

THE CONSTRUCTION OF THE ‘GRATEFUL’ REFUGEE IN LAW AND DESIGN

Christine Schwöbel-Patel and Deger Ozkaramanli*

INTRODUCTION

The global refugee crisis, as part of the mass displacement of people, is one of the defining issues of the 21st century so far. Certain images have come to symbolise the crisis, whether it is crowded and unsafe vessels (as in *Figure 1*) or the heart-wrenching widely circulated photograph of the body of a Syrian toddler washed up on a beach in Turkey. In this short essay, we ask how images and image-making have constructed a narrative about refugees prompting particular societal expectations on the behaviour of refugees. In particular, we find that an idea of the ‘grateful’ refugee has been constructed, who is placed in the dilemma of having to be both deferential and entrepreneurial. We interrogate this image of refugees from the perspective of our disciplines, namely international law and industrial design. Adapting Judith Butler’s work, we argue that representations of refugees in the experiential and discursive fields of design and law have a *framing* capacity.¹ In the narrowing of the frame to an ideal ‘grateful’ refugee expectations of who is deserving and who is undeserving are created.



Figure 1: A refugee boat (Stock photo from Pixabay)

* C.Schwobel@liverpool.ac.uk and deger@designwithdilemmas.com. All websites were last visited on 1 August 2018. Many thanks to Jessie Hohmann for inviting us to present this work in progress at Queen Mary University of London for a workshop on ‘Conversations on International Law and Materiality’. Amanda Perry-Kessaris, who acted as discussant, provided us with excellent feedback. Many thanks also to Anne Neylon for very helpful comments. All errors remain our own.

¹ Judith Butler, *Frames of War: When is Life Grievable* (Verso 2010).

Displacement can occur through conflict, dissent, poverty, on the grounds of conflict, discrimination of race, religion, nationality, membership of a particular social group or political opinion, or through climate change. The growing numbers of forcibly displaced people (over 68 million people worldwide)² and the recognition of the ‘new normal’ places practical pressures on receiving states and spaces, origin states and spaces, and, on a more metaphysical level, general conceptions of humanitarianism. Particular pressure points occur according to the migration routes one investigates, whether this is on land or sea, the entry into Europe, Australia’s offshore detention of refugees in Nauru and Papua New Guinea, or migration into North America. Although diverse, these pressures have raised common questions around who qualifies as a refugee, possible short-term and long-term solutions to displacement, and discussions around symptoms and root causes.

Narratives around the refugee crisis are, we argue, constructed. They do not simply unfold in a world ‘out there’, with facts ripe for the picking.³ Instead, narratives are based on particular epistemic and ideological assumptions. The construction of a particular narrative is therefore a choice, selected on the basis of images, metaphors, and other discursive structures.⁴ The images of the refugee crisis are mostly ones of desperation, where lives are imminently at risk. These images of crisis are occasionally juxtaposed with positive stories of overcoming hardship. A recent story which circulated across the world’s media was that of the ‘Spiderman of Paris’. Mamoudou Gassama, a 22-year old man from Mali, was filmed scaling a Paris building to rescue a small child. Paris mayor Anne Hidalgo thanked Gassama, describing him as the ‘Spiderman of the 18th’: ‘He explained to me that he had arrived from Mali a few months ago dreaming of building his life here,’ she said. ‘I told him that his heroic act is an example to all citizens and that the city of Paris will obviously be very keen to support him in his efforts to settle in France.’⁵ Gassama was rewarded with a certificate of courage, French residency and an internship with the Paris fire service.



Figure 2: ‘Spiderman of Paris’ (Photo Habib Bibou/Facebook)

² As of August 2018, according to the United Nations High Commissioner for Human Rights, <http://www.unhcr.org/uk/figures-at-a-glance.html>.

³ This was memorably stressed by Hilary Charlesworth as regards international law’s focus on crises in Hilary Charlesworth, ‘International Law: A Discipline of Crisis’ (2002) 65(3) Modern Law Review 377.

⁴ Thomas Skouteris, *The Notion of Progress in International Law Discourse* (The Hague: TMC Asser Press 2010) vii.

⁵ ‘Malian “Spiderman” rescues child dangling from Paris balcony’ *Sky News* (28 May 2018) <<https://news.sky.com/story/heroic-rescue-of-child-dangling-from-balcony-11387870>>.

Such representations of refugees have the capacity to order; to include, and to exclude people, debates, issues. A consciousness of such framing is to be understood, with Butler, as a means ‘to learn to see the frame that blinds us to what we see’; framing itself is an operation of power.⁶

I. THE CONSTRUCTION OF THE ‘GRATEFUL’ REFUGEE IN LAW

In law, the construction of the ‘grateful’ refugee operates at the intersection between the permissive and the punitive. The legal protection of refugees is regulated in a panoply of domestic, regional, and international laws, regulations, and policies. Although the legal regime is generally credited for its protective possibilities, it has allowed for exclusions on the basis of new border securitisation norms. Although reactive to the crisis, such securitisation - which happens at the intersection between a protective refugee law and a punitive criminal law - can be placed in the context of a long history of exclusion through international law.

The *1951 Refugee Convention* is the United Nations (UN) convention offering protection to refugees. It was drafted following the large number of (mainly Jewish and political) refugees in and after the Second World War. It recognises the need for protection of people being forced to leave their homes for fear of persecution. The key principle of refugee law, found in Art. 33 of the Refugee Convention, refers to the obligation of states not to expel or return (*refouler*), a refugee to ‘the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’.⁷

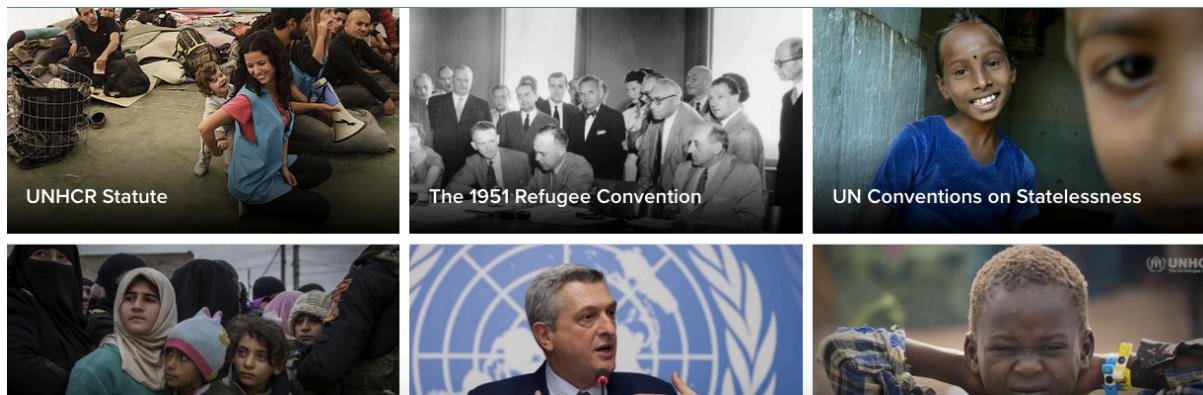


Figure 3: Screenshot from UNHCR home page ‘About Us’, August 2018

As it requires persecution of an individual, the Refugee Convention is narrow on the question of ‘who qualifies as a refugee?’. With continued internal conflicts, climate change impacting on living conditions, and a global political economy which is skewed in favour of the Global North, there are increasing flows of people who are seeking refuge but are not necessarily persecuted under international law. This mass migration of people raises legal and policy questions of who qualifies for protection, and whether the Refugee Convention is antiquated on that point. The United Nations High Commissioner for Refugees (UNHCR), the UN Refugee Agency, is known for the measures it takes to protect refugees. It sees itself as ‘the guardian’ of the 1951 Convention, describing the UN Convention as ‘the key legal document that forms the basis of our work’.⁸ As an influential organisation, which is central to the a consciousness of refugee protection, it is instructive to examine the ways in which the UNHCR visually and rhetorically represents refugees. It is striking that the web page depicts women and children, in the open, often wearing traveling

⁶ Butler (n 1).

⁷ Art. 33(1) 1951 Refugee Convention.

⁸ <http://www.unhcr.org/uk/1951-refugee-convention.html>.

clothes, huddled in groups; the images of children are ones in which they stand alone, looking directly at the camera (*Figure 3*). The only men depicted in the foreground are UNHCR officials, an image of mainly white men in a black and white photograph at the 1951 conference, and the image of the High Commissioner, male and white. This aesthetics of contrasts fixes some pre-determined ideas about race, vulnerability, and weakness.⁹

Such visual framing feeds into a narrow understanding of protection, fuelling a toxic politics of labels. The hierarchy which has emerged when it comes to protection is one in which refugees are constructed as innocent and, on the other side of the divide, migrants and asylum seekers are met with suspicion, often xenophobia. Indeed, a public debate on who is deserving has led to accusations of ‘bogus’ asylum seekers and ‘fake’ refugees.¹⁰ This in turn fires up a public notion of exclusion, exploited by some news outlets through inflammatory language and demagogues with nationalist and immigration-hostile policies.¹¹



Figure 4: Barbed wire (photo by Robert Hickerson on Unsplash.com tagged as ‘border’, ‘barbwire’, ‘fence’)

There is growing demand not only to have legal assurance that these so-called ‘bogus’ refugees are ‘sent back’, but also to criminalise them. In the meantime, administrative detention policies for those seeking asylum or refuge, justified on the basis of national security, places all migrants in a precarious position.¹² Importantly, the implementation of securitisation policies around asylum and immigration inclusions and exclusions highlights that legal and policy responses of international bodies are reactive only for some parts of the world. In the common narrative, the refugee ‘crisis’ is not understood to be a crisis in the origin countries; rather, the crisis is perceived in threats to peace and security in the Global North. The political and public pressure is consequently connected with a punitive legal system, which fixes the debate and public imagination on a criminal justice lens. Criminalisation notably places pressure on the individual and their behaviour rather than questioning the role of the state and international legal system in dealing

⁹ This stereotype corresponds with the notion of an ‘ideal’ victim. For a discussion, see Christine Schwöbel-Patel, ‘The Ideal Victim of International Criminal Law’ (2018) European Journal of International Law *forthcoming*; and Christine Schwöbel-Patel, ‘Spectacle in International Criminal Law: The Fundraising Image of Victimhood’ (2016) 4(2) London Review of International Law 247.

¹⁰ Ross Clark, ‘We need tougher policies to tackle bogus asylum seekers says Ross Clark’ *The Express Online*, (3 March 2015) <<https://www.express.co.uk/comment/expresscomment/561412/Ross-Clark-on-bogus-asylum-seekers-and-Britain-being-seen-as-a-soft-touch>>; Jane Norman, ‘Peter Dutton declares “game is up” for “fake refugees” living in Australia’ *ABC News Online* (21 May 2017) <<http://www.abc.net.au/news/2017-05-21/peter-dutton-october-deadline-asylum-seekers-protection/8544890>>.

¹¹ The recent debates about US President Trump’s separation and detention of families along with the images of children in cages exemplifies how problematic this politics of labels can become. Maya Rhodan, ‘Here are the Facts about President Trump’s Family Separation Policy’ *Time Magazine Online* (20 June 2018) <<http://time.com/5314769/family-separation-policy-donald-trump/>>.

¹² For a critique of the Australian administrative detention system, see Ben Saul, ‘Indefinite Security Detention and Refugee Children and Families in Australia: International Human Rights Law Dimension’ (2013) 20 Australian International Law Journal 55.

with the political, economic, historical, ecological, cultural, and social root causes of the crisis. This narrative of crisis has provided fertile ground for the construction of distinctions between undeserving migrants (illegals) and deserving refugees (legals).

International law's norms and institutions are further reproduced in the imagery of borders. Aside from the images of women and children in camps, the migration route maps have a distinct framing effect on the imagination of inclusion and exclusion, legal and illegal, and deserving and undeserving. The migrant 'flows' are often highlighted with arrows directed towards the states of the Global North, such as the routes into Europe shown in *Figure 5*, printed in the *Economist* in 2018 and titled 'The way in'.

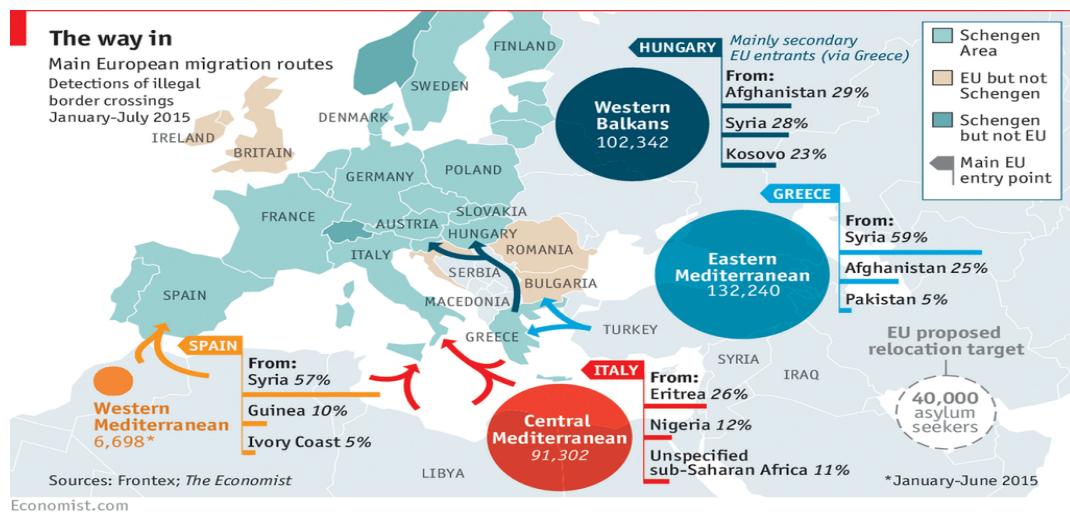


Figure 5: The way in', migrant flows into Europe (The Economist, 2015)

This visualisation around borders is constructed around the so-called Westphalian (European) international order which assumes a centralised state authority exercising power over its citizens. Such arrangements around territory and sovereignty enable strict legal delimitations between citizens and non-citizens and their respective rights and responsibilities. This delimitation can become punitive if stress is put on the system, such as experienced in the so-called refugee crisis. The very statist system itself is therefore not only a form of protection, but a means for exclusion, famously problematised by Hannah Arendt's memorable account of 'the right to have rights'.¹³ Visualising a transgression of sovereignty by arrows and borders is particularly myopic, or hypocritical, given the history of colonisation of the very states which claim sovereignty. Indeed, in studying the root causes of conflict, one finds that it is not only the drawing of borders which continue to cause problems, it was the retention of these same borders during decolonisation. During the process of decolonisation, mainly in the 1950s and 1960s, the boundaries were, under the international legal principle of *uti possidetis* ('as you possess'), fixed. Although often considered as a protective mechanism, the mentioned imagery in the aesthetics of contrasts and the migration route maps provides a flavor of international law's narrowing effect on who is considered deserving in the refugee crisis.

II. THE CONSTRUCTION OF THE 'GRATEFUL' REFUGEE IN DESIGN

The refugee crisis has also inspired designers to tackle the challenges which emerge through people moving across borders and settling, often temporarily, elsewhere. Among these challenges are

¹³ Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Books 1951) 296.

finding or making shelter, addressing language barriers, and securing an income. For instance, What Design Can Do (WDCD) is an influential platform through which the societal impact of the design discipline is discussed. In 2016, it launched the WDCD Refugee Challenge in collaboration with the UN Refugee Agency and the IKEA Foundation.

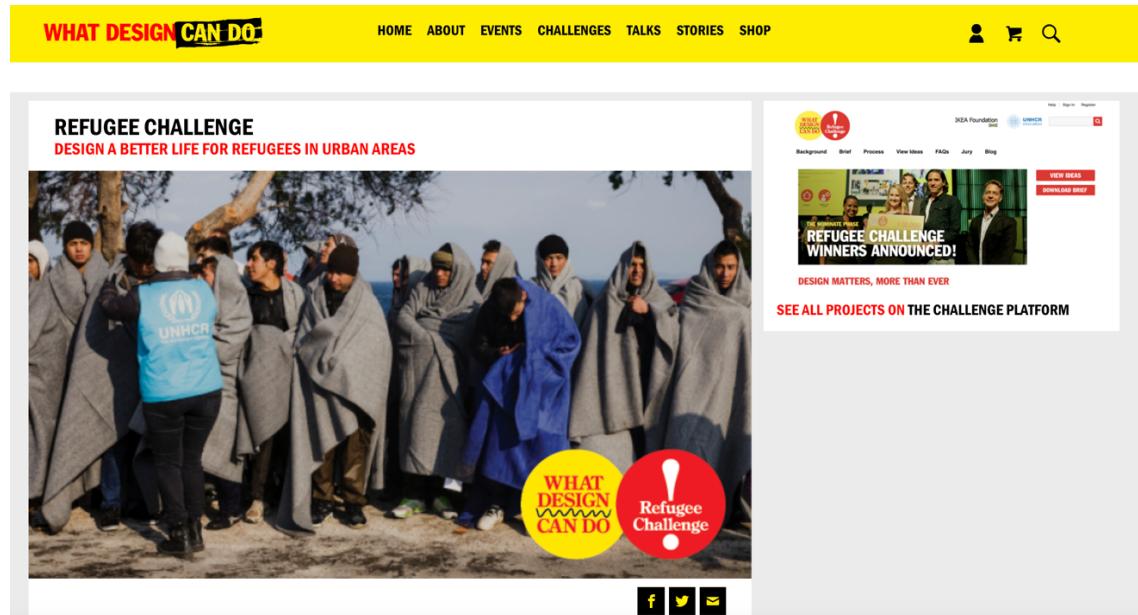


Figure 6: Screenshot from the website of *What Design Can Do Refugee Challenge* (2016)

The WDCD Refugee Challenge invited designers to tackle the difficulties faced by millions of refugees in everyday life. In addition, a recently launched initiative ‘Good Design for a Bad World’ brings together domain experts in various fields to reflect on and communicate how design can address global issues such as climate change, refugee crisis, and terrorism.¹⁴ The effort to do ‘social good’ through design is also evident in the emergence of research topics such as Social Design,¹⁵ Design for Emotional Durability,¹⁶ and the uptake of Participatory Design, which places community interest at the core of its practices.¹⁷

‘Reframe Refugees’ in *Figure 7*, for instance, is one of the five shortlisted designs of the 2016 What Design Can Do Refugee Challenge.¹⁸ It is an online platform that enables refugees to sell their own photographs to media companies to raise money for selected charities. The designers of ‘Reframe Refugees’ have placed self-representation and empowerment at the core of their design concept. At the same time, Reframe Refugees highlights that the entrepreneurial skills of refugees can be harvested in such a way that exploits the precarious conditions they live in, fixing certain ideas about migration and desert.

¹⁴ <https://www.dezeen.com/2017/10/02/dezeen-dutch-design-week-launch-good-design-for-a-bad-world-initiative/>.

¹⁵ Nynke Tromp, Paul Hekkert and Peter-Paul Verbeek, ‘Design for Socially Responsible Behavior: A Classification of Influence Based on Intended User Experience’ (2011) 27(3) *Design Issues* 3.

¹⁶ Jonathan Chapman, ‘Design for Emotional Durability’ (2009) 25(4) *Design Issues* 29.

¹⁷ Elizabeth B. N. Sanders and Pieter Jan Stappers, ‘Co-Creation and New the Landscapes of Design’ (2005) 4(1) *Co-design* 5.

¹⁸ <https://refugeechallenge.unhcrideas.org/Page/ViewIdea?ideaid=4926>.



Figure 7: Reframe Refugees by Marie-Louise Diekema and Tim Olland
<https://refugeechallenge.unhcrideas.org/Page/ViewIdea?ideaid=4926>

Many design and architecture studios have responded to the problem of refugees finding shelter through proposing modular or compactable / expandable housing concepts. An example is Mezzahome in *Figure 8*, a modular furniture system that can be placed in abandoned buildings for shelter. Mezzahome is a structurally and experientially sound design solution. It successfully envisions the challenges of not having shelter and offers the basic spatial necessities for everyday living. At the same time it, knowingly or unknowingly, embodies the aesthetic choices of an IKEA-style Western home. Most importantly, it neutralises the urgency and depth of the forced displacement issue. Designing a temporary, IKEA-inspired shelter for refugees is agreeing to isolate migrants from host states, all the while attributing Western values to their living conditions.



Figure 8: Mezzahome by Ke Tian Tay
<https://www.dezeen.com/2016/06/25/what-design-can-do-refugee-challenge-25-shortlisted-projects-improve-refugees-lives/>

To a certain extent, these design concepts provide incremental improvements in the everyday life quality of a refugee. At the same time, the concepts raise critical questions, mask implicit assumptions, and often propagate stereotypical representations of refugees.

III. PROBLEM-SOLVING AS MARKET-THINKING

Reactive laws and policies as well as the creation of new products and services construct and uphold a myopic image of the refugee crisis, whereby the symptoms and not the root causes of the challenges faced by refugees are addressed. Lawyers and designers are drawing on and constructing stereotypes of who is deserving and who is undeserving, which create binaries between innocence and criminality. Problem-solving at the expense of systemic analysis is closely linked to neoliberal market thinking in practice and sustaining rigid disciplinary boundaries in research. In the context of market thinking, the ideal or deserving refugee is, we argue, the ‘grateful’ refugee. Gratitude, aligned with a notion of desert and debt, is the defining feature of an idealised archetype, constructed to be in a constant state of precarity.¹⁹

Framing through the extreme poles of innocence on the one hand and criminalisation on the other is connected to punitive regimes for exercising agency. For example, a refugee’s desire to work, as an example of exercising agency, is often accompanied by the expectation that this will exclude them from refugee status; these individuals then risk falling into the muddy regulative and politically toxic waters of economic migrants. Indeed, many refugees are denied the right to work, particularly in the so-called ‘humanitarian silos’, the areas and states outside of war zones which deal with the first emergency response. The reward for passivity (waiting for status determination and not seeking work) is arguably reifying societal expectations of refugees who give up their foreign identities and submit to the ethical and legal frameworks of their destination countries without questioning. It also concerns a deferential attitude, where abuse and rejection are expected to be endured.

The expected passivity of the grateful refugee, who is not a drain on state resources, is paradoxically pitted against pressures of entrepreneurship. Whilst passivity is expected when it comes to demands on the host state, activity is rewarded for the entrepreneurial refugee, who makes something out of their situation.



Figure 9: The ‘SmYd Guys’ (UNHCR Canada website, February 2018)

¹⁹ Judith Butler states: ‘Lives are by definition precarious: they can be expunged at will or by accident; their persistence is in no sense guaranteed’ (n 1) 25. Also discussed in Arendt (n 13).

The entrepreneurial stories are constructed as heroic resourcefulness and savviness. Refugees are generally expected to be economically active (inventive) in previously uncharted market territories. Ideally, this type of new business is a problem-solving business of refugees themselves precluding the need of any form of state (public) involvement. An example of this type of entrepreneurialism can be seen in the Reframe Refugees project (*Figure 7*) or the ‘Smyd Guys’ who have set up a Syrian desserts business (*Figure 9*). Related to the unrealistic societal expectation of refugees being both deferential and entrepreneurial, refugees are constructed in a way which places pressure on them to literally be superheros, as with the ‘Spiderman of Paris’. This idea of self-maximizing human capital in the entrepreneur or superhero is key to neoliberal subjectivity. Crucially, exerting agency exclusively in the private sphere means that the refugee bears the risks of failure themselves.

The expectation of passivity in the public sphere and agency in the private sphere is hardened through an international legal refugee regime which places a great onus on humanitarian agencies (rather than state agencies).²⁰ Humanitarian agencies, which receive a large amount of funding from donors of the Global North, in turn construct their refugee images and narratives to coincide with the notion of the deserving refugee. As Lisa Malkki observes, the constructed notion of a refugee adds up to ‘an ideal figure of which any actual refugees were always imperfect instantiations’.²¹

The ‘grateful’ refugee (as both deferential and entrepreneurial) is the corresponding dilemma to what has been referred to as ‘Schrödinger’s immigrant’, who is ‘simultaneously stealing your job and too lazy to work’ (*Figure 10*), epitomising the *ungrateful* refugee.

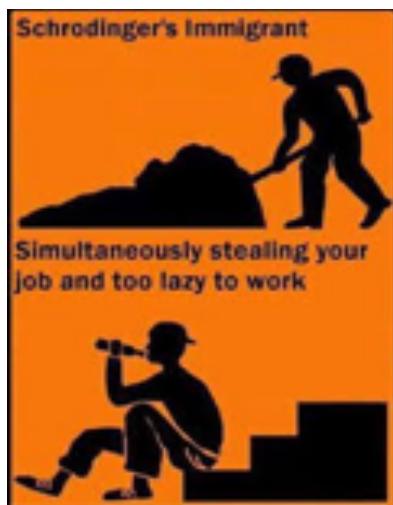


Figure 10: Schrödinger’s immigrant meme

The ungrateful refugee exercises agency through labour and through making demands on state resources. These two features are connected to anti-immigrant and anti-refugee sentiments. The Schrödinger’s immigrant meme was circulated by those less hostile to immigrants in an effort to demonstrate the dilemma in which immigrants find themselves.

Entrepreneurial refugees, who only exert agency in the private sphere, are depoliticised, often reimagined as ‘stakeholders’ rather than political subjects.²² Structural questions are accordingly

²⁰ Caroline Wanjiku Kihato, Loren B. Landau, ‘Stealth Humanitarianism: Negotiating Politics, Precarity and Performance Management in Protecting the Urban Displaced’ (2016) 30(3) *Journal of Refugee Studies* 407.

²¹ Lisa Malkki, ‘Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization’ (1996) 11(3) *Cultural Anthropology* 337, 385.

²² See Guy Goodwin-Gill, ‘The Dynamic of International Refugee Law’ (2014) 25(4) *International Journal of Refugee Law* 651, who generally refers to ‘stakeholders in refugee protection’.

blended out. This blending out is exemplified in the images of the UNHCR (*Figure 3*) and the Reframe Refugees project (*Figure 7*), which place images of conflict visually in refugee camps, never in the context of their previous life or place of destination. Such visual placing in a space of flux blends out questions pertaining to the socio-economic conditions of refugees' origin countries or the root causes (colonial or post-colonial) of the conflict they may have escaped. Blending out prevents enquiries into resource conflicts between states and corporations, enquiries into equitable redistribution of resource gains or the current exploitative global value chains (and the complicity of the global North in the status quo). The entrepreneurial refugee therefore also acts out of gratitude: adding to the economy without demanding from it, stemming from the idea of 'giving back'. The attitude of gratitude, i.e. deference and entrepreneurialism, has been *embodied* by refugees, as exemplified in the following quotation:

Afraid for my future, I decided that everyone was right: if I failed to stir up in myself enough gratefulness, or if I failed to properly display it, I would lose all that I had gained, this western freedom, the promise of secular schools and uncensored books.²³

Meanwhile, the dilemma of the grateful refugee has shifting goalposts, often depending on the level of anti-immigrant sentiment in receiving states. The level of anti-immigrant sentiment is itself a phenomenon which comes with a jealous notion of having been overlooked in the rapid pace of globalisation in its neoliberal instantiation.

CONCLUSION

Representations of refugees are not only constructed to reflect the world in which we live; they also themselves have a capacity to order the world. We have relied on Judith Butler's concept of 'framing' to make this point. The narrowing of the frame, according in particular to pressures of a problem-solving neoliberal approach, has revealed a narrow definition of a 'grateful' refugee who is placed in the dilemma of being expected to at once be deferential and entrepreneurial. Framing refugees in this narrow way through legal and design images, metaphors and discursive structures obscures the frequent complicity of receiving states in the plight of refugees, thereby upholding the status quo. Such myopic framing is exemplified by the attitude towards the large number of people fleeing Syria and Libya; both are countries where Western military intervention in the name of humanitarianism has destabilised the political and economic situation further, and has consequently increased the flow of people who have no choice but to leave. That these individuals should then be expected to display 'gratitude' lays bare the inherent insufficiency of the problem-solving approach.

²³ Dina Nayeri, "The ungrateful refugee: "We have no debt to repay"" *The Guardian* (4 April 2017) <<https://www.theguardian.com/world/2017/apr/04/dina-nayeri-ungrateful-refugee>>.