Abstract: Do "queer cases" - like proverbial "hard cases" - make bad law?

In HJ (Iran) and HT (Cameroon), the UK Supreme Court struck down a doctrine under which gay claims to asylum had been rejected on the grounds that the applicants could - and should - "be discreet" about their sexuality, and thereby avoid the risk of being persecuted at home. In an extraordinary passage that has attracted significant public attention, Lord Rodger of the new UK Supreme Court asserted that "... just as male heterosexuals are to be free to enjoy themselves playing rugby, drinking beer and talking about girls with their mates, so male homosexuals are to be free to enjoy themselves going to Kylie concerts, drinking exotically colored cocktails and talking about boys with their straight female mates."

While the decision of the Supreme Court is clearly liberating, we provide a critical assessment of its impact on international refugee law as a whole. We suggest that to reach their preferred result, the Supreme Court ran roughshod over the duty to find a "well-founded fear" of future persecution, and that it failed clearly to understand the real human rights costs of the enforced concealment that so-called "discreet" homosexuals face.

We offer an alternative theory of how international refugee law can and should embrace the claims of sexual minorities who can avoid serious harm only by accepting self-repression.

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