**Clamouring for Legal Protection: What the Great Books Teach Us About People Fleeing from Persecution,** Robert F Barsky, Oxford, Hart Publishing, 2021, £75 (Hdbk), ISBN: 978-1-50994-315-9

*and*

**The Walk**, Amir Nizar Zuabi (artistic director), David Lan and Tracey Seaward (producers), The Walk Productions, 2021.

When it comes to examples of dramatic conflict between national and international legal orders, and between vulnerable humanity and the machinery of the state, there can be few topics to rival that of the treatment of people feeling persecution. The British government’s current policy of diverting refugees arriving on its shore in small boats into the Rwandan asylum system is at the very least in serious tension with the Refugee Convention:[[1]](#footnote-1) the subject of legal challenge from its very inception,[[2]](#footnote-2) the policy faces further challenge in the High Court in September 2022 on human rights grounds. In Italy, the government in apparent defiance of the international duty of rescue at sea, decreed in April 2020 that its ports were ‘unsafe’ for the disembarkation of migrants rescued in the Mediterranean Sea due to the impact of COVID-19.[[3]](#footnote-3) In the United States, the Trump administration in March 2020 invoked ‘Title 42’ - a public health measure that effectively closed the border to migrants from Mexico, Guatemala, Honduras, and El Salvador including those fleeing persecution. The Biden administration’s attempt to lift Title 42 was thwarted in May 2022 by a Louisiana Federal Court, ensuring the continued removal of migrants crossing the United States’ southern border or arriving at ports of entry despite the Centers for Disease Control signalling that the measure is no longer necessary.[[4]](#footnote-4)

Readers of arts and humanities contributions in this area are now used to scholars framing the relevant problem in terms of a refugee’s ‘right to have rights’ within an international legal order dominated by nation states (a framing typically credited to Hannah Arendt)[[5]](#footnote-5) and by the enduring legacy of colonialism.[[6]](#footnote-6) The legal, cultural and literary histories of refugee migration by, for example, Lynsey Stonebridge and Itamar Mann have exposed the consequent shortcomings of western liberal humanitarianism, and associated ideas of human rights and human dignity – shortcomings that are especially pronounced for people who find themselves outside of the protective borders of nation states, or as non-citizens within inhospitable states.[[7]](#footnote-7) Bisecting this literature is a further scepticism about the critical potential of ‘law and literature’ scholarship in the area of refugee, asylum and migration. Quite apart from the well-known general criticisms of legal academics looking to literature as a means of supplementing the limitations of dry, formal and rule-bound law,[[8]](#footnote-8) scholars such as Joseph R Slaughter, and more recently Anthea Vogl, Agnes Woolly and Justine Poon have proposed further that textual devices borrowed from literature are tools useful primarily to help border officials in destination nation states *exclude* migrants. [[9]](#footnote-9) For example, if the ‘good migrant refugee’ story is one about an individual who strives valiantly and honestly to overcome personal adversity and thereby finds his or her place in a new society then this privileges those who can present themselves in a way that chimes with the genre of the *Bildungsroman*.[[10]](#footnote-10) For the refugee, that means in practice achieving narrative consistency (i.e. facts that can be corroborated, without contradictions, memory lapses or decisions that confound logic), personal credibility and integrity (absent moral compromises such as having paid people smugglers) and awareness of the demands of transitioning into a new political culture (allowing for successful incorporation into society).

Against this background of scepticism and doubt then, Robert F Barsky’s new book, *Clamouring for Legal Protection: What the Great Books Teach Us About People Fleeing from Persecution*,[[11]](#footnote-11) and the ambitious ongoing art project *The Walk*[[12]](#footnote-12) are both striking examples of a bold return to humanitarian ‘first principles’ and to a belief in the creative arts as agents of empathic transformation. Barsky spells out the premises of his book in his introduction as follows: 1) that narrowly legal perspectives on refugees, migration and asylum afford only a partial picture, and that to understand the refugee experience more broadly, we need to use knowledge from outside of law that helps us to broaden that perspective; 2) that there is a need to foster a more generous and more inclusive sense of solidarity with and empathy for the lives of people forced to flee to find safety; 3) that there is a need for more effective means for critiquing and challenging populist rhetoric directed at punishing and excluding the migrant ‘other’; that in the Great Tradition of Great Books we have a veritable treasure trove of characters and stories that can help us made good all three of these deficits.

In *Clamouring for Legal Protection*, the five main chapters are organised thematically, and each considers one strand of the migrant refugee experience against selected works of western literature. Chapter 1 analyses the experience of the COVID-19 pandemic in light of literary works that deal with the themes of plagues and lockdowns by Camus, Boccaccio, Defoe and Poe. Chapter 2 focuses on the routes by which migrants attempt to travel and the people with the necessary knowledge and skills for guiding and assisting them in their movement, and here Barsky examines narratives from the Bible (Exodus), Dante, Homer and Dickens as stories about migrants being guided to their destination. Chapter 3’s theme is the obstacles that migrants face and the lengths that state authorities go to divert, confound, and obstruct them from making and succeeding in their claims for legal protection: Kafka, Aeschylus, Hardy, Dostoyevsky, and Ovid all provide canonical examples of relevant experiences. Chapter 4 is about the difficulties for migrants in making a viable new home in the lands to which they travel, and a store of characters struggling to do just that is mined from the works of Milton, H.G. Wells, Melville, Mary Shelley and Byron. Finally, Chapter 5 tackles the issue of political rhetoric that demonizes migrants, using the lens of ‘vampire’ and ‘monster’ literature of Stoker, Milton, Nabokov, and Mary Shelley. Barsky’s book is a decidedly and boldly traditional sort of literary jurisprudence, which finds a good deal in common with the work of, say, Martha C. Nussbaum (albeit she is not cited) in positioning literature as a source of information about vulnerable lives that assists law students to become more rounded, aware, and empathetic.[[13]](#footnote-13)

When it comes to following through on its premises, Barsky’s scholarly method is also disarmingly simple. The approach taken here typically involves reviewing a broad sweep of literary depictions of migration and supplication in their broadest senses, including all kinds of journeys, and all kinds of reasons for making journeys. In each case, Barsky asks rhetorically (and paraphrasing the author here): *don’t you see how the predicaments and challenges faced by the protagonists of the Great Books remind us of the predicaments and challenges faced by vulnerable migrants or would-be migrants today?* Readers are reminded how, for example, like migrants awaiting an asylum decision, Kafka’s Joseph K struggles to understand the administrative structures that ensnare him and tries to live under constant threat of punishment (*The Trial*); how, like modern populations locked down during the COVID-19 pandemic, Camus’s inhabitants of Oran in *La Peste* are desperate to flee the plague visiting their city; furthermore how, like migrants subject to the will of capricious nation states, Odysseus’s fate falls to the mercy of various gods and island governors; how Cato’s astonishment at Dante’s ability to move from Hell to Purgatory (*The Divine Comedy*) reminds us of the propensity for laws of migration suddenly to change; how Scrooge’s dealings in *A Christmas Carol* with his three ghost-guides mirrors the requirement for migrants to say the right things to various different authorities; how the Dark Angels of Milton’s *Paradise Lost* must, like the former wealthy and middle-class people of Syria, learn to adapt to displacement by war and expulsion by a hostile ruler and to life in inhospitable circumstances; how Dostoyevsky’s characters such as Raskolnikov (*Crime and Punishment*) and Ippolit Terentyev (*The Idiot*), like asylum seekers relaying their experiences to immigration officials, find release in personal confession; how, like Frontex or the Italian coastguard, the rescuers-at-sea depicted in H.G. Wells’s *Dr Moreau’s Island* can be reluctant or appear in frighteningly inhuman garb; how the populist speeches about the moral, public health and legal dangers of migrants-as-potential-terrorists and carriers of disease echo Van Helsing’s warnings in *Dracula* about the hidden menace of vampires, or how the consequences of the social exclusion of Frankenstein’s monster breeds the sort of resentment and resistance to authority that can be dangerous in migrant populations.

There is plenty on offer here to delight and surprise readers, at least those coming from a legal background with an interest in migration and a hitherto unquenched thirst to broaden their knowledge of literature. The sheer breadth of the literary sources discussed means that there must be few readers who are not scholars of western Classics both ancient and modern that will be familiar with all of Barsky’s primary sources. Indeed, readers with have no prior grounding in the canon of western literature can expect to find a wealth of exciting material here. Barsky’s method is no mere scattergun either: particular works (notably Milton’s *Paradise Lost*, but also Mary Shelley’s *Frankenstein* and Kafka’s *the Trial*) are discussed in greater detail, providing helpful thematic focus. Some of the connections that Barsky draws between literary texts and characters are also highly thought-provoking in ways relevant for the migrant and refugee themes: that in his travels by car with adolescent Lolita, Nabokov’s Humbert Humbert is ‘another kind of Dracula’ and like Stoker’s novel, *Lolita* provides unfortunate ammunition to anti-immigration sentiment (p.247); that the sickly children ‘Want’ and ‘Ignorance’ that Scrooge finds hiding in the skirts of the Second Ghost of *A Christmas Carol* mirror the children of Satan – ‘Death’ and ‘Sin’, conceived by raping his own daughter and who in turn ravage the same woman – lending further dark undertones to the idea of transit between realms (p.229-233). Many readers will also, I am sure, be fascinated to learn that *Frankenstein* is a ‘climate change novel’ (p.173), inspired, like Percy Shelley’s *Mont Blanc*, John Polidori’s *Vampyre* and Lord Byron’s *Darkness, Heaven and Earth* and *Cain*, by the volcanic eruption of 1816 and the resulting ‘year without summer’ (p.168). These are not novel insights in themselves, but their setting in the context of the broader concern about the figure of the migrant here gives them fresh meaning. Helpfully for readers from a legal background, the literary works are themselves typically described in enough detail (and indeed quoted at sufficient length) that even those with no prior knowledge can appreciate their relevance to the point being made.

For all the reasons given above, *Clamouring for Legal Protection* is an enjoyable book and one worth spending time with. Having said that, Barsky’s very direct and accessible style and approach does come with limitations. Readers should notexpect to find here any sustained considerations on questions of theory, be it about literature, humanities scholarship, the endeavour of understanding legal narrative and the respective role of literary and legal methods in that endeavour. Barsky does not engage with issues of literary criticism or interpretation, and nor does he delve deeply into any area of legal doctrine or policy. The book does not offer (and to be fair, nor does it claim to offer) a new way of reading the relevant texts, nor does it reveal new meanings within them. As for the capitalized ‘Great Tradition’ of ‘Great Books’: this is similarly not the place to find a detailed and self-critical examination or reappraisal of these concepts.[[14]](#footnote-14) The same observation applies to the migrant refugee experience itself: there is no cache of first-hand testimony on display in this book and no new (and thus potentially hitherto unfamiliar) collection of hitherto unknown or unscrutinised migrant ‘stories’. Nor has Barsky conducted the sort of mining of the trove of secondary literature that might be expected of a work that bills itself as ‘a novel approach to law and literature’ (p. *i*): just one article is cited from the journal *Law and Literature,*[[15]](#footnote-15) and none at all from any of the other journals where ‘law and literature’ work are chiefly to be found (*Law, Culture and Humanities*, *Law and Humanities*, the *Yale Journal of Law and the Humanities*, *Law Text Culture* or *Pólemos*)*.* Furthermore, the bibliography lists only the primary literary work discussed (and these in the free online form where there is one), not secondary sources.

Barsky’s choice of texts are also somewhat idiosyncratic: for example, why discuss *The Trial* (and the already familiar parable within that novel ‘Before the Law’) but never mention *The Castle* (the latter featuring Kafka’s most heart-breaking scene of supplication to legal authority)? Why, by the same token, *A Christmas Carol* (in which the travel is more metaphorical than actual) and *Martin Chuzzlewitt* (travel for commercial adventure) and not Dickens’s many memorable (and much more relevant, for Barsky’s purposes) characters fleeing persecution and seeking protection: Oliver Twist’s desperate walk to London to escape a cruel master, or David Copperfield’s flight from his overbearing step-father Mr Murdstone, or Little Nell’s attempts to be free of the malevolent Quilp and other pursuers in *The Old Curiosity Shop*? Shakespeare is another name here conspicuously absent. Barsky does refer in the Preface to Shakespeare’s contribution to *The Book of Sir Thomas More*, and the ‘mountainish inhumanity’ shown to strangers in inhospitable lands. But of the plays themselves or their vast array of itinerant wanderers, vagabonds, suppliants, and victims of capricious rulers and judges: not a word. These observations are not necessarily criticisms of the book judged purely on its own terms, and no book can cover everything. But readers might have expected to see more in terms of explanation from the author as to the choices he made regarding research methods, sources, or about where this book sits within broader humanities and law and literature conversations.

The parallels between the circumstances of fictional characters and the vulnerabilities of real migrants that Barsky’s wants his book to elucidate, and a consequent increase of empathy and solidarity for the latter he wants it to bring about, are aims ambitiously also pursued in the art project *The Walk*. The project features a 3.5m tall puppet of a Syrian child refugee which during June to November 2021 completed a symbolic walk from Gaziantep in Turkey near to the Syrian border to the UK, greeted by crowds from town to town along the way. ‘Little Amal’ is, so the backstory goes, a child searching for her mother (who had travelled on ahead of her), and represents the many thousands of unaccompanied child refugees making the same journey. The *Bildungsroman* happily did not end in 2021: Little Amal visited thirteen cities in the UK in June 2022 as part of Refugee Week, and at time of writing is set to cross the Atlantic to ‘walk New York’ from September to October 2022 carrying the message ‘Don’t forget about us’.[[16]](#footnote-16)

Little Amal arrived in Britain at the port of Folkestone on October 19th 2021, and I attended her appearance in front of the west door of St. Paul’s Cathedral in Central London on October 23rd (see figure 1).



Figure : 'Little Amal' meets a crowd of people, including this correspondent, at St Paul's Cathedral, Ludgate Hill, London, 23rd October 2021 (copyright: David Gurnham). ‘The Walk’, by Amir Nizar Zuabi (artistic director), David Lan and Tracey Seaward (producers), The Walk Productions, 2021.

Much of what I saw was scripted: the puppet’s walk up the street to the appointed meeting place, the speeches from gathered local community and faith leaders that welcome her to Britain and to London, the music supplied by a local band and choir (‘My Girl’ and ‘Consider Yourself At Home’), the ritual of Little Amal knocking on the West door of the cathedral and being ceremoniously brought inside, and her final exit from the site and procession away and across the Millennium Bridge accompanied by musicians, flagbearers and invited members of the local community. What could not be scripted, and that surely goes a long way also to supporting the argument of *Clamouring for Legal Protection*, is the palpable sense of goodwill, solidarity and excitement on display amongst the gathered crowd that would be incomprehensible but for the fact that this was not just *any* 3.5m puppet on a journey, but one with a particular social and ethical meaning. Barsky makes a point of not writing about artistic or journalistic responses to the current migrant crisis in his book, and for this reason *The Walk* fall slightly outside of the remit of *Clamouring for Legal Protection*. Nonetheless, the effectiveness of *The Walk* depends on precisely the same assumption as does the argument in *Clamouring* – that people care about the fate of enduringly popular fictional creations and can be brought to extend that care to real people in vulnerable situations.

The welcome Little Amal received in London and many other places besides is the sort of reception traditionally reserved only for truly celebrated figures. It seems cruelly unnecessary to observe that this sort of reception is generally the opposite of the real experiences of refugees who, at least in Britain, are treated in immigration and asylum policies as an administrative burden and a drain on resources at best and a deadly security risk at worst. The atmosphere of celebration at the performance of the arrival of a Syrian refugee I witnessed, and that was repeated across scores of locations across Europe and involving tens of thousands of people, can therefore only be a fantasy of what we would wish our society (which generally does not extend such a welcome to refugees) to be like, or what it might be like in the most hopeful dreams of a child like Amal. The strength of the project is that by showing us how excitement of this kind may be generated for a puppet freighted with symbolism, a kinder and more generous society and legal regime for *people* might yet be possible if we want it to be. The project proposes that there might actually be a wellspring of fellow-feeling that could be extended to impact the lives of actual people in the position that Little Amal is supposed to be. As a fantasy or a dream of a different sort of society to the one we currently have, *The Walk* stands as a rebuke to governments that prioritise border control, security and nativist sentiments, and to populations who vote for such governments.

*The Walk* could not of course prevent the passage of the British government’s odious Nationality and Borders Act in the Spring of 2022 – legislation making a person’s arrival on Britain’s shore without prior permission an offence punishable for up to four years in prison and a reason to deny access to the British asylum system. Amal’s appearances in New York in the Fall of 2022 are similarly unlikely to check the anti-immigration policies to be expected if a populist Republican candidate wins the US Presidency in 2024. Nonetheless, the surge of positive feeling generated by projects like *The Walk* are valuable reminders that there are important purposes to which the creative artistic imagination may be applied. The current ‘state of play’ of relevant academic scholarship may now have moved ahead of that observation, but it is nonetheless one that remains a powerful presence at the crossroads of law, literature and culture.

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1. Article 31(1) of the 1951 Convention relating to the Status of Refugees says: ‘The Contracting 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.’ [↑](#footnote-ref-1)
2. The first flight to Rwanda, scheduled for 14 June 2022, was stopped at the last minute after an interim measure by the European Court of Human Rights in *K.N. vs United Kingdom* (app. 28774/22, 14 June 2022) stipulating that the deportation must be paused to allow time for an ongoing judicial review to complete, in order to avoid ‘a real risk of irreparable damage’. [↑](#footnote-ref-2)
3. Inter-Ministerial Decree, Decree 150, Rome 7 April 2020. On the international duty, see IMO Resolution A 920 (22): safety measures and procedures for the treatment of persons rescued at sea (adopted 29 Nov 2001). On public health measures impacting migrants in Europe more generally, see Amnesty International, *Policing the Pandemic: Human Rights Violations in the Enforcement of Covid-19 Measures in Europe* (EUR 01/2511/2020). [↑](#footnote-ref-3)
4. See <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>. [↑](#footnote-ref-4)
5. Hannah Arendt, *The Origins of Totalitarianism* (Allen & Unwin, London 1958). [↑](#footnote-ref-5)
6. Edward W. Said, *Orientalism* (London: Penguin, 2003). [↑](#footnote-ref-6)
7. Lyndsey Stonebridge, *Placeless People: Writing, Rights, and Refugees* (OUP 2018); Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (CUP 2016). [↑](#footnote-ref-7)
8. Jane B Baron, ‘Interdisciplinary Legal Scholarship as Guilty Pleasure: the case of Law and Literature’ in Michael Freeman (ed.), *Current Legal Issues* Vol 2 (OUP 1999) 21; Guyora Binder and Robert Weisberg, *Literary Criticisms of Law* (Princeton University Press 2000); Desmond Manderson, ‘Mikhail Bakhtin and the Field of Law and Literature,’ (2012) 12(2) Law, Culture and the Humanities 226; Olson, G. ‘Law is not Turgid and Literature not soft and Fleshy: Gendering and Heteronormativity in Law and Literature Scholarship’ (2012) Australian Feminist Law Journal, 36(1), 6. [↑](#footnote-ref-8)
9. Joseph R Slaughter, ‘Enabling Fictions and Novel Subjects: The *Bildungsroman* and International Human Rights Law’ (2006) 121(5) Publications of the Modern Language Association 1405; Anthea Vogl, ‘The Genres and Politics of Refugee Testimony’ (2018) 30(1) Law & Literature 81; Agnes Woolley, ‘Narrating the “Asylum Story”: Between Literary and Legal Storytelling’ (2017) 19(3) Interventions 376; Justine Poon, ‘How a Body becomes a Boat: The Asylum Seeker in Law and Images’ (2018) 30(1) Law & Literature 105. [↑](#footnote-ref-9)
10. *Bildungsroman*:a novel concerned with educational or spiritual growth and character formation, classic examples being *David Copperfield* and *Jane Eyre*. [↑](#footnote-ref-10)
11. Hart Publishing, 2021. [↑](#footnote-ref-11)
12. Amir Nizar Zuabi (artistic director); David Lan and Tracey Seaward (producers), 2021 <<https://www.walkwithamal.org/>> accessed Aug 22 2022. [↑](#footnote-ref-12)
13. Martha C Nussbaum, ‘Poets as Judges: Judicial Rhetoric and the Literary Imagination’ (1995) 62(4) The University of Chicago Law Review 1477. [↑](#footnote-ref-13)
14. See instead Resnik, J. ‘Constructing the Canon’ (1990) Yale Journal of Law and the Humanities, 2(1), 221. [↑](#footnote-ref-14)
15. Penelope Pether, ‘Comparative Constitutional Epics’ (2009) *Law and Literature* 21(1) 106–28. [↑](#footnote-ref-15)
16. St Anne’s Warehouse, ‘14 September – 2 October 2022: Little Amal Walks New York’ (The Walk Productions and St Anne’s Warehouse, 2022). <<https://www.walkwithamal.org/new-york-city-2022/>> accessed 22 Aug, 2022). [↑](#footnote-ref-16)