

INDEX

Adjudication formal and substantive theories of, 57 neutrality, and, 293 standards of, 303 Agenda for Protection, 23 Amnesty International, 250 Asylum seekers access to justice, 282 application of rule of law, and, 1 denial of access to legal system, 281 irregular migration, and, 26 legal limbo, in, ix, measures deterring, 3 numbers of, 4 responsibility to process, 8 restrictive legal measures for, 26 safe third country notion, 26 right to seek asylum, 9-11 refoulement, and, 10 Refugee Convention, and, 9 state responsibility, and, 10 states' duty not to obstruct, 10 territorial sovereignty claims, and, 10 rise of populism, and, ix, routes taken by, choice of, 72 Audi alteram partem, 78 Australia, 171-227 appeals, 179 asylum system, 173 border control policy, 187 border management, 174 citizens and non-citizens distinction, definition of refugee, 179

deportation, 186 designated unauthorised arrivals, extra-territorial processing, 171 Federal Magistrates Court role, 184 Humanitarian Program, 175 Middle East crises, and, 177 offshore program, 176 Vietnamese boat people, 176 judicial review, 179 jurisdiction of High Court, ouster clause, 297 mandatory detention policy, 185 alien status, and, 187 community responses to, 192 criticisms of, 188 detention of children, 189 entry into Australian community, and, 191 gap between domestic and international law, 190 human rights, and, 189 implied limitation on, 191 impracticable removals, 190 integrity of migration program, and, 187 Migration Reform Act 1992, and, 186 misuse of power, and, 193 public opinion, and, 192 reasonably necessary powers, and, 188 reform of, 194 stateless peoples, 189 mandatory detention regime, 176



INDEX

330

Australia (cont.) Migration Legislation Amendment (Judicial Review) Bill, 2001, 183 Migration Legislation Amendment (Procedural Fairness) Act, 2002, 184 Migration Program, 176 Minister for Immigration, powers, 173, 178 accountability, and, 209 humanitarian discretion, 208 inquiries into, 210 scope, 184 MV Tampa incident, 171 national human rights code, 173 non-refoulement obligation, 202 case law, 203 Minister's humanitarian discretion, and, 207 protection obligations, and, 204 Refugee Convention incorporation, and, 202 relevance of effective protection, right to enter and reside, and, 205 safe third country principle, and, 203 standards for implementation, standards of implementation, 205 offshore and onshore refugees, 175 offshore processing centres, 195 offshore selection of refugees, 174 Pacific Plan, 171 abolition, 197 access to legal system, denial of, 172 legal limbo, and, 171 legislation for, 171 mandatory detention policy, and, 193 secondary movers, 178 Permanent Protection Visas, 211 persecution test, 180 post World War II refugees, 174 removal, 175 queue jumpers, 177

Refugee Convention drafting and establishment, 173 incorporation, 173, 198 indirect incorporation, 198 Minister's discretion, and, 199 protection obligations, incorporation, 197 refugee definition, 217, 300 application of causation standard, 2.2.5 being persecuted, meaning, 218 causation standard, 222 human rights, and, 219 members of social groups, 222 mixed motives for persecution, 223 motivation test, 224 nexus requirement, 222 persecution, meaning, 220 privately motivated persecution, 224 significance of harm, 225 sustained discriminatory conduct, systematic and discriminatory conduct, 220 threat to life or liberty, interpretation of, 221 Refugee Review Tribunal, 179 legislative functions, 181 review of adverse decisions, 181 role, 180 refugee status determination, 178 decision-making structures, 179 refugees as constitutional aliens, 174 Constitution, and, 174 parliamentary sovereignty, and, 175 significance of, 174 Temporary Protection Visa regime, 177, 210 border control measure, as, 215 ceased circumstances clause, and, 212, 306 new measures in, 212 periodic review of status, and, 215 rights under, 177, 211



INDEX 331

standard of proof, 216 unmeritourious migration litigation, 185 Authority law, and, 35 Border control national interest, in, 64 Border controls burden of asylum, and, 72 Brennan, Sir Gerard interpretation of legislation, on, 47 neutrality, on, 51 Canada, 78-121 asylum seekers in, 78 asylum system, 80 acceptance rates, 82 accepted claims, 82 conditional removal orders, 83 expedited process, 81 families, 81 full hearings, 81 grounds for ineligibility, 80 humanitarian and compassionate consideration, 83 Personal Information Form, 81 Pre-Removal Risk Assessments, 83, 290 reasons for decisions, 82 Refugee Protection Officers, 82 rejected claims, 82 safe third country, 81 visa requirements, 80 border controls, 105 asylum seekers stranded on high seas, 106 smuggling law, 106 Canada-US Safe Third Country Agreement, 107 9/11, and, 108 appeal regarding, 119 arbitrariness, 118 Charter analysis, 117 criminality exclusions, 115 discretion, and, 118

exceptions, 107 exclusion from asylum for terrorism, 115 extraordinary rendition to torture, 117 history of, 107 individualized consideration of exceptional factors, 118 interpretation of refugee definition, 116 Land Border Claims, table, 109 NGO challenge to validity of, 109 number of asylum seekers, and, 108 prohibition against refoulement, and, 112 rationales supporting, 107 reasonableness, and, 114 refoulement to torture, 116 requirements, 107 security concerns, and, 108 Smart Border Action Plan, 108 success of, 109 US asylum regime, and, 114 US border security concerns, and, 283 US compliance with international obligations, and, 113 Canadian Council for Refugees, 308 empirical immigration, 78 Immigration and Refugee Protection Act, 2001, 79 Immigration and Refugee Protection Regulations, 79 international law, treatment of, 92 human rights norms, 92 IRB Refugee Protection Division appointment process, 96 decision-making independence, 97 incompetence, and, 97 level of competence, 96 main tasks of members, 95 political interference with, 96 reputation of, 294 size of, 95 judicial review access to, 103 application for leave, 103, 297

discrimination, 118

doctrine of ultra vires, and, 119



INDEX

332

Canada (cont.) docket control, and, 104 exercise of power outside Canadian territory, 106 grounds for, 103 rejected asylum seekers, and, 103 ordinary courts, access to, 104 post-war refugee admissions, 79 procedural fairness in, 55 Refugee Convention, 79 refugee determination process single decision maker, 102 refugee determination system, 85 Chiarelli case, 90 credibility of asylum seeker, 95 IRPA process, 101 oral hearings, 89 post 9/11 securitzation of immigration, and, 90 preventing access to, 95 principles of fundamental justice, and, 88 prohibition on torture, and, 91 requirements of, 90 right/privilege distinction, 90 security of the person, and, 90 Singh case, 85 Suresh case, 91 refugee hearings counsel-led questioning, 100 departures from routine, 98 example of, 97 exceptionally vulnerable claimants, 100 nature of, 100 reverse-order questioning, 98 refugee, definition of, 93, 299 IRB Gender Guidelines, 93 right to be heard, 84 Supreme Court rights of asylum seekers, and, 105 Cartagena Declaration on Refugees, 1984, 16 refugee, definition, 16 fear of being persecuted, and, 222 Central America

Children detention of, 189 Cold War effects of end of, 19 international migration after, 23 refugee protection, during, 15 Communism US refugee policy, and, 125 Community closed borders, and, 67 concept of, 66 conferring membership on newcomers, 67 exclusion of non-citizens, and, 74 liberal theory, and, 67 political community standard, 70 political culture, and, 74 principle of mutual aid, 68 reciprocity and mutual concern, and, 70 Comprehensive Plan of Action for Indo-Chinese refugees ('CPA'), 17 Consistency, presumption of, 63 Constitutional review originalism debate, and, 44 Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), 9 Convention on the Rights of the Child (CROC), 289 Convention Plus, 28 Courts of law refugees' rights of access to, 7 role of, 43 Craig, Paul ultra vires doctrine, on, 49 Customary international law non-refoulement as part of, 14 Dauvergne, Catherine communitarian liberalism, on, 67

refugee situation, 16



| Democracy | the community, and, 69 |
|---------------------------------------|-------------------------------------|
| judicial review, and. See Judicial | theory of adjudication, 46 |
| review | • |
| Detention, freedom from | Education |
| refugees' rights, and, 8 | refugees' rights, and, 7 |
| United States, in, 166 | Ethical |
| Dicey, Albert Venn | definition, 73 |
| rule of law, on, 35 | European Charter of Human Rights |
| Diplomatic assurances | national security, and, 229 |
| use of torture, on, 263 | European Charter of Human Rights |
| Discrimination | (ECHR) |
| refugees' rights, and, 8 | deportation for national security |
| Displacement | reasons, and, 259 |
| root causes of, 20 | torture, prohibition on, 289 |
| Dualist legal systems | European Convention of Human |
| | |
| incorporation of international law, | Rights, 229 |
| and, 288 | UK implementation, 60 |
| integrity of, 282 | European Council of Refugees and |
| Dublin Convention, 107 | Exiles (ECRE), 257 |
| Due process, 39 | European Court of Human Rights |
| neutrality, and, 50 | Chahal decision, 261 |
| Durable solutions, 17 | European Union |
| first use of term, 17 | assistance in regions of origin, 28 |
| repatriation, and, 17 | burden-sharing arrangements, 242 |
| Dworkin, Ronald | Common European Asylum |
| adjudicative principle, and, 46 | System, 242 |
| checkerboard statutes, 59 | harmonization of asylum, 229 |
| constitutional review, on, 45 | harmonized standards, influence |
| interpretive theory of integrity, xi, | of, 276 |
| 39, 285 | influence on UK domestic law, 244 |
| adjudication, and, 299 | Qualification Directive, 268 |
| criticisms of, 41 | aim, 268 |
| due process, application of, 39 | asylum shopping, and, 269 |
| functioning of legal systems, 39 | cessation of refugee status, 271 |
| interpretation of legislation, | incorporation of, 269 |
| and, 286 | international law norms, |
| judges, role of, 40 | and, 270 |
| limits to, 304 | Refugee Convention, and, 270 |
| moral justifications, 40 | revocation of refugee status, 271 |
| operation of rule of law, and, 40 | rule of law, and, 274 |
| sets of laws, 41, 286 | standards for subsidiary |
| state power, and, 41 | protection, 270 |
| support for, 41 | safe third country concept, |
| legal interpretation, on, 48 | and, 27 |
| legislative principle, 57 | Exclusionary inclusion, 65 |
| political morality, 39 | Extraordinary rendition, 117 |
| procedural fairness, on, 56 | Extra-territoriality |
| rule of law, on, 34 | refoulement and, 12 |
| | |



334 INDEX

Feminism refugee, definition of, and, 94 Forced abortion, 133 Forced migrants choice, and, 72 Forced migration economic development, and, 25 worldwide phenomenon, as, 122 Freedom of movement qualified right, as, 64 refugees' rights, and, 9 Gibney, Matthew J. exclusion of non-citizens, on, 72 Global Commission on International Migration 2005 report, 24 Hailbronner, Professor Kay safe third country concept, and, 26 Harm principle role of industrialized states, and, 73 Hart, Herbert L.A. legal positivism, on, 36 Hathaway, James Refugee Convention, on, 6

Hathaway, James
Refugee Convention, on, 6
refugee status, on, 10
rights under Refugee Convention,
on, 7
Human rights
being persecuted, defining,
and, 219
detention of asylum seekers,

Refugee Convention, and, 6

and, 189

Interdiction, 8

defences of, 146

Illegal immigrants, 65
Indo-China
refugees during 1970s and 1980s, 17
Integrity
asylum system, of, 33
ideas of, 33
law as, 33
limits to principle of, 304
Interceptions, 8

provisions for interdicted passengers, 146 vessels on high seas, of, 145 Internally displaced persons (IDPs), 4 first recognition of, 20 growth in numbers of, 4 humanitarian assistance for, 21 policies of containment, and, 21 ratio of refugees to, 22 support for refugees, and, 21 International Covenant on Civil and Political Rights (ICCPR), 289 International law standards inconsistent application of, ix International migration, 23 conditions causing, 23 end of Cold War, and, 23 irregular, 25 restrictive measures, justification

restrictive measures, justification for, 26
International system of refugee protection, 3 development of, 5–9
Cold War period, during, 15 refugee crises, 3 rights of refugees, and, 3
Iraq internally displaced persons in, 20

Judicial review, 297-8 delegated legislative authority, and, 50 democracy, and, 48 doctrine of separation of powers, and, 47 parliamentary sovereignty, and, 49 red light theory of, 49 refoulement, and, 48 restrictions on right to, 297 role of judges, and, 48 **Judiciary** dependence of refugees on, 55 moral neutrality, 52 neutrality, and. See Neutrality

moral neutrality, 52 neutrality, and. See Neutrality role of, 40, 44 activist role, 44 'law as integrity', and, 46



INDEX 335

conformity of legislation, and, 47 constitutional review, and, 44 conventional approach, 45 legislation, 46 legislative supremacy, and, 46 positivist theory of statutory intention, and, 44 procedural fairness, and, 56 protection of substantive values, and, 45

Jus cogens refoulement, and, 13

Legal positivism, 36 exclusive and inclusive versions, 37 Legal reasoning application of standards in, 45 Legislation compliance with process for introduction of, 59 conformity of, 47 executive arm of government, and, 58 incorporation of treaty obligations, 59 dualist systems of law, under, 60 interpretation of obligations, 60 partial implementation, 61 rights of refugees, and, 60 transnational judicial conversation, and, 61

conflicting interpretations, 63
justice and fairness, and, 58
legislative principle, 57
legislative supremacy, 46
legislators' powers, exercise of, 58
overturning judicial decisions
with, 58
positivist theory on, 58
role of judges, and, 46
ruling government's use of, 58

Vienna Convention, and, 61

interpretation of treaty obligations,

Mertus, Julie geopolitical role of states, on, 19

treaty obligations, and, 58

Migration–asylum nexus, 3, 23 developed states' response to, 24 effect of, 3 Mutual aid, principle of, 68

National security asylum processes, and, 248 Natural justice principle. See Procedural fairness

Neutrality
decision makers, of, 51
importance to asylum seekers, 51
judicial independence, and, 50
justifications for, 51
principle of equality, as, 52
procedural fairness, and, 53
refugee status determinations,
and, 52
substantive reasons for applying,
52

New Zealand alliance with Australia, 283 being persecuted, meaning, 218 judicial review, 298 Refugee Convention, incorporation, 291 Refugee Status Appeals Authority,

218
appointment of members, 295
human rights approach in,
293
independence of, 295
powers, 295
procedure, 295

Nexus test, 222 Non-arrival measures legality of, 10 Non-citizens exclusion of, 66

government by consent, and, 66 principle of equality, and, 65 refugees, as, 65
Non-entrée measures, 8

Non-entrée measures, 8 Non-governmental organisations (NGOs) influence in UK, 249

Non-state actors recognition of claims by, 133



336 INDEX

Offshore processing, 8
Oliver, Dawn
judicial review, on, 49
Organisation of African Unity
Convention Governing the
Specific Aspects of Refugee
Problems in Africa (OAU
Convention), 15
right of asylum, 16

Pacific Plan. *See* Australia
Parliamentary sovereignty
judicial review, and, 49
right of *non-refoulement*, and, 66
rights of refugees, and, 66
rule of law, and, 36
Participation principle, 54
Persecution
being persecuted, meaning, 219

generalised violence, 15 individualized, 15 meaning, 6 right to be free from, 9 right to flee, 6

distinction between law and, 35 Populism refugee protection, and, ix Principle of legality, 63

Procedural fairness
community membership, and, 70
decisional independence, and, 157
exclusion of non-citizens, 56
ideal of justice, as, 54
instrumental value, 54
justice value, 54
limitations on right to, 55
neutrality, and, 53
participation in democratic
processes, and, 55
participation principle, and, 54
principle of practical application,

principle of universal justice, as, 55 refoulement, and, 53 substantive and procedural

as, 54

substantive and procedural standards, 54 Property rights
refugees' rights, and, 7
Protocol Against the Smuggling of
Migrants by Land, Sea and Air
(the Migrant Protocol), 25
Protocol relating to the Status of
Refugees, 1967, 5
Protocol to Prevent, Suppress and
Punish Trafficking in Persons,
Especially Women and Children
(the Trafficking Protocol), 25

Protracted refugee situations definition, 22 durable solutions for, 28 locations of, 22 number living in, 4 policies of containment, and, 23 post-Cold War increase in, 19

Rationing refugees' rights, and, 7 Refoulement judicial review, and, 43, 48 neutrality, and, 51 non-refoulement obligation, 11-14 admission at borders, 11 application, 301 application to asylum seekers, 12 CAT, 12 'chain' refoulement, 12 customary law, whether, 13 extra-territorial application, 13, 301 extra-territoriality, and, 12 fundamental nature of, 11 good faith implementation of, 11 ICCPR, 12 implementation of, 14

implementation of, 14
pre-clearance schemes, and, 12
principle of *jus cogens*, as, 13
Refugee Convention, 11
rejection at frontier, and, 302
restrictive interpretations of, 14
scope, 11
standard of, 12
state-level interpretations of, 14
torture, and, 12
parliamentary sovereignty, and, 66
procedural fairness, and, 43, 53



| procedures to protect against, 8 | non-discrimination, 8 |
|--|-------------------------------------|
| right against, 6 | non-penalisation provision, 7 |
| right to seek asylum, and, 10 | parliamentary sovereignty, |
| safe third country principle, | and, 66 |
| and, 203 | property rights, 7 |
| Refugee Convention, 1951, 5 | rationing, 7 |
| aims, 5 | refoulement, against, 7 |
| ceased circumstances, and, 213 | Refugee Convention, under, 6 |
| human rights, and, 5 | resettled refugees, 8 |
| international cooperation, and, 8 | states' obligations, 8 |
| international incorporation of, 288 | taxes, 7 |
| interpretation, 62 | Universal Declaration of Human |
| legislative modification of, 61 | Rights, 9 |
| primary instrument, whether, 300 | states' duty to admit, lack of, 10 |
| procedural fairness, and, 53 | warehousing, 27 |
| refugee, definition, 5 | Repatriation |
| refugee status determination | preferred solution, as, 17 |
| procedures, 10 | voluntary, 18 |
| 'right' to seek asylum under, 9 | Restrictive entry measures, 64 |
| rights and responsibilities in, 6 | Right to be heard |
| status of refugees, 305 | asylum, and, 85 |
| Refugee Protocol, 1967, 15 | Rule of law |
| UNHCR mandate, and, 15 | access to legal system, and, 282 |
| Refugees | application to refugees, 308 |
| communitarian liberalism, and, 67 | democracy, and, 1 |
| containment, problem of, 28 | development of refugee policy, |
| definition, 5 | and, 284 |
| discriminatory policies towards, 3 | evolutionary nature of, 37 |
| international system of protection. | formal vision of law, 39 |
| See International system of | harmonization of asylum law, |
| refugee protection | and, 274 |
| protracted refugee situations, 4 | implementation at national level, 2 |
| rates of recognition, 29 | incorporation of international |
| rights of | treaties, and, 198 |
| access to courts of law, 7 | law, meaning, 34 |
| advanced education, 7 | legitimacy of justice, and, ix |
| applicable to all, 8 | meaning, 34 |
| discrimination, 7 | morality, relationship with, 37 |
| elementary education, 7 | national and international, |
| exclusion of, 69 | relationship between, 2 |
| freedom from detention, 8 | national enterprise, as, 2 |
| freedom of movement, 9 | operation of, 32 |
| implementation, 1 | ordinary courts, access to, 104 |
| incorporation of treaty | politics and law distinguished, 35 |
| obligations, and, 60 | principle of, ix |
| 'lawful' refugees, 7 | reconstructing, ix |
| lawful 'stayers', 7 | right to be heard, and, 84 |
| liberty of political participation, 74 | rights of refugees, and, ix |



> 338 INDEX Rule of law (cont.) presumption of consistency, 63 rule-by-law, and, 34 Vienna Convention, 61 separation of law and politics, 38 Ultra vires doctrine thin vision of, 36 UK role in developing, 228 parliamentary sovereignty, and, 49 versions of, 75 United Kingdom, 228-80 accelerated procedures, 254 Safe country of origin, 228, 253 non-refoulement, and, 257 Safe third country, 8, 254 appeal rights, 234 'asylum fatigue', and, 26 Asylum and Immigration Appeals Act, 1993, 236 non-refoulement obligations, and, 203 asylum law and policy in, 231 notion of, 26 carriers transporting official recogition of, 27 undocumented passengers, Security migrants as risks of, 3 Former Yugoslavian refugees, 232 number of applications, 233 Smuggling, 25 Social groups public debate regarding, 234 family as, 224 refugees with UK connections, Sovereignty 232 meaning, 36 terrorism, and, 235 constitutional structure, 244 Soviet Union break up of, 19 detention centres, 254 States ECHR, incorporation, 240 geopolitical role of, 19 amending or repealing, 241 Sterilization, 133 declarations of incompatibility, Stevens, Dallal 241 UK asylum policy, on, 231 Human Rights Act 1998, and, Subsidiary protection, 270 240 legislation complying with, 241 prohibition on torture, and, 303 refugees' rights, and, 7 protection for asylum seekers, Territorial-sovereignty argument, 73 and, 240 Torture EU Directives, transposition of, 242 deporting terror suspects, Common European Asylum and, 264 System, and, 243 EU Qualification Directive, refoulement, and, 12 Trafficking, 25 and, 268 Transfer of assets compelling reasons exception, resettled refugees, and, 8 278 Trauma enforcement, 276 effects of, 85 impact of, 277 Treaty obligations refugee exclusion criteria, 277 incorporation of. See Legislation European law, and, 229 interpretation, 61 Executive action, scrutiny of, 248 codified presumptions, 63 human rights commissions, 249 common law presumptions, 63 Independent Immigration

conflict with international law, 63

Inspectorate, 249



| Joint Parliamentary Committee | proliferation of legislation, 236 |
|--|--|
| on Human Rights, 248 | refugee status decision making, |
| NGOs, 249 | 233, 250 |
| UK Refugee Council, 250 | accelerated procedures, 234 |
| Home Office, 255 | appeals, 252 |
| Case Owners structure, 257 | asylum claims, 251 |
| criticism of, 255 | Asylum Policy Guidance, 251 |
| delays in decision making, 255 | Asylum Policy Instructions, 251 |
| measures to address problems | delays in, 234 |
| with, 256 | Discretionary Leave, 306 |
| quality of decision making, 256 | humanitarian protection, 251, 306 |
| Immigration Rules, 239 | human rights claims, 251 |
| nature of, 239 | indefinite leave to remain, 252 |
| income support | limited leave to remain, 252, 306 |
| withdrawal from asylum seekers, | restrictive legal terms, 228 |
| 245 | rule of law, and, 257 |
| judicial review, 253 | safe country of origin, 253 |
| restrictions on, 298 | criteria for, 254 |
| judiciary, 244 | meaning, 253 |
| application of asylum law, 244 | safe third country, 254 |
| checking executive action, 245 | lists of, 254 |
| landmark decisions, 244 | restricted rights, and, 254 |
| national security issues, and, 248 | sovereign right to exclude aliens, 292 |
| models of adjudication, 296 | United Nations Convention against |
| national security, 259 | Transnational Organised Crime |
| applicant's conduct, and, 262 | (CTOC framework), 25 |
| conduct by non-contracting | United Nations High Commissioner |
| states, 264 | for Refugees (UNHCR), ix |
| deporting terror suspects, 259 | 1967 Refugee Protocol, and, 15 |
| | |
| diplomatic assurances, and, 263 | asylum systems, and, x Convention Plus, 28 |
| ECHR, and, 259 home-grown terrorists, 259 | establishment of, 5 |
| | |
| human rights obligations, and, 259 | non-refoulement obligations, and, 203 |
| | non-refoulement, on, 14 |
| risk of ill-treatment, and, 262 | |
| scale of threat, 265 | number of people 'of concern', 4 role in 1990s, 20 |
| special immigration status, | |
| 260, 306 | role of, 8 |
| New Asylum Model, 256 | rule of law, and, ix |
| targets and timetables, 256 | states' obligation to cooperate |
| Parliamentary supremacy, doctrine | with, 8 |
| of, 244 | United States of America, 122–70 |
| Refugee Convention, incorporation, | administrative and adjudicative |
| 235–9 | structures, 128 |
| asylum regulations, 239 | appeals, 129 |
| interpretation of exclusion | arrivals at the border, 128 |
| provisions, 237 | asylum application process, 128 |
| policy 'platforms', and, 238 | immigration judges, 128 |
| | |



| United States of America (cont.) | rule of law, and, 156 |
|------------------------------------|------------------------------------|
| appeals, 129 | separation of powers, and, 159 |
| precedents, 130 | termination of appointments, |
| asylum in, 127 | 151 |
| availability of, 127 | theories of, 157 |
| asylum law and practice in, 122 | unpopular minorities, and, 158 |
| communism, 125 | international human rights |
| constitutional basis for refugee | instruments, 134 |
| protection, 123 | judicial review, 130 |
| detail of legal regime, 122 | exceptions, 130 |
| non-refoulement, 125 | increase in petitions for, 130 |
| parole, 124 | suspensory effect, 130 |
| permanent resettlement program, | legislative powers, use of, 287 |
| 125 | one-off legalization programs, 139 |
| Refugee Act, 1980, 125 | perceived abuse of asylum system, |
| Refugee Convention, 1951, 124 | 140 |
| Refugee Protocol 1967, | economic impact of |
| ratification, 124 | undocumented immigrants, |
| refugee, definition, 125 | 141 |
| separation of powers, and, 123 | free trade, and, 143 |
| World War II, during, 124 | impact of illegal immigration, |
| cancellation of removal, 139 | 142 |
| displaced persons, 290 | law enforcement problem, as, 144 |
| domestic remedies, 136 | rule of law, and, 141 |
| discretionary relief, 138 | violations of border law, 142 |
| temporary protected status, 136 | permanent resettlement program, |
| impediments to access, 144 | 126 |
| interdiction of vessels on high | family members, 126 |
| seas, 145 | maximum nuber of refugees, 126 |
| strategies for, 145 | number of admissions under, |
| independence of adjudicators, 150 | 126 |
| Attorney General, and, 154 | priorities governing, 126 |
| BIA, 152 | private bills, 140 |
| courts, 155 | refugee protection system, 123 |
| defensive judging, 158 | registry, 139 |
| effect of BIA reassignments, 154 | rule of international law, 161 |
| federal judges, 156 | criminal prosecutions, 169 |
| Immigration Judges, 150 | detention, 165 |
| interpretation of legislation, | exclusion clauses, 164 |
| and, 159 | implementation of obligations, |
| political accountability, 157 | 161 |
| procedural fairness, and, 157 | interdiction on the high seas, 162 |
| protection from political process, | standard of proof, 164 |
| and, 158 | rule of law, 140 |
| questions of fact, 160 | substandard adjudication of |
| reassignment, 152 | claims, 147 |
| reassignment of BIA members, | BIA streamlining reforms, |
| 153 | and, 147 |



INDEX 341

judges, errors by, 150
judicial criticisms, 149
review of system, 150
substantive criteria for refugee
status, 131
forced abortion or sterilization,
133
non-state actors, claims by, 133
persecution of social groups, 132
precedent decisions, 132
refugee, definition, 131
temporary protected status, 136
withholding of deportation
procedure, 290
withholding of removal, 127

Universal Declaration of Human Rights (UDHR), 9 Vienna Convention on the Law of

Treaties, 1969, 61
interpretation of treaty obligations, 61
Vietnamese boat people
Australian Humanitarian program, and, 176

Walzer, Michael community membership, on, 68 World War II refugees after, 5