Foreword

In my time in the Court of Appeal, the House of Lords and latterly the Supreme Court, there is no doubt as to the major growth area: public law disputes in relation to foreign residents who had gained entry to this jurisdiction, usually unlawfully, and who did not wish to be returned to their own countries. Some advanced arguable claims to refugee status, others invoked the Human Rights Act, contending that it would contravene the Convention to remove them to countries where their human rights would not be respected.

To give a recent example, in 2012 the Supreme Court reviewed the law relating to claims for asylum for Zimbabwean refugees in the decision: RT (Zimbabwe) and others v Secretary of State for the Home Department.\(^1\) RT and others were a group of Zimbabwean Nationals whose claim for asylum had been rejected by the Asylum and Immigration Tribunal. Specifically, they claimed they would face persecution if they were returned to their country because of their lack of political opinion. In Zimbabwe, a lack of political opinion is seen as a failure to show loyalty to the prevailing political regime: the Zimbabwe African National Union – Patriotic Front (ZANU-PF). Under this regime, political apathy is akin to political opposition and it poses a real risk of persecution. The central issue is whether a claim for asylum could be overthrown in circumstances where individuals would be forced to lie about their lack of political beliefs to feign loyalty to a political regime and avoid persecution? On this point, the Court of Appeal examined the principles set in an earlier case: HJ (Iran) v Secretary of State for the Home Department.\(^2\) This case found it was no answer to the claim for asylum that a homosexual man could conceal his sexual identity to avoid persecution and that the Convention entitled individuals to live freely and openly in accordance with sexual identity. The Court of Appeal found that the principles in HJ (Iran) applied to the facts in this case; the Home Secretary brought an appeal against this decision; and the Supreme Court

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1\(^{[2012]}\) UKSC 38 on appeal from \([2010]\) EWCA Civ 1285.
2\(^{[2011]}\) AC 596.
unanimously dismissed the appeal. In coming to this decision, the court considered, amongst other items, freedom of thought and opinion and whether this extends to the freedom not to hold or express these. The Supreme Court agreed with the Court of Appeal, finding that it was correct to apply the principle set out in *HJ (Iran)*. Thus, individuals who are forced to lie about their absence of political beliefs, like individuals who are forced to conceal their sexual identity to avoid persecution, will not have their claims for asylum defeated. This is just one of many examples of the present day challenges and uncertainties in refugee law. Interestingly in this case, none of the appellants were political refugees in the ordinary sense of the word. In most cases, such claims to asylum would be less likely to go through. However, given the conditions in Zimbabwe, this proved to be an important exception.

Some of the most cogent cases were advanced by those the government was most anxious to remove for reasons of national security, and I have seen the development of principles of law, in which Strasbourg has been involved, in relation to such cases. At the same time, the majority of illegal immigrants are not able to plausibly invoke any recognised ground for being permitted to remain here. The procedural burden of dealing with their claims has been of concern to the government and to the judiciary alike.

The contributors to this timely collection of essays identify a number of areas where the basic humanity that underlies refugee law makes fresh claims for giving victims shelter in this country. These claims are made at a time when there has been growing public antagonism, encouraged by some organs of the media, against human rights in general and the demands of immigrants in particular.

One area that the media has given particular attention to is the perceived threat of terrorism. Concerns over our security have displaced more humanitarian concerns for the plight of others. After 9/11, the British Government decided that the threat of terrorism in Britain was such as to amount to a public emergency threatening the lives of the nation and purported, on that ground, to derogate from the Convention. Depriving people of protections under the Convention because of their beliefs or behaviour, however obnoxious, leads to the disintegration of society. A democracy cannot survive in such an atmosphere. The rights and fundamental freedoms guaranteed under the Convention are not just for some people. They are for everyone. Over the years, we have

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3 Lord Dyson gave the leading judgment with which Lord Hope, Lady Hale, Lord Kerr, Lord Clarke, Lord Wilson and Lord Reed agreed.
welcomed millions of immigrants to the United Kingdom from all corners of the globe. Many of these people have been refugees from countries where human rights were not respected. It is essential that these people, their children and their grandchildren should be confident that their adopted country treats them without discrimination and with due respect for their human rights.

Each author in this collection of essays is a leading scholar in the field of refugee law. They canvass, in meticulous detail, just some of the challenges facing refugee law today.

The first part of this collection begins with a chapter describing the state of crisis in refugee law considering pressures such as the influx of numbers on the asylum system. The next chapter provides a framework for conceptualising human rights in refugee law. It evaluates the sources of refugee law and the impact of a handbook for determining refugee status developed by the United Nations High Commissioner for Refugees. The final chapter in this part explores the idea of international humanitarianism in refugee law.

The second part of this collection turns to consider modern issues in refugee law including the rights of children, trafficked persons, those on gender related asylum and conscientious objectors to military service. How has the international community responded to these developments? Are there sufficient safeguards to protect the needs and specific vulnerabilities of these people? Each chapter critically considers these issues and more.

Chapters in the third and final part of this collection focus on the interplay of state interests, ethics, rights and gender. They critically consider important topics such as the securitization of asylum and human rights, the ethics of exclusion and the relationship between gender and the internal relocation of refugees.

This is an original and informed collection of essays covering common themes of refugee law and contemporary issues alike. All contributors should be commended on the wealth of knowledge, thought and perception that they bring to each topic discussed. Refugee law is by no means a static area of law; it is growing at a great pace. All of these chapters quite clearly demonstrate the ever changing position of refugees in the international community and the topics raised by each are as relevant now as they ever were.

I hope you enjoy this collection of essays as much as I did.

Lord Phillips of Worth Matravers
(former President of the UK Supreme Court, 2009–2012)