of oppressive technocracies. The author advocates a radically different alternative, moving away from top-down approaches towards the recognition of people suspended by formal systems, yet still finding ways to become part of our communities.

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Even if the appellant’s claimed activities in Afghanistan were substantiated, he was not entitled to asylum in any event. This was because his claim that he had fought against ISAF, if accepted, meant that he had been guilty of acts contrary to the purposes and principles of the United Nations and was therefore excluded from the definition of refugee by reason of article 1F(c) of the Refugee Convention.1

Yao Li’s _Exclusion from Protection as a Refugee: An Approach to a Harmonizing Interpretation in International Law_ analyses and interprets article 1F, the ‘exclusion clause’, of the 1951 Refugee Convention, which sets out the criteria by which certain individuals may be excluded from refugee protection, and ‘thus from a human rights protection regime’ (p 110). The exclusion clause found in article 1F is there to disqualify persons from the benefits of refugee status by reason of serious transgressions committed, in principle, prior to seeking asylum. The primary purposes of these exclusion clauses are to deprive the perpetrators of heinous acts and serious crimes of such protection, and to safeguard the receiving country from criminals who present a danger to that country’s security. While conducting this analysis, the author argues that the exclusion clause is a quasi-punitive provision and article 1F must ‘be construed by taking into account Criminal Law notions’ (p 7). Li provides ‘harmonizing interpretation’ as a means of interpretation of article 1F. ‘Harmonizing interpretation’ is a methodology in which conflicting legal regimes and purposes (p 7) are brought together and interpreted and balanced against each other for a more coherent international law. The author aims to apply this methodology to article 1F by balancing both refugee law and criminal law principles to achieve conciliation between the two, thereby applying both legal regimes so that one does not override the other (p 152). The study, therefore, also advances efforts to tackle difficulties arising from the fragmentation of international law as harmonizing interpretation seeks to offer a more consistent application of international law.

1 _Al-Sirri (FC) v SSHD_ [2012] UKSC 54, para 44.
The topic of this book is especially pertinent considering the revival of the exclusion clause in recent decades (p 2), rendering it a ‘regular feature in refugee status determination hearings’. This is due to a variety of factors, including an ‘increased interest in prosecuting international criminals arising out of the conflicts in, inter alia, the former Yugoslavia and Rwanda, recent terrorist attacks, and the endurance of refugee-producing armed conflicts (p 2), as well as the current panic concerning the arrival of asylum seekers in Europe and the growing fear of terrorism. The study thus discusses a particularly important and contentious clause in current affairs.

In chapter 2, the author attempts to explain why criminal law principles should be taken into consideration when interpreting article 1F. She does so by analysing the exclusion principle’s intersection with different legal systems, revealing that ‘exclusion lies at the intersection of Refugee Law, (International) Criminal Law, Human Rights Law and Extradition Law’ (p 110). The author begins by establishing the humanitarian purpose of refugee law and discussing the right to asylum, which she concludes may, under certain circumstances, amount to an obligation under the principle of non-refoulement (p 49). While doing so, she states that although the ‘confirmation of a customary rule of non-refoulement is more than wishful, it is doubtful that the current status [of the principle of non-refoulement] can indeed support the existence of such a norm’ (p 48). This is a surprising conclusion as non-refoulement is regarded by the majority of scholars as customary international law. Such a statement might have benefited from more in-depth analysis; however, as the author mentions, this is perhaps outside the scope of her study.

The author discusses the objectives of exclusion, after which she stresses that human rights obligations cannot be relied upon as a safety net when assessing the consequences of exclusion (p 60). In other words, exclusion cannot be applied simply because other human rights protections may be triggered. Rather, exclusion must be applied restrictively and with caution (p 59). A failure to do so, Li argues, would ‘run contrary to the object and purpose of each human rights convention to provide more protection’ (p 110). Additionally, applying the clause restrictively would not necessarily result in impunity, since the respective individual could also be criminally tried after being considered as a refugee (p 343). This is a welcome conclusion, particularly following recent developments in State practice where exclusion has become more central to status determination.

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The author then analyses how (international) criminal law is interlinked with exclusion in international refugee law by highlighting some of the parallels between criminal norms and the exclusion principle and concluding that the exclusion clause comprises various criminal law characteristics. This demonstrates the need for criminal law principles, for instance, that protect the rights of the accused, to be transferred and also applied during exclusion procedures (p 80). The author also discusses the significant influence of human rights law on both refugee law and international criminal law and the implications of this influence for the exclusion principle. Finally, she analyses the apparent intersections between exclusion and extradition law, demonstrating that ‘both areas of law have different purposes and mechanisms’ (p 109), as well as very limited similarities.

Chapter 3 considers several interpretative methods to integrate ‘Criminal Law, Human Rights Law and Extradition Law notions in the interpretation of Article 1F’ (p 161). The author’s proposed interpretation seeks to unify ‘the particularities of different fields of law into one single interpretation’ (p 113) in order to achieve a clearer and more consistent application of the law. She begins by outlining the need for such a harmonizing approach in order to achieve a consistent interpretation and thus, contribute to a ‘more coherent and therefore effective body of International Law’ (p 116). She then undertakes an analysis of the Vienna Convention on the Law of Treaties, which leads her once more to stress the necessary restrictive interpretation of the exclusion clause according to the principles of good faith, effectiveness, and the object and purpose of the Refugee Convention. She concludes by proposing a harmonizing interpretation resulting in an interpretation of article 1F which calls on criminal law provisions ‘also to be applied with due accuracy’ (p 162). The harmonizing interpretation proposed is based on the principle of systemic integration, pursuant to article 31(3)(c) of the Vienna Convention to bring together different notions and principles from separate legal regimes, and the principle of concordance, employed in German constitutional law, to identify to what extent each legal regime should be considered.

Finally, Chapter 4 ‘applies harmonizing interpretation to article 1F ..., taking due account of its quasi-criminal nature’ (p 163). The author begins by outlining the differences between an exclusion assessment and a criminal trial. She states that unlike criminal trials whereby there is a sentence which reflects the crime the individual has perpetrated, the result of an exclusion decision on the other hand is either yes or no and therefore does not consider any variation (p 340). To counteract this, the author proposes proportionality considerations within exclusion assessment in order for the ‘consequences [of exclusion] to be proportionate to the gravity of the committed crimes’ (p 171). She also stresses the importance of considering whether an individual adheres to the refugee definition laid out in article 1A(2) before considering the exclusion clause, an important and valuable consideration. Next, the author examines the various evidentiary standards, concluding that the International Criminal Tribunal for the former Yugoslavia’s indictment standard ‘reasonable grounds to believe’ is an appropriate evidentiary threshold to establish ‘serious reasons for considering’ the exclusion clause, modified by the prerequisite that the refugee’s side must also be taken into account (p 224). She then outlines the need for the presumption of innocence, with actus reus and mens rea as well as doctrines of extended liability to be considered in exclusion decisions. Once again, she stresses the importance of the humanitarian purpose of the
Refugee Convention, leading to the conclusion that when there are doubts or uncertainties in the assessment of criminal conduct, the most lenient and advantageous interpretation should be applied in favour of the refugee. Finally, the author analyses the various words within article 1F to better understand these individual terms. This is incredibly beneficial, as it contributes to and improves our understanding of this provision – its interpretation and application.

The exclusion clause is a key provision in refugee law which ‘helps to preserve the integrity of the asylum concept’. It is vital, as the author has shown, that it is applied restrictively and that there is consistency in its interpretation and application. The study is exceptionally clear and concise particularly when analysing and interpreting key instruments such as the Refugee Convention, which can be arduous and convoluted. As mentioned above, the topic of the study is extremely relevant and will thus appeal to various practitioners, academics, and policymakers. The author is successful both in articulating the quasi-criminal characteristics of the exclusion clause, and in demonstrating the need to include criminal law principles as well as human rights principles in its application. Li makes a compelling argument for a harmonizing approach to interpret the exclusion clause in which she successfully illustrates that this approach ‘contributes to a more human rights sensitive’ application of the exclusion clause (p 346), as well as establishing that such an approach will lead to a more comprehensive and cohesive utilization of the exclusion clause. This argument renders this study an important contribution, whereby a restrictive and human rights-centred application of the exclusion clause is welcomed, a particularly positive conclusion given recent developments in State practice. The author mentions the lack of an international refugee court. It would have been interesting to further develop this concept and perhaps consider the implications of introducing an international refugee court. This could allow for coherent interpretations, rather than domestic courts interpreting the international Refugee Convention differently.

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