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On Translating Humanity in Law and Literature: A Conversation

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Abstract:

In this paper which takes a law and literature approach, I will start by evidencing the denigration and dispossession of those seeking asylum. I rely on the work of Sharam Khosravi, himself an asylum seeker, to show how the undocumented undergo a process of reclassification from citizen human to ‘other’, which brings with it a loss of rights. Using the novels of Katie Kitamura and Rebecca Kuang, I use translation as a metaphor to explore the ways in which lawyers, smugglers, interpreters, experts, journalists and decision makers interpret norms to accentuate, protect or deny entitlements. This they do by moulding their narratives to fit the desired outcome. Using the novels of Addonia, Desai, Mbue, Unigwe and Wiles, I explore the schemes used to gain entry and the challenges faced by those who find themselves de-classified. The penultimate section returns to the question of the efficacy of rights. The conclusion follows.

Keywords: Human Rights -efficacy of, Asylum and Migration, Literature and Translation.

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On Translating Humanity in Law and Literature: A Conversation*

Fareda Banda

“At each and every checkpoint the refugee is asked

Are you human?

The refugee is sure it’s still human but worries that overnight,

while it slept, there may have been a change of classification.”¹

Introduction

This is a conversation about who is human. Technically we all are, but who, in practice is given the rights associated with the classification human? Warsan Shire’s poem chimes with the story that I will tell which shows that some are seen as more human than others and are thus treated as rights holders. Some are not seen as human at all. We see this daily in newspaper and human rights reports on the impact of immigration laws and in refugee policies. How did we get here?

In Shona we say *ziva kwawakabva mangwana irima-* translated as, ‘know where you have come from for tomorrow there is darkness.’ So, let’s take a step back and look at history. I am influenced here by the work of Edward Said. In *Culture and Imperialism*, Said locates the development of comparative literature studies with the rise in nationalism between 1745-1945.² He notes:

**This paper is based on a public lecture given in September 2023 for the Centre for Transnational Legal Studies, held at Gray’s Inn, London). I am grateful to Professor Yvonne Tew (Georgetown) for the invitation.*

¹ From Warsan Shire “Assimilation” in her collection *Bless the Daughter Raised by a Voice in Her Head* (Chatto and Windus, London, 2022)

² E. Said *Culture and Imperialism* (Vintage, 1994).

“ it is evident that when most European thinkers celebrated humanity or culture they were principally celebrating ideas and values they ascribed to their own national culture, or to Europe as distinct from the Orient, Africa and even the Americas.”³

Said goes on “To speak of comparative literature therefore was to speak of the interaction of world literatures with one another, but the field was epistemologically organized as a sort of hierarchy, with Europe and its Latin Christian literatures at its centre and top.”⁴

I see here parallels with the development of refugee law and immigration policy. The hierarchical ordering of world literature is reflected in the sorting of people into deserving and undeserving. The treatment of asylum seekers and migrants shows that both sending and receiving states have been found wanting. People leave home due to inhospitable environments occasioned by war or a failure of the state to provide the socio-economic opportunities for people to lead lives of dignity. Their countries of destination prove equally unwelcoming.⁵ Asylum seekers are caught between a reliance on law to frame their claims and a political climate in which states refuse to acknowledge those entitlements and their obligations.

In this paper I will start by the evidencing the denigration and dispossession of those seeking asylum. I rely on the work of Sharam Khosravi, himself an asylum seeker, to show how the undocumented undergo a process of reclassification from human to ‘other’, which brings with it a loss of rights. This process is explored using fictional literature. Through the work of Katie Kitamura and Rebecca Kuang, I use translation as a metaphor to explore the ways in which lawyers, smugglers, interpreters, experts, journalists and decision makers use norms to accentuate, protect or deny entitlements. This they do by moulding their narratives to fit the desired outcome. Using fiction, I explore the schemes used to gain entry and the challenges faced by those who find themselves de-classified. The penultimate section asks if human rights are supposed to inhere in all, but the evidence shows that this is no longer the case, if it ever was, should we join Hopgood in declaring the End times of Human Rights? The conclusion follows.

³ E. Said (1994) 54

⁴ E. Said (1994) 55.

⁵ Wilson BK, Burnstan A, Calderon C, And Csordas TJ. "Letting die" by design: Asylum seekers' lived experience of postcolonial necropolitics. *Soc Sci Med.* 2023 Mar;320:115714. See also K.C. Villavicencio *The Undocumented Americans* (2020). See also S. Addonia (2024) 35.

Part 1 -Not Our Problem-State Abrogation of Responsibility

I see the ways in which governments have handled the refugee, asylum and migration issue, as the Trumpification of the international world order. One only has to substitute America in 'America first' with a host of other country names and you have a sense of where we are. We are in the "me only" cynical age of disengagement from collective responsibility. The Pope has called it, the "globalization of indifference." ⁶

This age of cynicism is led by states who are responsible for both promoting and protecting human rights, but there has been an abrogation of leadership. In practice they have sub-contracted the role to civil society and religious bodies to do the work of looking after those who the state does not want to recognise.

How is this possible? Doesn't the Refugee Convention say that people can leave home if they are experiencing, or fear persecution and their governments are unwilling or unable to protect them? ⁷ Does it not list the five grounds that create entitlement to claim asylum? As a refresher, these are: race, religion, nationality, membership of a particular social group, or political opinion. ⁸ Has not the UN Office for the High Commission for Refugees UNHCR issued numerous guidelines on how asylum seekers should be treated? Have not human rights treaty bodies issued guidance in the form of General Comments and in constructive dialogue with states? Have not several governments adopted national guidelines of good practice on the processing and treatment of asylum seekers? How have we arrived at this place where people are sorted and rights allocated depending on which class or group one finds oneself in?

While much of the focus of the migration debate has been on states in the Global North, the backlash is global. Anti-migrant rhetoric has also ratcheted up. In July 2023, the Tunisian President said Black Africans were going to take over Tunisia. He warned his countrymen that the effect would be to distance the country from its Islamic-Arabic roots. Amnesty International reported:

⁶ [Do not fall prey to indifference \(12 March 2020\) | Francis](#) See also Guzik, P. (2018). Communicating migration – Pope Francis' strategy of reframing refugee issues. *Church, Communication and Culture*, 3(2), 106–135. <https://doi.org/10.1080/23753234.2018.1478230>

⁷ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137; Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

⁸ (Refugee Convention) art 1A2.

“President Saied said that ‘hordes of irregular migrants from Sub-Saharan Africa’ had come to Tunisia, ‘with all the violence, crime, and unacceptable practices that entails.’ He said this was an ‘unnatural’ situation and part of a criminal plan designed to ‘change the demographic make-up’ and turn Tunisia into ‘just another African country that doesn’t belong to the Arab and Islamic nations anymore.’”⁹

His comments were condemned by the UN Race Committee.¹⁰ The African Union expressed “deep shock and concern at the form and substance of the statement targeting fellow Africans, notwithstanding their legal status in the country.” It reminded African Union Member States, which include Tunisia, “to honor their obligations under international law and relevant African Union instruments to treat all migrants with dignity, wherever they come from, refrain from racialised hate speech that could bring people to harm and prioritize their safety and human rights.”¹¹

Despite this furore, Tunisia was rewarded with a visit by the head of the EU and two Prime Ministers who came bearing a 1 billion Euro package of aid and loans in exchange for limiting the boats used to transport people across the Mediterranean towards Europe. Black Africans, including Black Tunisians were harassed and lost jobs and homes. Some Black sub-Saharan Africans were expelled and deposited near border-exit points.¹²

In South Africa a vigilante group called Dudula -meaning ‘force them out’, held rallies in which it threatened migrants from other African countries which it accused of taking away jobs and opportunities. They said: “Our country is a mess. Foreign nationals are working on a 20-year plan of taking over South Africa.” Dudula even tried to register as a political party to contest the 2024 elections.¹³ Poor, mostly Black foreigners continue to experience daily violence and discrimination. Despite its history of apartheid, the richer, foreigners from the Global North are welcomed because of their access to hard currency.¹⁴

⁹ Amnesty International [Tunisian president’s racist speech incites a wave of violence against Black Africans](#) Amnesty International 10 March 2023.

¹⁰ UN News [Racist rhetoric in Tunisia must stop, independent UN experts warn | UN News](#) 4 April 2023 March 2023.

¹¹ African Union Press Statement [The Chairperson of the African Union Commission strongly condemns the racial statements on fellow Africans in Tunisia. | African Union](#) 24 February 2024.

¹² Human Rights Watch [Tunisia: No Safe Haven for Black African Migrants, Refugees | Human Rights Watch](#), 19 July 2023. See also M. Abdelhadi [Kais Saied: Why Tunisia's president picked on sub-Saharan African migrants - BBC News](#) 13 March 2023.

¹³ *Operation Dudula v Electoral Commission of South Africa and Another* [2024] ZAEC 9. For a fictional, but nevertheless realistic reflection of the lives of Zimbabwean and other migrants in South Africa, see the novel by Sue Nyathi *The Gold Diggers* (2019 Pan Macmillan).

¹⁴ If one is to tell the story properly, then it is important to acknowledge the extensions given to Zimbabweans who are the majority foreign population in South Africa. Government Gazette, Vol. 713 No. 10177 29 November 2024. Regulasiekoerant No. 51696. This follows many cases challenging the decision of

Meanwhile the Democrat Mayor of New York, Eric Adams was criticised by his own party, the Democrats, for saying that migrants were dangerous and the rise in numbers would destroy the city. So much for the Statute of Liberty welcoming people.¹⁵

In 2023 Human Rights Watch and Channel 4 News documented the widespread killing and maiming of hundreds of Ethiopians on the Yemeni-Saudi Arabian border. Human Rights Watch suggested that the actions of the Saudi government which occurred between March 2022 and June 2023, could amount to crimes against humanity.¹⁶ Testimony from victims showed that in addition to indiscriminate machine gun fire, sometimes the Saudi border guards invited the Ethiopian migrants to choose which limb they wanted shot.¹⁷ The Saudi government refuted the allegations. Concluding the report, the Channel 4 presenter, Lindsey Hilsum, posed a rhetorical question: Would Western allies take any notice of the Human Rights Watch report and the evidence of widespread atrocities, or would they brush it aside, preferring to maintain cordial relations with an ally over upholding human rights. For its part, Saudi Arabia continues to launder its poor human rights record by lavishly funding sporting and cultural events.¹⁸

The behaviour of governments in the last few years shows that we are in a loop of blaming and ‘offshoring’ in effect, playing pass the parcel with responsibilities and human beings who are treated as the detritus that must be deposited elsewhere. Australia is the exemplar of this.¹⁹ Attempts to remind the state of their obligations has fallen on deaf ears.²⁰ While

the Minister of Home Affairs to end the special exemption scheme for Zimbabweans. M. Hirsch and J. Chirume [Last minute reprieve for Zimbabwe Exemption Permit holders | GroundUp](#) 29 November 2024.

¹⁵ E. Fitzsimmons, “In Escalation, Adams says ‘Migrant crisis will destroy New York City’” *New York Times*, 7 September 2023. [New York migrant crisis sparks huge Democrat row as Mayor hit by backlash from own colleagues \(msn.com\)](#)

¹⁶ Human Rights Watch (2023), ‘[They Fired on Us Like Rain’: Saudi Arabian Mass Killings of Ethiopian Migrants at the Yemen-Saudi Border](#),’ Human Rights Watch (2024) [Saudi Arabia: Deadly Abuses Despite Image Campaign | Human Rights Watch](#)

¹⁷ Channel 4 News “Saudi Arabia accused of killings on Yemen border in new report” at: [Saudi Arabia accused of killings on Yemen border in new report](#)

¹⁸ Human Rights Watch “The Man who bought the world” 22 November 2024.

¹⁹ Until told to stop by the Supreme Court of Papua New Guinea *Namah v Pato* [2016] PGSC 13; SC1497 (26 April 2016).

²⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan. E. Mendez, Observations on communications transmitted to Governments and replies received, A/HRC/28/68/Add.1, 6 March 2015, paras. 16-31. The Australian Prime Minister Tony Abbott hit back saying that Australia “was sick of being lectured to by the United Nations” (in the past it has been criticism of Australia’s treatment of Aboriginal people that has resulted in anger). B. Doherty and D. Hurst “UN accuses Australia of systematically violating Torture Convention” *Guardian*, 10 March 2015. See also Australia Human Rights Commission, “Information for List of Issues Prior to Reporting- Australia: Submission to Committee against Torture (2016), Australia Human Rights Commission, 27 June 2016.

Australia may have been an early adopter of offshoring, many governments have followed.²¹

The Conservative government in the UK entered into a Memorandum of Agreement with Rwanda. It is said to have spent £700 million paying Rwanda to take its unwanted asylum seekers. When questions were raised about Rwanda's human rights record and a successful claim for non-refoulement (return) was brought before the Supreme Court, the government enacted a law declaring Rwanda a safe country.²² The UK approached other countries to take its unwanted asylum seekers (from Afghanistan) but they refused.

The UK had its UN Universal Peer Review in 2022 with the Working Group reporting in 2023. A range of states with different ideological foundations and political systems, urged the UK to reconsider its Rwanda policy; to limit the time that asylum seekers were held in detention²³ and to, "Ensure that all refugees are not discriminated against on the grounds of their mode of arrival in the country."²⁴ Particularly cynical given its own record, was Tunisia's recommendation that the UK: "Respect the principle of non-refoulement and prohibit collective expulsions."²⁵ Türkiye, which has taken many asylum seekers, was one with some moral authority to ask the UK to abide by its Refugee Convention obligations and "not engage in any practice that has the effect of undermining the right to asylum in

²¹ Countries include Italy which made a pact with Albania to export those that were not at risk. The decision has been challenged. Reuters [Returning sea migrants to Libya is illegal, Italy's top court says | Reuters](#), 18 February 2024; InfoMigrants [Italy: What next for the government's Albania plan? - InfoMigrants](#) 25 October 2024. InfoMigrants [Somalia and Germany announce deportation deal - InfoMigrants](#), 6 November 2024.

²² S. Atrey "Why Offshore processing of asylum applicants is actually racist" African Legal Studies Blog, 8 November 2024 at: [Dr Shreya Atrey – africanlegalstudies.blog](#). She notes that laws enacted included: [Illegal Migration Act 2023](#), [Nationality and Borders Act 2022](#), [the New Plan for Immigration](#), the [UK-Rwanda Migration and Economic Development Partnership treaty](#) and the [Safety of Rwanda \(Asylum and Immigration\) Act 2024](#). The case was [R \(on the application of AAA \(Syria\) and other v Secretary of State for the Home Department \[2023\] UKSC 42](#). See also F. Banda [OPINION: How Suella Braverman's fight to "stop the boats" breaches human rights | SOAS](#) 14 March 2023.

²³ Report of the Working Group of the Universal Peer Review United Kingdom of Great Britain and Northern Ireland, A/HRC/52/10, 9 January 2023. (The review was conducted in November 2022). In 2023 the UN Children's Rights Committee made similar recommendations. It based its recommendations on Joint General Comments No. 3 and No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. GE.23-10524 CRC/C/GBR/CO/6-7 22 and No. 23 of the Committee on the Rights of the Child (2017) on the human rights of children in the context of international migration. UN CRC//C/GBR/CO/6-7, 22 June 2023, paras. 49-50. The UN Convention against Torture raised the issue of processing of asylum claims which resulted in a high number of decisions being overturned on appeal showing a need for proper training. It also queried the return of asylum seekers to places where torture was known to occur including Afghanistan. Finally, it addressed the issue of the use of detention including during statelessness determination. CAT/C/GBR/CO/6, 7 June 2019 paras. 52-55 and 38.

²⁴ State of Palestine recommendation to UK UPR at para. 43.297

²⁵ Tunisia recommendation to the UK UPR at para 43.296.

the United Kingdom.”²⁶ No doubt eyebrows were also raised when the Russian Federation recommended that the UK should: “Ensure the same standards of reception for all migrants as well as ensuring them adequate access to health care and legal services.”²⁷

The UK responded by recounting its long and proud history of offering refuge and its commitment to human rights but noted that, “the immigration and asylum system had been subject to significant strain.” It argued that reform was sorely needed and cited “the implementation of the Nationality and Borders Act 2022.”²⁸ It stated its goals: “to make the system more effective and fairer, while deterring illegal entry into the country, disrupting people smuggling business models and removing individuals who had no right to be in the United Kingdom.”²⁹ In 2024, the incoming Labour government scrapped the Rwanda scheme.

It is telling that even Sweden, traditionally seen as both liberal, and, until recently, open to welcoming refugees has taken a turn. In an echo of the UK government’s Hostile Environment Policy (renamed the Compliant Environment Policy), in 2024, the Swedish government proposed that public sector workers in the employment, social insurance and tax departments should have a duty to disclose the immigration status of those who were undocumented. Their remit would thus be extended beyond the immediate work that they were employed to do and turn them into an additional arm of border control and immigration. The proposal excluded schools and health services but it is hard to see how they could be kept discrete. Civil society pointed out how a fear of deportation would lead to those in need not seeking assistance.³⁰ It is not inconceivable that Sweden will take a leaf from a Nordic neighbour and emulate Finland which proposed banning undocumented people from accessing health care except in emergencies.³¹ Life is difficult for this group.

Khosravi’s 2010 ethnography of undocumented migrants in Sweden showed how their enforced ‘illegality’ made them the most legally compliant, for they sought to avoid

²⁶ Türkiye recommendation to the UK UPR para 43.295

²⁷ Russian Federation recommendation to the UK UPR at para 43.288.

²⁸ A/HRC/52/10 at para. 8. See also paras 17, 19 and 27 addressing some of the other criticisms.

²⁹ A/HRC.52/10 at para. 8

³⁰ [Sweden unveils blueprint for obliging public sector workers to denounce undocumented migrants - PICUM](#) 26 November 2024.

³¹ [PICUM Finland: new draft law bars undocumented people from necessary health care - PICUM](#), 23 September 2024.

detection. They were also exposed to economic exploitation, contributing to the economy and yet not able to claim any of the benefits. They were the subject of constant (often negative) comment by politicians and the media, and yet they were voiceless, unable to counter untruths or to challenge stereotypes; they were under constant legal surveillance and yet, fearing detection, were unable to avail themselves of any of the remedies that law offered. The emotional and physical costs paid were high. Depression was common. These new proposals will only exacerbate the challenges that undocumented migrants face.³²

And yet...Do you remember the photograph of Ayan Shenu better known as Kurdi in 2015? He was the Syrian-Kurdish toddler who was pictured being carried off the beach where he had been found by a Turkish police officer. Had we not all been moved to offer pledges of non-repetition, never again ? And yet, here we are, the situation so much worse. For asylum seekers, the justice so boldly proclaimed in the preamble to the UDHR, eludes them and seems to mean Just Us, an exclusive club to which they are denied entry.³³

We are no longer as engaged by news of yet another ship coming from Libya sinking with hundreds on board as we were in 2013.³⁴ In 2023 the few men who survived the sinking of a ship coming from Libya and bearing people from Egypt, Pakistan and Syria, said that a Greek Coast guard vessel had come, but had not given the assistance required.³⁵ Many perished. The women and children had been confined to the hold, packed in, leaving them no hope of escape. Confronted with the evidence of the survivors who testified that the Greek Coast Guard had knowingly abandoned them to their fate, the Greek Coast guard denied that they had failed in their maritime and human rights duty to rescue those in need. Despite evidence provided, including by other ships that had received alerts, the Greeks continued to assert that the boat had been sturdy and the passengers had asserted a wish to continue to Italy.³⁶ This seems an extreme form of ‘burden sharing.’

³² S. Khosravi “An Ethnography of Migrant ‘Illegality’ in Sweden: Included yet Excluded.” *Journal of International Political Theory*, 6 (1) 2010, 95-116. V.T. Nguyen (ed), (Hereafter Khosravi 2010(a)).

³³ This aphorism was cited by late political science scholar Charles E Mills in his book *The Racial Contract*,

³⁴ L. Davies “Lampedusa Victims include Mother and Baby attached by umbilical cord”, London, Guardian, Thursday 10 October 2013.

³⁵ [Regulation \(EU\) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union](#) art. 9.

³⁶ N. Beale and K. Kallergis [Greece boat disaster: BBC investigation casts doubt on coastguard's claims - BBC News](#), 18 June 2023 [Greek Coast Guard Faces Questions in Migrant Mass Drowning - The New York Times](#)

This was not the first time that the Greek authorities had failed to perform their duties. Research undertaken by the BBC for a documentary focusing on the period 2015 to 2020 showed that the authorities had engaged in a variety of unlawful activities including pushing ships back to other territories such as Türkiye, rescuing then abandoning 15 migrants on a dingy and forcibly pushing some into the water. In all the BBC documented 43 deaths as a direct result of Greek illegal behaviour.³⁷

A poem by Waheed comes to mind, 'Immigrant':

“you broke the ocean in
half to be here.
Only to meet nothing that wants you.”⁸

I ask again: what about human rights? What is the point of all those human rights instruments that states negotiate, adopt and ratify? Aren't they supposed to kick in? If, as is claimed, human rights inhere in all who belong to the human family, then how is it that they are not enjoyed by all? Clearly something has been lost in translation or during the classification process.

Part 2-Re-Classification

Sharam Khosravi whose book *Illegal' Traveller: An Auto-Ethnography of Borders* has informed my thinking, suggests that in leaving home, the asylum seeker and migrant (he is himself an Iranian Swede who traversed borders in the shadow of the law) suffers 'loss of citizenship which also means loss of human rights.'³⁸

“...the loss of citizenship is called denaturalization' becoming unnatural. Citizenship has become the nature of being human. Being outside the realm of citizenship means being outside nature. In the conditions of statelessness, in the absence of citizenship, one becomes dehumanized (unnatural) and can be exposed to necro politics-violence and death.”³⁹

³⁷ L. Smith and B. Steele [Greek coastguard threw migrants overboard to their deaths, witnesses say - BBC News](#) 24 June 2024.

³⁸ See S. Khosravi “'Illegal' Traveller: An Auto-Ethnography of Borders (Basingstoke, Palgrave Macmillan (2010) 122.

³⁹ See S. Khosravi (2010) 122. See also 122-127.

However, this process of denaturalisation does not impact all in the same way. Where you come from and who you are in terms of race, religion, sexual orientation and wealth all influence how you are treated. The enjoyment of human rights indeed the very idea of humanity itself is contingent. We can better understand what Khosravi meant when he wrote:

“Through politico-juridical discourse and regulation, this system creates a politicized human being (a citizen of a nation state) but also a by-product, a politically unidentifiable ‘left-over’, a ‘no-longer-human being.’ Sent back and forth between sovereign states, humiliated and represented as polluted and polluting bodies, stateless asylum seekers and irregular migrants are excluded and become the detritus of humanity, leading wasted lives. The modern nation state has claimed the right to preside over the destruction between useful (legitimate) and wasted (illegitimate) lives.”⁴⁰ (References excluded).

For Khosravi, these differences show that we live in an “era of world-apartheid; where borders differentiate individuals. While for some, the border confers a ‘surplus of rights’; for others it is a ‘colour bar.’”⁴¹ He goes on to highlight the enforced territoriality of the global underclasses which he contrasts with the elites who are allowed to exercise unfettered freedom of movement or extraterritoriality.

While law delineates the borders and who is allowed in them and who must be expelled or kept out, literature shatters them. In his novel *Exit West*, Mohsin Hamid is alive to the fact that if he allows himself to be bound by law, then his story of a young couple migrating from Iran to Mykonos in Greece via London before finishing up in California, will not move beyond the first chapter, so he uses a literary device-his characters walk through metaphorical doors (borders) to reach the next destination. Hamid does not ignore the “legal rules” but rather simultaneously explains and subverts them noting that:

“The Doors out to the richer destinations were heavily guarded, but the doors in, the doors from poorer places, were mostly left unsecured, perhaps in the hope that the people would go back to where they came from-although almost no one ever did-or perhaps there were simply too many doors from too many poorer places to guard them all.”⁴²

⁴⁰ S. Khosravi (2010) 3.

⁴¹ S. Khosravi (2010) 66 (notes omitted).

⁴² M. Hamid *Exit West* (Penguin, 2016) 101.

The use of doors and his “walking through” analogy speaks to freedom of movement- which technically is a right to be enjoyed by all, but which is severely constrained for some more than others.

Here literature performs the work of a translator. It makes explicit that the language of law is itself a confection of literary narrative borders. Reviewing asylum determination processes, Herd and Pincus who started the *Refugee Tales* project, say that the language used can itself become the border. “It isn’t the whole of the border, nor its most manifest aspect, but it is absolutely a medium in which the border takes effect.”⁴³ An example here is the Illegal Immigration Act which sought to oust the right to claim asylum if arriving by boat. The language used in the statute signals to the population at large that there are people who are, by virtue of their means of arrival, always outside the borders of legality. The story that is told about them by the law leads to their dehumanisation. They need champions.

Khosravi tells us: “Only those few who could ‘translate’ their local stories into Eurocentric language had a chance”⁴⁴ to navigate the asylum and immigration systems of many countries. This in turn requires an expert translator-a specialist lawyer to help them navigate the labyrinth of regulations

Lawyers as Translators

Sociologist Carol Smart has described the work that lawyers do for their clients as translation.⁴⁵ They take the clients problems and make them legible in law and to law. In short, they translate the clients’ stories about their problems into legally recognisable categories. The lawyer is both narrator and midwife to the client’s narrative. They also hold ‘insider information’ on the functioning of the system.

In 2018, it was revealed that in the UK, the immigration regulations and policies had been amended 5,700 times since 2010, doubling in length to 375,000 words, or, in my currency, four PhD theses. A leading immigration and asylum barrister, Colin Yeo, is quoted as saying that:

“The frequency of the changes means it’s very difficult to keep on top of them...You have to read everything that’s coming out and it’s very hard to be certain you’ve captured every

⁴³ D. Herd, *Refugee Tales II*, (Comma Press, 2017) 113, 120.

⁴⁴ S. Khosravi (2010) 34.

⁴⁵ C. Smart *The Ties that Bind* (London, Routledge, 1984).

single change that might be relevant to your clients. The changes are often hurried out, which means they can be badly written. They can be very difficult to understand, even for judges and lawyers. We've seen a number of errors in drafting that have to be corrected in later versions."⁴⁶

So that is why you need an expert, but as we all know cuts to legal aid and the sheer exhaustion that comes from working in immigration law, means that there is a shortage of qualified immigration specialists. It is days like this that one needs a lawyer like the fictional Bubakar in Imbue's *Behold the Dreamers*⁴⁷, "He was not only a great immigration lawyer with hundreds of African clients all over the country but also an expert in the art of giving clients the best stories of persecution to gain asylum."⁴⁸

Bubakar advises his anxious Cameroonian client, Jende who is living and working in New York, not to worry about the delay as:

"Immigration courts are backlogged these days like nothing I've ever seen before-there's just too many people the government wants to deport and not enough judges eager to deport them. You should have received your Notice to Appeal long ago, but the way your asylum case has been going, I don't even know when you're going to get it because I'm calling the asylum office and nobody is telling me anything useful. So, you may not even have to stand in front of a judge for up to six months, maybe even one year. And then after the judge sees you, he's going to want to see you again, and the next court date may not be for Allah knows how long. And even if the judge denies your asylum case, my brother we can still appeal the decision. We can even do more than one appeal."⁴⁹

This buys Jende more time to fulfil his ambitions.

It is of course true that expertise comes in many forms. There are simultaneous interpretations/translations of refugee law. This includes the shadow version of the smuggler. Amir the smuggler in Khosravi's ethnography, describes himself as his, "own

⁴⁶ M. Bozic, C. Barr, N. McIntyre and P. Noor "Revealed: immigration rules in UK more than double in length" Guardian, London, 27 August 2018. C. Yeo *Broken Britain* (Digest, 2020); C. Yeo *Refugee Law* (Bristol University Press, 2022). In 2007 Yeo founded an advice and information blog covering issues of immigration and asylum: [Free Movement: immigration law news, analysis and training](#)

⁴⁷ I. Mbue *Behold the Dreamers* (Fourth Estate, 2017)

⁴⁸ I. Imbue *Behold the Dreamers* (Fourth Estate, 2017).

⁴⁹ I. Imbue (2017) 72

migration board. I work for those who are declined visas and passports. I work for anyone who has no passport, and with pleasure help them to go wherever they want.”⁵⁰

Plural normative orders

We can, in fiction and in practice, see the interaction between the laws of the state and increasingly the shadow laws of smugglers and fixers of various stripes. Each principal teaches their client how to frame their narrative to achieve the greatest success. I am reminded of Sally Falk Moore’s semi-autonomous social fields where she shows how state law and other normative orders co-exist.⁵¹

Khosravi illustrates the interaction between the fields of state v. smuggler law well. He gives the example of Amir, a smuggler, who produced and published online a 48 page guide for his ‘clients’ about the asylum process and how to interact with immigration and airport officials. This is a ‘legal text’ for those operating in the shadows.⁵² For Amir, there is a connection between his work and that of the refugee lawyer:

“...in fact, I do not smuggle people. I take them to the border where they can seek asylum. When they have sought asylum a refugee lawyer takes care of their cases. Why is my job a crime but not the lawyer’s? We both have the same goal.”⁵³

This is echoed by Addonia in his 2024 novel *The Seers*⁵⁴ about an Eritrean asylum seeker who shares the two pieces of advice given by the smuggler who ‘facilitates’ the journey. The first was an instruction to destroy the fake Egyptian passport used to get on the flight in Cairo. The second was not to speak English despite having learned it at school. This was to pander to the official’s sense of superiority.⁵⁵

At the interview with the immigration services aided by an interpreter, the immigration official asks about the passport. Destroyed comes the response. Why they ask. Because my smuggler told me to. Can you describe the smuggler. “He had brown skin but his behaviour was like theirs, I said pointing at the Englishman in front of us.”⁵⁶ The

⁵⁰ S. Khosravi (2010) 109.

⁵¹ S.F. Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study” *Law & Society Review* Vol. 7, No. 4 (1973). 719-746.

⁵² S. Khosravi (2010) 109.

⁵³ S. Khosravi (2010) 110.

⁵⁴ S. Addonia *The Seers* (Prototype 2024).

⁵⁵ S. Addonia (2024) 28.

⁵⁶ S. Addonia (2024) 31.

interpreter chooses not to translate this. The protagonist says: “As you wish, but it’s the truth I said.”⁵⁷

Literature can help us see more clearly that law is itself a series of narratives or stories told from the perspective of different protagonists.

On Storytelling

The late political scientist Terence Ranger examined the multiple narratives involved in the asylum process.⁵⁸ There is the narrative told by the asylum seeker setting out why they left home while by implication also invoking a story about why the country of refuge has been chosen. This he calls the internal narrative. There are two further narratives—that of the immigration official or decision maker and, finally the decision letter setting out the rationale for the decision made. These seek to tell a compelling story about the way in which the law has been applied to reach the outcome. These are external narratives.

One could add here the input of the country expert working to influence the decision maker about the safety of the state in question. The University of Edinburgh described these experts as “shaping the implementation of immigration and asylum policies.”⁵⁹ Their interpretation of the country information available to them, “help(ed) practitioners to adapt their evidential strategies in asylum claims.”⁶⁰ It is clear that what they choose to share may impact both the immigration lawyer and the decision maker.

Addonia captures this process of honing the client’s story to fit the template, recalling the work that his lawyers did:

“They softened the rough edges of my story, cut out the controversial bits and homed in on the present atrocities between African nations that led me to flee, leaving out the inconvenient truths of the contributing factors of the world order, disentangling me from my reality and creating a simple, presentable version of a refugee who would fit into the future of this country. I was boxed as a Black African, woman, straight.”⁶¹ This is not easy for the protagonist, “I couldn’t imagine leaving my story behind.”⁶²

⁵⁷ S. Addonia (2024) 31.

⁵⁸ T. Ranger, “The Narratives and Counter-narratives of Zimbabwean Asylum: female voices” 26(2005) *Third World Quarterly* 405-421, 407.

⁵⁹ In 2014 the University of Edinburgh submitted an impact case study to the Research Exercise that focused on the work of experts. See 2014 Ref Impact University of Edinburgh Law. Quote-para.4.

⁶⁰ *Ibid*

⁶¹ S. Addonia (2024) 47.

⁶² A. Addonia (2024) 47.

The role of translators or interpreters is also important. A pertinent literary example is provided by Kitamura in her novel *Intimacies* about the work of interpreters at the International Criminal Court in the Hague. The job involved seeking to bridge the potential gaps in meaning between languages by, “throw(ing) down planks across these gaps.”⁶³ In doing this work, “Linguistic accuracy was not enough. Interpretation was a matter of great subtlety, a word with many contexts, for example it is often said that an actor interprets a role, or a musician a piece of music.”⁶⁴

Rebecca Kuang’s *Babel* is a speculative novel set in Oxford in a fictional translation institute. Set in Victorian times, Kuang’s story focuses on the students of colour who have been brought to the Institute in the hope that they will use their linguistic capacity to service the empire, in the way SOAS was established to teach languages and later law, to prepare colonial officials to help to run the colonies.⁶⁵ One of academics at the Institute tells a student that it is important to know a language in depth, going “down to its roots and skeletons...you need to know the history, shape and depths of a language, particularly if you plan to manipulate it as you will one day learn to do.”⁶⁶

Later, in *Babel*, we learn (from one of the students) of a French translator, “Antoine Galland (who) did his best to Frenchify the dialogue and to erase all cultural details he thought would confuse the reader.”⁶⁷ Here we see the ‘retooling’ or editing of the language for local consumption.

In Addonia’s *The Seers*, the interpreter chooses to edit the protagonist for their own good: “I revealed to her some of the details of my journey to get here. I told her that the desert had mountains made of African bones, which she felt was too dramatic to translate. I then told her that I came close to being killed a few times. But all that didn’t matter to my application.”⁶⁸

⁶³ K. Kitamura *Intimacies* (Penguin, 2021) 13.

⁶⁴ K. Kitamura (2022) 15. See also R.F. Kuang *Babel, or the Necessity of Violence: An Arcane History of the Oxford Translator’s Revolution*. (Harper, 2022) 534.

⁶⁵ J. Harrington and A. Manji [The Emergence of African Law as an Academic Discipline in Britain on JSTOR African Affairs Vol. 102, No. 406 \(Jan., 2003\)](#), pp. 109-134.

⁶⁶ R.F. Kuang *Babel, or the Necessity of Violence: An Arcane History of the Oxford Translator’s Revolution*. (Harper, 2022) 27. See also Waterstones, [R.F. Kuang on Babel and the Legacy of Victorian Literature | Waterstones.com Blog](#)

⁶⁷ R.F. Kuang (2022) 52.

⁶⁸ S. Addonia (2024) 30-31.

It is also worth noting the role of journalists as key protagonists in how the law and policy are explained to the general public. The language used often legitimises the social vilification of migrants. There is a single story told about them leaving the impression that asylum seekers and migrants are all grifters.⁶⁹

In *Intimacies* Kitamura's protagonist notes the way journalists turn up at the start of trials at the International Criminal Court and again at the end, missing the nuance and complexity of the middle. Her protagonist interpreter observes: "They had mere fragments of the narrative and yet they would assemble those fragments into a story like any other story, a story with the appearance of unity."⁷⁰

Ellen Wiles headlines each chapter in *Invisible Crowd* with an actual headline taken from a newspaper. The Daily Mail makes a lot of appearances. Here is an example:

"Lying asylum-seeker can stay here - because she had two children by an HIV alcoholic"⁷¹

The headline is based on an actual Supreme Court case, *ZH v. Tanzania*⁷² about a Tanzanian woman who had failed to get asylum. Her immigration history was, to use my students' words, sketchy. She had met, married, then divorced a British man with whom she had two children. The Home Office wanted to deport her and her children. Lady Hale held that the two children were British citizens whose interests were best served by remaining in the only country that they had ever known. She also linked her decision to the UK's ratification of the UN Children's Rights Convention and specifically the state's duty under article 3 to uphold the child's welfare or best interests.

Noteworthy is the alternative account of this case in Afua Hirsch's children's book *Equal to Everything: Judge Brenda and the Supreme Court*. In it, seven year old children in their third year of primary school, visit Baroness Hale at the Supreme Court where she explains her work. Hirsch's child-friendly translation of the *ZH v. Tanzania* case is markedly different in tone to the Daily Mail version:

"There was a mum from Tanzania, her children were British like you. When she asked to stay in this country, what she said wasn't always true.

⁶⁹ C.N. Adichie *The Danger of a Single Story* TED Talk, YouTube, 7 October 2009

⁷⁰ K. Kitamura 2021: 216.

⁷¹ J. Doyle and C. Fernandez, "Lying asylum seeker can stay here-because she had two children by an HIV alcoholic" London, *Daily Mail*, 1 February 2011. The comments that follow the article are almost all critical of the decision.

⁷² *ZH (Tanzania) (FC) (Appellant) v. Secretary of State for the Home Department (Respondent)* [2011] UKSC 4.

She was told she would be sent away. Her family was terribly sad.

Her kids would've had to go with her, leaving their friends and even their Dad?

But we changed the law by deciding it wasn't fair to make her leave. Children shouldn't suffer for adults' mistakes. That is what I believe."⁷³

I prefer the Hirsch telling of the story to that contained in the Daily Mail headline.

Part 3: Navigating the Rules

This summer my family and I caught an old Mission Impossible film on TV. We watched Tom Cruise flit from London to Washington via Paris, before alighting in Havana and Vienna. He then headed off to Morocco for an explosive filled adventure before finally defeating the baddies in London.⁷⁴ My family loved the action. More cynically, I remember thinking: Only a rich white bloke with the right passport could move that freely across continents.

In the first part we saw how states had closed their borders to the 'undesirables' of the world. We now need to consider how those people who travel on the "wrong" or poorly rated, (by Henley Passport Index) passports fare?⁷⁵

As any person from the Third World who has ever had to get a visa will tell you, freedom of movement is a nice idea, a human right to aspire to, but hard to achieve in practice. Writing about visa requirements in Europe, den Heijer shows how race, income and geography are central to the determination of who is required to get visas before travel. On a map he shows that all African countries are listed as requiring visas and most Asian and Arab ones. The exceptions to the Asian and Arab states are those deemed 'rich' or strategically important. Den Heijer highlights that because of specific exemptions in some EU equality directives states are not under any obligation to guarantee equal treatment to third country nationals from outside the European Union.⁷⁶ This severely limits the scope for challenging discriminatory decision making.

⁷³ A. Hirsch and H. Beaumont, *Equal to Everything: Judge Brenda and the Supreme Court* (London, Legal Action Group Education and Service Trust Ltd, 2019).

⁷⁴ C. McQuarrie (Director) *Mission: Impossible-Rogue Nation* (Paramount Pictures 2015). The locations are what I remember which may not be strictly accurate-well, London, Vienna and different locations in Morocco are. The opening sequence is ostensibly in Belarus.

⁷⁵ [Passport Index | Henley & Partners](#)

⁷⁶ M. den Heijer, "Visas and Non-discrimination" 20 (2018) *European Journal of Migration and Law*, 470-489, 480-482.

In this section I look at the schemes that are used by those who are denied the right of passage by conventional means.⁷⁷ There are at least four ways for people with poorly rated passports to move:

- i) Claiming asylum-assuming you are given the opportunity to do so and not just sent straight to detention for arriving by the wrong means;
- ii) A short term visitor's visa of a few months that you then "extend" while working out a longer term plan;
- iii) A student visa
- iv) A marriage visa
- v) If you have means, some states will allow you an Investor visa-but you have to have serious money for that. I think Malta was offering passports for Euro 600,000 investment for those with three years residence or 750,000 for those with 12 months residence. There is an additional requirement to make a Euro 10,000 philanthropic donation.⁷⁸ The UK has cancelled this route-too many dodgy people and there are security implications.⁷⁹

From Imbolo Mbue's *Behold the Dreamers* we learn that our four viable entry point options are not exclusive, but inter-linked. For example, let's listen in to advice on how to extend the three months stay on the protagonist's visitor's visa until he can save enough to return home with a Green card:

"Asylum is the best way to get papier and remain in the country...Either that, or you marry an old white woman in Mississippi with no teeth."⁸⁰ I can't resist the story of Sapeur (a word used for a dandy) who got his papers by marrying a woman he met in a nightclub while "dressed in a three-piece orange suit and a red fedora."⁸¹

Jende's wife is registered in a college of some description so she counts as a student. But student visas require money for fees which can be prohibitively expensive. In addition to

⁷⁷ I rely on my book F. Banda *African Migration, Human Rights and Literature* (Hart 2020 -hardback and 2022 paperback).

⁷⁸ Global Citizens Solution, "Malta Citizenship by Investment" [Malta Citizenship by Investment 2024 Guide](#).

⁷⁹ UK Government, Home Office, [Tier 1 Investor Visa route closes over security concerns - GOV.UK](#), 17 February 2022.

⁸⁰ M. Mbue (2017) 19

⁸¹ I. Mbue (2017) 82. See also the stories in C. Unigwe *Better Never Than Late* (London, Cassava Press, 2019) especially "The Transfiguration of Rapu"; "Cunny Man Die, Cunny Man Bury Am" and "Love of a Fat Woman"

looking after their young son, Jende's wife also has a job to contribute to the family income.

Fictional literature is also contextually rich providing excellent comparative socio-cultural insights about how different legal systems work. We learn, not only about the law but also about bureaucratic differences across regions and cultures. These can make fulfilling the procedural requirements for asylum difficult.

I want to focus on two issues: Evidence and also Credibility. These two are central because to get a visa or asylum, you need to provide evidence and you also need to convince the visa officer or immigration official that you meet the criteria. Again it is about getting your story straight.

On Evidence

Beneduce, a professor of Medical and Psychological Anthropology in Turin wrote a paper on the "The Moral Economy of Lying".⁸² He highlighted the disconnect between what immigration and asylum officers think an applicant should be able to prove, and the ability of the supplicant to furnish the required evidence. In part, this is because of a difference in emphasis about what constituted "proof". He also identified the different expectations of how of bureaucracy functioned in other parts of the world and also the availability of paperwork to evidence one's claim.

On this, Noo Saro Wiwa, journalist, author and daughter of the murdered environmental activist Ken Saro Wiwa observes:

"The asylum seeker born out of shoddy bureaucracy often struggles to prove not only their identity but their ill-treatment too. The policeman who dragged them into African prison cells don't always fill out paperwork. Those same police might not maintain records of gang rape reported to them by a distraught girl."⁸³

Saro Wiwa's observations are captured in Adichie's story "The American Embassy." The protagonist who is at the embassy to claim asylum after a failed attempt on her journalist husband's life (they killed her son instead while the husband escaped and fled), recounts her interview with the embassy official, who on hearing that she is claiming political

⁸² R. Beneduce "The Moral Economy of Lying: Subjectcraft, Narrative Capital, and Uncertainty in the Politics of Asylum." *Med Anthropol.* 2015;34(6):551-71.

⁸³ N. Saro Wiwa "A Time to Lie" in L. Popescu (ed), 2016, 128. See also T. Ranger (2005) 411-418 and S. Khosravi (2010) 34.

asylum, requests proof. The protagonist answers that she buried her son the day before. She sees her son's death as the "proof". Living in a dictatorship, she is not likely to have a documented confession of unlawful death. The embassy official, seeking to remain neutral observes:

"Ma'am? The United States offers a new life to victims of political persecution but there needs to be proof..."⁸⁴

Similarly, in *The Seers*, Addonia's traumatised protagonist looks in the mirror and observes: "the absence of dreams in my eyes and the presence of emptiness. I hadn't slept for weeks and I was meant to tell them a story to persuade them of my right to live in their country, but weren't my wounds as visible as the fish in the pond or the portrait hanging on the reception wall?"⁸⁵

In *The Seers*, the interpreter asks how old the protagonist is. The answer: 17. The interpreter, no doubt recalling that the passport had been flushed down the toilet en route, asks about proof of age. The protagonist shrugs, leading the interpreter to point out the consequences:

"Hannah, if you don't show them proof, they might assume you are an adult, and they'll keep you in this place until they discover the truth somehow. I have no evidence, I said."⁸⁶

The interpreter clearly convinces the immigration officials for the protagonist is transferred to accommodation for unaccompanied minors.

The need for "proof" in turn generates creativity. Desai's novel *The Inheritance of Loss* which starts in India with migration to the United States as the goal, shows that there is a visa market involving a network of fixers who include doctors who will falsify medical information, lawyers who will act as brokers, including of marriage, and corrupt airline officials who will take a cut for onward transmission of the "cargo." There are many people involved in the creation of the exit narrative.⁸⁷

"Sometimes every single paper the applicants brought with them was fake: birth certificates, vaccination records from doctors, offers of monetary support. There was a

⁸⁴ C. Adichie (2009) 128, 141. See also A. Wooley, "Narrating the 'Asylum Story': Between Literary and Legal Storytelling" 19 (2017) *Interventions: International Journal of Postcolonial Studies* 376, 386-391.

⁸⁵ S. Addonia (2024) 34.

⁸⁶ S. Addonia (2024) 30. See also A. Mohammad "The Deportee's Tale" in D. Herd and A. Pincus (eds) (2016) 99-106,105.

⁸⁷ K. Desai *The Inheritance of Loss*, Hamish Hamilton, 2006. See also S. Khosravi (2010) 30.

lovely place you could go, clerks by the hundred sitting cross-legged before typewriters, ready to help with stamps and the correct legal language for every conceivable requirement...”⁸⁸

In *Behold the Dreamers*, our man, the lawyer Bubakar, having decided on the asylum route that the protagonist, Jende, should take, provides a list of the evidence that is needed. The list includes letters backing his story, a birth certificate for his living child, a death certificate for the other one, proof that he was sent to prison and pictures. Jende is worried that he does not have this evidence and tells Babukar so.

Bubukar’s response:

“Do I have to spell it out for you? You got to use your common sense and produce for me something I can show these people. Eh? It’s like that man Jerry Maguire says, show me the money. These people at USCIS are going to say, show me the evidence, show me the evidence. You get me?”⁸⁹

And herein lies the applicant’s dilemma because sometimes there is no evidence. There is an important intersectionality point here. If you are gay and coming from a country where LGBTI rights are not recognised, then you will not have sent sexy texts or written passionate letters or sent saucy emails or taken loving photographs. That evidence would get you imprisoned, or worse, killed.⁹⁰

Credibility now often expressed as: “they all lie” is now the lens through which all migration is viewed.

Credibility

In her novel *Intimacies* about an interpreter working at the International Criminal Court in the Hague, Katie Kitamura shows that law has similarities with theatre so that “A trial was a complex calculus of performance in which we were all involved.”⁹¹

⁸⁸ K. Desai (2006) 183.

⁸⁹ I. Mbue (2017) 24.

⁹⁰ I am grateful to G. Gilleri and Guo for this insight Gilleri, G., & Guo, A. (2021). African Migration, Human Rights and Literature, written by Fareda Banda. *European Journal of Migration and Law*, 23(3), 371-375.

⁹¹ K. Kitamura (2021): 15

“Every person who took the stand was projecting an image of one kind or another: their testimony was heavily coached and shaped by either the defense or the prosecution, they had been brought to the Court in order to perform a role.”⁹²

Khosravi notes that a refugee is expected to perform refugeeness, which “entails living up to the expectation of what a refugee is.”⁹³ He goes on: “A real refugee is supposed to be a ‘profound’, ‘poor’, ‘traumatized’, ‘serious’ and of course ‘sad person.’”⁹⁴

The protagonist in *The Seers* remembers the smuggler’s advice on how to interact with immigration officials: “Although their empire had collapsed a long time ago, my smuggler said, they still like to feel superior. It will help your case if you look ignorant in front of them. I bowed my head and said: Me English no speak.”⁹⁵

The madame who runs the house where women trafficked from Nigeria live in Brussels in Chike Unigwe’s *On Black Sisters Street*, gives this advice to one of her proteges who is going for her asylum interview:

“Look sad. Cry. Wail. Tear your hair out. White people enjoy sob stories. They love to hear about us killing each other, about us hacking each other’s heads off in senseless ethnic conflicts. The more macabre the story the better.”⁹⁶

It does not work. Asylum seekers should also be seen to be truthful, deserving and grateful—very grateful—just read Dina Nayeri’s “The Ungrateful Refugee.” Above all they must be seen to be credible.⁹⁷

However, as Khosravi’s research shows, the asylum seeker learns that telling their truth—that is their story as they experienced it, may not lead to the expected outcome. From personal experience, Khosravi observes that in the UNHCR determination process, the stories of those who have gone before may become the template—‘the precedent’ of expectation, so if anyone’s story does not fit this template, then they are lying.

⁹² K. Kitamura (2021) 14.

⁹³ S. Khosravi (2010) 72.

⁹⁴ S. Khosravi (2010) 73.

⁹⁵ S. Khosravi (2024) 28.

⁹⁶ C. Unigwe (2010) 121. See also S. Khosravi (2010a) 72-73 and I. Mbue (2016) 23,24.

⁹⁷ D. Nayeri, “The Ungrateful Refugee” in V. T. Nguyen (ed) *The Displaced: Refugee Writers on Refugee Lives* (New York, Abrams Press, 2018) 137-150, 149-50. N. R. Tshuma, “New Lands, New Selves” in V.T. Nguyen (ed), (2018) 159-173, 166,167

Literature can elucidate the ridiculous, Kafkaesque requirements for claiming asylum or refugee status. It sometimes seems as if there is a preference for stereotypes over mundane realities. The lawyer in *The Seers* explains:

“Every officer at the Home Office is looking for reasons to reject an application, so we just adjusted the story to give it a better chance of succeeding... The Home Office is populated by people and not machines. And we need to find subtle ways to appeal to their emotions.”⁹⁸

The lawyer is clear that this does not guarantee success. Luck plays a part. “A story’s not science. You’ll succeed if your story comes across the desk of someone who finds it convincing Otherwise you won’t.”⁹⁹

The need for repetition may also mean one is “caught out in a lie”. In *Invisible Crowd*, Yonas, from Eritrea shares his story with his mates in the squat:

“I claim at the airport, when I get ‘ere, like I was advise and am told I am lying. But still, they make me tell my story so many times more, and if I say one thing differently they say to me: Ha! This prove you are lying. Even after they say I was lying from the start. And after that I am kept waiting. I cannot work, and I no get any decision for six years after.”¹⁰⁰

Another Eritrean in Wiles’s *Invisible Crowd*, Gebre, is gay. He finds himself in detention and facing deportation after being caught stealing food because he was hungry and did not have any money. Wiles gives a detailed account of both the asylum application process and the interview.

At the interview, Gebre details the torture that he endured at the hands of the Eritrean regime. He also reveals that he was sexually assaulted by the prison guards who discovered that he was gay. Rather than follow the Home Office and UNHCR guidelines which say that a person can rely on more than one ground to claim asylum, the interviewer responds incredulously: “So now you are gay as well?’ And laughed.” ... “And you’ve been sexually abused? Sounds to me like a convenient, erotic little story you have come up with for this interview! Right?”¹⁰¹

⁹⁸ S. Addonia (2024) 44-5.

⁹⁹ S. Addonia (2024) 47.

¹⁰⁰ E. Wiles (2017) 84. S. Khosravi gives an account of how he left out information about his imprisonment and father that he thought irrelevant. When he later added it, he was met with scepticism by the interviewing officer. Khosravi (2010) 34.

¹⁰¹ E. Wiles (2017) 237 (includes all quotes up to footnote).

The interview proceeds on that sceptical note with the interviewer asking wholly unjustified questions about how Gebre enjoyed sex. Again, the disbelief creeps in, “Well, this seems like a neat way to add a bonus human rights layer to your asylum claim. Did your lawyer tell you to say this?” They then move on to religion and to Gebre’s disclosure that he is an Orthodox Christian, the interviewer asks; “So how can you justify being a homosexual? The Bible says it is a sin, correct? Orthodox Christians are very strict about that sort of thing.” By now Gebre realises that the interview has taken a turn. The interviewer continues; “So how am I supposed to believe that you defied your entire culture and religion to have all this twisted gay sex you are now claiming you had?” Wryly Gebre muses; “He had not even got onto asking why I left Eritrea yet.”¹⁰²

In the last section I want to pause and consider the state of human rights today.

Part 4 -The End Times of Human Rights?

My former colleague Stephen Hopgood wrote a book entitled, *The Endtimes of Human Rights* about the demise of human rights.¹⁰³ I differed with him preferring Sikkink’s more upbeat *Evidence of Hope*.¹⁰⁴

I am now coming round to the Hopgood view that the excitement and belief in the potential of human rights to bring about change and to hold states accountable has been exaggerated. It is increasingly clear that human rights are akin to a buffet from which states parties pick and choose what to consume (take seriously), and what to ignore. Perhaps I should have imbibed less of the Kool Aid and remembered Said:

“What partly animated my study of Orientalism was my critique of the way in which the alleged universalism of fields such as the classics (not to mention historiography, anthropology and sociology) was Eurocentric in the extreme, as if other literatures and societies had either an inferior or transcendental value.”¹⁰⁵

¹⁰² E. Wiles (2017) 238

¹⁰³ S. Hopgood *The Endtimes of Human Rights* (Cornell University Press, 2013) . See the rejoinder, Amnesty International Netherlands *Debating the Endtimes of Human Rights: Activism and Institutions in a Neo-Westphalian World* (Amnesty International Netherlands, 2014).

¹⁰⁴ L. Sikkink *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton University Press, 2017); G. de Burca *Reframing Human Rights in a Turbulent Era* (OUP, 2021)

¹⁰⁵ E. Said (1994) 54. Third World Analysis of International Law (TWAAIL scholars) have made this argument for decades A. An-Naim *Decolonising Human Rights* (CUP, 2021). K.M. Clarke *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (CUP, 2009). From a literary perspective see the epilogue in R.F. Kuang (2022) 536-542.

Writing about the 2024 US election, Moyn argues that we now have to acknowledge that law and litigation is not the panacea that liberals have hoped for. Looking at the triumph of Trump despite the many legal cases that were brought against him highlights, Moyn says, that politics trumps law.¹⁰⁶ On a global scale, the inconsistent application of international law by those who are its main champions has made explicit to a wider audience, that law is used or invoked only when useful or supportive to the cause of the powerful.

Asylum seekers are caught between a reliance on law to frame their claims and a political climate in which states refuse to acknowledge those entitlements and their obligations. The treatment of asylum seekers and migrants shows that both sending and receiving states have been found wanting. People leave home due to inhospitable environments occasioned by war or a failure of the state to provide the socio-economic opportunities for people to lead lives of dignity. Their countries of destination prove equally unwelcoming.¹⁰⁷

Radical is Achiume's argument that those states which colonised others owe a particular duty of care to migrants, asylum seekers and indeed the very countries from which they come. A decolonial approach to migration requires new ways of thinking and doing which recognise and seek to repair the damage caused by the impact of colonialism. The repair may include a more open approach to borders.¹⁰⁸

Advocating for open borders, 'a utopian vision', is commentator and academic, Gary Younge.¹⁰⁹ The feasibility of Achiume and Younge's claims are directly matched by ever creative and harsh migration control regimes, legally, physically and also in the exclusionary rhetoric now deployed by politicians. In many ways they are seeking to respond to sections of their populations and media who perceive asylum seekers and

¹⁰⁶ S. Moyn "Liberals bet they could beat Trump with the Law. They Lost" New York Times, 22 November 2024.

¹⁰⁷ Wilson BK, Burnstan A, Calderon C, And Csordas TJ. "Letting die" by design: Asylum seekers' lived experience of postcolonial necropolitics. *Soc Sci Med.* 2023 Mar;320:115714. See also K.C. Villavicencio *The Undocumented Americans* (2020). See also S. Addonia (2024) 35.

¹⁰⁸ E.T. Achiume, "*Migration as Decolonization*". *Stanford Law Review.* 71 (6): 1509–1574. [ISSN 0038-9765](#); Achiume, E. Tendayi (2017). "*Reimagining International Law for Global Migration: Migration as Decolonization?*". *AJIL Unbound.* 111: 142–146. [doi:10.1017/aju.2017.48](#). [ISSN 2398-7723](#). [S2CID 148772268](#).

¹⁰⁹ G. Younge "End all immigration controls'-they're a sign we value money more than people" Guardian, 15 October 2017.

migrants as posing a threat to their livelihoods and way of life.¹¹⁰ Politicians scramble to defer to the nimbyism (not in my back yard).

While few politicians are now willing to counter this now dominant anti migrant narrative, there are the rare exceptions. In 2024 the newly elected President of Botswana, a human rights lawyer named Duma Boka, addressed the country noting that it was important to recognise undocumented Zimbabweans who formed the majority of migrants in the country. He made the link between the lack of recognition to work legally with a drift into criminality. Reflecting on the ‘taking our jobs claim’ he pointed out the common practice of migrants doing the work that citizens did not want to do such as domestic work and gardening. Significantly, he saw the legal recognition of those already in the country as mutually beneficial. Migrants could teach the locals skills that they did not possess.¹¹¹

The Botswana approach is on all fours with the Inter American Court’s Advisory Opinion on the duty of states to address discrimination against undocumented workers.¹¹² The court recognised that discrimination on grounds of status meant that workers were not paid the full wage and did not accumulate pension benefits. They ran the risk of injury without the possibility of compensation. The state lost out on taxes that the migrants could contribute if recognised as workers. Cheaper undocumented labour undercut the workers who are entitled to work legally.

To close on an optimistic note; if one sees human rights as part of national and transnational civil society advocacy tools, then there may still be evidence for hope.¹¹³

¹¹⁰ See for example the way in which a newspaper discusses a book aimed at children which casts refugees in a positive light and notes their contribution to the economy and life of the country. C. Simpson “Children told refugees ‘enrich our country’ and drive ‘growth’ in Usborne book. *The Telegraph*, 24 November 2024. The newspaper notes that some, including a politician from the right leaning Reform party, have criticised the book as a form of ‘indoctrination.’ There were many comments below the article which were indignant that such a book existed and was being distributed. They displayed negative attitudes towards refugees and indeed the publisher of the book. “Boycott Usborne books.” (David Eden) “When is the Usborne books big bonfire?” (Michael Sims); “Stamp on this ‘this book contains lies’” (Randolph Hurst).

¹¹¹ Pindula, [Botswana To Legalise Undocumented Zimbabweans - President Boko](#) 8 November 2024. In passing, I am struck by how often working ‘under the counter’ in construction features in fictional literature. B. Chikwava *Harare North* (2010) 49-54; S. Afolabi “Monday Morning” in S. Afolabi *A Life Elsewhere* (London, Jonathan Cape, 2006)1-15, 6.

¹¹² [Inter-American Court of Human Rights, Advisory Opinion, OC-18/03, 17 September 2003, Inter-Am. Ct HR, \(Ser. A\) No. 18, 2003](#), paras 82-110.

Segarra, P., Prasad, A. Undocumented immigrants at work: invisibility, hypervisibility, and the making of the modern slave. *Humanit Soc Sci Commun* 11, 45 (2024). <https://doi.org/10.1057/s41599-023-02449-5>.

¹¹³ D. Anagnostou, *The European Convention of Human Rights Regime: Reform of Immigration and Minority Practices from Afar* (Routledge, 2024).

Conclusion

This paper started with a stanza from Warsan Shire's poem "Assimilation" in which the asylum seeker, reflecting on their treatment, wonders if they are human. The answer is that their humanity is contingent and contested. An overview of media and reports by human rights organisations has highlighted that there is a global turn against taking in people fleeing persecution. We have seen how states have engaged in unedifying conduct seeking to shift their obligations by paying others to take on the people that they do not want within their borders. The shutting down of legal means of migration has in turn led to creativity on the part of those fleeing their homes of origin. The schemes used are captured in fictional literature where writers seek to translate the experiences of asylum seekers and migrants in the way that lawyers and smugglers seek to translate their clients' problems into legally recognisable categories.

In concluding, I leave you with this hope from Kuang's *Babel* that we should be:

"Listening to the other and trying to see past your own biases to glimpse what they are trying to say. Showing yourself to the world and hoping someone else understands."