**Figuring the migrant refugee in the wake of the Nationality and Borders Act 2022: a kind of ghost story?**

*What literary conventions best help us understand the migrant refugee’s claim for protection, and the terms on which law claims to offer it? One contender to have attracted attention recently is ‘bildungsroman’ (‘formation novel’): the genre of fiction concerned with a marginalized individual’s testing personal journey towards maturity, self-realization, and acceptance within a nation state. However, in light of UK legislation passed in 2022 apparently aimed at ensuring that migrant refugees who arrive illegally should not have any cause to hope for such acceptance, this paper proposes that we look instead to conventions associated with the ghost story. The article focuses its attention on the figure of the ghost as issuer of an unsettling reminder of unremedied injustice and moral duty: of a call to action that also inspires dread and consequent efforts to make it disappear and retreat to where it came from. These qualities are here considered as a basis for understanding the figure of the migrant refugee in law and in artistic depictions, including public performance (*“The Walk,” 2021-22*), photojournalism (*“Risking the Channel ‘death route’ to Britain – a photo essay,” 2020*) and visual art (*“Dzhangal,” 2016-17*).*

If refugee migration and legal responses to it constitutes a story, then what kind of story is this? To put it another way, what literary conventions best help us understand the migrant refugee’s claim for protection, and the terms on which law claims to offer it? One contender to have attracted attention recently is *‘bildungsroman*’ (‘formation novel’): the genre of fiction concerned with a marginalized individual’s personal journey towards maturity, self-realisation and acceptance within a nation state.[[1]](#endnote-1) Before civil wars in Syria, South Sudan, Yemen and Libya in the 2010s pushed the migratory flows of refugees to the top of the political agenda in European countries, *bildungsroman* had been credited as key to figuring the modern legal subject in the era of human rights. Joseph R. Slaughter had observed that legal and literary forms demonstrably work together as “mutually enabling fictions” in fashioning the “person” as bearer of inherent value and dignity.[[2]](#endnote-2) The last decade has seen a number of literary and artistic works broadly invested in this idea, depicting characters formed by an experience of displacement and a journey in search of acceptance that is not only metaphorical but literal as well. Normative expectations of the narrator-protagonist of *bildungsroman* – to demonstrate integrity, responsibility, and plausibility – can be found reproduced in these depictions, and (more controversially perhaps) instrumentalised in nation states as a basis for setting a legal benchmark for asylum claims.[[3]](#endnote-3)

*Bildungsroman*’s focus on the individual’s story thus allows it to be presented as an appealing intellectual advance on metaphors of environmental and other threats (overwhelming tides, invasions, hordes) typically associated with ‘border control’ discourse, while retaining a basis on which to continue to distinguish meritorious asylum claims. However, recent policy developments in the UK in this context – chiefly the Nationality and Borders Act 2022 (hereafter NABA) and ministerial policy announcements following its enactment – have undermined this appeal by seeming to be aimed at rendering the demarginalization, acceptance and incorporation of displaced people in the UK a very rare exception. According to ministerial commentary both during its passage in parliament and subsequently, migrants who reach the UK on their own steam via irregular routes and who arrive illegally in small boats should not in future have any cause to hope for incorporation in the sense celebrated in *bildungsroman*, but instead should be stopped in their tracks: detained, removed, and returned. These policy developments are significant enough to force us to look to different literary forms and conventions that might help us to revise and adapt our understanding the figure the migrant refugee and her story.

In seeking such an alternative, this article examines three recent visual depictions of the migrant refugee, all of which importantly illustrate how different literary conventions are key to this topic. Of primary interest here is the giant puppet ‘Little Amal’ – centrepiece of the performance project *The Walk* (2021-22)[[4]](#endnote-4), and we read this alongside two slightly older displays: Samar Al-Doumy’s photographs of migrants for the article “Risking the Channel ‘death route’ to Britain – a photo essay” (2020)[[5]](#endnote-5), and Gideon Mendel’s still-life photographic collection on the dismantled Calais migrant camp - *Dzhangal* (2016-17)[[6]](#endnote-6). As we shall see in the first half of the article, these three different works are ambivalent about the figure of the migrant refugee in different ways, and prima face might be read as affirming existing traditional figurations. First, Al-Doumy’s images for “Risking the Channel ‘death route’” may be read as part of a tradition of figuring the migrant through environmental and natural dangers: a metaphorical register that can tend to deny or play down refugees’ individuality, identity and agency. Second, *The Walk* and *Dzhangal* seem, again prima facie, to represent the revival and animation of the migrant refugee as the agent and master of a demarginalizing journey that ends in successful incorporation into host society.

However, in light of NABA, these characterisations of the migrant refugee are unsatisfying: if the well-worn metaphors of natural and unnatural threats are unduly agency-denying and demonizing, then *bildungsroman* is conversely unduly optimistic. This article proposes that a more productive approach could be to look instead to literary conventions associated with the figure of the *ghost*, and to consider discourse about migrant refugees as one governed by the conventions of the ghost story. Our interest in the ghost for present purposes does not lie in notions of spectral insubstantiality however, but in the ghost as issuer of an unsettling reminder about ongoing injustice, unhappiness, and moral obligation. The ghost invoked here is the figure who calls those to whom it appears to action, but who also inspires dread and consequent efforts to make it disappear and to retreat to where it came from. Without returning to previous theoretical debates ably and amply discussed elsewhere therefore,[[7]](#endnote-7) the article considers the consequences and possibilities associated with framing the issue thus as a species of ghost story: calling attention to NABA’s attempts to prevent the appearance of the migrant refugee on the English shore, and to the experience of trauma that NABA implicitly obscures.

Having outlined the themes and concerns of this article, let us briefly introduce the four sections of the discussion that follows. Section 1 reviews examples of the traditional characterisation of the migrant refugee as an environmental or otherwise non-human threat: a metaphorical register prone to downplay the migrant refugee’s agency and other individual qualities. Section 2 describes how, by contrast, the conventions of *bildungsroman* have come to play a significant role in creative artistic responses to the issue that seek to ‘rehumanize’ the refugee subject. Section 3 introduces the relevant developments in UK law and policy that (as this article argues) undermine that significance, and that now prompts a rethink of the relation of law to literary genre. Section 4 follows through on this, arguing that the figure of the conscience-pricking, disjointing ghost might better illuminate our topic. This final section therefore presents a re-reading of the three visual arts representations of migrant refugees mentioned above and offers some historical context for this reading by reconsidering briefly two classic Twentieth Century fictions as ghost stories, namely George Orwell’s 1949 novel *Nineteen Eighty-Four[[8]](#endnote-8)* and Gassan Kanafani’s 1962 novella, *Men in the Sun[[9]](#endnote-9)*.

As a final introductory note, we acknowledge that the continually unfolding and evolving developments in border and asylum policy – including the day-to-day reception and treatment of migrants and the progress of legal challenges to the NABA legislation in the courts – are matters mostly beyond our present scope. Although the most recent indications of policy direction and practice are noted where relevant for present purposes, the discussion here focuses attention on the themes, texts and argument as described above.

**1. Figuring the migrant refugee through agency-denying metaphors: a troubled history**

Metaphors most familiarly used for figuring the migrant refugee as an issue for potential host states tend to be agency-denying, and arguably dehumanizing, involving natural phenomena such as bodies of water (rivers, waves, swamps, tides) or similar environmental entities with a potential to move, and to swell to an overwhelming and unmanageable size and impact.[[10]](#endnote-10) This worry about being overwhelmed makes the treatment and framing of migrant refugees in legal policy a prime example of the “human need for separation, enclosure, and boundary setting [and] the necessity of constructing a difference between self and environment”.[[11]](#endnote-11) Analyzing media representations in the context of Kurdish migration in central Europe, El Refaie proposes that ‘the fact that the refugees actually came across the sea seems to have created a particularly strong sense of a “natural” thematic link between the people and water.’ She provides one particularly telling example in which refugee-as-water metaphor is further pronounced by referring to the border as a surface for keeping out water:

On rusty ships, Kurds land in Southern Italy and try to fight their way through into Central Europe. Albanians seep into Greece. Rumanians tried first to get into Austria and Germany via Hungary. Now that our Eastern border is more or less watertight, they make a detour via Italy. These tides of economic refugees [. . .] are endangering the security of the EU.] (NKZ 4.1.1998: 3) [*Neue Kronen Zeitung*][[12]](#endnote-12)

The affective impact of water metaphors is depersonalizing and distancing, since the frame of reference for the migrants themselves is one that mutes individual or distinctly *human* characteristics in favour of general ones, typically replacing these with characteristics of generalised environmental threats.[[13]](#endnote-13) Migrants so positioned are often seen as a source of worries about unwelcome social change,[[14]](#endnote-14) of native populations being ‘washed away’,[[15]](#endnote-15) or a vaguer sense of fear of crowding.[[16]](#endnote-16)

The use of metaphors that emphasise the mutability of individual human characteristics and an association instead with mute, agency-less natural phenomena and natural landscapes is also a feature of a certain strain of refugee art and art criticism. For example, the *Guardian* article “Risking the Channel ‘death route’ to Britain – a photo essay” (2020), featuring the photography of Samar Al-Doumy, begins by displaying two images depicting the experience of irregular sea migration, the contemplation of which is to be confronted with vast and awesome seascapes within which faraway bodies are virtually swallowed up.[[17]](#endnote-17) In the first of the images, titled with conspicuous understatement *Migrants on board a boat in the English Channel*, six men in thin jackets and hoodies can be seen standing on a craft which is itself invisible but for a tiny glimpse of outboard motor at the back. The men’s bodies and the boat itself are partly concealed by an ominously large wave looming in-front of it. Behind the wave we see the migrants only from their elbows up, faces turned to the front. Their faces are visible but magnifying them to scrutinize their features reveals no discernible expression, only a resigned passivity that reflect the blank indifference of the sea itself. The composition emphasises not merely the migrants’ vulnerability to the elements, but their inseparability from those elements and the wide grey sea all around, behind and in-front of them.

The second image of the same collection carries a similar insinuation: *Migrants prepare their own crossing on the beach of Gravelines as a ferry passes in the Channel*.[[18]](#endnote-18) Again, viewers who are unfamiliar with the particulars of migrant boats in the English Channel are struck by the fact that, unlike the towering and glittering ocean liner on the horizon, the boat itself is so low in the water and so dark that it seems barely to exist at all. The image conveys the impression that the several migrants who stand on it with no obvious means of support or safety rail (having carried their boat out to sea and are viewed from the shore about to depart) are actually standing on the water itself. The figures are tiny, distant and roughly human in shape but with no features at all – not unlike the ‘masses of tiny figures, passive objects at the mercy of the natural world’ that Manderson finds in JMW Turner’s controversial 1840 painting of slaves being thrown into the sea from a ship.[[19]](#endnote-19) Moreover, the migrants in both of Al-Doumy’s photographs are depicted already out to sea and *moving away from the viewer* such that any opportunity for communication and connection appears to recede as we watch. If legal recognition of refugees depends on the possibility of hearing their testimony therefore, the migrant bodies seemingly merging into the natural landscape suggests they are (to borrow Itamar Mann’s expression) “literally beyond the pale of law”.[[20]](#endnote-20)

To *natural* environment and threat metaphors for refugees in the history of border control discourse, we can also add *unnatural* or *super*natural metaphors. For example, the gradual disappearance of the migrant figures and their apparent absorption by the “deathfulness of the open, deep, illimitable sea”[[21]](#endnote-21) implied by the aesthetic of Al-Doumy’s photographs invoke a sense of the *spectral*. This has proved useful for studies of migrants as a marginalised community, for instance by Esther Peeren who used it as an ethical device for drawing attention to society’s “living ghosts”, effectively rendered invisible due to their being undocumented and routinely “ignored and considered expendable”.[[22]](#endnote-22) At the more extreme end of this figurative scale, the zombie as a metaphor for refugees is a familiar trope, and one that is regularly reinforced when political leaders and policymakers resort to figures of speech that explicitly or implicitly construe refugees as a threatening or overwhelming incoming ‘horde’, legitimizing punitive policy responses to their apparent preparedness and ability to run mortal risks and suffer hardships that would be horrifying to anyone else.[[23]](#endnote-23) Like natural danger metaphors, the lack of individuality, race or history in typical zombie genre fiction can implicitly translate to a characterisation of refugees as a mass of undifferentiated bodies that minimises the importance both of individual differences and the role of colonial exploitation and political and economic inequalities that mark migration flows.[[24]](#endnote-24)

Commentators have already explored the potential consequences of these sorts of frameworks. For example, Itamar Mann has argued that policies designed to deter or thwart irregular migration by interceptions in international waters seem aimed at removing opportunities for a truly human encounter, such that “there is no place for a powerful party … and a disempowered party seeking protection to meet each other.”[[25]](#endnote-25) The literal and symbolic distancing and consequent prevention of dialogue between human persons is also at the heart of Justine Poon’s analysis and critique of the legal category of “unauthorized maritime arrival” in Australian law. Poon argues that as a metaphor, this legal term effects the ‘disappearance’ of the refugee as a person with a legal and moral claim, and the appearance in her place of a *mere object*:

The legal subject that might be able to assert a claim under international law becomes an object whose only significance is its presence within the territory. It is the subject with political life that disappears and an object, a pure presence upon which the law acts, which emerges.[[26]](#endnote-26)

Corina Stan provides another example in the German legal label *fictionsbescheinigung*.Translating literally as “fiction certificate”, *fictionsbescheinigung* designates a person as not yet having attained refugee status, and for Stan it pejoratively “stamps the existence of human persons by certifying them as ‘fiction’ (with its connotations of pretence, of made-up stories)”.[[27]](#endnote-27)

The primary concern shared by these authors (Mann, Poon, Stan) is to show how legal mechanisms can be used symbolically to degrade human beings in ways that may have practical consequences too (“all measures are permissible”[[28]](#endnote-28)). They tend to suggest that refugee migrants may thus be lawfully reduced almost to the status of mere things in the water or on the shore that should not be there, and their removal more a matter of efficiency than human rights. As we shall see in the following sections (and in section 4 in particular), the approach adopted by the UK in its NABA legislation passed in 2022 takes my own approach to analysing the law in a different direction, albeit like Poon proceeding from the legal characterisation of the problem as the “*pure presence*” of migrants where they should not be.[[29]](#endnote-29)

**2. Visual art and the literary conventions of *Bildungsroman*: Figuring character and responsibility in the migrant refugee’s story**

If the role of metaphor in the legal and cultural history of figuring the refugee vis-à-vis the concern to protect and defend national borders has tended towards dehumanizing abstraction, *bildungsroman* fiction as an alternative model for the refugee tale helpfully complicates that picture. For Slaughter, the conventions of *bildungsroman* are the imaginative glue that holds together the cultural, moral and legal apparatus of international human rights, and that affirm the idea that a person can claim legal protection *qua* person-before-the-law:

The *Bildungsroman* has been doing some of the sociocultural work that human rights law cannot do for itself to extend its incorporative franchise and to make its tautologies compelling … As one of the primary carriers of human rights culture, the novel of demarginalization, more than any other genre, is said to perform what it thematizes, imagined to effect in the reader the modernizing process of personality development that it narrates for the protagonist.[[30]](#endnote-30)

We are used to thinking about the refugee story as straddling legal and non-law discourses. Whether in the form of memoir or the work of the imagination, it is a burgeoning and diverse genre in its own right.[[31]](#endnote-31) As Woolley has observed, migrant testimonies bear an obvious relation to the legal contexts of asylum and human rights, the distinguishing feature of the latter being the legal consequences that flow from the attitude and actions of an official who reads or hears the story.[[32]](#endnote-32)

Beyond the written word, visual figuring of the migrant refugee tend also to draw on the narrative form of the *bildungsroman*, as Vogl notes with reference to the Australian poster campaign ‘I Came By Boat’.[[33]](#endnote-33) Arguably the most well-known example in the UK at time of writing is the performance of *The Walk* (2021-22) [see figure 1], featuring a fictional child migrant refugee with a story of fleeing persecution and making a difficult journey that ends with successful integration and incorporation into UK society. Preceding *The Walk* and sharing some of its key qualities is Gideon Mendel’s 2016/17 photographic migrant art exhibition *Dzhangal*. Generating substantial attention in the press but so far comparably little in the way of sustained critical scholarly analysis,[[34]](#endnote-34) we examine these two creative depictions of the migrant refugee, with an initial reading in light of *bildungsroman* conventions in this section, and then returning to offer a different reading in section 4, below.



*The Walk* featured the character known as ‘Little Amal’ – a 3.5m tall puppet controlled from within her body and at each arm by three human puppeteers, with responsive facial features, and in narrative terms a Syrian unaccompanied child refugee who walked from Gaziantep in Turkey near to the Syrian border, across continental Europe, taking a boat across the English Channel and after landing at Folkstone continued walking: across Kent via Canterbury, through London, the Midlands, Yorkshire and finally resting in Manchester, reunited with her Mother who had travelled on ahead. The journey, punctuated by public appearances and performances at numerous cities, was intended to represent the many thousands of unaccompanied child refugees, and draw attention to their experiences and hardships. As is traditional in *bildungsroman*, Little Amal had to overcome difficulties and learn lessons along the way. Some of these were scripted (on Ludgate Hill, for example, I saw her leaning against a lamppost to catch her breath before ascending the stairs of St Paul’s Cathedral, apparently exhausted from so much walking already) and others not (local councillors voted not to allow her to visit of the monasteries of Meteora in Greece, and then right-wing protestors in Larissa, also in Greece, threw stones).[[35]](#endnote-35) Otherwise, almost everywhere that Little Amal appeared however, she was greeted by crowds of people cheering and wishing her well. At St Paul’s Cathedral where I and several hundred others turned out to see her [fig.1], speeches from local faith and community leaders predicted that the story would end well for her: the British people being a kind people, she would find welcome and sanctuary here. In this story, determined as it was from its inception, that is precisely what happened. So far, so *bildungsroman*.

A few years prior to Little Amal’s walk across Europe, Gideon Mendel’s art exhibition *Dzhangal* featured studio-produced ‘still-life’ photographs of various objects that the artist found abandoned at a dismantled migrant camp at Calais. Although the book containing the images in Mendel’s collection is now out of print, highlights can still be seen in the 2016 *Guardian* article published at the time of its first exhibition as well as on the publisher’s website, and more extensively on Mendel’s own website.[[36]](#endnote-36) Viewers notice the variety of different objects on display, as well as evidence of objects having been creatively transformed to serve new purposes in their lifetime (such as the collection of used teargas canisters that had been painted and turned into hanging plant pots – a transformation that tells its own story). Most of the images in Mendel’s collection depict rows of multiple objects of the same type (one image depicts a collection of shoes, and others likewise display collections of clothes, toothbrushes, teddies, children’s books, etc). They each invite the viewer to think about the people who might have handled them and dropped them there in the Calais mud, and who travelled away from home in search of safety and protection. It is difficult to look, in other words, without creating a human narrative in one’s mind’s eye. One of the most arresting of these images is a photograph depicting just one object: the disembodied head of a child’s doll with flame-red hair flowing from its scalp, and bright eyes looking directly back at the viewer. The uncanny, life-like quality of the face, appealing as it does to viewers conditioned to find the life of a person in the eyes, makes that image strongly metonymic, not only for migrant lives in general, but for a single human being on the move.

 Neither *The Walk* nor *Dzhangal* concern themselves directly with the tribulations associated immigration and asylum processes: Amal’s progress was not hampered by border controls on migrants, and the legal fates of the former owners of the objects retrieved from the Calais migrant camp is not known. For some commentators, the fact of immigration and border laws is itself a challenge to the descriptive power of *bildungsroman* in the refugee context, since while the reader of *bildungsroman* expects the protagonist finally to be accepted and incorporated into the state, such a happy ending is far from certain in the migrant’s case. Stephen Clingman, for example, asks:

If the human rights story is one of incorporation, then it is incorporation into a society which recognizes (certain) human subjects: the state is the horizon of their recognition. But what of the state founded on the exclusion of some, for whom incorporation is not an option, at least not in their lifetimes? What is their narrative of human rights? And what literary forms might correspond to such a story, or allow us to see a story not foretold in the existing human rights script?[[37]](#endnote-37)

My view is that Clingman asks the right question (indeed, the following two sections present my own critique and alternative), but that he was ahead of his time. For Clingman in 2015, it was enough for the descriptive plausibility of *bildungsroman* to be called in question that the application of its conventions and expectations failed wholly to lead to an “enabling” of marginalised people’s human rights, and might as easily lead to exclusion and re-marginalisation as successful incorporation in a host state. But that would be too much to expect of the genre. But it is entirely consistent with a *bildungsroman* narrative that claims for legal sanctuary should fail, provided that such failure is not a necessary or foregone conclusion for the applicant. *Bildungsroman* retains its descriptive significance in a legal context where a person arriving (albeit illegally) in a potential host state has an opportunity to have their asylum application considered and evaluated there – for what Mann calls “the human rights encounter” to take place.[[38]](#endnote-38) Indeed, the addition of the legal evaluation of the refugee’s claim arguably only strengthens the descriptive suitability of the genre, since as Vogl has observed, *bildungsroman*’s conventions are also instrumentalized by asylum law. In the context of the Australian asylum process, Vogl has observed how the asylum claimant may be expected to answer questions about potential and hypothetical persecution, often involving speculations about the decisions and thoughts of others (“Why would your brother’s tutor entrust you with that letter?”) that only an omniscient narrator of *bildungsroman* could possibly answer satisfactorily.[[39]](#endnote-39)

**3. Figuring the irregular migrant refugee in Law: the Nationality and Borders Act 2022**

Clingman’s query about the suitability of *bildungsroman* as a framework for understanding refugee and asylum law has now been made more pertinent however in the wake of NABA 2022, designed as it seems to be, to remove from the majority of migrant refugees even the *chance to explain* how they satisfy the requirements of the 1951 Refugee Convention. NABA came into being against an international context in which Western countries were seeking ways to limit their responsibilities for accepting migrant refugees,[[40]](#endnote-40) and a national context still dominated by the United Kingdom’s withdrawal from the European Union in 2020 and what the referendum result in 2016 in favour of leaving the Union should mean for immigration and asylum policy.[[41]](#endnote-41) Parliamentary speeches by the ministerial sponsors of the Bill in 2021 made clear that the moral case for the government’s approach to reforming asylum law hinged on the meaning to be attached to the concept of ‘fairness’, and the consequences that flow from it for people seeking legal protection in the UK. In elucidating that meaning, the speeches on the one hand emphasise a wish to fulfil relevant international obligations (“A fair asylum system should provide safe haven to those fleeing persecution, oppression, or tyranny … Because that is the right thing to do”[[42]](#endnote-42)). But on the other hand, ‘fairness’ is also the means for restricting asylum claims, and for identifying refugees who may be refused help (“humanitarian measures are possible *only* if we have a fair asylum and immigration system, *capable* of providing both welcome and integration.”[[43]](#endnote-43)) This much more pointed notion of ‘fairness’ is sharpened further in the Home Secretary’s characterisation of “illegal entry”: as a crime of sufficient seriousness to be listed alongside people smuggling, human trafficking and modern slavery, with apparently nothing much to distinguish them:

Enough of people trying to gain entry illegally, ahead of those who play by the rules. Enough of foreign criminals – including murderers and rapists – who abuse our laws and then game the system so we can’t remove them. … The very principle of seeking refuge has been undermined by those who pay their way to travel through safe countries to then come to the UK to claim asylum. … British people object to illegal entry, and they are absolutely right.[[44]](#endnote-44)

The chief innovation introduced by NABA for achieving the desired ‘fairness’, and for ensuring refugees “play by the rules”, is to turn the protections contained in Article 31(1) of the 1951 Refugee Convention on their head. Article 31(1) was drafted to protect refugees from punitive treatment by host states on account of their irregular transit and arrival, or as Lord Bingham put it some years ago: “to protect refugees from the imposition of criminal penalties for breaches of the law reasonably or necessarily committed in the course of flight from persecution or threatened persecution.”[[45]](#endnote-45) The Article stipulates that:

…states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.[[46]](#endnote-46)

NABA treats this protective formulation as implicitly *licensing* the punitive treatment of refugees whose route to the UK was not so direct, and therefore as justifying a two-track asylum system based on refugees’ mode of arrival in the UK.[[47]](#endnote-47) Section 12 of the legislation thus defines a favoured “group 1 refugee” as one who, *in addition* to the Article 1 requirement of a “well-founded fear of persecution” in another country, can *also* establish that they did not pass through any “safe” country before arriving in the UK – a requirement that in practice restricts such status to those who are able to access an official UK refugee resettlement scheme. A refugee so categorised can expect to be given leave to remain in order to make an asylum claim without being detained, to have their family join them in the UK, and, if their application is successful, apply successfully for indefinite leave to remain.

On the other hand, refugees who make “illegal entry” to the UK (in other words, informally by small boat and without a visa) or are otherwise present in the UK illegally without being able to show “good cause” for that illegality, and/or who travelled to the UK via a “safe” third country, are classified as “group 2 refugees”. They can expect to face much less favourable treatment, including: (a) short term temporary leave to remain in the UK, without recourse to public funds and without a right to bring family members,[[48]](#endnote-48) (b) possible prosecution and imprisonment for up to four years for the offence of “knowingly entering”, “knowingly arriving” or “knowingly remaining” without leave to do so[[49]](#endnote-49) and then (c) deportation – as a foreign “serious criminal” (i.e. convicted of any offence punishable for 12 months or more)[[50]](#endnote-50); (d) exclusion from the UK asylum system as “inadmissible”,[[51]](#endnote-51) and (subject to further legal challenge) (e) relocation to another country such as Rwanda.[[52]](#endnote-52) These are potentially far-reaching measures. Although at time of writing they have yet to realise their full impact (almost eight months after the Act’s passing, less than half of 1% of migrants arriving illegally had been prosecuted for it,[[53]](#endnote-53) and there had been no removals to Rwanda due to legal challenges), both the Home Secretary and Prime Minister in post from October 25th 2022 strongly affirmed their desire to see them made fully operational.[[54]](#endnote-54)

As if in answer to those who would say that the punitive measures in NABA are more a matter of rhetoric than reality, the new Home Secretary and Prime Minister signalled that the government intends to further harden the distinction created by NABA between group 1 and group 2 refugees. According to a December 2022 policy paper for which the Home Secretary wrote the foreword: It should be *impossible in law* to claim asylum in the UK after travelling from a safe country, and *no migrant who arrives here illegally should ever be allowed to settle here*.’[[55]](#endnote-55) The following week, the Prime Minister confirmed this as government policy:

Early next year we will introduce new legislation to make unambiguously clear that if you enter the UK illegally *you should not be able to remain here*. … And once removed you should have *no right to re-entry, settlement, or citizenship*.[[56]](#endnote-56)

For a person seeking to access the UK asylum system as means for escaping persecution and marginalisation, who by their own initiative journeys in search of protection, recognition and reincorporation into the UK as an adoptive society, the direction of policy represented by NABA therefore is not merely a blockage in the road, but an attempt to prevent to prevent their unbidden appearance altogether. Rather than uncertainty as to whether any individual claim will lead to incorporation into the UK as the new host society (a narrative which we described above as consistent with *bildungsroman*), NABA’s two-tier system seems to be calculated to ensure that apart from the small minority of refugees placed in one of the limited official resettlement schemes, *certain failure* should be the only plausible outcome.

How are we to understand this drive toward making it “*impossible*” for the migrant refugee to claim asylum upon appearing on the shore, and for “*unambiguously clear*” consequences for defiance? What kind of story is this, and what kind of character is the migrant refugee within that story? The apparent determination in this policy to put a final and decisive *end* to the arrival of little boats is no mere adjustment to the categories; more fundamentally, it challenges us to reconsider our existing frameworks for conceiving and figuring the migrant refugee. We are prompted therefore to think about what narrative tools might be usefully brought to bear on that task beyond the conventions of *bildungsroman*. Responding to this challenge, the final section below explores what potential there may be here in reading lawmakers’ (in my view) conspicuously extreme desire to be rid of the *presence* of the migrant refugee as a figuring of that refugee as a kind of ghost. Section 4 therefore now follows this line of thought, with respect both to law and to the visual arts depictions already considered.

**4. “Don’t Forget About Me!”: the migrant refugee as ghost who cries under the stage**

The figure of the ghost is no stranger in the realm of legal studies, and has be invoked previously, for example, underpinning studies of people who are made ghostlike by marginalisation – “untouchable in the sense of [being] … avoided, exploited and abjected”.[[57]](#endnote-57) In section 1 above, it was noted that the spectral metaphor is sometimes used, or alluded to, as part of a much broader collection of agency-denying figurations of migrants, and we cited the ghostly quality of the distant and receding bodies in the English Channel in Samar Al-Doumy’s photographs as an example.[[58]](#endnote-58) The ghost also periodically appears in critical analyses of insubstantial fictions such as ‘personality’, ‘proportionality’, ‘legality’. These ideas are ghostly in the sense of spectral abstraction from the material, and as modern notions ostensibly replacing other, more ancient ones, they themselves may also *become* haunted by that which they try to subdue.[[59]](#endnote-59)

All of these are fascinating applications of the idea of ghostliness as *insubstantiality*, but our own invocation here of the spectral takes us away from them, and in a rather different direction. For present purposes, this discussion focuses instead on two distinct qualities of the character of the ghost in western culture, and considers what we can extrapolate from that about the migrant refugee of law (NABA) and visual display (*The Walk* and *Dzhangal*). The first of these qualities is the special nature of the ghost’s situation as part of a separate and unreachable world beyond ordinary time and space, while nonetheless also present for someone in the everyday world. The second quality is the sense of purpose or mission with which the ghost is typically imbued: the disturbance or disjointing of ordinary life by a reminder of a perceived injustice, prompt some to stir to positive action and others to seek to expel the spectral irritation and send it back to whence it came.

To identify these qualities with matters of interest for lawyers is not a novel move in itself, of course: it is well-known that stories of the ghosts of murder victims returning to haunt powerful oppressors have served as a means for obliquely critiquing perceived failures of law to achieve justice in the real world.[[60]](#endnote-60) There are furthermore other qualities traditionally associated with the ghost of fiction that do not obviously or readily apply to the figure of the refugee migrant. For example, ghosts tend to be associated with a particular haunted place or locality, where-as the migrant refugee is characterised by dislocation and movement. But might the depictions of the migrant refugee discussed here – *The Walk* and *Dzhangal*, and the NABA as well – nonetheless be understood as components of a ghost story? Let us return to these texts with that question in mind.

Little Amal’s arrival in the UK was uncannily timed. As the same time that, according to her story Amal was supposedly settling down in the north of England with her mother, the then Nationality and Borders Bill was passing its final hurdles in parliament, receiving royal assent in April 2022. The consequence of its full implementation would mean that others following the same route – passing through safe third countries in continental Europe, travelling clandestinely by small boats, dealing with people smugglers along the way and then landing on the Kent coast without permission – find themselves barred from full legal protection and settlement in the UK. Knowing all of this, Little Amal’s message “*Don’t Forget About Me*”, which she then adopted in Autumn 2022 and carried with her when she crossed the Atlantic to continue walking in New York City, takes on a slightly chilling significance. In this return to reading *The Walk*, I want to dwell a little on that significance, albeit without making any claim about what the directors of the project themselves intended for it.

In the first place then, it is difficult to read Amal’s message without being reminded that the consequence of applying NABA strictly would be to make most refugees that arrive on the southern shore of England *disappear from view* as a domestic concern, and remarginalized by detention, removal and return. Being categorised out of and away from the UK asylum system in this way means effecting a disappearance that makes it entirely apposite to insist that they must be remembered, and *not* forgotten. “*Don’t Forget About Me*” also disorients the spectator by breaking the life-creating spell that Little Amal’s appearances (so expressive and vivacious as they are) are so good at casting on audiences. The phrase jars against the sense of *The Walk* as *bildungsroman* and Amal *herself* as its protagonist-author, since it reminds spectators that we are after all only seeing an image that stands as a substitute for, an apparition of, a refugee who in fact is somewhere (or somewhen) else, possibly dead, possibly yet unborn. Standing in for child refugees currently living, dying and already dead, and for whom she appears to ensure none are forgotten, Amal demonstrates an important quality of the ghost. She is (as Manderson puts it in another context): “the persistent after-image of a prior event” (her own story relating specifically to a journey from Syria to northern Europe in 2021), but more broadly than that, “a slip in time”.[[61]](#endnote-61)

The refugee as ghost is strongly figured also in Gideon Mendel’s still-life photographic art project *Dzhangal*, which as we have seen (also in section 2, above), featured hundreds of lost and discarded objects retrieved by the artist from a dismantled Calais migrant camp. We referred above also to this project as an example of a presentation consistent with *bildungsroman* conventions, since the viewer is invited to treat the visible objects as evidence of a journey that might have ended in newfound safety, acceptance and incorporation in a new country. But just as Amal’s message “*Don’t Forget About Me*” must refer to persons somewhere (and some *way distantly*) off-stage or separated from the objects by the passage of time, it is important to keep in mind that the objects on display in Mendel’s work are all *disembodied* and *lost*. They cannot tell us where to find their former owners, if indeed they are still alive. There is no way to reconnect the absent people to these present objects, such that displaying those objects carries a disturbing suggestion that they are substitutes for people who have altogether vanished.

In a very literal sense (rather than the figurative sense relevant in Amal’s case), the objects that Mendel collected and included in his exhibition are the “after-image of a prior event” – the lingering record of trauma that has not been worked through. Read in this light, the red-haired doll’s head that we described above so vividly provocative of speculation about its former owner can equally disturb in that its own disembodiment serves as a brutal reminder of the *absence* of that former owner. Taking our chain of associations to wander into darker places still, the arrangement of numerous different shoes or toothbrushes all lined up in neat rows, remind us of images of clothes and shoes removed from people murdered in the Nazi death camps, and thus suggest that the former owners have not simply moved on, but that they have been erased. The former owners may have drowned, returned home to be mistreated or killed, indefinitely detained, or, even if having escaped those fates, then disappeared into the oblivion of exploitative labour practices. We can use our imaginations to recreate them, but they are spectral, absent presences.

Mendel’s lost objects, and Amal’s admonishing reminder “Don’t Forget About *Me*” connect in these ways to a tradition of narratives of spectral apparitions. In different ways, they both oddly recreate the terrifying commands of “Mark me!” and “Remember me!”, issued by the ghost of Old Hamlet urging his son to avenge his murdered “dear father”, and not to resemble “the fat weed” rotting away in the mythological Greek river of forgetfulness.[[62]](#endnote-62) They also share with the ghost of *Hamlet* a sense of a unity between the personal and the public – appealing both to feelings and to a broader sense of justice that is also the mark of the ghost that cries of wrongs warranting correction. This sense of the visual depiction of the migrant as being-there-but-not-there, or perhaps of being a visual reminder of a trauma from another time and place, resembles not the sturdy hero of *bildungsroman* whom we expect to gain in substance and stature, but the fragile, haunting spectre of the ghostly vision who disturbs, stirs, reminds. It is for this reason that the presence of the huge ocean liner cruising in apparent serenity in the background of Al-Doumy’s *Migrants prepare their own crossing on the beach of Gravelines as a ferry passes in the Channel* is significant (described above, in section 1): it implicates not merely the inequalities of wealth and opportunity between two worlds, but a vantage point from which observers might be shocked into consciousness by glimpsing the small, dark human shapes on the water below.

This reading of our visual depictions of the migrant refugee by way of the figure of the ghost-as-reminder draws on a literary tradition, the relevance of which for this topic is typically overlooked. For example, neither Orwell’s *Nineteen Eighty-Four* or Kanafani’s *Men in the Sun* are ostensibly ‘about’ the figure of the ghost (or indeed the refugee) at all. However, both tellingly yield a reading that helps to enrich the perspective advanced here. In an early scene of *Nineteen-Eighty-Four*, the protagonist Winston Smith recalls watching a propaganda film depicting the sinking of a refugee boat, in which a mother, “who might have been a jewess”, vainly tries to protect her infant child from bullets and bombs with her arm. The novel later describes Winston’s guilty childhood reminiscences and dreams of his own mother and sister, with whom Winston had competed for food (of which there was “never enough”), and for whose deaths he had ever since blamed himself. He recalls how his mother had also adopted a futile gesture with her arm to try to protect her daughter when the ravenous eleven-year-old Winston stole her meagre chocolate ration, and that this gesture reproachfully reminded him of the gesture of the jewish mother in the sinking refugee boat:

At this moment his mother was sitting in some place deep down beneath him, with his young sister in her arms. … He was out in the light and air while they were being sucked down to death, and they were down there because he was up here. He knew it and they knew it, and he could see the knowledge in their faces. There was no reproach either in their faces or in their hearts, only the knowledge that they must die in order that he might remain alive, and that this was part of the unavoidable order of things.[[63]](#endnote-63)

Against the grain of the broadly liberal humanist reading of *Nineteen Eighty-Four* (namely as a story of the destruction of individual moral integrity, solidarity and kindness by totalitarian brutality),[[64]](#endnote-64) Lynsey Stonebridge has argued that the juxtaposition of these two scenes represents the west’s guilty conscience about its own failure to uphold humanitarian ideals in the case of stateless Jewish refugees seeking refuge after the Second World War and its insistence on closing the door to ‘economic’ migrants.[[65]](#endnote-65) Why else, asks Stonebridge, should Winston dream of his family *drowning* in a “sunken ship”*,* and feel so sure that their deaths were “unavoidable” and necessary for his own survival (“*they were down there because he was up here*”)?[[66]](#endnote-66) For our purposes, the refugees of *Nineteen-Eighty-Four*, like Winston’s dead mother and sister, speak to the NABA’s characterisation of the refugee as both ever impinging on the conscience (who after all remain “refugees” for the purposes of the Refugee Convention) but also as irritants to be made to go away (as “group 2 refugees” whose presence is “illegal”). Orwell’s refugee-mother imposes a moral imperative on Winston, but at the same time she does not exist in the world depicted in the novel. Despite her imposing presence, she is a figure remembered from a film and that intrudes on a memory of his own family, occupying a separate plane of reality without substantial corporeal existence. The memories of the two mothers’ arms resonate together only in the realm of dreams, and the sound they make there is always “*Remember* me!”, the guilty conscience of the citizen standing in for the haunted place of ghost-fiction.

My own reading of the novella *Men in the Sun* by Palestinian writer, editor, refugee and activist Ghassan Kanafani draws on the same line of thought, and for this reason departs from extant readings. Kanafani’s novel involves three Palestinian men hiding in a hot and airless metal water tank on the back of a lorry crossing the border from Iraq to Kuwait, where they hope to begin a new life. The conditions of their journey across the dessert in the heat of the sun are hellish, and the men all suffocate to death in the tank during a short delay at the border crossing (the driver of the lorry, also Palestinian, having been detained by bantering interrogation in the officials’ office). The final lines of the story are the thoughts of the driver, who eventually dumps the three bodies in the garbage: “Why didn’t you knock on the sides of the tank? Why didn’t you bang the sides of the tank? Why? Why? Why?”[[67]](#endnote-67)

Like *Nineteen-Eighty-Four* published a short time before, *Men in the Sun* has been the subject of interpretations that diverge mainly on the point about the novel’s historical, geographic, and moral specificity. Some readings focus on the story as a parable specifically about Palestine and Palestinians: the question of whether to leave or stay to fight for the Palestinian homeland; the roasting, unforgiving sun a trial of fire for every Palestinian; the banging or not banging on the side of the tank figuring the question of whether Palestinians (and Palestine itself) fight for survival or submit to death.[[68]](#endnote-68) Other readings focus on the broader plight of migrant refugees in general, and the uneasy relationship between the stateless individual and legal structures and mechanisms. For example, Bishupal Limbu draws a broad lesson from the fact that during the fatal border delay, “there was no one there to hear them, and even if someone did hear them, he wouldn’t have taken upon himself to help them.”[[69]](#endnote-69) Reading the story as a critique of the fiction of universal human dignity and international rights, Limbu argues that the deaths of the three men could not have been averted because all they had to offer was their humanity, and (as Arendt previously put it): “a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man”.[[70]](#endnote-70)

But taking the story as a living and a mobile text, I would suggest that neither of these readings captures the most relevant aspect of that scene in the policy context that we find ourselves in the UK in the wake of NABA. For me, extant readings of *Men in the Sun* fall short because, for understandable reasons, they accord too much attention to the attempts (if any) by the men to alert people outside to the danger they were in, and conversely too little attention to the effect of their deaths on the lorry driver. Looking again at that the tense narrative in the latter half of Kanafani’s novella and its sad conclusion, we can observe a haunting quality that seems previously to have escaped attention.

For one thing, the tank’s sealable lid effectively turned it into a tomb, symbolizing the fundamental separation of the refugee from the ordinary world. The tank itself is never described in the story except through similes and metaphors of radical separation from the everyday world: it is “like the next world in there” (56), a “hell” (57), an “accursed well” (58) and a “terrible prison” (65) from which its unfortunate inhabitants’ voices echo “as if from a great depth” (58). Having spent several minutes inside it during an initial stage of their journey, the three migrants emerge with “faces seeming … yellow and mummified” giving the driver the impression that already “they were dead” (61) – a macabre premonition for their real deaths later that day. In other words, being sealed in there, the men inhabited a tomb – a separate world with passage between the two worlds impossible for ordinary human bodies. It makes sense then that the only message that does actually escape from inside that space happens after the men die, and as such issues from the supernatural ‘beyond’ in the form of the haunting of one already psychically disturbed by guilt.

Indeed, this is what happens in the final scene. Upon returning to the lorry after finally getting his paperwork cleared by the border officials and finding the three men dead from suffocation, the lorry driver’s guilty self-reproaches at having let them perish are presented as a haunting visit from one of the victims:

Marwan’s face came into his mind for some reason, and wouldn’t go away. He felt the face take possession of him from within, like a fresco shimmering on a wall… Marwan’s face had surged up to take complete possession of his mind, like a spring that bursts from the earth… (71).

The dead migrant’s appearance to the guilty man puts us in mind of other literary ghosts (Shakespeare’s Banquo and Dickens’s Jacob Marley, for example) in which former acquaintances appear to work on a character’s conscience. The very last scene, the distraught driver now alone, is not most significant for his final unanswerable question (“Why? Why? Why?”) that Limbu focuses on. Rather, it is for the fact that he gives up on his plan to bury the bodies afterwards, deciding simply to leave them lying on the ground at a rubbish dump – a serious indignity given the importance that the characters would all have attached to prompt burial. The implication is that the driver’s haunting by the spirit of the dead migrant Marwan has robbed him of his usual strength and courage, and despite his initial resolve to give this final dignity to the dead men, he finds he is “consumed with exhaustion, as though a drug had been injected into his arms.” (72). Physically and morally defeated by this unnatural lethargy, all he can manage to do is to pull the three bodies out of the tank in the night and throw them down in-front of a garbage heap for the collectors to find in the morning. His abject failure, not only to prevent the men from perishing, but furthermore to ensure the dead’s most basic due, we can imagine that the disappeared migrant’s spirit will continue to “take possession” of this driver for some time and will not allow him to forget him. “Remember me!”, “do not forget me!”, again, are the words of the migrant as ghost that resists efforts to make her disappear.

**Conclusions**

NABA’s distinctive two-tier approach to migrant refugees, categorising the bulk of that population as suitable for being closed off from legal protection despite being genuinely in need, gives us reason to reopen the question about the kind genre conventions currently finding their way into legal forms. The article has proposed that if we are to look outside of law for a cultural or literary basis for the figure and story of the migrant refugee before the law, it is not in the protagonist of *bildungsroman* forging her way to self-realisation within the state that we find it, but rather in the much more unsettling, disorienting figure of the ghost. As we have seen, the critical or ethical significance of recent visual depictions of the migrant refugee is that they draw attention to her spectral quality: a figure we are admonished not to forget, who haunts the consciences of host nations and reminds us of a duty; a reminder made even more important since she is made the target of concerted efforts by lawmakers to be made to disappear.

The article has sought to take seriously the implications of reading legal and creative-arts depictions of the migrant refugee in this way. To be sure, it is an approach that is not unproblematic: the migrant refugee is unlike the more traditional ghost of genre fiction at least in terms of seeming to be ‘placeless’, and the ghost’s insubstantiality arguably accentuates her invisibility, inaudibility and hence marginality. But this article has sought to redirect the figurative quality of the ghost in a way that I believe affords fresh scope for appreciating the discursive violence of policy and that helps to reorient critical appraisal of creative arts responses. Justine Poon’s characterisation of law’s response to migrant refugees as a problem of unwanted “presence*”* (quoted in section 2 above) is evocatively suggestive for our purposes: of a problem not merely about how legal categorisation assists efficient removal, but also about the unsettling, discomfiting effect of the presence of the migrant refugee as a reminder of a moral duty unfulfilled.

1. "Bildungsroman, n." OED Online, Oxford University Press, December 2022, [www.oed.com/view/Entry/18946. Accessed 19 December 2022](http://www.oed.com/view/Entry/18946.%20Accessed%2019%20December%202022). On this definition, Charles Dickens’s *Great Expectations* and J.K. Rowling’s *Harry Potter* series may both be thought of as examples. [↑](#endnote-ref-1)
2. Joseph R Slaughter, “Enabling Fictions and Novel Subjects: The *Bildungsroman* and International Human Rights Law” *Publications of the Modern Language Association* 121, no. 5 (2006): 1405, 1417. [↑](#endnote-ref-2)
3. Anthea Vogl, “The Genres and Politics of Refugee Testimony,” *Law & Literature* 30, no. 1 (2018): 81-104; Agnes Woolley, “Narrating the ‘Asylum Story’: Between Literary and Legal Storytelling,” *Interventions* 19, no. 3 (2017): 376–394. [↑](#endnote-ref-3)
4. *The Walk*, Amir Nizar Zuabi (artistic director), David Lan and Tracey Seaward (producers), The Walk Productions, 2021. [↑](#endnote-ref-4)
5. Clement Melki, Sameer Al-Doumy, Thomas Bernardi, “Risking the Channel ‘death route’ to Britain – a photo essay,” *Guardian*, September 23, 2020, <https://www.theguardian.com/artanddesign/2020/sep/23/risking-the-channel-death-route-to-britain-a-photo-essay> (accessed November 18, 2022). All the images of this collection can be viewed online via this link. [↑](#endnote-ref-5)
6. Gideon Mendel, *Dhzangal* (London: Gost, 2017). [↑](#endnote-ref-6)
7. Cf Roger Luckhurst, “The Contemporary London Gothic and the Limits of the ‘Spectral Turn’,” *Textual Practice* 16, no. 3 (2002): 527-46, 534. [↑](#endnote-ref-7)
8. George Orwell, *Nineteen Eighty-Four* (Project Gutenberg 2001), <https://gutenberg.net.au/ebooks01/0100021h.html> (accessed November 18, 2022). [↑](#endnote-ref-8)
9. Gassan Kanafani, *Men in the Sun and Other Palestinian Stories*, trans. H. Kilpatrick (London: Lynne Rienner, 1999). [↑](#endnote-ref-9)
10. Gerald V. O’Brien, “Indigestible Food, Conquering Hordes, and Waste Materials: Metaphors of Immigrants and the Early Immigration Restriction Debate in the United States,” *Metaphor and Symbol* 18, no. 1 (2003) 33, 41ff; Theresa Catalano and Andreas Musolff, “‘Taking the Shackles off’: Metaphor and Metonymy of Migrant Children and Border Officials in the U.S.,” *DigitalCommons@University of Nebraska – Lincoln* (2019): 25-6; Ana Otto Santa, “Empirical analysis of anti-immigrant metaphor in political discourse,” *University of Pennsylvania Working Papers in Linguistics*, Article 19, 4 no.1 (1997); Jonathan Charteris-Black, “Britain as a container: immigration metaphors in the 2005 election campaign,” *Discourse & Society* 17, no. 5 (2006): 563, 572. [↑](#endnote-ref-10)
11. Andreas Philippopoulos-Mihalopoulos, “Flesh of the Law: Material Legal Metaphors,” *Journal of Law and Society* 43, no. 1 (2016): 45-65, 54. [↑](#endnote-ref-11)
12. Elisabeth El Refaie, “Metaphors we discriminate by: Naturalized themes in Austrian newspaper articles about asylum seekers,” *Journal of Sociolinguistics* 5, no. 3 (2001): 352, 359-60. [↑](#endnote-ref-12)
13. Ibid, 358. [↑](#endnote-ref-13)
14. Charteris-Black, “Britain as a container,” 571-3. [↑](#endnote-ref-14)
15. Otto Santa, “Empirical Analysis,” 323. [↑](#endnote-ref-15)
16. Catalano and Musolff, “Taking the Shackles off”, 26. [↑](#endnote-ref-16)
17. Melki, Al-Doumy and Bernardi,“Risking the Channel”. [↑](#endnote-ref-17)
18. Ibid. [↑](#endnote-ref-18)
19. Desmond Manderson, “Bodies in the Water: On Reading Images More Sensibly,” *Law & Literature* 27, no. 2 (2015): 279, 286. [↑](#endnote-ref-19)
20. Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (Cambridge: Cambridge University Press, 2016), 43. Mann probably has in mind Hannah Arendt’s own expression for stateless people ‘outside the pale of the law’ (Hannah Arendt, *The Origins of Totalitarianism,* (Allen & Unwin, London 1958) 277, 286, 295). [↑](#endnote-ref-20)
21. Ibid, 284. The phrase is a quotation of John Ruskin’s commenting on Turner’s painting. [↑](#endnote-ref-21)
22. Esther Peeren, *The Spectral Metaphor: Living Ghosts and the Agency of Invisibility* (2014: Palgrave Macmillan, 2014), 14. Peeren herself draws heavily on Jacques Derrida, *Spectres of Marx* (New York: Routledge, 1994). [↑](#endnote-ref-22)
23. See Jon Stratton, “Zombie Trouble: Zombie texts, bare life and displaced people,” *European Journal of Cultural Studies* 14, no.3 (2011): 265–281. [↑](#endnote-ref-23)
24. Penny Crofts and Anthea Vogl, “Dehumanized and demonized refugees, zombies and *World War Z*,” *Law and Humanities* 13, no. 1 (2019): 29-51. [↑](#endnote-ref-24)
25. Mann, *Humanity at Sea*, 174. [↑](#endnote-ref-25)
26. Justine Poon, “How a Body becomes a Boat: The Asylum Seeker in Law and Images,” *Law & Literature* 30, no. 1 (2018): 105, 109, 110-111. [↑](#endnote-ref-26)
27. Corina Stan, “A life without a shoreline: Tropes of refugee literature in Jenny Erpenbeck’s *Go, Went, Gone*,” *Journal of Postcolonial Writing* 54, no. 6 (2018): 802. [↑](#endnote-ref-27)
28. Poon, “How a Body”, 115. [↑](#endnote-ref-28)
29. Poon, “How a Body”, 115. My emphasis. [↑](#endnote-ref-29)
30. Slaughter, ‘Enabling Fictions and Novel Subjects’, 1417. [↑](#endnote-ref-30)
31. For an example of the refugee story in the form of memoir, see Behrouz Boochani, *No Friend but the Mountains: The True Story of an Illegally Imprisoned Refugee*, trans. O. Tofighian (Basingstoke: Picador, 2019) and the biographical film *The Swimmers* (El Hosaini, Working Title/Netflix, 2022). For testimonies translated into activist creative writing, see David Herd and Anna Pincus, eds., *Refugee Tales* (Manchester: Comma Press, 2016) and Loraine Masiya Mponela, *I Was Not Born a Sad Poet* (Kindle Direct Publishing, and Counterpoint Arts, 2022); for a collection of entirely imaginative representations of refugees, see Lucy Popescu, *A Country to Call Home: An anthology on the experiences of young refugees and asylum seekers* (E-book: Unbound, 2018). [↑](#endnote-ref-31)
32. Woolley, “Narrating the ‘Asylum Story’”. [↑](#endnote-ref-32)
33. Vogl, “The Genres and Politics,” 82-3. [↑](#endnote-ref-33)
34. See Joe Murphy and Joe Robertson, “The first steps: across Europe with Little Amal,” *Index on Censorship* 50, no. 4 (2022): 66-69; Janet Banfield, “Walking with Amal: the politics of the stranger,” *Cultural Geographies* 29, no. 4 (2022): 603-609. [↑](#endnote-ref-34)
35. Amelia Gentleman, “‘People felt threatened even by a puppet refugee’: Little Amal’s epic walk through love and fear” *Guardian*, October 18, 2021, <https://www.theguardian.com/stage/2021/oct/18/threatened-puppet-refugee-little-amals-epic-walk> (accessed January 11, 2022). [↑](#endnote-ref-35)
36. Amelia Gentleman, “Teddies and teargas canisters: what remained in the Calais camp” *Guardian*, December 30, 2016, <https://www.theguardian.com/world/2016/dec/30/teddies-tear-gas-canisters-what-remained-calais-camp> (accessed November 18, 2022); Gost, <https://gostbooks.com/product/dzhangal/> (accessed November 18, 2022); *Dzanghal: the Act of Collecting* (Gideon Mendel, 2016) <https://gideonmendel.com/dzhangal/> (accessed November 18, 2022). [↑](#endnote-ref-36)
37. Stephen Clingman, “Rights, Routes, and Refugees: The Fiction of Caryl Phillips,” *Law & Literature* 27, no. 3 (2015): 365, 368. [↑](#endnote-ref-37)
38. Mann, *Humanity at Sea*, ch.5 and ch.6. [↑](#endnote-ref-38)
39. Vogl, “The Genres and Politics,” 87-88, 89-95. [↑](#endnote-ref-39)
40. Cathryn Costello, “Article 31 of the 1951 Convention Relating to the Status of Refugees,” (Division of International Protection, *UNHCR*, July 2017), 7. [↑](#endnote-ref-40)
41. According to the then Home Secretary, “In 2016, the British people withdrew their consent to be governed - in part - by the European Union. They also withdraw their support for a broken immigration system. We, therefore, have a democratic mandate and imperative to fix it.” (Rt Hon Priti Patel MP, ‘Home Secretary Priti Patel speech on immigration’, *Home Office*, May 24, 2021, <https://www.gov.uk/government/speeches/home-secretary-priti-patel-speech-on-immigration> (accessed January 11, 2023). [↑](#endnote-ref-41)
42. Rt Hon Priti Patel MP, “Home Secretary opening speech for Nationality and Borders Bill” (Home Office, July 19, 2021), <https://www.gov.uk/government/speeches/home-secretary-opening-speech-for-nationality-borders-bill> (accessed November 18, 2022), emphasis added. [↑](#endnote-ref-42)
43. Lord Wolfson, Nationality and Borders Bill (817 Lords Hansard, 5 Jan 2022), col 572, emphasis added. [↑](#endnote-ref-43)
44. Rt Hon Priti Patel MP, “Home Secretary opening speech”. [↑](#endnote-ref-44)
45. *R v Asfaw* [2008] UKHL 31, para 9. Cf Costello, “Article 31 of the 1951 Convention”, who summarizes the object of Article 31 as “non-penalization”, 5ff. [↑](#endnote-ref-45)
46. *Convention Relating to the Status of Refugees* (UN, 1951), Article 31(1). [↑](#endnote-ref-46)
47. NABA, s 12. [↑](#endnote-ref-47)
48. NABA, s 12(5). [↑](#endnote-ref-48)
49. NABA, s 40(2): increasing from the 6 months already available under s 24 of the Immigration Act 1971. [↑](#endnote-ref-49)
50. NABA, s 38, reducing from 2 years, previously set by the Nationality, Immigration and Asylum Act 2002, s 72. [↑](#endnote-ref-50)
51. NABA, s 16, amending Part 4A of the Nationality, Immigration and Asylum Act 2002. Inadmissibility due to connection with a safe third country (for s 16) is framed in the Act as if it were a separate consideration from illegal entry (s 12). However in practice the short range of the small boats typically used to ferry migrants to the UK means that one usually implies the other. [↑](#endnote-ref-51)
52. “Borders Act to overhaul asylum system becomes law” (Home Office, 28 April 2022), <https://www.gov.uk/government/news/borders-act-to-overhaul-asylum-system-becomes-law> (accessed November 18, 2022). For critical commentary of this initiative, see UNHCR, “UK Migration and Economic Development Partnership with Rwanda”, n.d. <https://www.unhcr.org/uk/uk-immigration-and-asylum-plans-some-questions-answered-by-unhcr.html> (accessed November 18, 2022). [↑](#endnote-ref-52)
53. Dominic Casciani, “Fewer than 100 migrants arrested for arriving in UK illegally” (BBC News, December 12, 2022), <https://www.bbc.co.uk/news/uk-63938698> (accessed December 13, 2022). [↑](#endnote-ref-53)
54. “Suella Braverman – 2022 Speech to Conservative Party Conference” *UKPOL*, October 4, 2022 <https://www.ukpol.co.uk/suella-braverman-2022-speech-to-conservative-party-conference/> (accessed 5/12/22) [↑](#endnote-ref-54)
55. Nick Timothy and Karl William, “Stopping the Crossings: How Britain can take back control of its immigration and asylum system,” *Centre for Policy Studies*, December 5, 2022, <https://cps.org.uk/wp-content/uploads/2022/12/CPS_STOPPING_THE_CROSSINGS-V2.pdf> (accessed December 5, 2022), emphasis added. [↑](#endnote-ref-55)
56. Quoted by Andrew Sparrow, “What Sunak said about proposed new law to stop people arriving in UK illegally remaining in country,” *Guardian*, December 13, 2022, <https://www.theguardian.com/politics/live/2022/dec/13/rishi-sunak-conservatives-tory-labour-strikes-latest-updates?filterKeyEvents=false&page=with:block-63987b9b8f085e682053ee37#block-63987b9b8f085e682053ee37> (accessed December 13 2022) (emphasis added). [↑](#endnote-ref-56)
57. Peeren, *The Spectral Metaphor*, 17. [↑](#endnote-ref-57)
58. Melki, Al-Doumy and Bernardi, “Risking the Channel”. [↑](#endnote-ref-58)
59. As noted above, Stephen Clingman’s critique of legal personhood also proposes Bertha Mason of *Jane Eyre* as the symptomatic “ghost” of law: “the shadowed double” and “secret history” that haunts the main narrative of “recognition and inclusion” (368); Cf Robert Spoo, “Ah, you publishing scoundrel!”: A Hauntological Reading of Privacy, Moral Rights, and the Fair Use of Unpublished Works’ *Law & Literature* 25, no. 1 (2013): 85-102 – Spoo refers to the moral rights of dead authors causing fear for living editors by ‘haunting’ the fair use doctrine; See also Goodrich on figurations of extra-legality that haunt the law by reminding it of its own extra-legal origins - Peter Goodrich, “Mos-Piraticus: On the Haunting and Infesting of the Seas,” *Law & Literature* 29, no. 2 (2017): 193-221. [↑](#endnote-ref-59)
60. See Giorgio Fabio Colombo, “Sakura Sogoro: Law and Justice in Tokugawa Japan through the Mirror of a Ghost Story,” *Law and Literature* 29, no. 2 (2017): 329-344 – on the role of the ghost as a popular imaginative agent of redress for criminal wrongs that went unpunished in 17th – 19th Century Japan. [↑](#endnote-ref-60)
61. Desmond Manderson, “Force of Wall,” *Law & Literature* 33, no. 3 (2021): 365-388, 375. [↑](#endnote-ref-61)
62. Shakespeare, *Hamlet*, Act I, scene v. [↑](#endnote-ref-62)
63. Orwell, *Nineteen Eighty-Four*. [↑](#endnote-ref-63)
64. See Martha C. Nussbaum, “The Death of Pity: Orwell and American Political Life,” in *On Nineteen Eighty-Four: Orwell and Our Future*, ed. Abott Gleason, Jack Goldsmith and Martha C. Nussbaum(Princeton University Press 2005), 279. [↑](#endnote-ref-64)
65. On this ‘zero-sum’ logic in the context of political rhetoric on migrants and Orwell, see Janice Ho, “Europe, Refugees and Nineteen Eighty-Four,” in *The Cambridge Companion to Nineteen Eighty-Four*, ed. Nathan Waddell (Cambridge: Cambridge University Press, 2020), 141. [↑](#endnote-ref-65)
66. Lyndsey Stonebridge, *Placeless People: Writing, Rights, and Refugees* (Oxford: Oxford University Press, 2018), 89ff. [↑](#endnote-ref-66)
67. Kanafani, *Men in the Sun*, 74. [↑](#endnote-ref-67)
68. Ibid, Hilary Kilpatrick, Introduction, 9-15. Kilpatrick notes that, in response to criticism of the story’s suggestion that the men would simply expire in silence with no protest, the film adaptation of the novel (*The Deceived*, 1972) changes the ending to show the men loudly banging on the side of the tank (11). [↑](#endnote-ref-68)
69. Bishupal Limbu, “Illegible Humanity: The Refugee, Human Rights, and the Question of Representation,” *Journal of Refugee Studies* 22, no. 3 (2009): 257, 276. Limbu attributes the quoted passage to Barbara Harlow, *After Lives: Legacies of Revolutionary Writing* (London: Verso, 1996), 53. [↑](#endnote-ref-69)
70. Hannah Arendt, *The Origins of Totalitarianism* (Allen & Unwin, London 1958), 300. [↑](#endnote-ref-70)