

"Protection or Punishment; The Detention of Asylum Seekers in Australia."

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### LONGER BOOK REVIEWS

M Crock (Ed): *Protection or punishment. The Detention of Asylum-seekers in Australia.*

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Anyone who has visited the *Anne Frank Huis* on the *Prinsengracht* in Amsterdam will come away with a vivid insight into the life of a famous refugee. In the room immediately before the exit, is a large map of the world showing the reception of Jewish refugees by different countries in the 1930s. Australia took relatively few. They were the "refos". We have done better since that time. But not well enough for some of the contributors to this book.

Australia today is a major target of refugees seeking to escape oppression, and to find a new life in a generally orderly, law abiding, prosperous, and multicultural society. Yet differentiating between real refugees and other entrants who are merely migrants in disguise, jumping the queue, and disturbing the country's orderly migration programme, is no easy task. To provide a reminder of the distinction, a detention centre in one of the most remote settlements on earth, Port Hedland, in Western Australia, has been established. Administrative and judicial procedures have been set in place. This is an area of a great deal of lawyerly activity. The publication of this new book will therefore be of interest to lawyers and many others.

It coincides approximately with the Report of the Joint Standing Committee on Migration, which has been examining Australia's detention policy. The book calls for aspects of the policy to be scrapped, or at least, significantly reformed.

The general editor of the collection of essays in this book is Dr Mary Crock, a solicitor who has practised and written extensively in the field of immigration and refugee law. She was co-founder of the Victorian Immigration Advice & Rights Centre Inc. With the other contributors to the book, she has provided a useful examination of a particular class of asylum-seeker in Australia: those who claim refugee status at the point of entry into Australia. Most such people are kept in detention until they are either returned home, or granted a permit to stay in Australia. The book explains the laws, and the policies behind those laws, dealing with detention of asylum seekers. It measures the policies and laws against Australia's international legal obligation, and humanitarian tradition.

The book arises out of a conference held in June 1993 in Sydney. The conference was opened, and the book contains a foreword, by Justice Murray Wilcox of the Federal Court of Australia. As he points out, estimates of the cost of keeping asylum-seekers in remote detention reach as high as \$200 per person per day. For example, in a case recently before the Federal Court, Wilcox J estimated that the costs to Australia of keeping 119 people, mostly Cambodians, who arrived on the vessel *Beagle* must, on his account, now exceed \$15 million.

Whilst Cambodians represent the greatest number of the 654 "boat people" who came to Australia between November 1989 and 1993, there were sizeable numbers of Chinese, and a trickle of Vietnamese, Polish, Romanians and others. Perhaps surprisingly, only two Indonesian nationals claimed refugee status.

There are 19 chapters in the book, which is divided into 6 parts. The first part contains political and official perspectives. The opening chapter is by Senator Jim McKiernan, Chairman of the Joint Standing Committee on Migration of the Federal Parliament. The second part contains critical analyses of the Australian detention policy and is led off by a chapter by Justice Marcus Einfeld of the Federal Court.

The third part on the human impact of detention outlines the psychological and psycho-social effects of prolonged detention, particularly on "boat people" who have, for the most part, been traumatised long before they see the Australian coastline.

The fourth part of the book deals with international practice. The book finishes with chapters concerned with the alternatives to detention. It closes with a joint chapter by a Sydney lawyer, Dr John Griffiths, and Dr Mary Crock, concerning the future of the detention policy. This chapter discusses some of the key decisions of the High Court of Australia, and of the Federal Court. See e.g. *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 110 ALR 97 (HC). It recounts the successful and unsuccessful applications to the courts. It points to the minuscule number of "boat people", and border asylum-seekers, when measured against the overall perspective of Australia's immigration statistics. It contrasts the policy of detention of such people, with the emotional one off grant of permanent resident status to almost 340,000 Chinese nationals in Australia at the time of the Tiananmen Square Massacre in June 1989. It is also important to put Australia's "refugee problem" in its global context. It has been estimated that there have been more than 20 million refugees throughout the world awaiting placement, pursuant to the 1951 *Convention Relating to the Status of Refugees*, which Australia has ratified.

Clearly enough, the policy of arrest and detention is designed not only to respond to the particular arrivals, but to send a message of deterrence to those

who might be tempted to follow them: floating down to Australia from the crowded countries to the north.

Perhaps the most important chapter in the book is that by Mr Arthur Helton. He is the Director of the Refugee Project of the United States Lawyers' Committee for Human Rights. He has been honoured by governments and universities for his work for refugees. In the United States, he has been involved in negotiating alternatives to detention for asylum-seekers. If we think we have problems in Australia, we should reflect upon the 35,000 refugees from Haiti, who have sailed into the United States in recent years.

The sheer number of refugee claimants in the United States has forced a change of policy with respect to detention, which Helton describes. It began in 1989 under the Bush Administration. It followed the course with which Australian lawyers would be familiar from their experience with parole and bail decisions. Instead of locking up refugees in expensive prisons or detention centres, many are allowed into the community, so long as they can show:

- (1) Clear proof of their identity;
- (2) A specific address at which they will be resident;
- (3) An arguable case for a claim for refugee status; and
- (4) In some cases the deposit of a bond ranging from US\$500-US\$2,500.

It is important to note that Helton reports that 93% of refugees dealt in this way comply with reporting obligation and attend their hearing, to abide the decision of the tribunal. It is this kind of policy which many of the writers in this book urge for adoption in the Australian context. It is put forward, at once, as being more humane and less expensive. The present detention policy, as reported by several contributors, is out of line with that adopted in other countries of refuge in Europe and in Canada.

In the recent issue of *Policy* (Spring 1993), Dr William Maley, reflecting on Australia's detention of Asian refugees, suggests that the singling-out of

"boat people" for particular attention by the *Migration Act* 1958, Division 4 B, was an instance of racial discrimination, based upon the fact that such refugees are overwhelmingly of Asian origin. Remarkably enough, until the High Court struck it down as *ultra vires*, a provision in Division 4 B purportedly excluded the court-ordered release of a person who fell within the Division. Such provisions suggest a large passion behind the policy, which may make it hard to shift. Dr Maley, invoking Robert Menzies' support for the bold post-war migration policy, reminded his readers that "most Australians are the descendants of boat people". In her recent report, the Federal Race Discrimination Commissioner described the delay in deciding the fate of asylum-seekers held in detention in Australia as "unseemly". It constituted a blot on what was otherwise a "proud humanitarian record with respect to refugees" in Australia. See *State of the Nation: Report on People of Non-English Speaking Backgrounds*, 1993, 263.

The value of this book is that it shows the number of Australian lawyers who are working towards a better policy on detention, whilst acknowledging the right of every country to control migration at entry. Australian migration from Asia has increased substantially in recent years. Of the 708,000 nett foreign-born arrivals between 1986 and 1991, 46.4% (329,000) were from Asia, using the "narrow" definition favoured by the Commonwealth statistician. But more than 51% were Asian, if the Middle East and Turkey were included. Australia's demography is clearly changing. To a very large extent, migration law and practice have adapted to the change. But there remain pockets of resistance. And there is room for improvement, and lessons to be learned from other recipient countries. This book does a service by pricking the conscience of Australians, and then suggesting what they can do about the problem.

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