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.
At no time in modern history have so many people been on the move as at present. Migration facilitates critical social, economic, and humanitarian linkages. But it may also challenge prevailing notions of bounded political communities, of security, and of international law.

The political and legal systems that regulate the transborder movement of persons were largely devised in the mid-twentieth century, and are showing their strains. New challenges have arisen for policymakers, advocates, and decision-makers that require the adaptation and evolution of traditional models to meet emerging imperatives.

Edited by a world leader in refugee law, this new series aims to be a forum for innovative writing on all aspects of the transnational movement of people. It publishes single or coauthored works that may be legal, political, or cross-disciplinary in nature, and will be essential reading for anyone looking to understand one of the most important issues of the twenty-first century.

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PROTECTION FROM REFUGE

From Refugee Rights to Migration Management

KATE OGG
Australian National University
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

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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.

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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

CRC

CRPD

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

IDP
internally displaced person

NGO
non-governmental organisation

Refugee Convention

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

UNRWA
United Nations Relief and Works Agency for Palestine Refugees in the Near East