

open systems with minimal controls see themselves as altruists, as do most of the authors in this collection, and like to paint those who take a more sober view of refugee policies and the national interest as selfish, narrow-minded and ethnocentric. In this book, those who consider that there is a case for detention, and that illegal immigrants seeking refugee status should be carefully monitored while their applications are under review, are rednecks, parochials, populists and racists.²

The work also illustrates the limited perspective of many self-professed 'altruists'. There are millions of people in developing countries struggling to achieve a better way of life and their numbers grow by over 90 million each year. Many of their stories excite our compassion, but immigration to a first-world country offers no solution to underlying problems of demographic pressure, underdevelopment and the dislocations caused by nascent economic growth. Only one of the authors, Marcus Einfeld, refers to the demographic background and he does so merely to dismiss it. In his 'intuitive assessment, borne of years of experience in the field' the situation poses no risk. People who take demography into account are simply racists gripped by an out-dated fear of the Yellow Peril. According to Einfeld, most inhabitants of the Third World do not want to move; they want conditions to improve at home. This is almost certainly true. But there are some four billion people in developing countries now; if 0.2 per cent decide to seek their fortune elsewhere, we have eight million people on the move. Something like this is happening. North America and Europe are experiencing unprecedented demand from outsiders wanting to come in and we can no longer assume that distance and oceans protect us from this demand.

■ **BOOK REVIEW: Mary Crock (Ed.)**
Protection or Punishment: The Detention of Asylum Seekers in Australia,
The Federation Press, Annandale, 1993
Katharine Betts

This book is edited by Mary Crock, lawyer and co-founder of the Victorian Immigration Advice and Rights Centre Inc. It aims both to explain why we have a policy of mandatory detention for border applicants for asylum and to put a case against that policy.¹ It goes some of the way towards meeting the first of these goals and falls short of the second. It also carries on a well-established tradition in Australian debate on refugee (and migration) policy; advocates of

Mandatory detention of people who have entered the country illegally (technically termed 'prohibited entrants') is one of the mechanisms that the Australian Government has evolved to implement the Australian people's sovereign right to maintain their country's borders. Senator Jim McKiernan, the only author in this collection who defends the policy, argues that it has been effective as a deterrent. The people-smugglers are no longer trying to ply their trade in Australia. Mary Crock goes on to provide a useful history. She shows how detention originated in the requirement that 'carriers' (airlines or shipping lines) bringing would-be illegal immigrants with them should bear the costs of taking them back. But this requirement could only be enforced if the person concerned was not given any formal permission to 'enter' Australia.

Margot Kingston provides the broader political context. She argues that immigration is deeply unpopular. During the 1980s political élites on both sides of Parliament engaged in a pact to keep the topic off the political agenda and thus avoided electoral pressure for a smaller program. In May 1993 Bob Hawke publicly confirmed that the pact existed and that it had enjoyed his keen support. As a 'high-immigration' man he could not afford to allow the general public to influence immigration policy. We can understand bipartisan support for detention against this background. No major party wished to be seen to be supporting a *laissez-faire* attitude to illegal entrants seeking refugee status, the group of would-be immigrants arousing the most resentment in the community. Kingston argues that fear of the public's attitudes to the asylum-seekers was so great that, with the exception of one Irving Saulwick poll, no public opinion polls have been taken on the question of detention. This

compliance on the part of polling organisations, and the media they work for, provides a disturbing glimpse of the reach of the political pact to insulate high migration from electoral opposition.

Almost all of the authors agree that some form of detention is warranted while an asylum-seeker's identity is confirmed and the basic facts of the claim are established. Their moral concern is reserved for prolonged detention. Here they have many sympathisers. Few observers have been happy to watch detention periods grow from months to years. But, in moral discourse, one cannot avoid asking: 'Why?' Why have people been locked up for so long while their refugee claims are argued back and forth in different settings? A number of authors try to dismiss this question. It is not profitable to look for culprits; delay is inevitable and one shouldn't try to apportion blame for it. Having said this, most focus their indignation on the Immigration Department. The Department is freely accused of running detention centres that are likened to gaols and concentration camps³ and the authors allege that detention itself, rather than prolonged uncertainty, has caused grievous psychological harm.

The book carries an essay by Arthur Helton, director of the Refugee Project of the USA Lawyers Committee for Human Rights. Helton describes a pilot study in which 647 asylum-seekers in detention in America were selected for a special program. They were released on parole under the supervision of church and community groups for 18 months during 1990 and 1991. During this period, 93 per cent regularly reported to the Immigration and Naturalisation Service. Refugee advocates in Australia often draw on this project as evidence that detention is not necessary to ensure compliance.⁴ But

they do not mention that the participants were carefully selected and that none received a final decision rejecting their claims while they were on parole. In contrast, Vernon Briggs reports that large numbers of undetained asylum applicants in the United States vanish into the community as illegal immigrants, either immediately or during the procedural stages of the appeal process.⁵

The picture that we get from this collection is of righteous lawyers and other refugee advisers battling stern and unfeeling bureaucrats for the future of people who are almost always described as 'refugees'. This fight occurs in the neutral legal environment of the courts. Mary Crock does mention that the attitude of the courts changed during the mid 1980s when they moved from tending to support Immigration Department decisions in refugee claims to tending to support the applicants. It is not clear why this change occurred. (Was it the law? Apparently not.) Perhaps it was a question of changing personnel. But for most writers the courts are a neutral arena.

In this context the contribution of Marcus Einfeld, a Justice of the Federal Court, is striking. Einfeld does not shrink from passionate advocacy. Detention is 'barbaric' and 'offensive to decency',⁶ attempts to blame lawyers for contributing to it are 'merely a ploy to deflect attention from those who should really bear responsibility for the system'. The lawyers were only taking proper advantage of the 'looseness' of the system. He also claims that, in most cases, the distress that causes people to try to come to Australia is our fault. Either we have contributed to wars that destabilised their countries or we have turned a blind eye to their poverty. We are part of the 'rich aggressor or neglector nations'. Decency demands that we now help our victims, especially

those affected by the Vietnam war: 'As I see it, this behaviour [aggression and neglect] ought to forbid us from affecting to take the moral high ground, in the cause of orderly or due process, towards a few remnants of these peoples who manage to make it to our country'.⁷

It is odd that none of the authors discuss the implications of the 1992 Migration Reform Act (to be fully implemented in September 1994) as far as mandatory detention is concerned. The Act removes the distinction between 'prohibited entrants' who are subject to mandatory detention and other illegals who are not. Under its provisions, all illegals requesting refugee status will be subject to detention but some may be released on bridging visas while their claims are examined. The administrative reforms of February 1992 are also missing from the account. These had the effect of removing much of the 'looseness' Einfeld refers to. More resources were put into processing applications so that delays in new cases were minimised and new rules were established setting time limits for the submission of applications. The new rules also required that all relevant details should be submitted at the time of application. These changes meant that lawyers could no longer advise clients to delay putting in their applications for prolonged periods. As well, applicants could no longer continually ask for their cases to be re-heard as extra evidence was produced.⁸

It is true that in the past people have been kept in detention for a distressing length of time. But, according to the former Minister, Gerry Hand, if the lawyers had got the applications in promptly and had accepted the Department's decision that the people were not refugees, the applicants would have been considered for visas on humanitarian grounds. But, by 1993, the situation had changed. Most of the

people were from Cambodia and, by that time, the UNHCR was repatriating Cambodians from the Thai border camps and the Australian Government could not then say that it was unsafe to repatriate people from Australia.⁹ Refugee lawyers also counselled their clients to reject advice from the Red Cross and the UNHCR that it was safe to return and continued to use every avenue to avoid accepting a final decision from the Australian authorities.¹⁰

The Department's concern to observe due process does explain part of the delay but the lawyers bear a heavy burden. The 1992 reforms mean that prolonged detention will not happen again. At the same time the 'soft amnesty' recently brought in by the new Minister, Senator Bolkus, may clear the backlog of all asylum seekers, including the detainees. The detention of the Cambodian boat people is a sad episode that is now over; all such detainees who are prepared to return to home for a year can apply for entry under the Special Assistance Scheme and be assured that their applications will be successful.

It is surprising that Mary Crock claimed on national radio that she wanted to get a more balanced spread of opinion among the authors but could not, because no one, except Jim McKiernan, could be found who would defend the Department.¹¹ In the introduction she writes that 'this book is dominated by people who regard the present law and policy as impractical, undesirable, or even abhorrent. No apology is made for this'.¹²

All of the Chinese students in Australia at the time of the Tiananmen Square massacre have been given permanent visas. Many of the Chinese students who came in afterwards and then applied for refugee status, as well as others in the backlog of applicants,

will also be granted permanent residence under the Government's new policies. Two factors have forced the Government to capitulate: the expense of continued court cases and pressure from those who favour open borders, the people who think of their more cautious compatriots as rednecks, racists, and aggressors. The near future will show whether Marcus Einfeld's intuitive feeling that migration control is illegitimate and out-of-date is a useful guide for policy makers.

References

- ¹ Griffiths and Crock, in Crock (Ed.), p. 163
- ² See Crock., in Crock (Ed.), p. xvii, also Kingston, pp. 9, 14, Crock, p. 32 and Einfeld, pp. 44-45, 47.
- ³ See N. Aisbett quoted in Kingston, in Crock (Ed.), p. 12.
- ⁴ See, for example, M. Crock, on 'Late Night Live', 3RN, 31/1/94.
- ⁵ 'U. S. asylum policy and the new world order', *People and Place*, vol. 1 no 3, 1993, p. 7
- ⁶ Einfeld, in Crock (Ed.), pp. 42, 49
- ⁷ *Ibid.* p. 48
- ⁸ See K. Betts, 'Refugee-status procedures and the boat people', *People and Place*, vol. 1, no. 3, 1993, p. 11.
- ⁹ 'Interview with Gerry Hand', *People and Place*, vol. 1, no. 4, pp. 4-6
- ¹⁰ *Ibid.*, pp. 6-7
- ¹¹ 'Late Night Live', 3RN, 31/1/94
- ¹² Crock, in Crock (Ed.), p. xv