believed by the decision makers.

And my interest specifically in emotion in the context of credibility assessment, I think it started with a particular hearing. I had a client who was a young woman from Colombia, and she had received threatening messages from the guerrilla. And she told the decision maker that she'd received these written threats. And the decision maker said, well, what did you do? Did you quit your job? Did you move to another city? And she said, I tried not to think about it, I just sort of carried on. And he said, well, you seem like an intelligent young woman. Was the writing on the message not big enough? Were the words not clear enough? In other words, how could you not have taken this seriously?

At the break in this hearing, I was outside, and I passed this adjudicator, and he was smoking his cigarette. In Canada, we have warning labels on the cigarette packages telling you how dangerous it is to smoke. And I just walked past him and thought, is the writing not big enough? Is the message not clear enough? You know, you're doing this dangerous thing that somehow you've managed to push the risk to the back of your mind as you carry on. We all do that, right? We all do. We all get in cars, even though we know there's a risk of car accidents. We all do this.

We take some risks more seriously than others. And some impact us emotionally in ways that others don't. So that was what started me thinking about why is it that when it comes to risk perception, especially in risk response, why is it that we are more emotionally impacted by some kinds of risks and in different kinds of ways? So we might be very upset about a risk, but still able to hivy it off, still able to push it to the back of our minds.

So that was my entry point into starting to look at the social science around the psychology of risk assessment, risk perception, risk response. And in refugee law, the question of fear is right at the heart of our legal definition. In the 1951 Refugee Convention, the language that helps to determine whether a person is entitled to refugee protection is about whether they have a well founded fear of persecution in the country that they've left. And in Canada, and in some jurisdictions, but by no means in all, we've actually taken that literally to mean this person must be afraid. So in Canadian law, it's actually technically not enough for a person to be at risk of persecution, they actually have to be subjectively afraid. That distinction in practice doesn't come up very often.

Most decision makers are willing to accept almost all the time that if you are actually at risk, you're probably also afraid. But where it does come up is in credibility assessment. So when our decision makers look at how people responded to dangerous situations, they will still say, you didn't act the way I think a frightened person would have. And I think, therefore, that you weren't frightened enough. So therefore, the risk wasn't real enough. So that's one of the areas that I look at.

I have looked at psychology evidence more broadly, I work at the intersection of law and psychology around questions of memory. So what do people remember, how complete, how accurate, how stable are our memories for the events that we experienced? There's a disconnect there as well with what decision makers often expect of claimants memories. So I looked at risk response, I've looked at memory. And then I have a body of legal work that looks at the legal structures that govern this process. But the questions of emotion in the memory context, we know a lot about how the emotional context of an event changes what and how we remember it. So having any of these conversations, without engaging with how people are feeling in those contexts, really doesn't make a lot of sense.

In refugee claims, in particular, there is the big elephant in the room, which is trauma, that these are traumatic experiences, and trauma affects cognition in all kinds of ways. Whether we think of trauma as sort of emotion, or whether we think of it as connected to emotion, where we draw those kinds of concentric circles, I think, from my perspective, the law in Canada and internationally is just simply very, very reticent to engage with any of it. So we tend still to default to a rational actor kind of paradigm, when we have questions about how people think and act, and we don't know how to answer them, we tend to default to what would a reasonable person do.

And in a refugee claim context, that ends up leading decision makers to say, I don't think your response was reasonable, I don't think you took appropriate steps to reduce the danger that you were being exposed to. And in international law, at the level of the Refugee Convention, it frankly wouldn't matter, it doesn't matter whether a person's a reasonable person or not, it doesn't matter whether their risk response was reasonable. The only thing that matters is are they at risk for the for the reasons under the convention.

AS:

Thank you so much, Hilary.

I will just update my second question a little bit, which is rather than just asking about where you think emotions play a role, because I think you've already given us quite a few examples here. Perhaps you could tell us a little bit about the response that you've had to the research that you've done, and especially from lawyers.

HEC:

Lawyers who work for refugee claimants understand that this evidence can help them to explain to adjudicators why the adjudicator shouldn't assume from what they're seeing that the person's not telling the truth. So if an adjudicator thinks: I would assume, based on my life experience, that most people most of the time would pack up their bags and flee if they were facing a fear for their life. That everyday sort of common sense impression that that adjudicator has is going to be reinforced by the fact that they're only ever going to meet the refugee claimants who did flee. So then they have that sort of bias built in. And our law, again, is very supportive of decision makers common sense. So we put common sense and reason right at the center of what we allow decision makers to draw on.

And I think there's some sense to that. What else are they supposed to use? Coming into a decision, of course, you use your common sense, but you have to be willing to update it in light of evidence. And so the lawyers, refugee lawyers, see this evidence as a way to help decision makers update their assumptions, or nuance or change their assumptions.

I have a fairly specific focus in my work, which is that I look at deception findings. So I look at when and why and how decision makers conclude that people are lying. I have, especially in recent years, really dug into the kinds of reasons that decision makers give for finding that people are lying. And when I look at the decisions where decision makers are finding that people are lying, it's really very depressing. There's very little engagement with social science, despite a sort of concerted push in the law and psychology community. My community of colleagues, we've been working for at least 15 years now to try to get this evidence in.

When we look at the rejections, at least in the studies that I have done, where I look at the rejections in the Canadian context, we just don't see much trace of evidence from social science. But I'm only seeing the rejections. And so what I do understand from colleagues who are still working as lawyers – I'm not any longer – but for colleagues who are, is that the evidence is having a broader effect. It's leading to more acceptances. So it's leading decision makers to do what we were hoping they would do and say: look, I still have some questions about this, it still seems odd to me, but I understand, for example, that maybe memory for dates isn't a complete or good enough reason to disbelieve someone.

Anecdotally, I have the sense from colleagues that when they use this evidence in their hearings, it is making a difference. It's having that effect. And that's borne out in my experience by the work that I do with decision makers.

I have also had now a fair amount of opportunity to connect with decision makers in Canada and in other jurisdictions internationally. And I will confess that as a refugee lawyer 15 years ago, when I started doing this research, I was unfairly cynical in that I thought the good decision makers don't need it, the bad ones won't care. And my initial purpose for putting this evidence into a refugee hearing was to convince the decision makers who wanted to find that this claimant was lying, or wanted to reject the claim, that they were going to have to find another way to do it. In other words, if I come in with a stack of documents about how bad memory for dates is, and I plop that stack of documents down on the table, the decision maker is probably not going to pick at the dates as much, they're going to talk about something else.

If I managed to do that effectively enough, if this decision maker doesn't believe the person, but can't find a good reason to justify why they don't believe them, my thinking 15 years ago was, well, they'll just reject the claim anyway, but they'll go to state protection, or they'll go to internal flight alternative, or they'll find some other reason to justify the decision they want to come to. And that is a reason that I'd rather be fighting about on appeal or in federal court. Because for one thing, I don't think we should be calling people liars for unconvincing reasons. So at the very least, my client will walk out of that hearing not having been called a liar to their face, for reasons that I don't think stand up, right? Again, that was me 15 years ago.

What I have seen is that it is not the case that the good ones don't need it and the bad ones don't care. There is a wide range, there's a broad range, in my experience, of decision makers who are very interested in this evidence and want to know more and want to make good decisions and want to get it right. They want to make the right decision, which legally is a bit of a problem, because the law actually doesn't ask them to get it right. In Canada, when a decision-maker makes this kind of decision, the law says that they must make a reasonable decision and a fair decision, but it does not actually require them to make an accurate decision. Making a reasonable decision means, for example, accepting evidence that you don't believe is true if you don't have a reasonable reason not to. So part of the work I do on the legal side when I talk to decision makers is to try to explain that even if you emotionally don't believe the claimant, and even if that brings up emotional feelings of not wanting to be played for a fool, you legally have to deal with those emotions with a different part of your brain, and you have to be willing to say, I accept this evidence because I don't have a legally solid reason to reject it, even though subjectively I don't believe it. But that is what you're being asked to do legally.

So, you know, the reception, how's the evidence been received? There's a long way to go. I mean, there is still a lot of work to be done, and that is part of what my current project is doing for the next six years. I'm working with colleagues who are psychologists and lawyers, and we are working to try to bring social science into refugee hearings in a more concrete way than it has been until now. At this point, we have a fairly solid, large body of research from psychology and from law and from those of us working in the middle that says to decision makers, essentially, you need to be very careful when you draw a negative conclusion from this kind of presentation. So someone's lack of clear memory on this point, or the fact that they didn't flee right away, or whatever. What we're trying to do now with the community of psychology researchers who are working in particular areas is to really drill down on what are the unsound inferences that decision makers would draw.

We want to be able to say to a decision maker, on this kind of evidence, all else being equal, it will simply never be a good reason to disbelieve somebody. So what we know about people's memory for dates, for example, if the claimant makes this kind of statement, that is within the range of normal human experience. What we hear from decision makers all the time is that they do want some solid footing, they will feel better with some solid ground under their feet, just emotionally, it will make them feel better. And we are not ever going to help them have solid ground for a rejection. But we can give them some solid ground for what is not a good reason for a rejection.

AS:

Thank you so much for that response. And that actually, it makes me think a lot about what we're trying to do in this project as well.

Often when I tell people that I'm working on emotions in international law, there's this kind of automatic assumption that what I'm saying is: no, we shouldn't be reasonable, we should just follow our emotions. And that's exactly not what I'm trying to do. And I think your answer here really shows that it's not about being unreasonable (or irrational), but about recognizing that emotions influence everybody, whether you're talking about a refugee claimant, or whether you're talking about a lawyer who's working on these cases.

HEC:

So on that point, I think that there's an interesting connection between emotion and normativity. So the idea that there are normative questions at the heart of a refugee status decision, like: is it better to reject a claim that should have been granted or to grant a claim that should have been rejected? We talk in the common law / criminal law context about Blackstone's maxim, which is this idea that it is better that 10 guilty persons go free than one innocent one be convicted. That's one of those ideas at the heart of the common law that really has influenced how common law criminal law structures are developed.

That's been described as 'a fundamental feeling' in the common law. It's a feeling, it's an emotion, the idea that we should prefer to accept a refugee claim that isn't well founded rather than reject one that is. We can try to find objective reasons to justify that feeling – we can catalogue the harms involved in both kinds of mistake and weigh the competing costs of both kinds of error, Scholars have done that in the criminal law context for a century. But at the end of the day, I think it's because one of these kinds of potential mistake just feels worse. The fact that it's emotional doesn't mean it's irrational.

You can unpack where it's coming from. But ultimately, it's a drive and the sense that the kind of moral, ethical imperatives in the law that get translated into those normative standards, the idea that that's coming from somewhere, that it's coming from an emotional place, I don't think makes it a problem. That's just part of what it means to have a moral ethical framework.

AS:

I have a last question, or maybe a last set of questions.

Could tell us a little bit about the research projects that you're working on, at the moment, and say a few final words about why you think it is important to engage with emotions in migration law?

HEC:

I've had for many years my head down in a very small part of this world. So I feel like I've been basically doing versions of the same thing forever, which is looking at how decision makers decide that people are lying and trying to change our systems so that we call fewer people liars for silly reasons. Basically, ultimately, I want us to

reject fewer claimants on the basis of unsound credibility rejections. So the work that we're doing now is this push to try to bring psychology evidence in, we're calling it the Psychology Research Evidence Project, the PRE-project, so it's about a six-year project.

That team is building on research that my colleagues Jane Herlihy and Michaela Hynie and I have done. We have a paper coming out very shortly in *Psychiatry, Psychology, and Law*, which looks at Canadian rejections in refugee status contexts, at credibility rejections, and looks at what are the most important assumptions at play in these decisions. So when a decision maker decides that someone is lying, what are the assumptions that they are most often relying on? We look at the justifications that they give, so the inferences that they're drawing in law, in writing, in their reasons, and then what would you have to accept as true if you were going to draw that inference coherently.

We are using those assumptions and those inferences to ground this study, the PRE-project, when we decide what we're targeting to try to identify, really, the unsound applications of those inferences. So we're doing that, we're looking at some off-the-record inferences. The PRE-project work is coming out of what decision makers say in their reasons. So they have to provide, in writing, a reason why they disbelieve this person. We know, from decades of social science, that the reasons you give for your decisions may not reflect what actually motivated your thinking. Consciously or unconsciously, decision makers might say that they're drawing a conclusion for one reason when they've really reached that conclusion on a different basis. So we're looking at what might be motivating them, and there's a rich literature on heuristics and biases in the decision-making context. We've done some interviews with refugee lawyers about what they think might be motivating refugee status decision makers, which tells us something about what lawyers think, maybe not directly what decision makers are doing, but it gives us at least a sense of what the right red flags might be that lawyers are worried about.

We're doing work to look at the online interface, because now, for the first time, refugee hearings will be online as a default in Canada. There's always been that option, and some hearings always have been, but the large majority were always in person. Now they're online. We want to look at how credibility assessment is influenced in that context, so we're starting to do some work in that area. Some of my work has looked specifically at certain kinds of biases in decision-making, so preconceptions around LGBTQ claimants and other kinds of off-the-record considerations, so we're following on with those bodies of research.

The second part of your question was, basically, what's the use of this in migration law more broadly? Well, I mean, from my perspective, there's so much happening in the world of migration. There's so much happening in migration law.

There are so many big currents and big issues, and my piece of it is a small piece of it, which is, for a start, individual inland refugee status decisions, so most refugee claimants in the world are not the people we are seeing in refugee hearings in Canada. They are living in refugee camps, or there are large groups of displaced people on the move, and the portion of the world's claimants who make it to Canada or to a country like Canada with a refugee status determination system like ours is minuscule. Most people are in a different context, so I'm always very careful when I have lots of friends who are migration scholars, and I'm always very careful to distinguish what I'm doing from what they're doing, because what they're doing is ultimately much more impactful.

It talks to bigger pictures than mine, but mine has an effect for the people who are in the position that my clients were in, which is you've somehow made it through this massive obstacle course. You've beaten all the odds. You've run the gauntlet, and you've, against all odds, made it to a country like Canada, and now what's standing between you and the help that you need is just this one person who's going to think you're lying for the wrong reasons.

So that's where I see the work that I do playing a role, but I'm really very aware of the fact that this is not revolutionary work. This is really working within that very small part of the picture to try to make a difference for the people who've ended up in that position.

AS:

Thank you, Hilary, and I might disagree [on your last point]. I think your contributions are much more than you make your work out to be.

Thank you so much for taking the time for this interview. I look forward to seeing you soon.

HEC:

Likewise. Thank you so much for having me. It's such a pleasure.

