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PRACTICAL LEGAL PROBLEMS OF REFUGEES AND OTHER MIGRANTS IN AUSTRALIA

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For many years I have felt the need to study the relevance of the rapidly increasing migrant population in the Australian community to the field of the law. While other disciplines have produced many excellent studies, especially at the Australian National University, the contributions from the legal field have been notably absent. I was, therefore, very glad when the invitation by the Rev, Father M. Rafter, Chairman of the Refugee and Migrant Service Commission, Australian Council for Overseas Aid (A.C.P.O.A.) for the preparation of this paper, gave me a welcome opportunity to make a contribution of an exploratory nature on this subject.

In the absence of previous writings I found it necessary to try to cover the widest area of the law within the limits of practicability, taking into account the short time available for preparation as well as the time limits of an address. My starting point was the experience with legal problems of refugees and other migrants, who have been assisted by my own Agency during the last decade or more, because I am convinced that these problems are very similar to those which arise in the course of the service of other international agencies operating in Australia. This experience has been complemented by opinions of leading individual members of the legal profession, from the Bench and the Bar, and I was helped also from that side of the legal professional work which is the closest to the client, including the migrant, namely the office of the Solicitor. While I hope that the result of these enquiries as set out in this paper will help all those who are involved in Refugee and Migrant service, especially

within our various Agencies, and the following discussion will bring comments which would encourage further work in this field, I hope also that because of the interest shown towards this project at the Faculty of Law of the Melbourne University, the results of my exploration will be tested on the academic level as well.

The number of our post-war migrants, taking into account their children too, have exceeded two million, spread all over our continent. Even a very tentative preliminary work would be insufficient on the legal field if no effort was made to cover more than one part of Australia. Fortunately, during the Citizenship Convention in Canberra this year, I had the opportunity to gather views and opinions from delegates with legal experience in States other than my own.

The purpose of this paper is to show the various areas in which refugees and other migrants in Australia meet legal problems of some kind. It is important to remember that the reference to any problem does not mean that such problem may be general within the whole migrant population of Australia. But it is equally important to stress that within a large migrant population, even if the problems affect a very low proportion^ the absolute number of the problems calls for attention by the Agencies which are engaged in Overseas Aid by resettlement operations in Australia, and by other Community Organizations which take part -in the integration of migrants through the Good Neighbour Movement. I am greatly indebted to all those who so willingly shared with me the wealth of their legal experience in spite of the risk that their expressed opinions might be reported with a misleading generalization. If the views were expressed to me without hesitation I attribute this to the recognition of the role of the Agencies forming the A.C.F.O.A. , operating through their large International network, with a large volume of such operations, at the same time carrying out very essential services within the Australian Community in co-operation with the Government and alongside with other community organizations.

For the purpose of my enquiries I defined the refugee or migrant as a

person who comes to this country with the intention to settle here permanently or who is regarded as such by studies carried out under any other discipline. We could thus include the children of migrants within the scope of our observations, if necessary. Because refugees from their arrival in Australia are not treated differently from other non-British migrants, my references to migrants cover also refugees, unless there is an indication for the contrary.

Legal problems of refugees and other migrants may arise from a particular rule of the law applying specially to migrants. More often however the problems are due to certain circumstances related to migrants (and refugees). Because of these circumstances the application of a rule of the law may bring a different result in the case of a migrant, from that in the case of an indigenous person.

I shall refer to the law of the country where the migrant (or refugee) carne from, but most of the problems will be related to the law of this country. Examples will be given in connection with the Law of the Commonwealth (mainly Statute Law) the Law of the State (Contract, Tort, Procedure, Criminal Law), Municipal Law, etc. We need to take into account the implications of the integration of the migrant population into the Australian community. The existence and the function of the Good Neighbour Council and all the changes that have taken place, especially during the last two decades in our land, inevitably lead us beyond the law that is, namely an abstract body of rules or a social machinery for securing order in the community, to questions connected with the law that would be related to the practical needs and ethical requirements of the Australian community being built under the influence of the large stream of post-war migration. These questions are linked with the Sociology of Law (migrant element in the population) and require the testing of our concepts, our standards, together with our ethical principles.

A) <u>The Law of the country or origin or previous residence (country of asylum).</u>

From the arrival in Australia the life of a refugee or other migrant is governed by the law of this country, though this does not mean that he thus became entirely excluded from the application

of the law of his former home country,' The law of the country of origin of a particular refugee could regard him as a subject, even after he had obtained citizenship in this country, and criminal procedure can be instituted for political motives after a rather long period, when he happens to be in that former home country again. In some cases refugees were prosecuted in their home country during their absence, and without the disclosure of the political motives extradition was sought from the countries of resettlement, on purely criminal grounds. According to the law of at least one country behind the Iron Curtain, the failure to return on the part of a person to whom a passport was issued for a purpose other than emigration, constitutes a criminal offence (Refusal of return), punishable with imprisonment from two to five years. The property of refugees in their home country can be liable to confiscation, or subject to special measures by the Government, so that the owner abroad is prevented from disposing of it at his free will. Obligation for military service does not cease because of absence abroad. Non-refugee migrants here are not subject to laws which would bring to them threat of persecution for political reason, from the country of origin. Yet there are countries where the citizenship remains valid even after a subject had obtained a new citizenship in the country of resettlement. Military obligations are thus kept alive in the former home country, for non-refugee migrants too. A migrant may have problems in wishing to transfer a property situated in his home country, because most probably his assets are subject to the exchange control regulations there. The law relating to pensions or other social service benefits in other countries may require from the beneficiaries who migrate here, to take certain action within a specified period to conserve the rights for such benefits. The report of Dr. Paul Anderson, who recently visited Australia, under the joint auspices of the World and Australian Councils of Churches, suggested that if migrants of a particular nationality are married in this country by a clergyman who is not recognised by the State Church in the country of origin of the migrants, the marriage certificate could be regarded as invalid. According to the law of that country if an inheritance or dowry is due to a child of a person born in. that country, and the marriage certificate is invalid, the child can be deprived of the inheritance on the

grounds of illegitimacy, even though the child was born here.

In all these situations the law of the country of origin, or previous residence, applies to the refugee or other migrant here, without any reference to that law by the law of this country, or in spite of the latter. These few examples emphasise the need for the legal and political protection of refugees, even here, to protect them, not so much from the operation of the Australian law, but from the exercise of the legal and political authority of the home country from which they took refuge. Also there seems to be a need for finding ways and means to obtain regular and systematic information on the legal developments in all the countries from which our migrants (refugees and others) come to settle in our land.

B) Problems in Connection With the Law of the Country of Resettlement.

The federal structure of the Commonwealth of Australia itself creates legal problems for migrants. Even those who come from Britain, find the division of the power between the Commonwealth and States, together with the variety of the law in the different States[5] rather confusing. For migrants from other countries the position may appear even more perplexing. I hope that the illustrations that follow, but which are by no me ins exhaustive[9] will indicate sufficiently the existence and diversity of special legal problems affecting migrants to our country.

1) Law of the Commonwealth of Australia;

My examples were selected from areas in which, under Section 51 of the Constitution the Parliament has power to make laws for the peace, order and good government of the Commonwealth,

II Taxations The problems of migrants seldom require judicial decisions. Considerable assistance is required by many migrants in completing taxation returns, but there are many facilities in advisory services for this. In most cases a wage earner receives a refund after his taxation return is lodged, and this is conducive to comply with the taxation requirements. A migrant may claim deductions for the purpose of income tax for dependants who are maintained abroad, provided steps had been taken for their migration to Australia,.

IX Quarantine: From some areas overseas migrants are not permitted to travel to Australia by plane. Those whose destination is in the

Northern Territory disembark in a Southern port and require onforwarding, usually to Darwin. The administration of the quarantine regulations during the last ten years has become easier than it used to be. The human element is very noticeable in the reactions of a migrant who does not speak English, when on landing he has to part with fruit, seed, or honey with comb, and no interpreter is available to explain the operation of the quarantine regulations, together with their importance for a country of this size.

XIX Naturalization and Aliens: The Aliens Act and the Nationality and Citizenship Act show definite signs of changes, necessitated by the progress of our large Immigration Programme, e.g., introduction of an annual registration of all Aliens and the repeal of the loss of citizenship acquired by registration or naturalization. We understand that the renunciation of allegiance to any sovereign as a separate act in the naturalization ceremony will be replaced by the incorporation of a sentence to this effect in the Oath of Affirmation of Allegiance. In cases when an application for Naturalization is refused or an Order is made under the amended Section 21 of the Nationality and Citizenship Act (63/1958) there is no provision for a semi-judicial review similar to that by the Commissioner regarding Deportation, in Division 2, Fart II of the Migration Act 1958. This aspect which has been raised in the Australian Community in connection with the desirability of Administrative Tribunals or an "Ombudsman" will appear later on again.

XXI Marriages Since the Marriage Act carne into operation, matters relating to the solemnization of marriages in Australia have been governed by a Statute of the Commonwealth. Some of the provisions in the Marriage Act are helpful in situations arising from our large scale immigration programme. Section 112 of the Act permits the use of interpreters where the person by whom or in whose presence a marriage is to be solemnized considers that it is desirable to do so. There are further provisions to ensure that the interpreter is able to understand and to converse in the languages in which he is to act as interpreter, and further that he carries out his service faithfully.

There are, however, problems too, Section 42 requires the production of a certificate regarding the date and place of birth of the parties to

the intended marriage, and if any of them states that that party is divorced, is a widow or widower, evidence of the divorce or of the death of that party's spouse is needed before the marriage would be solemnized. Many refugees have no such documents in their possession and when other migrants produce documents these may have been issued in such a form or by such an authority that the Australian authorities find themselves in *a* very difficult position to decide whether they could accept beyond doubt that the document was indeed issued by an authorised official in the other country. This occurs especially with documents issued in countries where administrative procedures have not yet been fully developed.
Problems may arise from Section 26 of this Act regarding the declaration of a religious body or a religious organization, being a recognised denomination for the purpose of the Act. Migrants bring with them their churches to this country. When differences arise within a denomination resulting in a division, one side may apply for the removal from the register of the ministers of religion, under Subsection 1 (c) of Section 33 of the Marriage Act, of any clergyman who takes the opposite side in the dispute. Unless the division is acknowledged as a fact and both sides are recognised and registered as a Denomination, the dissenting clergyman can be authorised to solemnize marriages only *e*3 "other suitable persons" under Section 39 of the same Act.
A semi-judicial procedure to review decisions regarding these situations toe would be of considerable help.
Section 55j in respect of a marriage solemnized in Australia by or in the presence of a diplomatic or Consular officer of a proclaimed overseas country, requires among others, that neither of the parties be already married to a person other than the other party to the marriage. This creates a problem for migrants from countries with laws based *on* the Moslem marriage rules, or for those from some areas in Africa where laws and customs are not based exclusively on monogamous marriages.

XXII Divorce and Matrimonial Causes and in Relation Thereto Parental Rights and the Custody and Guardianship of Infants

The Matrimonial Causes Act brought this matter also into the Statute Law of the Commonwealth of Australia and applies to cases with wide varieties arising within our constantly increasing migrant population. To illustrate the width of the problems I mention two cases.

Agency A brings out a refugee family from Turkey, husband, wife and a child. Both husband and wife v/ho v/ere married in Turkey, had been married before, and a child was born to the wife from her first marriage. After the arrival in Australia, the wife[1]a first husband arrives from South America. The wife and her first husband resume cohabitation and by now have three children, two of them born in Australia, Meanwhile the refugee husband, who was left alone, obtained under his second name -which is used quite normally in his country or origin, admission for his first wife and her children, who had been left in Yugoslavia, approached Agency B for assistance, and was reunited with his family. They have lived together ever since. Legal advice is now sought to enable the firstly arrived second wife to marry her first husband again. Meanwhile no questions are asked as to whether the marriage of the second husband of the firstly arrived second wife to his secondly arrived first wife is valid or not. As a matter of fact, marital life has been resumed.

Another example is the case of a large Russian refugee family from Northern Manchuria in China. After arrival in Australia the husband was killed on the road in an accident, and in order to institute proceedings under the Common Law, it is intended to establish the validity of the marriage that took place in China in 1948. Marriage Certificate is available only from the Church but the Soviet passport contains an endorsement referring to a marriage certificate issued by a U.S.S.R Consulate. This Consulate has been closed for a long time and a copy of the Consular Marriage Certificate cannot

be obtained. Probably in this case it will be the law of the US.S.R and not the Chinese law under which the marriage was solemnized and validity of the marriage can be proved because in matters of status the Chinese law did not apply to U.S.S.R. citizens.

These examples illustrate the breadth and depth of the problems coming within the provision of the Matrimonial Causes Act, following the increasing proportion of migrants and their children in our community.

In Part V dealing with Jurisdiction (Section 25 (3)) and in Part X Recognition of Decrees (Section 95) the Act refers to the application of the law of any country or place when it would be in accordance with the common law rules of private international law to apply the laws of that country or place. I suppose it is the reflection of the greater nobility of our population and within this, above all, the effect of migration on our population structure, that the Act makes special provisions as to the wife's domicile for the purpose of this Act. In this particular field the law of the country of origin or previous residence (asylum) of our migrants is applicable in our country because of the provisions of the law of Australia,, and this situation is thus different from the examples mentioned earlier in dealing with the laws in the country of origin or former residence (asylum) of refugees and other migrants (a).

Problems arise with respect to maintenance ordered in connection with matrimonial relief, or even without it, when the person against whom a maintenance order is to be enforced has returned to his former country. It is necessary to know the law of that country relating to the enforcement there of court orders issued here. This is the reversal of the procedure which is followed when we receive in Australia for enforcement court orders issued in the former country of migrants, and to which I alluded earlier in Part A of this paper.

XXIII - XXIII A - Social Service Benefits With special consideration of the situation created by migration, the period of residence required for Age Pension has been reduced to ten years (Section 21/6 Social Services Act). Among problems which affect migrants I could mention two examples.

a) Invalid Pensions The qualifying period is five years' residence if the applicant became permanently incapacitated for work while in Australia, but ten years if he became incapacitated outside this country. It is part of our participation in overseas aid that we should admit aged and invalid refugees and other migrants whether alone or to join relatives. The qualifying period of five years for invalid pensions could not be reduced because five years' residence is necessary before most of the applicants could become British subjects (Australian citizens) by naturalization. Differentiation whether the applicant became incapacitated in Australia or elsewhere, however, prevents the receipt of pensions by handicapped citizens of our community for a further period of five years.

The second example of the problem is that a pension ceases to be payable if the pensioner is absent from Australia for more than twelve weeks. The number of Australian pensioners abroad would be probably less than those who would continue to draw pensions from other countries while living in Australia. This is a problem which may affect migrants from certain countries in which the Government is desirous of establishing reciprocity with Australia before making payments to pensioners living in this country. (Section 49 of the Social Services Act refers.)

XXVII - Immigration and Emigrations The Migration Act 1958 is a further illustration of how migration has affected our legislation. The provisions which in the repealed act were intended to control a restrictive immigration programme (Dictation Test, Certificate of Exemption) have been replaced by a simplified procedure based on an Entry Permit issued on board the ship carrying the migrant, or immediately *on* the landing of the migrant from an aircraft.

A further improvement is the establishment of a semi-judicial procedure before a Commissioner in Part II Division 2, regarding Deportation, and I mentioned this earlier. This procedure relates only to deportation ordered under Section 14 of the Act and not under any other provisions.
There are matters of great concern to migrants, but in which no adequate legal provisions appear to exist for impartial review of the administrative decisions made in connection with immigration. Some of these matters relate to the applications for admission to Australia of further migrants. I am sure all the Agencies share with me an appreciation for the courteous reception by the Department of Immigration of our representations and for the most sympathetic consideration given to our appeals. We also know that many migrants approach their Members of Parliament to make representations in a particular case to the Department of Immigration. My concern here is with those applicants whose case does not come within the scope of the activities of our Agencies, and who feel that a Member of Parliament is too remote to be approached in a specific case. It can happen that the applicant v/ill pour out his bitterness to an officer of the Department concerned and possibly, under an emotional stress, in an abusive manner, so that a harmless case may be considered as a highly undesirable one, and the applicant could be judged as a troublesome person. A similar question may arise with the determination of a person as a prohibited migrant, e.g., a person who obtained a visa to Australia on a forged passport. Problems may occur in connections With the arrest of a deportee. Under Section 39 (Subsection 6) a deportee may be kept in such custody as the Minister or an officer directs pending deportation. Recently an action was brought before one of the Supreme Courts against the Commonwealth of Australia for damages arising from detention in a State Prison where the deportee was subject to treatment like common criminals. During the proceedings evidence was before the Court to the effect that the Commonwealth paid three shillings per diem to the State for keeping the deportee, and at this rate the State could not afford other treatment than was indeed provided, namely, in a prison. After the hearing of the case for a few days, the

Commonwealth settled the matter with the Plaintiff. Meanwhile the arrangements made for deportees have been improved, because if possible they are kept in custody in buildings within Immigration Centres. This illustration shows that even one legal case could lead to the improvement of the situation of many others in a similar situation.

In connection with the admission to Australia of refugees and other migrants the provisions for Maintenance Guarantees, contained in Part IV of the Migration Regulations, create problems to the migrants and even to the Agencies. Before an aged or handicapped migrant is admitted to Australia (apart from exceptional cases: S.A.R.P. and similar schemes) the Department of Immigration requires a full time maintenance guarantee under the Migration Regulation. It has been understood that this is necessary to safeguard the States which may be involved in considerable welfare (surgical, dental) expenses, without being able to claim reimbursement from the sponsor, if the nominee is unable to meet these expenses. While this is understandable, there is a concern, because in the term "maintenance" under Section 20, (Subsection 1) of the Migration Regulations, any Special Benefit granted under Division 6 of Part VII of the Social Services Act is also included. This provision suggests an attitude on the part of the Commonwealth Government to refrain from any welfare assistance to needy refugees and other migrants, especially the aged, if they are not qualified for other pensions for five or ten years from their arrival. There is a permissive provision in Subsection (3) Section 22, of the Migration Regulations for the writing off of any debt due to the Commonwealth. I am wondering, however, if the institutions of a State may do more in this regard than the Commonwealth, though it is the Commonwealth that carries the responsibility for the nation building through migration, at the same time participating in aid to overseas countries by receiving refugees and other migrants.

2) State Laws

The legal problems of migrants discussed in connection with the Federal Legal system were related mainly to the Statute Law and mostly within the province of the Public Law. The most obvious examples of the legal problems of migrants, arising on the level of the laws of the various Australian States are, however, connected with the application of the Statute and Common La?/,

Civil and Criminal Law, and further, Private and Public Law.

Many legal problems affecting migrants without necessarily requiring litigation, in the opinion of the interviewed leading members of the legal profession, are found in the Law of Contract. Migrants coming to this country are less aware of the values than those who have been brought up here. There is an element of pride which prompts the migrant to manage his own affairs alone, without asking for advice. As against this element the opinion was expressed during one of my interviews with members of the legal profession that when coming here, migrants have an image of this community, as one where the highest standards, honesty, trust-worthiness together with the principles of British justice are applied everywhere. Also, migrants appear to have a false belief in high values because of the higher wages they receive compared with their earnings before migrating here. The fact that the living expenses are also higher here tends to be overlooked, and the result is the acceptance by many migrants of obligations under hire purchase agreements far in excess of their financial ability, especially if these purchases are necessary to meet the need of a family dependent entirely on the earnings of the family bead, who is the only wage earner. To all these factors we need to add the lack of knowledge of English among many new non-British migrants, and the suggestion that migrants are easy prey for vultures on the business field seems to be a fair comment. Selling of wet blocks of land during the dry summer, building contracts offered by firms heading for bankruptcy, causing the loss of the deposits paid by many migrants, door to door sales, motor car purchases, these all are transactions in which migrants are heavily involved and not necessarily for the same reason as native Australians, I was reminded that the relevant column in "The Bulletin" used to appear under the heading "Business, Robbery, etc."

Another important observation of lawyers suggests that migrants tend to conduct their life here in a way which seems to conform to the legal pattern in their country of origin or country of former residence (asylum) and which is at variance with the law of this country of resettlement. This applies mainly to domestic

arrangements relating to property (succession on death), and to the relationship between members of the family* Lawyers explain these symptoms with the ignorance of the laws of this country. Indeed many migrants from non-British countries believe that their property after their death will descend to the nearest family members as it would have happened in their home country, and a lack of awareness was mentioned regarding the need to make a will. Among migrants from a particular Western country, however, a Solicitor found that though these migrants showed hesitation in making a will because of a superstitious feeling that once you make a will you will die, a belief was also held, and rather widely, that in the absence of a will the property devolves on the State. It is this belief which prompts these migrants to consult a Solicitor with a view to making a testamentary disposition in respect of properties, to save these from being taken over by the State in the event of intestacy.

The domestic relationships between the members of a migrant family may affect the handling of financial matters by pooling the income of all members for the common purpose of the family, or may lead, regarding the position of the family members to each other, to views which are substantially different from the customs of this country as observed and protected by our laws. Among these views we find the antagonism of many migrant husbands to any independent action (working outside the home) on the part of their wife, and the reluctance of the parents to accept the dissolution of the marriage (by divorce) of one of their children, who may follow the Australian way of life, whereas in the eye of the parents who still live in the spirit of the law of their home country, a marriage cannot be dissolved by divorce.

These last examples remind us of the close link between law and customs, both motivated by ethical principles and reflecting standards of morality adopted in the life of a particular community. The individual cannot exclude himself from the influence of the community, but the migrant cannot be expected to be under the exclusive influence of the

Australian community life nor could he cut himself automatically and fully off from the influence of his former community in the country of origin or former residence (asylum). This is another reason why we need to keep ourselves informed of the legal principles and developments in the countries from where we receive refugees and migrants, because such knowledge may give important insight to the set of values and attitudes of migrants during the period of their integration into our Australian community.

Among the laws from the old country, which the migrants may observe here, lawyers mentioned the absence of written contracts, or the tendency on the part of migrants to amend orally a written contract. It would be interesting to compare such beliefs with the laws of the particular countries, because it may be found that in most of the countries of origin of our migrants, though in general a written form may not have been essential for the validity of a contract, for the kind of transactions to which a migrant becomes a party here, even the law of the home country may have required specifically a written agreement, whether in a special form or at least by exchange of commercial letters.

We should turn to the next area of legal problems in which migrants appear in considerable numbers as parties, (plaintiffs or defendants) in an action before the court, namely the Law of Torts, I was given two examples, which conform with our experience in my Agency, probably shared by other voluntary Agencies, too, namely Industrial Accidents and Road (Motor Car) Accidents

Speaking of Industrial Accidents, the opinions expressed by members of the legal profession during our recent conversations, suggested, among the main causes of industrial accidents, that the migrants find themselves in on environment different from their own, the living and working conditions are different, they work with different people (not only Australians, but also migrants from other countries). The language problem appears again in connection with the understanding of the working instructions, or in the case of emergency the need to understand a sudden warning of danger and to act almost instinctively.

Because of these factors, from the point of view of the law, a migrant can represent a danger not only to himself but also to others. In Civil Actions for damages the liability is determined along the line of negligence, taking the standard of care as that of the reasonable man in Australia, The Australian man. One may ask the question is not the presence of so many migrants in this country overlooked by the law?

In connection with actions claiming compensation for injuries, members of the legal profession have a feeling that migrants express an attitude to work as it is customary in their former country, namely that the talent for work of an injured man has been destroyed, so that even after a moderate injury the claim for compensation is based on alleged total and permanent incapacity for any work whatsoever. These migrants are being looked at as having an eggshell personality that suffers (or as it is usually expressed proverbially, the glass is broken) following an accident at work, and the legal profession, as well as the judiciary and the juries tend to regard such claims with a suspicion for sensing an element of exaggeration. My questions are at this points are there indeed openings for light work for these injured migrants, mostly un- or semi-skilled labourers, and are there any adequate rehabilitation services (re-training or vocational training), available for these migrants?

Referring to the Road (Motor Car) Accidents, a member of the legal profession described the main factors as follows the driving *on* the different sides; different road laws which change slightly even within Australia from State to State; the inability of some migrants to read the road signs and to learn the road rules; elderly migrants, who are bewildered by the heavy road traffic; pedestrians when trying to cross the road other than at an intersection and drivers- especially at an intersection tend to look left first, instead of to the right. It is felt that drivers while moving ahead in a busy road traffic find the driving on the different side of the road less strange than a pedestrian who, looking to the wrong direction, steps directly in front of an approaching car. The legal considerations regarding these Road Accidents are similar to those related to Industrial Accidents, However, in connection with. Road Traffic, the learning of the Law of the Road appears to be an

important factor because of the hazards presented by the congested roads and fast motor vehicles, affecting practically every member of the community. Some refugees, being aware that in this country the traffic moves to the left and not to the right, are most particular on their arrival in this country to follow the correct side, and they insist on walking on the left side of the road. This resulted in death and injury, especially on country roads (to and from Bonegilla, and in outer suburbs) and we could not find any indication that new arrivals were told in their own language that, though pedestrians should keep to the left when on a footway or pedestrian crossing, they shall walk near to the right hand boundary of a highway where no footway exists. I suppose the same rule applies in all States in Australia.

Legal Procedure too presents some special problems to migrants. The most important of these again appears to be the language. For the Bench, this gives an additional element of uncertainty. When a person is before the Court, the judge has to ascertain the mind and the will of that person as relevant to the matter before the Court, whether the will was expressed, how and when if at all. It is quite understandable that when a person whose social and economic background is quite different from an Australian born is before the Court, because of' the lack of knowledge of the language of the Court, (English, particularly legal English) on the part of the migrant, unless there is an interpreter available who understands fully ail the shades of meaning in the various expressions, including the legal terms and who is also a person of integrity, the judge can be left often with the feeling that his decision may not have been based on the full facts of the matter.

When oral evidence is given before the Court, what matters most is not what happened indeed, but what is said before the Court that had happened. It is here, that very often migrants make a great mistake, whether because of pride or because of trying to save expenses, when they insist on giving evidence without the aid of an interpreter. It is a good thing if a migrant has the necessary confidence for expressing himself in English.

Unfortunately very often even a reasonable command of English may prove to be quite insufficient in legal proceedings especially under cross examination because the meaning of what is said can be misunderstood by the jury and an expression may be interpreted with a meaning just opposite to what a witness meant to convey.

It was mentioned to me that there may be instances when the fact that a migrant is before the Court, there could be an element of risk for him from the side of the jury. The language problem mentioned before, may affect an average Australian citizen who has to relate his thinking to the law in which he is not an expert, much more than the judge or the barrister and his instructing solicitor. Moreover if the jury represents the cross section of the Australian community it would probably include members from those of our community who are not favourably disposed to migration in general, or to individual migrants in particular.

Turning to the field of the CRIMINAL LAW, it is more difficult to obtain a general picture in a community with a large population and large proportion of migrants, than in a State with ,a smaller population and smaller number of migrants. During a 'conversation at the last Citizenship Convention with a delegate from a State other than my own, we recalled the whole period of postwar migration. He indicated that offences which came before the court following police action, during the first few years of the postwar migration were mostly violence motivated by hostile national feelings and aggravated by drunkenness; unlawful wounding, and assault on females* As time went on, many of the migrant groups which harboured aggressive national feelings have disappeared. The larger migrant groups have built up their communities, sometimes around their church, sometimes otherwise, and these communities, like the Greek, Italian, Russian and Polish groups, fulfil a most beneficial function. The settled life of their members is based on the observance of the law, and thus on keeping the peace of. the Queen and country. The present types of migrant criminality include minor offences, some arising from the ignorance of law - shooting on Sundays, gambling; the more serious types are breaking and entering, mostly by young men when employment

arrangements break down, stealing, stabbing (under emotional stress) and illegal use of motor cars, (I am wondering if perhaps the latter could be regarded as a symptom of integration.) In that particular State the Police has special migrant staff members of the force who are in a position to give special attention not only to the criminal migrants as well as refugees, though the latter may have had more distressing experiences. All these lead to an inclination to violence and fear of the Police. Though in a large community, the proportion of migrant criminality cannot be accurately measured, the opinions expressed in the reports of the Dovey Committee of the Immigration Advisory Council are unquestionably accepted, namely that the migrant criminality does not exceed the rate prevalent among the Australian born population, and among some nationalities (e.g. from Southern Europe) it is even considerably lower. It was mentioned to me that members of the Jewish community do not seem to be involved in matters which have to be dealt with in criminal jurisdiction.

In a larger State the language problem may appear during the investigation by the Police, when a policeman may try to take advantage of the lack of knowledge of English of the suspect and obtain a statement from the migrant, without providing an interpreter, or when an interpreter could not be obtained in any case. Also what was said before, concerning juries in civil procedure, applies to the criminal procedure as well,

3) In the federal structure of our Commonwealth the broadest base of community life is found in the municipalities, professional and other community organizations including church communities. The By-laws, Rules and Regulations made by these bodies affect many situations in which migrants are involved. Because of the impossibility to cover this large field without a very extensive research, I would like to give only three examples. In a suburban municipality at one stage the voting was restricted to British subjects alone, and in preparing the electoral roll for the municipal elections all migrants with foreign names were omitted, including those who were British subjects. Among the colleges of medical specialists, one baa shown signs of almost absolute

reluctance to consider an application from a man with long overseas university experience (not only in his own country but also at other universities) and with a British degree, on the basis of which he has been registered as a practitioner in this country for some 27 years. At an age of 60 the fellowship of the College would bring to such a person, who has practised for the last 15 years or so as a specialist, no financial benefits whatsoever. It is doubtful whether all the young applicants from this country with approved residency and even with some years' postgraduate work in Britain, could have achieved as high or higher standard before they are admitted to the college, than this man has, who has been rejected, causing great humiliation to him. I used this example to illustrate the application of a constitution by strict adherence to any requirements laid down, and because of the refusal to consider a case in the light of those sections of the constitution which allow flexibility in the admission to the fellowship of that particular body. Exclusion, however, could operate in reverse. There are migrant organizations which have in their constitution restrictive provisions for the admission for membership of others than those of their own ethnic origin.

C) The Law and the Changing Australian Community,

Even among the few examples which we used earlier we are able to see the influence of changes in the Australian community during the last two decades. These changes occurred as a result of our national development causing tremendous changes in the economic structure of our country. This national development, however, cannot be separated from the continuous post-war migration programme with consequent changes in our population, bringing changes in the cultural and spiritual life of our nation too.

The changing pattern of our population and the call for the integration of the new settlers into the Australian community led to the formation of the Good Neighbour Movement, to co-ordinate the activities in the field of migrant integration. This Good Neighbour Movement, which has no similar organization in any other country, is necessarily involved in many aspects of the legal problems mentioned before. During a recent conversation within the

Good Neighbour Movement I was given the impression that there is a great need to provide migrants with more information than is available at present about the law of our country. Many migrants fail to seek or to obtain legal advice. It was suggested that the legal costs nay be high, and because of an increasing specialization within the legal profession it is necessary to find the right person with special experience in the particular legal problem. While these comments nay apply to the indigenous population also, a migrant requires much more information in a similar situation, namely in asking for legal aid and/or finding the right specialist for the particular problem. It was mentioned to me that members of the Australian community who find nothing unusual in hearing from someone about going to visit a physician or a dentist, would sense an element of seriousness when someone may refer to an impending consultation with a lawyer. It is therefore not entirely unexpected that members of the legal profession and even the Law Schools of the Universities appear to be rather detached from the realities of the changes of our population caused by migration. We can mention again the absence of legal studies connected with migration and migrants to our country, so that there is no cross-fertilization of ideas and co-operation of research workers between the legal field and other disciplines studying migration and its effects, though our country has been regarded as the best workshop for this purpose.

In spite of the very large volume of migration since the end of World War II, migration has been vital to Australia ever since the first landing on the 26th January, 1788, In fact, the law of Australia was brought here by migrants. The basis of the present law came with migrants from Britain, and among the Statutes, e.g., in Victoria we find in the Imperial Act Applications Act, 1923. Part II, Division 13 -referring to Justice and Liberty - transcribed provisions from the Statute of Marleberg dating back to 1267, (52 Henry III). We may recall how the Common Law has developed here since the days of the first settlers, how the settled migrant population adopted the Constitution, and we saw in this paper some of the recent amendments of the federal statute law

possibly under the influence of the latest wave of migration. Migrants from the territory of Scottish and Irish law have left their impact on our laws and on the legal machinery. It was mentioned to me that the Court Rules in one of our States were developed very much *on* the pattern of the work of the Courts in Ireland.

On the basis of the material which I have just presented, in spite of its limitations, we may have good reasons to believe that by now for a considerable part of our population, the law of other communities (countries) is a "living law[11], (e.g., military obligations, Private International Law, custom within families). There seems to be a need for the recognition of the existence of such a living law from abroad amidst us, because this could lead to a new approach to problems connected with naturalization.

By the act of naturalization a migrant becomes a member of our community, but in fact the acquisition of this new citizenship makes little difference in the daily life. This view is supported by the reference of members of the legal profession to the lack of knowledge of our law, and to the lacking or limited knowledge of English among a considerable part of the migrants. These and other factors limit the possibility of participation in our community life, and thus migrants need to remain under the influence of their own national community in order to be protected from the serious consequences of social isolation. These communities could be the most useful instruments in helping the migrants by information, among other matters, about the laws of this country. At the same time we could obtain information through these communities (and through the foreign language press) on the ethical values and standard (e.g., family structure) which lay at the basis of the law of the country of origin of our migrants. The recognition of the legal elements based on the home country, in the life of our migrants here could be reassuring for our migrant population that they are really accepted members of our community, which is being built with the contributions of migrants from many countries.

CONCLUSION

It would appear that the practical legal problems of refugees and other migrants, which I tried to illustrate by examples, represent problems also for the legal profession and for the Australian community as a whole. The sharing of opinions by leading members of the legal profession with me during our recent interviews has revealed real appreciation of the problems even though seldom were these related to the experience and result of various studies available outside the legal world. The Agencies within the Australian Council for Overseas Aid, in their service to refugees and other migrants and as community organizations co-operating with each other, with the Government and with their counterparts overseas, may be justified in asking for suggestions as to the dealing with the problems outlined in this paper.

It seems obvious to me that much further study would be needed, and I mention only a few areas:

a) There is a need for studying the statutes and the sources of the law in order to discover the legal provisions that may have special relevance to our migrant population (e.g., in one of the States dependants abroad of a worker killed at work are excluded from benefits under the Workers[1] Compensation Act, even after the dependants, wife and children, arrived and settled in this country). Because probably only a small proportion of the legal provisions, spread over a very wide field, may have a special application to migrants, such a study nay require a long time and great patience.

b) The gathering of information from members of the legal profession could greatly extend the knowledge of the problems faced by migrants in our country. The Law Institutes and migrant lawyers in practice, could be very useful.

c) Knowledge of the legal system of the countries from which refugees and other migrants come here seems to be desirable, and it would be an advantage to follow with interest the legal developments in those countries.

d) Because the legal problems of our migrants reach out beyond the practical legal work, the involvement of Law Schools in these studies, especially concerning the areas outside Australia, would be essential. Because of the difference of the laws in the various

States, if one Faculty of Law may show sufficient interest in forming a workshop for this rather specialized problem area, this workshop could be linked up with research work at the Australian National University, and with other Law Schools where interest may arise in a similar project.

I am confident that the adoption of any of these suggestions could assist greatly in the service to refugees and other migrants in this country. It may lead to greater participation by members of the legal profession in the integration of migrants into our community, and this may facilitate the settlement and integration of more refugees and other migrants. The contribution of these new settlers towards the development of Australia may enable our community to share our resources to a greater extent with countries overseas which require our participation in their enormous task in meeting a rather desperate need for relief and development.