

PROTECTION FROM REFUGE

The places in which refugees seek sanctuary are often as dangerous and bleak as the conditions they fled. In response, many travel within and across borders in search of safety. As part of these journeys, refugees are increasingly turning to courts to ask for protection, not from persecution in their homeland, but from a place of 'refuge'. This book is the first global and comparative study of 'protection from refuge' litigation, examining, with a particular focus on gender, whether courts facilitate or hamper refugee journeys. Drawing on jurisprudence from Africa, Europe, North America and Oceania, Kate Ogg shows that courts have transitioned from adopting robust ideas of refuge to rudimentary ones. This trajectory indicates that courts can play a powerful role in creating more just and equitable refugee protection policies, but have, ultimately, compounded the difficulties inherent in finding sanctuary, perpetuating global inequities in refugee responsibility and rendering refuge elusive.

KATE OGG is Associate Professor at the Australian National University. Her research has been published in leading international journals, and she is co-editor of the acclaimed *Feminist Engagement with International Law*. Kate has presented her research at UNHCR Headquarters and given evidence on refugee law to the Parliament of Australia.

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PROTECTION FROM REFUGE

From Refugee Rights to Migration Management

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Cambridge University Press & Assessment
978-1-009-01108-2 — Protection from Refuge
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CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
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www.cambridge.org
Information on this title: www.cambridge.org/9781009011082

DOI: 10.1017/9781009024259

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place without the written permission of Cambridge University Press & Assessment.

First published 2022
First paperback edition 2023

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

Names: Ogg, Kate, author.

Title: Protection from refuge : from refugee rights to migration management / Kate Ogg, Australian
National University, Canberra.

Description: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2022. |
Series: Cambridge asylum and migration studies | Includes index.

Identifiers: LCCN 2021032148 (print) | LCCN 2021032149 (ebook) | ISBN 9781316519738 (hardback) |
ISBN 9781009011082 (paperback) | ISBN 9781009024259 (ebook)

Subjects: LCSH: Refugees – Legal status, laws, etc.

Classification: LCC KZ6530 . O35 2021 (print) | LCC KZ6530 (ebook) | DDC 341.4/86–dc23

LC record available at <https://lcn.loc.gov/2021032148>

LC ebook record available at <https://lcn.loc.gov/2021032149>

ISBN 978-1-316-51973-8 Hardback

ISBN 978-1-009-01108-2 Paperback

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978-1-009-01108-2 — Protection from Refuge
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For Ron

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PREFACE

It is counterintuitive that some people may need protection *from* refuge. If a refuge is meaningful, then surely nobody needs to be protected from it. Conversely, a refuge from which people feel compelled to flee ought arguably not to be deemed a refuge at all.

Yet as Kate Ogg makes clear in this groundbreaking study, claims for protection from refuge are increasingly common and litigated. To understand this phenomenon, Ogg undertakes what Martha Minow refers to as a ‘recasting project’, drawing on lines of seemingly disparate cases from across jurisdictions to discover whether there is in fact a conceptual commonality that links them. Through examination of resistance to practices of mandatory encampment, the setting of regional asylum boundaries, containment policies, the relegation of Palestinian refugees to an institutionalised enclave and rules that compel refugee claimants to return home to face internal displacement, Ogg identifies a common thread: in none of these cases does the refugee believe that what is on offer is truly refuge worthy of the name.

This book argues that the legal response to the various manifestations of the failure of refuge has ebbed and flowed. While some courts have championed a full-throated understanding of asylum, others have, in Ogg’s words, approached ‘refuge as a scarce commodity and one stripped down to the barest minimum of protections’. Equally important, Ogg shows that, when refugees challenge that stripping-down exercise, courts are often disinclined to offer relief in other than circumstances deemed ‘exceptional or extraordinary’ – the definition of which rarely does justice to needs and aspirations defined by such concerns as gender, age or disability.

This is a marvellous book in so many ways. It takes law seriously – unearthing and engaging with the work of courts around the world on issues of critical importance to persons compelled to flee in search of protection, thus neatly complementing and completing stories of refugee journeys in the social science literature. It harnesses feminist legal analysis to posit an inclusive definition of what ought to count as truly adequate refuge and shows how adjudicative practice too often fails to meet that standard. Most fundamentally, it constructs a paradigm to understand and effectively to contest the fact that the places in which people seek protection are often as bleak and as dangerous as those which they fled.

James C. Hathaway
Editor, Cambridge Asylum and Migration Studies

ACKNOWLEDGEMENTS

This book was written on Ngunnawal and Ngambri country, which was stolen and sovereignty was never ceded. I pay my respects to the elders of the Ngunnawal and Ngambri people, past, present and emerging. I thank them for their continued generosity in welcoming all people who have come to live in and visit their ancestral lands.

I express my deepest gratitude to Professor Hilary Charlesworth for nurturing this project, which began as a PhD thesis. Thank you also to my associate supervisors, Professors Michelle Foster and Fiona Jenkins, for their guidance and encouragement. I also wish to thank Professors Catherine Dauvergne, Cathryn Costello and Dallal Stevens who examined the dissertation and provided invaluable feedback. This project emerged from the interdisciplinary research environment at the School of Regulation and Global Governance (RegNet). I thank Professors John Braithwaite, Veronica Taylor, Kate Henne and Anthea Roberts for their generous reflections that helped shape the research.

While working on this project I was fortunate to be hosted as an academic visitor by Professors James C. Hathaway, Jane McAdam and Cathryn Costello. I am indebted to each of them for the conversations that enriched the work. Thank you also to everyone at the University of Michigan Law School, Kaldor Centre for International Refugee Law and Refugee Studies Centre for their warm welcome and helpful comments on the research.

I am grateful to everyone at the Office of the United Nations High Commissioner for Refugees who provided feedback and an opportunity to present this research. Particular thanks go to Dr Madeline Garlick, Louise Aubin, Jean-François Durieux and Chanelle Taoi.

I express my gratitude to the ANU College of Law at the Australian National University (ANU). Thank you to those who have been mentors and supported my career, especially Professors Sally Wheeler, Kim Rubenstein, Don Rothwell, Penelope Mathew, Penelope Andrews, Susan Harris Rimmer, Fiona Wheeler, Jeremy Farrall, Ann Evans, Peta Spender, Pauline Ridge, Rebecca Monson, Vivien Holmes, Tony Connolly and Matthew Zagor.

I was blessed to have a wonderful publication team at Cambridge University Press. Thank you to Finola O’Sullivan, Becky Jackaman and Marianne Nield. I am also greatly indebted to the anonymous reviewers for their insightful feedback and suggestions.

Finally, to my family. This book would not have been possible without the unfailing love and support of my husband, Associate Professor Ron Levy. Thanks go to my parents, Patricia Eckford and Peter Ogg, for their love and for giving me every opportunity to pursue university study. My son, Josiah Levy, arrived into the world during the research for this book and propelled and disrupted it in ways both unexpected and delightful.

ABBREVIATIONS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1456 UNTS 85, in force 26 June 1987
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13, in force 3 September 1981
CRC	Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3, in force 2 September 1990
CRPD	Convention on the Rights of Persons with Disabilities, 30 March 2007, 2515 UNTS 3, in force 3 May 2008
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5, in force 3 September 1953
EU	European Union
ICCPR	International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, in force 23 March 1976
ICESCR	International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, in force 3 January 1976
IDP	internally displaced person
NGO	non-governmental organisation
Refugee Convention	Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137, in force 22 April 1954, as amended by the Protocol Relating to the Status of Refugees, 31 January 1967, 606 UNTS 267, in force 4 October 1967
UDHR	Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948)
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	Office of the United Nations High Commissioner for Refugees
UNHCR Statute	Statute of the Office of the United Nations High Commissioner for Refugees, GA Res 428(V), UN Doc A/RES/428(V) (14 December 1950)
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East