Scholarly monograph
The Human Rights of Migrants and Refugees in European Law (Oxford University Press 2016)
(published 25 December 2015)
Joint Winner of the Odysseus Prize 2016
This book entails a unique scholarly analysis into the interactions between EU and ECHR migration and refugee law, contrasting the roles of the CJEU and the ECtHR. It integrates doctrinal, empirical, and theoretical material (on social membership, legal pluralism and legality) into the EU context, developing a novel argument for the inclusion of migrants and refugees into EU law. It was joint winner of the prestigious Odysseus Prize 2016.

Comments include that it ‘grapples with three complex spheres of law - migration, human rights, and European Union and brings them into conversation with one another. [The] lucid and compelling analysis illuminates the state of the jurisprudence, the rapid evolution of the European legal order, and the underlying normative tensions at play.’ (Audrey Macklin, Professor and Chair in Human Rights Law, University of Toronto).

It is ‘[a] treasure trove of insights and ideas. It provides a critical, lucid and panoramic account of the evolving EU migration and asylum policy. Dr Costello unravels the complex interaction of overlapping human rights legal orders in this policy area and develops a thought-provoking pluralist approach. It is a very valuable source of authoritative analysis for scholars, students and practitioners.’ (Dora Kostakopoulou, Professor of European Union Law, Warwick Law School).


'This book is truly an outstanding contribution to the field of European migration and asylum law.’

Geoff Gilbert (2017) International Journal of Refugee Law pp. 193-194: ‘To write a monograph on migrants and refugees in Europe is challenging enough. To write it as the continent was facing the largest influx of forcibly displaced persons since the end of the Second World War and yet to still produce a classic study that is timeless in its thematic analysis reflects the insight and authority of the author…. Professor Costello’s work should be read by all lawyers, practitioners, and policymakers working in the areas of international refugee law, international human rights law, and European law.’

Edited and Co-Edited Collections

2. Co-editor, with A Bogg, ACL Davies (eds), Edward Elgar Research Handbook on EU Labour Law (Elgar 2016)


Explanatory Note: This collection, co-edited with Professor Mark Freedland, establishes an important new area of legal study at the intersection of migration and labour law. I was the instigator of the
project, and it opens with a seminal essay setting up this new research field by Professor Freedland and me. The collection as a whole was carefully curated to focus on the impact of migration and migration law on labour law and employment relations, in particular demonstrating the immigration law tends to create statuses that have a divisive impact on labour rights and relations. I have developed a further line of research from the collection, including 'Migrants and Forced Labour: A Labour Law Response' (2014), (arguing that forced labour is a preferable frame of reference for migrant labour exploitation than modern slavery or trafficking) and 'Seasonal Workers and Intra-Corporate Transferees in EU Law: Capital’s Handmaidens?' (with Mark Freedland) (2016) (arguing that EU migration statuses introduce distinctive exploitation risks into labour relations). Reviews of the collection note the importance of the opening essay and the collection ‘to making a very convincing case for the importance of migration and immigration law to scholarly investigations of labour law.’ (Ruth Dukes, Modern Law Review).


Journal Articles


6. Cathryn Costello and Michelle Foster (2015) ‘Non-refoulement as custom and jus cogens? Putting the prohibition to the test’ Netherlands Yearbook of International Law 46, pp. 273-327 Explanatory Note: This co-authored contribution appeared in the prestigious Netherlands Yearbook of International Law special edition on jus cogens (peremptory superior norms of international law). Our contribution focused on jus cogens in refugee law and we chose the principle of non-refoulement as the core of our analysis. This proved to be a rich and complicated topic and our final contribution exceeds 25,000 words (including footnotes). We received favourable reviews, which described the article as ’original’ (Reviewer I), and noted that ‘The article focuses on non-refoulement as jus cogens and does a great job in furthering the debate on that issue’ (reviewer II). The significance of the article is that it contains a rigorous and timely reappraisal of a key norm in international refugee and migration law, non-refoulement. Refugee law scholars are divided about whether the norm even has the status of customary international law, but we demonstrated that it definitively has. As regards its jus cogens status, we argued that it is ‘ripe for recognition’ as a norm of jus cogens, thereby also clarifying a matter of contention amongst scholars of international law generally – just what are the criteria and processes for the discernment of rules of that nature within the
international legal order.


*Explanatory Note:* Detention as part of migration control is sometimes portrayed as a 'necessary adjunct' of the state's power to control immigration. My contribution critiques this characterization, in particular the law's failure to require proper legal grounds for immigration detention. A ground is a particular form of legal reason, which both explains and justifies the official action in question. By examining the question of grounds, this article elucidates the manner in which immigration law itself produces reasons to detain, and by doing so creates detainable subjects, migrants. Basic liberty-protective principles and practices developed in other areas of law are notably absent. This state of affairs is not inevitable, and legal alternatives are within reach.

This is the most significant piece (based on a prestigious invited Current Legal Problems lecture) in a suite of influential work on immigration detention. My first contribution on the theme was 'Human Rights & the Elusive Universal Subject: Immigration Detention under International Human Rights and EU Law' (2012). Recognition of the impact of this first piece is that it was reprinted in Vincent Chetail (ed) *International Law and Migration* (Elgar 2016), which brings together 'seminal and classic articles that have influenced the development of research in a particular area of study.' Others include (with Minos Mouzourakis) 'EU law and the detainability of asylum-seekers' (2016); and (with E Kaytaz) *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva*, UN High Commissioner for Refugees (UNHCR), June 2013.


   a. (reprinted in Vincent Chetail (ed) *International Law and Migration* (Elgar 2016). The collection brings together 'seminal and classic articles that have influenced the development of research in a particular area of study.')


*Explanatory Note:* This is an earlier piece, but was my first significant work on the Common European Asylum System, focusing on the EU directive purporting to harmonise asylum procedures. The article combines a rigorous analysis of the complexities of the legal measure and a critique of its negative impact on access to asylum. The quality and significance of the piece are reflected in the 83 citations it has garnered, being the definitive analysis of this Directive. It is cited in all the major refugee law textbooks, general works of EU law, and most subsequent scholarship on asylum procedures in Europe.


**Chapters in scholarly collections**


6. ‘Strategic Litigation to Vindicate the Rights of Refugees and Migrants: Pyrrhic Perils and Painstaking Progress’ (2016). In I Bacik and M Rogan (eds) *Legal cases that changed Ireland*, Dublin: Clarus.


Explanatory Note: This piece examines how migration and migration law produce vulnerability to forced labour, and outlines a labour law response to this phenomenon, critiquing the criminalisation of 'modern slavery' and the migration control ethos of anti-trafficking measures. It has been widely cited, including in many significant works on 'modern slavery' since, including V Mantouvalou 'Modern Slavery Act Three Years On' (2018) MLReview; K Strauss 'Sorting victims from workers: Forced labour, trafficking, and the process of jurisdiction' (2017) Progress in Human Geography and J Fudge 'Modern Slavery, Unfree Labour and the Labour Market: The Social Dynamics of Legal Characterization' (2018) Social & Legal Studies. Fudge engages extensively with the argument developed herein: 'What Costello's intervention brings to the fore is the fact that labour markets are legally instituted processes. There are structural and systemic processes that operate at multiple scales and produce different regimes of unfree labour – slavery, serfdom and indenture, for example – at specific times and places.'


Commissioned Reports


9. **Report on Improving the Quality and Consistency of Asylum Decisions in the Council of Europe member states** (Council of Europe Parliamentary Assembly) (c. 30 pages)

Other Publications & Blog Posts


with Mariagiulia Giuffre ‘Tragedy’ and responsibility in the Mediterranean’ Open Democracy 27 April 2015, https://www.opendemocracy.net/can-europe-make-it/mariagiulia-giuffré-cathryn-costello/crocodile-tears-tragedy-and-responsibility-


With E Hancox Two Policy Primers of the Migration Observatory:


Selected Journalism
‘Brexiters offered an alternative that is a mirage’ Irish Times, 26 June 2016
‘Duel: is our definition of ‘refugee’ too wide?’ (Debate with David Goodhart, Prospect, 15 October 2015)
‘The view from Lesbos: Politicians prevaricate while refugees suffer’ Irish Times, 10 September 2015
‘Welcome to the European Union: notes from Lesbos’ Open Democracy, 9 September 2015
‘Decisions on refugee rights should not all fall to judges’ Irish Times, 24 February 2014

Selected Media Appearances
18 March 2016: BBC Radio 4, Today programme, interview on the proposed EU-Turkey deal

9 March 2016: BBC2, Newsnight, interview regarding legality of the EU-Turkey deal
https://www.rsc.ox.ac.uk/news/cathryn-costello-questions-the-legality-of-the-eu-turkey-plan-to-address-eu-refugee-crisis

29 February 2016: BBC News Channel, interview regarding the so-called ‘Jungle’ camp at Calais
https://www.rsc.ox.ac.uk/news/we-have-illegalised-refugees-and-created-a-bonanza-for-smugglers-cathryn-costello

https://www.rsc.ox.ac.uk/news/the-hungarian-position-is-absolute-untenable-in-both-international-and-european-union-law-cathryn-costello

15 Sept 2015: NPR (USA), interview regarding UK/EU response to crisis

25 August 2015: BBC World Service Newshour, interview about EU response to refugee crisis
https://www.rsc.ox.ac.uk/news/while-we-are-moving-slowly-this-crisis-isnt-cathryn-costello

11 August 2015: BBC World Service News, interview about deficiencies of the EU asylum system

26 June 2015: The Guardian, interview regarding EU relocation scheme
https://www.rsc.ox.ac.uk/news/will-the-european-commission-relocation-scheme-work

25 June 2015: BBC Radio Scotland Newsdrive, interview regarding Dublin system and Calais

21 May 2015: Monocle 24 Radio, interview regarding EU response to refugee crisis

11 May 2015: BBC News Channel, interview regarding European Commission's proposals to deal with the Mediterranean refugee & migrant crisis
https://www.rsc.ox.ac.uk/news/cathryn-costello-any-comprehensive-solution-has-to-include-safe-access-to-asylum

25 April 2015: BBC Radio Scotland, Good Morning Scotland, EU/Mediterranean refugee crisis
https://www.rsc.ox.ac.uk/news/lack-of-safe-legal-access-routes-for-refugees-such-as-humanitarian-visas-drives-demand-for-smuggling-cathryn-costello

Book Reviews


