

***Contemporary Issues in Refugee Law* edited by Satvinder Singh Juss and Colin Harvey, Edward Elgar Publishing, 2013, 324pp, Hbk £[XX], ISBN: 978-1782547655.**

Contemporary Issues in Refugee Law is a collection that attempts to do at least two things—expose a number of challenges faced by contemporary refugee law practice and position refugee law’s central concepts and institutions in the context of a rapidly changing world. The contributors use a wide range of examples to demonstrate that aspects of the refugee system will need to be rethought, some incrementally and some radically if, as editors Satvinder Juss and Colin Harvey note, it is to remain relevant in contemporary times (1).

The book is organised into three main parts (“Of Refugee ‘Crisis’, Normative ‘Soft Laws’ and ‘Human Rights’”, “Of the Advent of New Refugees” and “Of the Securitization, Exclusion and Internal Relocation of Refugees”). This breakdown of the contributions allows for a relatively straight-forward thread of critique, beginning with the framing of refugee law in contemporary times, then following on to review the doctrinal and institutional challenges faced by various groups of applicants and closing with a critical assessment of the limits placed on refugee protection.

The first of the three main sections frames refugee law as a regime in crisis (13). Catherine Dauvergne in “Refugee law as perpetual crisis” uses the vernacular of crisis to describe the paradigm from within which refugees are viewed, both in terms of how their plights are represented (fleeing from crisis)(14) as well as what she terms ‘crisis bias’, or the centrality of the crises of the urgent escape or the noteworthy drama of regime change within successful refugee claims (15–16). This contribution provides a timely echo of the work of Hilary Charlesworth, who described international law as a ‘discipline in crisis’. While Charlesworth argues the disadvantages of such a crisis model, Dauvergne departs from this sentiment and suggests that the crisis paradigm when applied to refugee law, unlike human rights law more generally, serves the important purpose of maintaining the value of refugee law—and that while the crisis embodied by refugees and the system of international refugee law must be resisted, to ‘resolve’ the crisis would ‘make refugees disappear’ and eliminate the critical potential of the constant tension and resistance caused by the ill-fit of refugee law within international law and international human rights law (28–31).

Satvinder Juss follows in “The UNHCR Handbook in international refugee law” with a depiction of the Handbook as a set of guidelines that the UNHCR intentionally did not make binding or definitive. In light of this fact, Juss argues that interpreting and applying ideas in the Handbook exemplifies the ‘politics of knowledge recognition’ and that today’s legal practitioners and scholars need to both acknowledge why certain aspects of jurisprudence are not codified into ‘hard law’ on one hand and look beyond ‘hard law’ to ‘soft law’ and extra-legal guidance on the other (39–43). Juss ultimately asks whether the Handbook can be rescued as a legal authority.

Colin Harvey, in “Is humanity enough? Refugees, asylum seekers and the rights regime”, sets out to articulate the pressures that build on the fault-lines between “statist imperatives of migration management and a legal order rooted in notions of guarantees owed to the person” (85). In this endeavour, Harvey argues that examination of the notion of status highlights tensions between a state-centred managerial approach and broader international human rights principles (72–74). He also critically analyses a number of recent cases to demonstrate the nature of decision-making in refugee law—“skilfully crafted calibrations which have notions of balance absorbed into their very language (even while this is strenuously denied)” (85). Despite discussing the concept of ‘humanity’ in some detail, as well as nodding to Arendt’s early critique of *human* rights as idealist for failing to reconcile with historical contingencies and state power (74), he does not leave the reader with a clear way to understand or use the concept in the scope of his argument. While this is dissatisfying, it has everything to do with the scope of the material (any two-page explanation of ‘humanity’ will fall short), and it does not detract from exploring the main tensions between state imperatives and international humanitarian norms.

Part II of the collection begins with Jason Pobjoy’s “A child rights framework for assessing the status of refugee children”. Pobjoy advances an analysis which aims to situate

the refugee child within the context of international law in a way that considers how international refugee law and international law relating to the rights of children can address the particular challenges posed to individuals at the intersection of being both refugee and child (94–95). Pobjoy closely considers the development of the Convention on the Rights of the Child and measures taken by the UNHRC to align refugee law protections with those of the CRC. He then argues that states have the opportunity to use the CRC in their own refugee status determinations, more specifically that the CRC provides procedural guarantees supplementary to international refugee law, acts as an aid for interpreting the Refugee Convention, and may give rise to an independent source of status for the child applicant. (116). With this line of analysis, Pobjoy provides a tightly-knit argument for the direct relevance of the CRC in child refugee cases.

The trafficking of human beings is a phenomenon that is discussed very widely. In “Protecting trafficked persons from re-foulement: re-examining the nexus”, Susan Kneebone, through analysis of recent cases, accounts for a gradual shift in refugee law jurisprudence in various jurisdictions from viewing the trafficked person’s “characteristics as a gendered and narrow ‘social group’ to a more nuanced understanding of the meaning of ‘human trafficking’ and of their protection needs arising from that experience” (140). After contextually defining the concept of ‘human trafficking’, Kneebone outlines major international legal instruments on trafficking, including the UN Convention against Transnational Organised Crime framework. She then moves into a discussion of the 2006 UNHCR Trafficking Guidelines and critiques it for its depiction of trafficking as a form of gender violence, which she indicates has influenced responses to trafficking, including the construction of the ‘social group’ analysis for trafficked refugees. Kneebone then analyses various cases to chart the changing modes of identifying trafficked persons in their status determination as refugees. This piece will surely prove a valuable contribution to the intersection of trafficking and refugee law.

Penelope Mathew, in “Draft dodger/deserter or dissenter? Conscientious objection as grounds for refugee status”, argues that conscientious objection, as ground for refugee status, has been contested from a number of angles, noting that if the other party in a military action is not “readily characterised as evil”, it is potentially more difficult to find support for conscientious objectors. She notes that the UNHCR handbook does not reflect important recent developments in the case law on conscientious objection, and she discusses the general jurisprudential approaches to conscientious objection in case law of various jurisdictions, including the UK, Germany, Australia and the ECHR. She then discusses the laws regarding conscientious objection in *jus ad bellum* and *jus in bello*, as well as the concept of ‘partial conscientious objection’. Mathew concludes by stating that, while there is a basis for even selective and partial conscientious objection to be recognised for refugee status, “the deep moral, political and evidentiary concerns that may drive refugee status decision-makers need to be addressed” (195).

Focusing on gender in asylum claims, Siobhán Mullally expands on the work of Deborah Anker as she locates ways in which gender-related human rights work and activism, as well as sexuality and gender law, have helped render visible gender-based persecution in the context of refugee law. In her contribution “Gender asylum law: providing transformative remedies?” Mullally analyses advances on gender-related claims made by UNHCR Guidelines, as well as the Yogyakarta Principles on sexual orientation and gender identity, but she also points to challenges faced in securing recognition of such claims in Europe, including “identifying the requisite nexus with a Convention ground” (203). In her analysis, Mullally traces a gender-analysis that recognises patriarchy and a queer analysis that recognises heteronormative assumptions and question the link between identity and behaviour. Mullally concludes that expanding categories of protection is not transformative, but rather fundamentally “everyday practice, including credibility assessments and the use of accelerated procedures” (224). I would agree, though I would possibly go further and suggest that those changes, no matter how fundamental, within the current framework of refugee law, would still only constitute reform, and that transformation would need to critically rethink the project of refugee law. However, the question of what constitutes transformation is open for

debate, and Part I of this volume provides analysis closer to the type of critical rethinking of the project of refugee law that I suggest.

Part III of the collection begins with a comparative look at securitization. Idil Atak and François Crépeau explore processes of securitization (which they define, as per Waever, et. al. as “a process of social construction that pushes an area of regular politics, such as asylum, into an area of security” (227)) of refugee law in the European Union and Canada. The authors trace a history of thinking about asylum as a security issue from the end of the Cold War, which may be the start of the specific discursive thread they indicate, but surely can not be viewed as the beginning of the process of securitization of immigration control in Europe or Canada. They locate discursive trends that have bolstered this securitization process, such as the criminalization of refugees, a hardline policy against irregular migration and the “War on Terror”. Finally, Atak and Crépeau explore how these discursive processes not only affect refugee claims, but social structures and institutions, such as repressive border measures and detention centres, and that change will be best achieved through supporting legal advocacy not only for liberal precedents, but for “changing public perceptions and fighting negative public discourses and policies” (257).

In the penultimate chapter titled “Ethics and the exclusion of those who are ‘not deserving’ of Convention refugee status,” James Simeon sets out to identify the moral and ethical problems associated with the exclusion clauses of the Refugee Convention, particularly Article 1F, which stipulates that those for whom there are serious reasons to believe they have committed crimes against peace, war crimes or crimes against humanity or limited other crimes are not deserving of refugee protection (262). Simeon questions the assumption that anyone could be seen as undeserving of such protection and whether those who are so labelled should be prosecuted. To address these questions, Simeon offers a legal analysis of the exclusion clause, read alongside other legal principles and scholarly writing.

The final chapter, “Internal relocation alternative in refugee status determination: is the risk/protection dichotomy reality or myth? A gendered analysis”, uses a gendered lens to address a question central to many refugee claims—internal relocation. As Rebecca Wallace indicates, as the typical refugee has changed, internal relocation is increasingly called upon to provide an alternative to refugee status to those fleeing from regionalised conflict (291). Wallace discusses the different jurisprudential approaches to balancing the risk of persecution and the state protection available in cases of internal relocation, looking specifically at country of origin information and allegations of gender-based persecution. With this background, in latter section of her article, Wallace cites examples from various Commonwealth countries to assess the viability of internal relocation in those cases. Ultimately, Wallace suggests that the dichotomy between risk and protection in the internal relocation cases may not be a helpful way to think about the persecution being faced by the applicants.

This collection, ultimately, provides a variety of specific areas of refugee law that could benefit from legal-technical scrutiny, political critique, or, in a few cases, very fundamentally rethinking of refugee law as a project. The collection is a timely addition to changes in refugee law in the UK and elsewhere. While it does run the risk of spreading itself thin as a single volume, given the range of specialised issues it covers and the variety of approaches that the contributors take, the collection is rigorous, coherent and critical. It delivers on its purpose.

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