

Crossing Law's Border

Canada's Refugee Resettlement Program

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UBC Press · Vancouver · Toronto

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ISBN 978-0-7748-6217-2 (hardcover)

ISBN 978-0-7748-6219-6 (PDF)

ISBN 978-0-7748-6220-2 (EPUB)

ISBN 978-0-7748-6221-9 (Kindle)

Cataloguing-in-publication data for this book is available
from Library and Archives Canada.

Canada

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada (through the Canada Book Fund), the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Awards to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada, and with the help of the University of British Columbia through the K.D. Srivastava Fund.

Set in Zurich, Univers, and Minion by Apex CoVantage, LLC

Copy editor: Stacy Belden

Proofreader: Dallas Harrison

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Cover designer: David Drummond

UBC Press

The University of British Columbia

2029 West Mall

Vancouver, BC V6T 1Z2

www.ubcpres.ca

Contents

	List of Tables / viii
	Acknowledgments / ix
	List of Abbreviations / xii
1	Law's Role in Resettlement / 1
2	Movement / 17
3	History, Humanitarianism, and Law / 32
4	Numbers, Access, and Rights / 56
5	Privatized Protection / 81
6	The State of Sponsorship / 110
7	Beyond the Convention / 125
8	Unsettling Refugee Resettlement / 154
	Appendix: Federal Court of Canada Resettlement Cases / 170
	Notes / 179
	Index / 240

Tables

- 1 UNHCR resettlement data, 2010–17 / 6
- 2 *Refugee Convention* state parties, 1951–2018 / 37
- 3 Government-assisted/private sponsorship ranges and landings, 2001–21 / 57
- 4 Private sponsorship ranges and landings, 1979–2021 / 96
- 5 Designated source countries by year, 1997–2011 / 128
- 6 Humanitarian and compassionate applications outside Canada, 2002–10 / 135

1

Law's Role in Resettlement

In the fall of 2015, a new reality hit Canada. Refugees were the topic of conversation – at dinner tables, at schools, in the media, and by politicians in the lead up to a federal election. Not only were they discussed; refugees were present in these spaces. They were invited in, welcomed, and the promises of the politicians swirled around how many to admit. In many ways, this newfound space for welcome was triggered by the now iconic image of a drowned Syrian boy, Alan Kurdi, and the world's sudden recognition that more needed to be done. In Canada, which was far from the refugee flows, that “more” translated into more resettlement.

With his election on 19 October 2015, the new Canadian Prime Minister Justin Trudeau set to make his campaign promise of resettling 25,000 government-assisted Syrian refugees to Canada a reality. The number – 25,000 – was a massive increase from government resettlement that in recent years had averaged 7,500. The large resettlement number also drew comparisons to the origins and heyday of Canadian resettlement during the Indochinese crisis of the 1970s. Humanitarianism was palpable as the government acted on resettlement promises and individuals came together to do the same through private sponsorship. The work of this book is coming to a close in 2017 as the Syrian resettlement momentum continues in Canada and increasingly draws the interest of other states as the war in Syria and crises in other regions relentlessly carry on. It is impossible to give a starting or final word on a shifting and evolving resettlement program. This book is framed, however, by the Indochinese and Syrian resettlements to Canada and all that happened in between.

Refugees and Resettlement

Refugees flee. They fear persecution, and they escape. Where they escape to depends on where they begin, the immediacy of their need for escape, their means and access, and their own physical abilities. Some barely get across an international border. Some get across the world. The reality of the disproportionate distribution of refugees results in a dual system of protection. By international agreement, many countries have recognized that if refugees arrive on their territories they will not be sent back. This is the principle of *non-refoulement* set out in Article 33 of the 1951 *Convention Relating to the Status of Refugees (Refugee Convention)*.¹ Other countries have not become a party to the *Refugee Convention* or simply have an overwhelming and unmanageable number of refugees entering their territories. As a result, some countries that are far from the refugee flows have agreed to voluntarily bring refugees, who have fled elsewhere but who have not received adequate protection, to their territories. This is the act of third country resettlement, commonly referred to simply as resettlement or refugee resettlement.

Resettlement is defined by the United Nations High Commissioner for Refugees (UNHCR) as “the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status.”² The decision to resettle a refugee is only made in the absence of local integration or voluntary repatriation. This statement belies the complexity of resettlement decisions that are explored in the substance of this book. Resettlement is regarded by the UNHCR as serving two further functions: working not only as a solution but also as a tool of protection and the expression of international burden sharing.³ Possibly as a result of its multiple purposes, and due to its voluntary nature, resettlement’s usage has been ad hoc, intermittent, and sometimes manipulative, all with incredibly low numbers even in moments of celebratory resettlement highs.

This book explores the intersection of rights, responsibility, and obligation in the absence of a legal scheme for refugee resettlement. By examining the Canadian resettlement program, I ask how law influences the voluntary act of resettlement and, conversely, how resettlement contorts the law of asylum. The chapters show that the core concept of refugee protection – *non-refoulement* – is often compromised by resettlement, both

by the resettlement selection process and by the influence of resettlement practices on in-country asylum. Nonetheless, resettlement provides a positive complementary addition to in-country asylum claims. Refugees come to Canada and are welcomed. My intent with this book, at a moment when the world is looking to Canada as a model of resettlement success, is to assess the current programs and practices of resettlement so as to promote the use of resettlement in a way that not only encourages resettlement but also maintains a commitment to the notion of refugee protection.

Beyond this, the book is about the relationship between refugees and the law. I demonstrate that law plays an influential role even in the voluntary, non-legal act of resettlement. Within a sovereign nation-state, law is clear. It is based on a formal or written constitution that establishes general law-making and law enforcement powers. In the international realm, by contrast, law is based on consensus and lacks a centralized, hierarchical structure. The refugee travels from a home state to the international realm and, ideally although not ultimately, back to a state, be it her return to her home state or her acceptance in a new state. During this journey, law weaves in and out. Both the individual states' domestic laws and the consensus-based international laws influence the refugee's journey.

The central law that applies to refugees is the international legal obligation of *non-refoulement*. *Non-refoulement* grants the refugee protection against return to the country where she fears persecution. It does so by preventing the state bound by the *Refugee Convention* from expelling a refugee from its territory. States that have become party to the *Refugee Convention* have thus taken on the responsibility for refugees who arrive in their territories. In total, 145 states are party to the *Refugee Convention*.⁴ The concept of *non-refoulement* can be found in other international and regional documents,⁵ and some scholars assert that it has reached the status of customary international law, binding even those states that are not party to the *Refugee Convention*.⁶ In non-convention states or in states where refugee recognition processes are not in place, the UNHCR is often permitted to grant mandate refugee status under the *Statute of the United Nations High Commissioner for Refugees (UNHCR Statute)*.⁷

A refugee's fate is determined by where she claims protection. If the refugee reaches a state that is party to the *Refugee Convention*,

non-refoulement triggers a domestic legal system that, in theory, will process the claim and accord the refugee a bundle of rights set out in the *Refugee Convention* but linked to the entitlement rights of citizens in the new state. If the refugee claims asylum in a state in which the UNHCR is granting “mandate status,” she will be recognized as a refugee but still lack the solution of a state.⁸ Despite the UNHCR’s grant of refugee status, the refugee will not be permitted necessarily to remain in the state. The consequence is a massive refugee population in limbo, having fled one state but not finding a solution in another.

Refugees in states that have either not joined, or are not living up to their obligations under, the *Refugee Convention* encounter the conceptual failure of both universal human rights and refugee protection. In the realm between persecuting and protecting states, refugees lack anywhere to assert their rights or find protection. The global refugee population under the UNHCR’s mandate was 19.9 million at the end of 2017.⁹ At that time, 13.4 million refugees were considered to be in protracted situations, living in forty host countries.¹⁰ Under the UNHCR’s framework, there are two aspects to a refugee’s journey: protection and solution. The *UNHCR Statute* begins thus:

The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing *international protection*, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking *permanent solutions* for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.¹¹

While the “international protection” responsibilities of asylum are supported by a strong legal basis, “permanent solutions” depend on voluntary burden sharing. The recognition of refugee status thus triggers protection, but it does not necessarily offer a solution. Three solutions are possible: local integration, voluntary repatriation, or third country resettlement. Essentially, the refugee may stay where she is, if so welcomed; go home, if it is safe; or go to another country, if that country is willing to take

her. There are many “ifs” on the solution side. While the international community has imposed the legal obligation of *non-refoulement* to ensure protection, solutions have been left as voluntary decisions by individual states.¹²

The Legal Periphery

Refugee protection is about law; refugee solutions are not. And, yet, the law is there on the periphery of refugee solutions. Resting on the edge, the law does interesting things to both solutions and protection. This juxtaposition of protection and solution is most acute with the solution of third country resettlement. Resettlement offers a solution, but it is also conceived of as protection in and of itself and as representative of international burden sharing. In the less globalized world of the early twentieth century, resettlement was in fact the dominant response to refugees. Travel was more difficult, and states therefore appeared farther apart. *Non-refoulement* was practically irrelevant in much of the global North where access to asylum was difficult to reach. Increasing refugee flows following the Second World War were significant enough to demand and achieve an international response in the consequent *Refugee Convention*. The convention legalized *non-refoulement* on an individuated case-by-case basis, but resettlement was left to continue on a voluntary basis. The lack of law attached to resettlement was a purposeful absence. The international community recognized the importance of burden sharing and prominently placed it in the preamble to the *Refugee Convention*, but burden sharing was not made into a binding legal obligation.¹³

From the state perspective, however, resettlement tends to fit into a legal framework. Resettlement resembles immigration in the application and selection of individuals from abroad for citizenship in the new state. To facilitate this process, a domestic legal framework is placed on the voluntary act of protection and international burden sharing. Resettlement requires a government to decide on its approach to the selection and integration of refugees and how to fund the program. In Canada, this entails that regulations frame the resettlement process. The law is thus both present and absent in refugee resettlement. The underlying question is what to make of this legal positioning? What does the law do for resettlement? What does the absence of law entail? How does the legally framed, but

voluntary, act of resettlement influence the non-voluntary legal arm of refugee protection? By answering these questions, law is brought into the story of resettlement. Resettlement is revealed in the previously unaddressed light of the law. Resettlement is not simply a voluntary act that states may or may not do at their leisure. It is also an act of international protection and burden sharing that is influenced by law and that, through its voluntary nature, influences the international refugee law of *non-refoulement*.

Canada at the Forefront

Three states have traditionally been the leaders in resettlement: Canada, Australia, and the United States. Combined, they have tended to receive approximately 90 percent of the UNHCR's resettlement referrals. In the 2017 calendar year, the United States resettled 33,400 refugees, while Canada resettled 26,600 refugees, and Australia resettled 15,100 refugees.¹⁴ They are all Western states far removed from refugee flows. In-country claims of asylum triggering *non-refoulement* occur in these three states but never in the numeric masses encountered by the refugee-receiving countries that neighbour the refugee-producing countries, which are generally in the global South. Large-scale resettlement programs recognize these geographic realities and contribute to international refugee burden sharing. In total, and as illustrated in [Table 1](#), over thirty states now offer resettlement.

TABLE 1
UNHCR resettlement data, 2010–17

Year	Submissions	Departures	Countries of resettlement
2010	108,042	72,914	28
2011	91,843	61,649	22
2012	74,840	69,252	26
2013	92,915	71,449	25
2014	103,890	73,608	30
2015	134,044	81,893	30
2016	162,575	125,835	37
2017	75,200	65,100	35

Source: Based on data from UNHCR, "UNHCR Projected Global Resettlement Needs 2015, 2016, 2017, and 2018," UNHCR Resettlement, online: <<https://www.unhcr.org/resettlement.html>>; "Global Trends: Forced Displacement in 2017," online: *UNHCR* <www.unhcr.org/5b27be547.pdf>.

ment programs with yearly resettlement numbers ranging from the tens of thousands to single digits.¹⁵

In 2012, Belgium and Switzerland established formal resettlement programs.¹⁶ That same year, Germany, Hungary, and Spain received the first arrivals under their newly established regular resettlement programs.¹⁷ Japan shifted from a pilot to a regular resettlement program starting in 2015.¹⁸ Italy also began its regular resettlement program in 2015.¹⁹ Due to the large refugee influx into Europe in 2015, the region has been developing several resettlement-related initiatives.²⁰ In July 2015, the Council of the European Union Conclusions on Resettlement was adopted, which made available 22,500 resettlement places for 2015–17 by twenty-seven member states as well as Iceland, Liechtenstein, Norway, and Switzerland.²¹ As a result of this adoption, countries like Bulgaria, Croatia, Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia began implementing formal resettlement programs for the first time.²² The European Union (EU) Commission adopted a recommendation in September 2017 calling on EU member states to offer resettlement places to 50,000 refugees by October 2019. Furthermore, negotiations are ongoing regarding the creation of a permanent EU resettlement framework.²³ As of October 2018, 18,400 people have been resettled so far as part of the EU resettlement scheme launched in July 2015.²⁴ Meanwhile, US resettlement numbers decreased 65 percent between 2016 and 2017.²⁵

The focus in this book is on Canadian resettlement. The Canadian program offers diverse and creative resettlement models. It is also a program that has undergone a recent period of political and legal flux. As such, the Canadian program offers a wide range of resettlement insight that is of comparative benefit and helpful to an international examination of resettlement in a moment of international curiosity and interest. This book consists of eight chapters. Following this chapter, [Chapter 2](#), “Movement,” situates resettlement in its international context as a durable solution and addresses resettlement’s connection to asylum access and border control. [Chapter 3](#), “History, Humanitarianism, and Law,” examines Canada’s immigration history from ad hoc refugee protection to the creation and reform of a legalized regime. [Chapters 4–7](#) follow the Canadian resettlement models. Resettlement in Canada occurs through either a government program, citizen-supported private sponsorship, or a blend of the two. Within these two main models, the program permits resettlement of a specific

group of refugees sharing the same ethnicity, language, and/or culture to one location, thereby creating immediate social networks and previously permitted source country resettlement from specifically identified countries. [Chapter 4](#), “Numbers, Access, and Rights,” examines Canada’s government-assisted resettlement program. It sets out the distinction between resettlement and refugee law and the juxtapositioning of the two in refugee protection. [Chapter 5](#), “Privatized Protection,” looks at the introduction of a complementary scheme of private sponsorship in Canada and how the addition of private citizens into resettlement affects the approach to, and selection of, refugees for resettlement. [Chapter 6](#), “The State of Sponsorship,” follows the evolution of private sponsorship into the creation of the Blended Visa Office–Referred program and the government’s global promotion of sponsorship to other states at the height of an asylum crisis. [Chapter 7](#), “Beyond the Convention,” probes the programs within these programs – group sponsorship and source country sponsorship – and what these selection processes reveal about the shifting focus of Canadian resettlement. With this examination of the full context of the Canadian resettlement program, [Chapter 8](#), “Unsettling Refugee Resettlement,” argues that Canada’s excitement about resettlement, and, particularly, with private sponsorship, is moving the program in a precarious direction that risks both its own sustainability and respect for the principle of *non-refoulement*. The book ends with the argument that Canada must reclaim its resettlement program as a positive complement to asylum and provides recommendations to achieve this rebalancing.

Bringing Law into Resettlement

Resettlement’s international status as the most-favoured or least-favoured solution to the refugee “problem” fluctuates over time. What remains constant is that it is a necessary, albeit modest, solution to and component of refugee protection and burden sharing. Arguably because of its given, but limited, role and use by only a select number of states, resettlement receives minimal consideration but increasing interest. It is attached to burden-sharing proposals with little elaboration beyond its stated presence in the plan²⁶ and unproblematically presumed in human rights agendas.²⁷ Alternative resettlement models such as group resettlement, in-country processing, and private sponsorship receive limited and specific

examination disconnected from an all-encompassing approach to resettlement or the relationship between resettlement and asylum. The aim here is to remedy this absence and provide a singular and thorough analysis of resettlement as a whole.

Establishing a comprehensive picture of Canadian resettlement allows for the question of law to be introduced and identifies a hitherto unaddressed linkage between law and resettlement. At law's border, resettlement is ultimately unsettled from the unquestioned cursory role it usually plays in refugee discourse. As a voluntary endeavour taken on by willing states, resettlement is ad hoc with terms, conditions, and approaches that vary between states and understandings of intentions that vary between individuals. A succinct and straightforward understanding of how resettlement operates is impossible. The greatest obstacle in pursuing this project was achieving a clear picture of a scattered program with a variety of players, conflicting interests, and fluctuating policy. In particular, government rhetoric can often cover or blur unstated intentions, which was particularly the case during this project as the research period spanned the significant legislative reform of Canadian refugee law.²⁸

Many in the Canadian resettlement community, particularly among private sponsorship groups and those in government, were resistant to the book's premise that law and resettlement are linked. That resettlement is a voluntary scheme seemed to close off any openness to the possibility of law's relevance. Furthermore, resettlement sits in a vulnerable position by the very absence of a legal obligation. Critiquing a voluntary government program requires delicacy. Research for [Chapter 5](#)'s discussion of the expansion of private sponsorship into a tool for family reunification predicted a 2012 announcement by the Canadian government to place significant limits on the program to curtail this tendency towards family reunification. Concerns that Canada's source country class resettlement required reform led, instead, to the removal of the class, as is discussed in [Chapter 7](#).

Refugee advocacy tends to focus on Canada's meeting of its international obligations to refugees. Resettlement is often sidelined in an unstated, but apparent, "be-grateful-for-what-we-have" mentality or, conversely, so celebratory of increases that the corresponding asylum commitments get forgotten. I encountered significant hesitancy in interviews and casual conversations with those working in resettlement in

Canada to express any criticisms of the program's operation beyond the desire for more freedom for more resettlement.²⁹ By putting resettlement at the forefront of a critical examination, this project sought to provide an accurate assessment of the program free from concerns about the consequences of criticism. Nevertheless, the research arises out of my sincere belief in the importance and continuance of the resettlement of refugees as a voluntary activity.

Beyond Traditional Concepts of Law

It is necessary to pause for a moment to state my conception of the term "law." The fluidity of law – from the tenuous grounding of international law to the firm foundation of domestic law – and the peripheral presence of law even in the voluntary scheme of refugee resettlement have already been reviewed. This is not an examination of doctrinal law in either its domestic or its international form. Rather, law is embraced in both forms and in all of their nuances to explore its hidden influences and consequences. To situate my understanding of law for this purpose, I took as my starting point Desmond Manderson's notion of "apocryphal jurisprudence," by which he means work that "focuses on what is missing from a certain conception of law, about the resources that yet remain within it to speak of these absences and failures, and about drawing our attention to how and where the law gives out."³⁰ In this way, one can move away from the specificity of legal rules and concern with the definition of law to broader explanations of law's purpose, its interest, and its power.³¹ The idea of the apocrypha moves me likewise outside of traditional approaches to, and understandings of, the law. The hope is that with such a temperament the project can move beyond the traditional conception of refugee law to see the multitude of legal influences in both refugee law and policy in domestic and international spheres.

This book seeks to explore refugee law not at the border or at the point of an asylum claim but, rather, further afield in the operation of the non-legal act of resettlement. The reluctance by some to even contemplate the possibility of a law-based discussion on the legally lacking voluntary scheme of resettlement illustrates the apocryphal nature of the project that appears by definition incomprehensible. I am interested in how refugees are influenced by the law and from outside of the law and what this does to their

access to protection and to their rights. Manderson speaks of the apocrypha's interest in "the marginal, in voices excluded by normative law, and by the complex layers of that exclusion."³² Refugees waiting in a state of legal limbo at both actual and metaphorical borders are the clear manifestation of these marginal excluded voices.³³

Law's influence outside of its application has been previously examined in other manners as well. Robert Mnookin and Lewis Kornhauser present an argument on how the legal system surrounding divorce affects the bargaining process between separating couples that occurs outside of this system.³⁴ This is an approachable analogy to the task at hand. They suggest that the interactions between separating couples occur "in the shadow of the law," by which they mean that bargaining is influenced by a knowledge of the legal outcomes if the legal process were to be invoked.³⁵ In essence, it is not the law but, rather, an awareness of the law that is relevant – law's shadow.³⁶ While this project does not address the individual bargaining between parties that these authors consider, it does pursue the basic premise that law affects outcomes outside of its direct application.

The rejection of traditional legal theory is further supported by Margaret Davies in her work *Asking the Law Question*.³⁷ While the substance of Davies's text examines the various theories of and approaches to law that constitute the legal canon, it is her introduction that sets out her own understanding of law that is most relevant to my interests. Davies presents the basic understanding of law as a means of ordering society. The suggestion is that law is a "huge system of categorization."³⁸ This is evident in the refugee context where categorizations of legality and illegality dominate. But, just as Manderson urges us to turn to other sources to understand law, the reality for Davies is that law cannot be separated out: "[W]e cannot dissociate our understanding of law from our conventional environments – our language, our social existence, and the institutions which structure our lives."³⁹ Seeking an answer to her own query of what the law is, she notes that "[l]imiting jurisprudence to the idea of law in a legal system is therefore only reinforcing the artificial distinction between law and non-law."⁴⁰ Again, this is the fault of defining law against politics and morality and all that is not law because it is all "always there *in law*."⁴¹ Moreover, as Davies points out, "*legal* definitions are never separated from popular ones."⁴² Law expands outward from its basic function. The

legal/illegal categorizations break down in a realm where various laws interweave. These intersections are at the crux of this project.

The further difficulty in situating this work in anything other than apocryphal theory is the failure of traditional legal theory to envision such a fluidity of law. Legal theorists tend to think only in national units. Often this is linked to the objective of seeking legitimacy for law's authority within a legal system.⁴³ Catherine Dauvergne refers to this as "law's traditional tie to the nation."⁴⁴ It reverberates throughout modern legal philosophy and serves almost as a precondition of any attempt to explain law.⁴⁵ Even the concept of international law, which is only a component of the discussion that follows, struggles to locate itself in a discipline of law based in domestic legal systems. Jutta Brunnée and Stephen Toope address this challenge of international law. These authors grapple with the perception of international law, by social scientists as well as by traditional legal theorists and lawyers, that is trapped in "the distorting optic of the domestic law analogy."⁴⁶ While it is unnecessary to explore in depth their attempt to set international law in a theoretical framework that is understandable by both social scientists and legal scholars, their recognition of the need for a language of law that can stand up to interdisciplinary work is insightful as much for the challenges they set out as for the solutions they put forward. Brunnée and Toope note: "In looking for such interdisciplinary insights, scholars have often adopted reductionist definitions of the 'other' discipline because they have not been actively involved in the constitutive internal disciplinary debates and processes that lead to healthy uncertainty and nuance."⁴⁷ In the case of law, they point out that outsiders can easily grasp a basic appropriation of the positivist view of law as sovereign enforcement.⁴⁸ Again, this is the basic idea of the categorization of law and non-law that is set out by Davies. The difficulty for Brunnée and Toope is that international law fails to fit within this theoretical framework.⁴⁹

The task here is to search for where law is absent and to look differently at the law that is present. It serves not only to give law a greater presence but also to provide a warning to be wary of its greater influence. Law as an academic pursuit remains relatively young. In 1887, the first law journal, the *Harvard Law Review*, commenced as an effort to legitimize the law school's place in a university setting. Examining the historical development of the now ubiquitous law review, Bernard Hibbitts notes: "As the patron

of a 'learned' journal ... [a law school] could at last make common academic cause with other progressive departments and professional schools on its campus ... [and] more fundamentally ... demonstrate that the law was amenable to 'scientific' study."⁵⁰ And, yet, over a century later, law remains an outsider in academia, markedly distinct from the social sciences and humanities and not so easily amenable to scientific study.⁵¹ Law's outsider status is a consequence of its inherent presence inside. It cannot be extracted for analysis. And, so, while this project is about law and an effort to extract and analyze the unique instances of law that arise in resettlement, it is also, inevitably, about much more.

My research intention is to map and assemble existing resettlement scholarship and models into a singular and thorough analysis of what resettlement is. Establishing this picture of resettlement allows for the question of law to be introduced. An unrecognized linkage between law and resettlement is identified, analyzed, and assessed. At law's border, resettlement is ultimately unsettled from the unquestioned cursory role it usually plays in refugee discourse. The novelty of the question of law's role in resettlement, combined with the scarcity of academic literature considering resettlement, necessitated a multi-pronged research design and methodological approach to the work. A variety of sources of information is required in each chapter to define, clarify, and analyze the research question. That said, the methodology is grounded in the legal discipline. Statutory and judicial authority frame and define resettlement. International law and Canadian and other states' statutory laws, regulations, court decisions, and policies have been collected and interpreted. The *Refugee Convention*, and Canada's *Immigration and Refugee Protection Act (IRPA)* and *Immigration and Refugee Protection Regulations*, as well as predecessor legislation, are at the forefront of this analysis.⁵² Chapter 4 devotes particular attention to judicial review of visa officer decision-making on resettlement cases in the Canadian Federal Court. Legislative review and Standing Committee reports are examined in Chapters 4–7 to reveal the considerations underlying law's movement, and particular attention is paid to the nuanced shifts that have occurred from the previous *Immigration Act* to the *IRPA*.⁵³ Two access-to-information requests were also made to Citizenship and Immigration Canada, which is now called Immigration, Refugees and Citizenship Canada, to gain statistics on humanitarian and

compassionate grounds applications made under the *IRPA* and a breakdown of permanent resident visas issued under the vulnerable/urgent need exception in the *IRPA*.⁵⁴ How these layers of law, both domestic and international, interact and conflict with each other demonstrates law's relevance to resettlement.

Other primary texts, including Canadian government documents and those produced by the UNHCR, are examined and critiqued. Library-based traditional legal research of secondary sources supports the interpretation of primary texts. There is also a necessary historical context to the analysis. To understand how states and Canada, in particular, engage with refugees requires a long-term view of the creation and development of laws and policies in the twentieth century. The historical component of the project was achieved through the review of primary and secondary sources. [Chapter 5's](#) discussion of the origins of private sponsorship in Canada predating the Indochinese boat people relied on documents from the Jewish Immigrant Aid Society found in the Canadian Jewish Congress Charities Committee National Archives. Interviews were further conducted with representative players from both the public and the private sector involved in the creation of Canada's private sponsorship scheme.⁵⁵

Media coverage from Canada's national and provincial newspapers and government news releases were broadly surveyed through Factiva searches of relevant terms to provide insight into government positioning and public perspectives on specific events and policies. Interviews in Canada were conducted with representatives from the UNHCR, Citizenship and Immigration Canada, the Immigrant Services Society of British Columbia, Immigrant Settlement and Integration Services Nova Scotia (now Immigrant Services Association of Nova Scotia), the Manitoba Interfaith Immigration Council, and the City of Winnipeg Wellness and Diversity Coordinator. The interviews and conversations sought to address knowledge gaps, clarify and confirm policies and procedures, expose any outstanding issues, redundancies, or contradictions in resettlement policies, test tentative conclusions, and explore options for reform.

I also represented the Canadian Council for Refugees as a delegate on a fact-finding mission to Colombia in November 2010.⁵⁶ The objective of the delegation was to gather information on the human rights situation within the country in the face of declining acceptance rates of Colombian refugees

at the Immigration and Refugee Board of Canada as well as significantly reduced source country class resettlement from Colombia to Canada.⁵⁷ Interviews were conducted with twelve organizations in Bogota.⁵⁸ Through the assistance of the Jesuit Refugee Service, we visited an internally displaced persons (IDP) camp in Soacha, south of Bogota, and met with several IDPs. The purpose of my participation was twofold. First, participation on the delegation enabled first-person interviews and insights on the largest source country resettlement program offered by Canada to inform [Chapter 7's](#) examination of this resettlement class. This involvement was crucial to my understanding of the program at a time of program flux. It preceded the Canadian government's announced repeal of the source country class by four months.⁵⁹ Second, my participation enabled a working relationship with the Canadian Council for Refugees, which granted me access to a wide range of involved participants in refugee resettlement for informal interview purposes. These conversations shaped my insight and understanding of the program from a wide array of perspectives across Canada.

The book therefore represents the gathering together and mapping of existing resettlement scholarship, historical documents, primary policy and legislative material, government and United Nations reports, documents, posted data, and statistical reports. While the information itself is not new, it has not previously been brought together into a singular examination, nor has there been an overlay of legal analysis onto the data as is achieved here. The project is not primarily empirical in the narrow meaning of analysis of a gathered data set, but it is nonetheless based on observation and analysis. The gathered information sets out a picture of Canada's resettlement models, policies, and intentions, the UNHCR's interactions, and, to an extent, the attitudes and approaches to resettlement in both Canada and among UNHCR officials. The creation of such a comprehensive picture establishes the schematic basis of the book and enables comparative textual analysis of scholarly and primary sources and an understanding of the intersection of the theoretical with the practical application of the models. Ultimately, as a book about law, one point of the project was to make a persuasive argument.⁶⁰ The methodology is structured around gathering the factual evidence to evaluate this argument. The analytical work on the place of law within resettlement will permit the argument to be made that resettlement is more legally influenced by and influential to the

legal scheme than assumed. Canada's resettlement program requires attentive restructuring to ensure refugee protection is forefront.

My research into resettlement commenced with a graduate thesis entitled *The Invisibles: An Examination of Refugee Resettlement*.⁶¹ That project, following from work I had done with the UNHCR in New Delhi, argued that refugees who fail to make it to the frontiers of safe states are simply not seen, with attention focused on asylum claimants. It is interesting to reflect back on that work's focus on invisibility since this book shows how the intervening years have brought resettlement refugees to the forefront of visibility with the assertion that they are, in fact, the only "real" refugees. With new initiatives in Canada to reduce human smuggling, promote resettlement, and reduce refugee processing in Canada, this book reveals how refugees waiting in camps are now much more commonly noted in government news releases, opinion pieces, and, arguably, public consciousness than they were a decade ago. Yet there is a danger in getting what you wish for. With the assertion that resettlement is the right way to achieve refugee protection, those refugees waiting in camps with practically no chance of resettlement remain as invisible as they were before. At the same time, refugees validly claiming asylum are losing legitimacy and visibility in the juxtaposition of resettlement and asylum. This book seeks to call out this imbalance and force a more critical assessment of humanitarian efforts and refugee protection. Complementarity between asylum and resettlement must be the central axis.



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