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, Muntarbhorn 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.

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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An instance of this approach relates to the very important topic of the qualifications and appointment of magistrates. Throughout the period from 1788 until the 1950s, persons appointed to the magistracy in New South Wales were totally without legal qualification. That this should be so was hardly surprising in the case of the honorary Justices of the Peace. But that the salaried magistrates in New South Wales (known at various times as Police Magistrates or Stipendiary Magistrates) should, even to the middle of the twentieth century, have been without formal qualifications in the law which they administered is almost beyond belief.

It is a serious defect in Golder's work that she accepts, apparently without question, and certainly without criticism, the fact that not only were legal qualifications not required for appointment to the magistracy until 1955, but that the members of the Petty Sessions Branch of the Department of Justice (who were the public servants appointed Stipendiary Magistrates, and those awaiting such appointment) were, at least until the 1950s, totally and absolutely opposed to the requirement of legal qualifications. They were also steadfast supporters of seniority as the chief (often the sole) criterion for promotion within the Branch, and were intransigent in their opposition to the appointment to the magistracy of any person from outside the public service. Indeed, the practical prohibition against any such appointment was enshrined in the *Justices Act* 1902 by an amendment enacted in 1947. When in 1975 a courageous Minister of Justice appointed two qualified lawyers from outside the public service, justifying those appointments by the fact that the appointees were both female and that there were more equally qualified women within the Public Service, the Petty Sessions Officers Association lodged an official, but unsuccessful objection before the New South Wales Industrial Commission.

Further, Golder ignores the fact (a fact clearly supported by the statistics which she presents) that most of the persons who appeared before magistrates, even until the fourth quarter of the twentieth century, and had the temerity to plead not guilty to criminal charges were almost invariably convicted by the magistrates. Indeed, it was notorious that Stipendiary Magistrates (who until 1947 were usually designated as Police Magistrates and whose courts were usually referred to as Police Courts) generally adopted the approach that their function was to work in cooperation with the police, and that persons charged by the police with criminal offences were automatically assumed to be guilty.

The magistrates, whether from close and constant association with the police during their rise through the Petty Sessions Branch, or for some other reason (perhaps because they lacked judicial independence and were public servants subject to the control and discipline of the Public Service Board) were reluctant to apply the principle of the presumption of innocence (or even to accept its existence), let alone the principle that a criminal charge must be proved beyond reasonable doubt.

Fortunately for the rights of the individual and the liberties of the subject, the Supreme Court of New South Wales has, ever since its inception in 1824, exercised a supervisory control over the conduct of magistrates — a fact which Golder has largely overlooked.

It is only 25 years since the Court of Appeal of New South Wales had occasion to give the following description of proceedings in the Court of Petty Sessions at Paddington:

> The picture is one which shows how the poor, sick and friendless are still oppressed by the machinery of justice in ways which need a Fielding or a Dickens to describe in words and a Hogarth to portray pictorially. What happened that day, however, to the applicant was only the beginning of the terrors which were to confront him before the proceedings before the stipendiary magistrate were completed (*Ex parte Corbishley; re Locke* (1967) 86 WN (NSW) 215 at 218, per Holmes JA).

It is hardly surprising that magistrates who administered justice in such a fashion would have opposed the requirement of formal legal qualifications or the appointment of persons from outside the public service. What is surprising is that successive governments, of all political complexions, allowed such an outrageous situation to continue for so long. Appointments of practising lawyers to the magistracy have occurred occasionally since 1975, but the great majority of currently serving magistrates are persons whose professional career to the time of appointment had been in the public service. It was only by the enactment of the *Judicial Officers Act* 1986 that magistrates in New South Wales achieved full judicial independence.

The impression is given that Golder, in common with many other social historians, has embarked upon a study of a specialist field without consulting those who are specialists in that field. For example, the notes to Chapter Seven are prefaced with the notation that "This chapter draws heavily upon discussions with former and serving magistrates as well as uncatalogued material in the possession of the Magistrates' Institute of NSW and C R Briese, former Chief Magistrate of NSW". The author, however, appears not to have consulted any members of the legal profession who practised before magistrates.

The book is not easy to read. Scholarly writing deserves precision and clarity. But here a somewhat opaque style is even further marred by the frequent use of colloquialisms and jargonic vernacular, a practice which is to be deplored in a work which is not only written by a professional historian, but contains much original research and has justified pretensions to scholarship. The work contains a number of useful tables and graphs, as well as some interesting illustrations (including a charming one of the annual distribution of blankets to Aborigines at the Glen Innes courthouse, circa 1860). A remarkable omission is the absence of any bibliography.

However, in a field where there is a dearth of scholarly writings, this work, despite its shortcomings, is nevertheless to be welcomed by legal historians with an interest in the development of the administration of justice in New South Wales. Perhaps unintentionally, the author has succeeded in emphasising the paradox contained in the title.

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