

Rewriting Jurisprudence: Centring Refugee and Migrant Lived Experience

Call for Papers

Editorial Team: Tina Dixson, Veronica Fynn-Bruey, Jessica Hambly, Eve Lester, Nyadol Nyuon, Kate Ogg, Olivera Simic and Matthew Zagor.

The purpose of **Rewriting Jurisprudence: Centring Refugee and Migrant Lived Experience** is to rethink, reframe and rewrite jurisprudence from the perspectives of scholars and lawyers with lived experience of forced displacement (refugees and internally displaced persons (IDPs)), statelessness and migration. Legal frameworks that govern significant aspects of forced displacement, statelessness and migration and the institutional and professional fora created to administer them are colonial, imperialistic, and patriarchal. Refugees, IDPs, stateless people and migrants are most often the objects of such law and policy created by individuals with no relevant lived experience. Similarly, in forced migration scholarship and migration studies there is increasing acknowledgment that the fields have been developed and are sustained by researchers without relevant lived experience writing *about* not *with* people from such backgrounds.¹ Forced migration scholarship and migration studies are multidisciplinary fields and, while there have been some initiatives in the social sciences that have responded to these concerns,² legal research lags behind.³ Some refugee and migration law judgments have been rewritten from queer and feminist perspectives⁴ but this will be the first project in which judgments are critiqued and rewritten by scholars and lawyers with lived experience of forced displacement, migration and statelessness.

¹ See, for example, Refugee Council of Australia, [“Nothing About Us Without Us: Getting Serious about Refugee Self-Representation”](#) (Report on Side Event Held During 2017 UNHCR Annual Consultations with NGOs, 2017); Sana Mustafa, [‘Nothing About Us Without Us: Why Refugee Inclusion Is Long Overdue’](#), *Refugees Deeply* (online), 20 June 2018.

² See, for example, Abis Getachew, Andhira Kara, Mary Gitahi, Mark Okello and Uwezo Ramazani, [‘A Refugee-Led Study on Refugee-Led Organisations’](#) Public Seminar at the Refugee Studies Centre, University of Oxford, 3 November 2021.

³ In a panel at the 2021 Australian and New Zealand Society of International Law entitled [‘Nothing About Us Without Us’: Incorporating Lived Experience of Displacement in International Law Scholarship](#), Tamara Wood, Rifaie Tammam, Tristan Harley, Susan Harris Rimmer, Katerina Teaiwa and Tina Dixson explain that this may be because of international law’s bias in focussing on the state and the relative lack of interview-based methodology in international law research.

⁴ See, for example, Mary E. Crock, ‘Roqia’s Story: Refugees and Natural Justice in the Court of Public Opinion’, in Heather Douglas, Francesca Bartlett, Trish Luker and Rosemary Hunter (eds), *Australian Feminist Judgments: Righting and Rewriting Law* (Hart, 2014) 101–114; Wayne Morgan, ‘Commentary on *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs*’ in Heather Douglas, Francesca Bartlett, Trish Luker and Rosemary Hunter (eds) *Australian Feminist Judgments* (Hart, 2014) 115; Shazia Choudhry and Jonathan Herring, ‘*Opuz v Turkey*’ in Loveday Hodson and Troy Lavers (eds), *Feminist Judgments in International Law* (Hart, 2019), 253.

Inspiration

The rewriting of judicial decisions that have prejudiced or misrepresented marginalised members of society is an innovative legal methodology that is gaining traction in a number of contexts. The idea of rewriting judgments as a form of critique was first taken up by feminist legal scholars.⁵ Other areas where this methodology has been employed include child rights, the environment, and international law.⁶ A recent project led by Nicole Watson and Heather Douglas invited Indigenous and non-Indigenous scholars to work in partnership to rewrite some key judgments in Australia's colonial legal history in order 'to reimagine justice through an Indigenous lens'.⁷ Watson and Douglas begin their Indigenous judgments project by stating that 'Indigenous people have often been objects of rather than voices heard in judicial narratives and decisions'.⁸ They highlight that while judicial decisions have delivered grave injustices to Indigenous Australians, Indigenous people have also used litigation as a tool to seek recognition of their rights.⁹ The authors considered what was missing from these key judgments, critically examined the interpretive choices made by the overwhelmingly white, male judiciary, asked 'whose stories were privileged' and sought to resurface these neglected narratives.¹⁰

Scope

The conceptualisation of this project is broad in reach. We invite proposals for rewriting any judgment concerning refugees, IDPs, stateless persons and migrants from any country or region. Authors can nominate a case they would like to rewrite or ask the editors for suggestions. We encourage authors to explore what was outside the judicial lens in the initial decision, whose narratives and voices were given priority and whose were (mis)represented, silenced or ignored. In doing so, we invite authors to write the judgment that might have been, drawing on existing, alternative, or even imagined legal frameworks. Some may write a dissenting opinion, in keeping with current legal structures and orthodoxies. Others may position their judgment in the future, offering a fictional context that provides new possibilities. Our openness to these styles of contribution recognises not only that there is potential within existing juridical frameworks, but also that authors should not feel constrained by the law's limitations.

⁵ See, for example, the Feminist Judgment Series: Rewritten Judicial Opinion, Cambridge University Press.

⁶ See, eg, Helen Stalford, Kathryn Hollingsworth, and Stephen Gilmore (eds), *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (Hart, 2017); Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 2017); Loveday Hodson and Troy Lavers (eds), *Feminist Judgments in International Law* (Hart, 2019).

⁷ Nicole Watson and Heather Douglas (eds), *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making* (Routledge, 2021), 1.

⁸ Ibid.

⁹ Ibid 7.

¹⁰ Ibid 3.

Co-authorship

Taking our lead from Watson and Douglas's Indigenous Judgments Project, we envisage that most of the contributions will be co-authored. We are looking to pair, in the first instance, scholars (from any discipline) or lawyers with lived experience of forced displacement, statelessness and migration and, in the second, scholars of refugee, statelessness and migration law without such lived experience. As the editorial team, we are similarly a group of scholars from these backgrounds. We invite proposals from authors who would like to write together but we also welcome expressions of interest from those who would like to be paired with a co-author. We will endeavour to match contributors with similar interests.

An Ongoing Project

Rewriting Jurisprudence: Centring Refugee and Migration Lived Experience is an ongoing project. In its first phase, we will be publishing a selection of rewritten judgments as articles in a special issue of a journal. We will then work towards producing a broader range of rewritten judgments for publication as an edited collection. Our strong preference is that these publications will be open access. During the project we will also publish shortened or draft versions as blog posts as a way of ensuring both accessibility and timeliness of contributions. We hope very much that the project will inspire other similar initiatives.

Process

The process that we envisage for this project is consultative and supportive. In this spirit, if you are wondering whether this might be of interest, but you are not sure if it is the right fit for you, please feel free to contact us to talk about it.

After we have received abstracts and identified suitable participants in the project, the College of Law at the Australian National University and Sir Zelman Cowen Centre at Victoria University will host an online meeting in mid 2022 (date to be decided) where contributors can share initial thoughts and ideas. We will then convene an online workshop in late 2022 (again, date to be decided) where contributors can present more developed draft papers.

Please send expressions of interest no longer than 200 words (together with a short bio) to kate.ogg@anu.edu.au by 18 April 2022. We warmly welcome expressions of interest from established scholars as well as those who may be new to academic publishing, including graduate students. The editorial team as part of the project will provide publishing mentoring to early career scholars.