

*Equal Opportunity Legislation Amendment Act (No2) 1992 (Cth)* and the *Sex Discrimination and other Legislation Amendment Act 1992 (Cth)*. There have also been amendments to state legislation. However, these developments do not invalidate the content of *Indirect Discrimination in the Workplace* which remains an excellent addition to the literature.

HILARY ASTOR\*

### THE STATUS OF REFUGEES IN ASIA by Vitit

Muntarbhorn, Oxford, Clarendon Press, 1992, viii + 217pp,  
\$70, ISBN 019825668X

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In his novel, *A History of the World in 10½ Chapters*, Julian Barnes relates the voyage of the passenger liner, *St Louis*, which left Hamburg in May 1939 with over 900 Jewish refugees on board, fleeing Nazi persecution. The liner was destined for Cuba, which had undertaken to accept the refugees pending their resettlement in the United States. After the ship had reached port in Havana, the Cuban government reneged on its undertaking and expelled the refugees from its territorial waters. For several weeks the *St Louis* plied the Atlantic Ocean, as appeals to the United States, Venezuela, Ecuador, Chile, Colombia, Paraguay and Argentina to accept the refugees went unheeded. During the ship's return voyage to Europe, with the refugees still on board, Belgium, Holland, France and Britain finally agreed to accept the passengers of "the ship that shamed the world". After the outbreak of the Second World War, the "passengers" of the *St Louis* shared the fate of other European Jews, their chances rising or falling depending upon the country to which they had been allotted.

Accounts of the migration of people across national borders, whether to flee persecution or economic privation, by no means started with upheavals in Europe this century, yet Barnes' story is a poignant symbol of the way in which European events have shaped our current understanding of the refugee problem world-wide. When the Convention Relating to the Status of Refugees was concluded in 1951, its scope was generally limited to pre-1951 events in Europe. Even states that dispensed with this geographic limitation, by making a declaration under the Convention or acceding to the 1967 Protocol, were bound by a treaty whose concerns were often distinctly Eurocentric. For example, the Convention guarantees refugees the right to social security, public education, and intellectual property, to the extent that these rights are accorded to nationals of the receiving state. However, such provisions are often meaningless in many Asian states, which do not possess a level of material well-being sufficient to grant these rights to their local population.

It is against this background that *The Status of Refugees in Asia* makes a valuable contribution to our understanding of refugee law, policy and practice among Asian states. The importance of the issue arises from the fact that nearly every country in Asia has been a refugee-producer or refugee-receiver since the Second World War. Moreover, numerically Asia accounts for a sub-

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stantial majority of the world's refugees: in 1990 over seven million refugees originated from Asian countries. Despite, or perhaps because of, the magnitude of the refugee problem in Asia, only seven Asian states are party to the principal international instruments on the status of refugees — the 1951 Convention and 1967 Protocol. The failure of these instruments to ameliorate the protection of refugees in Asia to any significant extent provides the backdrop against which Muntarbhorn explores the intricacies of the Asian refugee problem. In emphasising regional arrangements for accommodating refugees, and in particular the Comprehensive Plan of Action adopted in March 1989 to deal with the large number of Indochinese refugees from Vietnam, the author breaks from the Eurocentrism of the past, and highlights the importance of regional factors in addressing refugee problems.

The book is divided into three parts. Part One gives a good account of the principal multilateral and regional arrangements of relevance to countries in the region. In addition to the two multilateral instruments mentioned above, the author surveys the provisions on refugees in the 1948 Universal Declaration of Human Rights, the 1949 Red Cross Conventions and 1977 Protocols, and the 1950 Statute of the United Nations High Commissioner for Refugees (UNHCR). The latter instruments, by their terms or the manner of their application, adopt a more liberal definition of refugees than the 1951 Convention on the Status of Refugees. They include under their protective umbrella persons who have been dislocated as a result of human and natural disasters, in addition to the conventional refugees who hold a "well-founded fear of persecution". As Muntarbhorn points out, the willingness of the Red Cross and the UNHCR to extend their good offices to protect persons who fall outside the 1951 Convention is of great importance in the Asian region, where many people have been displaced by war and economic hardship, and where in any case few states have acceded to the obligations under the 1951 Convention.

Perhaps the most interesting chapter in the book is the introduction to Part One, which examines the nature and causes of the refugee problem in Asia. Had these issues been more than briefly sketched, and had they been integrated with the subsequent country profiles, the book would have been elevated beyond its largely descriptive account of Asian refugee policy, law and practice. Nevertheless, the chapter contains some very interesting observations. Muntarbhorn traces the origins of the refugee problem to European colonialism in Asia. Before the arrival of colonial powers in the eighteenth century, the communities that existed in Asia lived together without clearly defined boundaries, in peace and in war. The movement of people between regions was governed by the discretion of kings and princes rather than by immigration laws. Colonisation, he claims, had a dramatic impact on this situation. Bringing with them European conceptions of the state, the colonisers instilled a concern for physical control over territory with defined boundaries. This observation echoes the point made by Benedict Anderson in *Imagined Communities* (Verso, rev ed 1991, Chapter 10) that the conduct of censuses and drawing of maps by colonisers created a new sense of geographic national identity among local Asian populations. Concomitantly with growing national and territorial awareness, the economic transformation of colonised communities accentuated the ethnic diversity of the region. Foreign labour was often needed to fuel new industries, and immigration of people from different cultural and ethnic backgrounds created an uneasy conglomeration of ethnic groups within the newly defined territory of the colonial power.

Many of the resultant ethnic conflicts remain unresolved today. The link between colonialism and refugees, though not fully explored in the book, would seem to be that territorial conceptions of the state encouraged the application of national immigration laws, which restricted the entry of foreigners into the bounded state, while simultaneously creating conditions of conflict that exacerbated the need for transborder migration.

It would be wrong to attribute all of Asia's contemporary woes to colonialism, not least because some states in Asia escaped the yoke of colonialism and yet remain significant producers of refugees in Asia. In recognising the responsibility of Asian states for shaping their post-colonial destiny, the author also examines the impact of a number of national policies and circumstances on the refugee problem. The post-war demands for independence from European powers has, he argues, spurred nationalistic sentiments that have been inimical to cultural pluralism. This has had an adverse impact on the accommodation of ethnically diverse refugees within the national polity. Widespread human rights violations, including a failure to implement economic, social and cultural rights, as well as ongoing armed conflicts, have caused considerable migration in Asia. Moreover, foreign policy has had a considerable impact on the attitude of states toward refugees. A refugee-receiving state may give preference to refugees from particular countries because of ethnic or ideological biases, while subjecting other refugees to the strictures of closed-door immigration laws. Examples are the preference given by China to Vietnamese refugees of ethnic Chinese origin, and the preference given by non-communist states to refugees fleeing from states espousing a contrary political ideology.

Although Part One provides an interesting and useful overview of the historical and legal background to refugee problems in Asia, by far the largest part of the book is devoted to profiles of refugee policy, law and practice in eight Asian states. Part Two examines three states that have ratified the 1951 Convention and its 1967 Protocol (China, Japan and the Philippines), and Part Three examines five states that are not party to these instruments (Brunei, Indonesia, Malaysia, Singapore and Thailand). The juxtaposition of the case studies in two parts may have been intended to highlight the difference between the policy, law and practice of states that have accepted the conventional obligations and those that have not, however, the profiles themselves fail to mark out any clear boundary. Two of the three states in the first category (China and the Philippines) have no formal process for screening refugees, other than those falling within the Comprehensive Plan of Action, and have sometimes discriminated in the treatment of refugees according to their ethnicity. There is thus a serious question of the effectiveness of the international instruments at the local level. On the other hand, many surveyed states not party to these instruments have to a large extent respected the principle of temporary refuge for asylum-seekers, and some have implemented screening procedures to determine refugee status. The contrast that emerges most clearly from the country profiles is not between the effectiveness of refugee policy of party and non-party states, but between the effectiveness of refugee policy implemented by regional arrangements compared with that implemented by an international but Eurocentric convention. This contrast perhaps deserved greater emphasis in the book's concluding chapter. The Comprehensive Plan of Action, adopted by Asian countries in relation to Indochinese refugees, has

dealt far more effectively with the refugee problem in its target group than has any multilateral instrument.

The predominant impression given by the country profiles and the brief appraisals which follow them, is that the fate of a refugee in Asia depends on the adventitious circumstance of the refugee's ethnicity, the country in which he or she sought first asylum, and the date at which he or she landed there. Durable solutions, Muntarhorn rightly tells us, must be found in the assimilation of refugees in the country of first asylum, in international burden-sharing through the resettlement of refugees in third countries and, finally, in the voluntary repatriation of refugees to their country of origin. Until such time as appropriate humane policies are implemented, the chances and prospects of Asian refugees are certain to rise or fall, like those of the passengers on the *St Louis*, with the enigmatic policy of the receiving state.

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**HIGH AND RESPONSIBLE OFFICE: A HISTORY OF THE  
NSW MAGISTRACY** by Hilary Golder, Sydney, Sydney  
University Press (in association with OUP), 1991,  
xii+275pp, \$44.95, ISBN 0424001764.

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The title to this work contains a paradox of significant proportions. Throughout much of its history the office of magistrate in New South Wales could be described by no standard (either that of its duties and functions or that of the manner in which those duties and functions were discharged) as high. Further, the results of the author's research discloses that the office was frequently occupied by low and irresponsible incumbents.

That the office was one of importance and significance in the administration of justice in New South Wales was recognised as early as 1835 when John Hubert Plunkett, then Solicitor-General of the colony, wrote *The Australian Magistrate*. The necessity for such a work demonstrated that the office was a responsible one, and that the magistrates (and those who appeared before them) should be acquainted with the duties of the office and the procedures to be followed in the discharge of those duties. Nevertheless, Plunkett's publication did not result in any appreciable improvement in the standard of those appointed to the office. Strangely, Hilary Golder omits any reference to this notable work, which was the first practice book of its kind to be published in Australia.

Golder (who is a professional historian, but, apparently, not a lawyer) has made extensive use of existing scholarly writings to rehearse the history of the magistracy in New South Wales to the middle of the nineteenth century. Her original research has carried on that history to the present day. For this later period her work is new and of value. However, despite the care and depth of her research, Golder appears frequently willing to merely state facts and the statistical results of her research, without offering interpretations of those facts and statistics or drawing conclusions.

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