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Equal Before The Law?: The Case of Vietnamese Refugees in South Australia

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FOREWORD

On March 2nd 1996, the Liberal and National Parties' Coalition defeated the incumbent Labor Party in the Federal Government election. This change of government at the federal level has implications for this thesis in a number of ways. In Chapter two the origins, development and implementation of multicultural policy in Australia are described and analysed. An historical critique of the policy is also provided and this leads to a not unreasonable conclusion that multiculturalism will continue to be a bi–partisan government policy. Such a conclusion may prove to have been too hasty in light of the new Government's changes to its policy management.

In the lead–up to the election, the Coalition released its policy on multiculturalism in which it not only endorsed the previous government's policy directions but also committed itself to improving strategies for 'access and equity', to increasing the funding for a range of services and to the provision of 'enhanced and more flexible English language programs'. Despite this apparent commitment to a bi–partisan approach to multicultural policy, John Howard — the leader of the Liberal Party — announced that under a Coalition Government new settlers would not be eligible for a range of income support payments for two years after arrival. Although refugees and humanitarian migrants would be exempt from the new rules, his proposal extended by eighteen months the period before which benefits might be claimed by newcomers. It also tightened the criteria under which claims could be made and spread the ban on payments to include most social security benefits rather than the two benefits — Job Search Allowance and Sickness Benefit — which had been restricted under Labor. The Coalition did not, therefore, diminish the rhetoric of its commitment to multiculturalism prior to winning office but it clearly had future cuts to services in mind.

After the election, the restrictions to income support for newly arrived migrants were implemented swiftly and came into operation on April 1. Since that time there have been changes made to the allocation of ministerial responsibility and to the bureaucratic

administration of multicultural affairs which re–establish the links between immigration and multiculturalism. This has been done by abolishing the Office for Multicultural Affairs previously attached to the Department of Prime Minister and Cabinet and relocating multicultural policy in the outer ministry to the newly named Department of Immigration and Multicultural Affairs. Such a move reduces the importance attached to the policy by the Government and lessens the ministerial influence which could be brought to bear in inner Cabinet decision–making.

In addition, invoking the language of small government, the Federal budget of August 20 1996 delivered what can only be called savage cuts to funding for Aboriginal welfare, higher education, care for the aged and training programs for the unemployed. For migrants this means that their entry into the workforce will not be facilitated through education and training programs and also that their children will not be eligible for Austudy for two years.

Some pre–election promises have been kept. For example, funds have been increased for English language tuition for new settlers. However, in a separate announcement, the Coalition also intends to double the cost of these programs to those migrants who at present pay concessional rates. The government also intends to recover, from the individual migrant, the full cost of all immigration procedures and services. These include applications to migrate or sponsor relatives and any health and education costs incurred in the two year waiting period before application can be made for citizenship. Once again, refugees and humanitarian migrants are exempt from many of these costs at the moment but there is little detail in the budget announcements which would reassure us that they will remain so. For example, a new rule that only citizens can apply to sponsor close family relatives means that refugees will be separated from their families for at least two years.

In other areas of multicultural policy more funds have been made available for Migrant Resource Centres and community organisations involved in resettlement services. This places the responsibility for successful settlement of newcomers on to ethnic group

organisations which are not necessarily equally able or equipped to provide such services adequately. This approach to resettlement is a return to the Fraser years of 'Galbally multiculturalism' which puts ethnic community organisations in competition with each other for funding where the stronger and more established groups are more likely to be successful. It also absolves the government of any further responsibility for either migrant welfare or the achievement of social justice ideals contained in the rhetoric of multicultural policy.

In brief, the approach adopted by the Coalition Government reinforces the *status quo* of structural inequality which goes to the heart of my argument about the difficulty of introducing measures for reform in liberal democratic societies. In the light of John Howard's ambiguous commitment to multicultural policy since 1987/88, his pre–election announcements and his post–election actions, the future of the policy for this government's term of office must be called into question.

August 26, 1996

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ABSTRACT

The inequality of migrants before the law has been well documented since the mid–1970s but, despite policy and legislative reform, social and legal inequality for minority ethnic groups persists into the 1990s. This thesis is concerned with some members of one group of recent migrants to Australia, the Vietnamese, and their search for equality before the law. There was little literature on Vietnamese adaptation to legal systems in western countries of resettlement. This study therefore seeks to identify and understand the difficulties experienced by a non–random sample of the Vietnamese in South Australia in their contact with the legal system.

The problems experienced by this sample of Vietnamese in legal situations had three dimensions. Some were due to their being from a non–English speaking background, some were a result of coming to Australia as refugees and others arose because they came from a particular geographic area. I have called this combination of factors a 'triple status'. This 'triple status' affects the resettlement and adaptation of new settlers to Australia but is rarely taken into account in Australian law and policy. I argue that it should be taken into account if policy and legislative reform is to be effective.

Another aspect of the ineffectiveness of reform measures is the model of equality used in liberal–democratic societies like Australia. This model of equality is one of equality of opportunity and treatment and its principles underpin multicultural policy, the law and law reform measures. Building on the equality debates contained in the feminist and the critical legal studies literature, I argue that the model is flawed and that progress toward full equality for ethnic groups will only come about through an extension of the boundaries which currently limit liberal ideas of equality. The thesis therefore proposes that Australian law and policy, as it relates to new settlers, should be based on a 'triple status' rather than the present 'migrant' status. This change would not only be a tool for the more effective implementation of legal reform but also contribute to an expansion of liberal ideas of equality which are more inclusive.

STATEMENT

This work contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text.

I give consent to this copy of my thesis, when deposited in the University library, being available for loan and photocopying.

Dated 22 March, 1996

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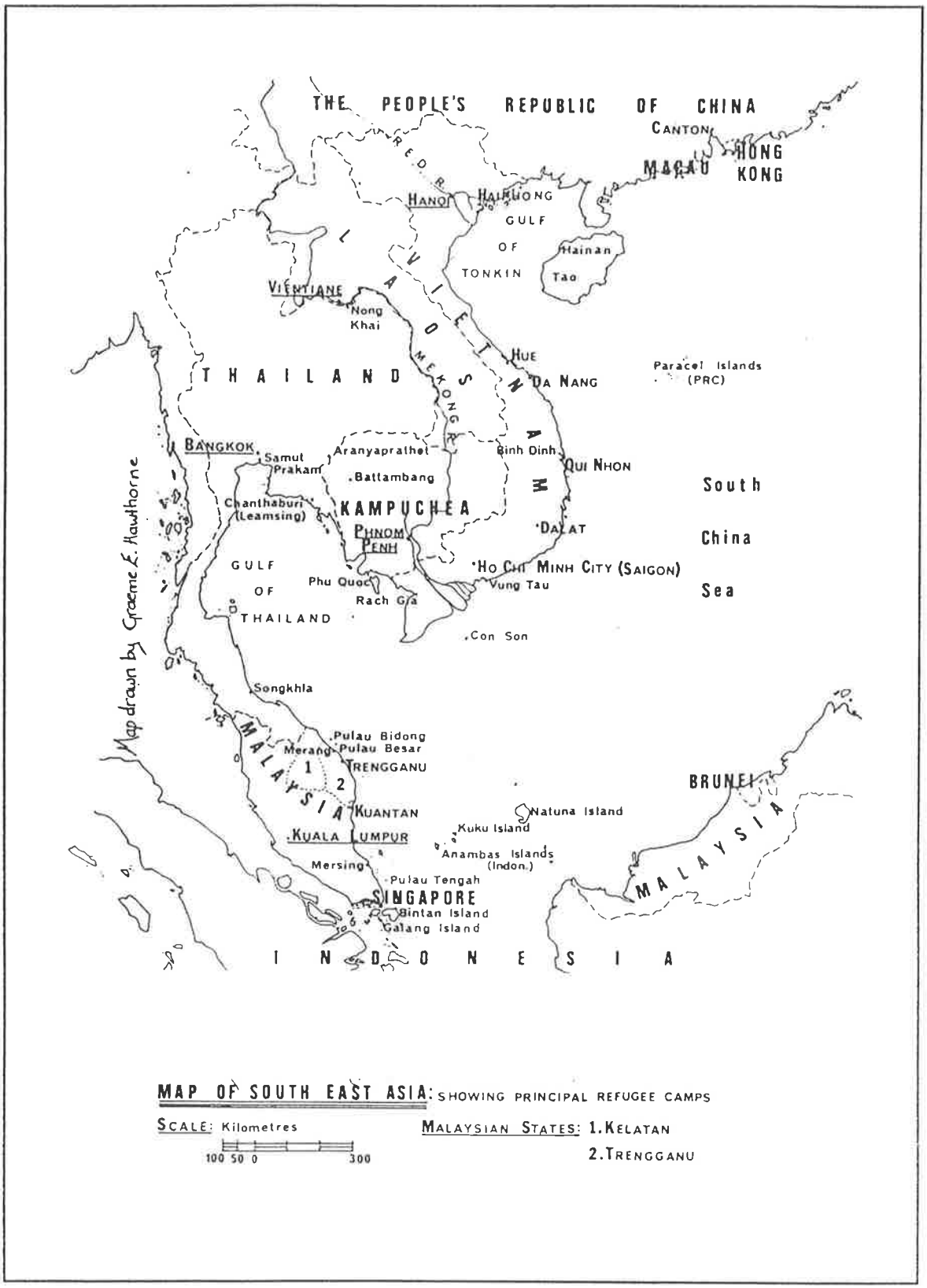
I am grateful to many people who have encouraged and supported me in this now lengthy project. My thanks must go first to all the members of my family who sustained me physically, emotionally and intellectually throughout the life of this research. Special mention must be made however of Megan and Chris, and more recently Anna and Lowan, who unstintingly assumed my family responsibilities and made the completion of the thesis possible. Thanks as well to my supervisors Dr Carol Bacchi and Dr Peter Mayer in the Politics Department who guided my efforts with unfailing patience and rigorous critique. In addition, I am indebted to my friend and colleague Francis Regan who not only read, criticised and commented on interminable drafts of the research but also listened, with enduring and perceptive interest, to hours of my struggle with a wealth of data . Thanks also to Annelies Groothedde for her help and comments on previous drafts and Frank Sharman who so painstakingly proof–read the final version.

The research was inspired by the policy needs of the Legal Services Commission of South Australia and I am grateful for the access provided by Directors Lindy Powell and Jim Hartnett to their statistical records. The research would not have proceeded however, without the help I received from members of the Vietnamese Community associations in South Australia. Special thanks must go to Mr Nguyen Ngoc Tan and Sr. Elizabeth Nghia for their provision of information, contacts, written referrals and official organisational endorsement. Mention must be made too of the assistance given to me by the Coordinator of the CAFHS program at ICHAWA, Rosemary Radford, and the CAFHS ethics committee who gave me access to their clients for interviews. Neither would I have got very far without the help of numerous Vietnamese and Australian community workers who tirelessly helped me, over a two year period, to understand the way of life in Vietnam both before and after 1975, the experiences of refugees and the problems encountered by them in resettlement and adaptation in a foreign country. Their efforts to teach me Vietnamese, although unrewarded with success, gave me valuable insights into their difficulties with learning English. Singling out particular people is very difficult when I am grateful to so many but special thanks must go to Philippa Aston, Lynne Harris, Nguyen van Thang, Dinh Cong Khanh, Le Hien, Nguyen van Trung, Nguyen Duy Phoung, Au Bich Thuy, Tran Bach Ha and Sergeant Bob Smith for the patient and generous gift of their time, their knowledge and their translating and interpreting expertise.

Finally, this research belongs particularly to the 175 respondents who must remain anonymous and without whom there would have been no research. I am most appreciative of the welcome I received into their homes and the time they took from their very busy lives to answer my questions. I hope the end result reflects their reality.

ABBREVIATIONS

ABS	Australian Bureau of Statistics
AGPS	Australian Government Publishing Service
AIMA	Australian Institute of Multicultural Affairs
ALRC	Australian Law Reform Commission
BIPR	Bureau of Immigration and Population Research
CAFHS	Child Adolescent and Family Health Services
CCCM	Canadian Consultative Council on Multiculturalism
CHOMI	Clearing House on Migration Issues
DEYA	Department of Education and Youth Affairs
DIEA	Department of Immigration and Ethnic Affairs
DSS	Department of Social Security
ESL	English as a Second Language
FACS	Family and Community Services
ICHAWA	Indochinese and Australian Women's Association
ICRA	Indochinese Refugee Association
LSC	Legal Services Commission
NESB	Non–English–speaking background
OMA	Office of Multicultural Affairs
SACAE	South Australian College of Advanced Education
SAHT	South Australian Housing Trust
SBS	Special Broadcasting Service
UNHCR	United Nations High Commissioner for Refugees
VEAC	Victorian Ethnic Affairs Commission



MAP OF SOUTH EAST ASIA: SHOWING PRINCIPAL REFUGEE CAMPS

SCALE: Kilometres

100 50 0 300

MALAYSIAN STATES: 1. KELATAN
2. TRENGGANU

Map taken from Lesleyanne Hawthorne (ed.), Refugee: The Vietnamese Experience, Melbourne, OUP, 1982

THERE IS A LAND

Hostile eyes surround us
on the station.
Must we be humble?
How atone
For the way we are?
(or were, for there has been change).
Learning the food and how to pay;
sending the children off
in strange buses to compulsory schools;
harder for them, or easier?
Patiently they sit,
eyes busy, small hands still,
awaiting an understood word.
Just accepted,
treading carefully,
eyes crease reluctantly at Australian fun,
Is it right to laugh, or should we be inspecting wounds?

Pat Gormley

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CHAPTER 1: INTRODUCTION

> Many migrants in Australia ... do not enjoy genuine equality under the law nor do they have access to legal resources required to enforce their rights.[1]

This thesis addresses the question of equality before the law for a non–random sample of the Vietnamese population in South Australia. In everyday political discourse, equality before the law is understood to consist of equality of access to the law and equality of treatment within the legal process. It also includes legislative provisions for equality of opportunity and freedom from discrimination in employment and in access to services in the wider society. The thesis argues that this model of equality of opportunity and treatment in liberal–democratic societies, such as Australia, cannot deliver substantive equality to all its citizens because it does not accommodate specific and important differences among individuals or groups. The thesis examines the reasons for the failure of this equality model in both multicultural policy and the law.

In the increasingly regulated society of modern times where the law touches all citizens in their daily lives, knowledge of laws and how the legal system works is essential for all Australians. While the majority of the Australian–born population would not be expected to have an extensive knowledge of the law, its processes or its appeal mechanisms, they can be expected to know when particular situations have or require a legal remedy. They will also know, or be able to find out without too much difficulty, where to go if they need legal advice or help.[2] The same cannot be assumed to be the case for migrants to

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1 Ronald Sackville, Law and Poverty in Australia, (Commission of Inquiry into Poverty: Second Main Report, October 1975) Canberra, AGPS, 1975

2 For example, in 1994–1995 the Legal Services Commission of South Australia received 19,000 applications for legal aid and approved 15,000, or 80%, of those applications. Nearly 9000 duty solicitor attendances were made and legal advice was provided in interviews or by telephone on 86,000 occasions.

Australia, especially if they come from non-English speaking backgrounds (NESB).

This ignorance of the law is particularly true for migrants or refugees from South-East Asia. These peoples face additional difficulties in understanding Australian law because British and European colonial influences have not been as enduring or pervasive in their region as they have been in other geographic areas. New settlers from this region bring with them quite different understandings of such things as the administration of justice or the best or most effective means of resolving conflict between individuals, within families and between citizens and the state. These different approaches to questions of social conflict, which are based in ethnic origin, mean that many migrants or refugees from the South–East Asian region will not readily comprehend either the nature or the operation of the legal system in a 'multicultural' Australia.[3]

As a matter of government policy, multiculturalism in Australia is said to promote a climate of social justice in which all Australians have a right to equality of treatment and opportunity. As part of this policy, all government agencies, including the Legal Services Commission of SA (LSC), have been obliged to develop 'access and equity' strategies or programs which ensure that services are delivered equally to all citizens regardless of race, ethnicity, religion, language, gender or place of birth. These strategies were necessary because inequality before and within the law does exist for disadvantaged groups in Australian society and has been widely documented in relation to Aborigines, women, some groups of youth, the socio-economically deprived and some migrants.[4] That the Vietnamese are a disadvantaged group in Australian society has also

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Legal Services Commission of South Australia, Legal Services Update, Issue 11, September 1995, p. 6. In 1992–1993 (the last year for which there is a breakdown of some figures by country of birth) a total of 762 NESB clients used duty solicitor services but it is not known how many sought face–to–face or telephone interviews for legal advice.

3 'Ethnic origin' is being used here to denote the history and social practices of a national geographic region which does not presume a necessarily homogeneous population.

4 See, for example, in the case of Aborigines, the Australian Law Reform Commission, The Recognition of Aboriginal Customary Law, 2 Vols., Report No. 31, AGPS, 1986; Australia. Royal Commission into Aboriginal Deaths in Custody, National Report by Commissioner Elliott Johnston, 5 Vols., Canberra, AGPS, 1991; John McCorquodale, Aborigines and the Law: A Digest, Canberra, Aboriginal Studies Press, 1987; where women are concerned there is a wide international literature dealing with their inequality in relation to the law. In Australia see, for example, Jocelynne A. Scutt, Women

been established in the larger settlement studies and the smaller, various and more focussed studies of the needs, adaptation and difficulties which the Vietnamese experience as newcomers to Australia. The literature also reveals that there has been little investigation of the legal needs of the refugees who have settled in Australia in the post-World war II era and that successive Government policies but rarely address adequately this aspect of migrant or refugee welfare.

This study was inspired by an LSC analysis of the birthplace of clients for the years 1986–1989 which revealed that very few Vietnamese clients had used LSC services (legal aid) in comparison with other ethnic groups. It was not known why the Vietnamese were not using Legal Aid services and this lack of knowledge posed a number of questions. Was it because the Vietnamese experienced fewer legal problems due to an inability to recognise and articulate them as such? Or did they experience legal problems while being unaware of legal remedies? Were they aware of available legal remedies but declining to avail themselves of the remedies because they were seen as confusing, unhelpful or inappropriate? Or were the Vietnamese managing the legal aspects of their lives without difficulty? There was a need to find answers to these questions if the providers of legal services were to respond adequately to the needs of the Vietnamese.

In an attempt to discover if the Vietnamese were experiencing difficulties in relation to the law in Australia, the present research set out to explore the nature of any barriers which existed between the Vietnamese and the legal system in South Australia. During 1992

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and the Law, North Ryde, NSW, Law Book Company, 1990; Regina Graycar and Jenny Morgan, The Hidden Gender of Law, Annandale, NSW, Federation Press, 1990; Ngaire Naffine, Law and the Sexes, Sydney, Allen & Unwin, 1990; for studies of youth see, for example, A. Borowski and J. M. Murray (eds.), Juvenile Delinquency in Australia, North Ryde, NSW, Methuen Australia, 1985; A. E. Debenham, The Innocent Victims, Sydney, Edwards & Shaw, 1969; D. W. Winnicott, Deprivation and Delinquency, London, Tavistock, 1984; in the case of the poor see, Australia. Commission of Inquiry into Poverty, Law and Poverty in Australia, 2nd Main Report of the Commission of Inquiry into Poverty, Canberra, AGPS, 1972; J. S. Western, Social Inequality in Australian Society, South Melbourne, Macmillan, 1983 and for migrants see, for example, R. D. Francis, Migrant Crime in Australia, St. Lucia, Qld., University of Queensland Press, 1981; A. Jakubowicz and B. Buckley, Migrants and the Legal System, Law and Policy Series, Australian Government Commission Inquiry into Poverty, Canberra, AGPS, 1975; B. Brown, 'The Ordinary Man in Provocation; Anglo-Saxon Attitudes and Unreasonable Non-Englishmen' in The International and Comparative Quarterly, Vol. 13, 1964, pp. 203-235

and 1993, extended interviews were carried out with 175 Vietnamese people from diverse sections of the Vietnamese community. Analysis of the data indicated that the majority of Vietnamese were not experiencing overwhelming difficulties in everyday encounters with the legal system. In a few areas however, there were serious problems of communication, abuse of rights and lack of services which gave rise to substantial injustice.

The literature dealing with the resettlement of Vietnamese refugees, both in Australia and overseas, has been concerned to differentiate refugees' needs from those of ordinary migrants. Studies have consistently found that being a refugee significantly complicates the process of settling in another country. 'Settlement' studies also note that this consideration is not generally reflected in government policy–making or provision of services. However, there is also an assumption in the settlement studies that, as basic refugees' needs for language, housing, employment, health and so on are met, that adaptation to the new society will automatically follow. Settlement studies thus presume that language competence and length of residence are the key factors leading to successful adaptation of the Vietnamese in countries of resettlement. However, my research indicates that other important but less well-known factors are also at work. These other factors are those which are specific to Vietnamese history, belief systems and customary behaviour and their significance needs to be appreciated in the formulation of policies and organisation of services if such policies and services are to be effective.

That such 'cultural' factors need to be considered is pertinent for many recent recommendations for law reform.[5] These reforms are aimed at facilitating new settlers' access to legal resources in Australian society. However, reform programs may fail to achieve their stated goals because they have been framed without reference to the refugee experience and some of the beliefs and behaviours of particular ethnic groups. The existence and nature of the barriers which inhibit new settler's access to the legal system

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5 Australia. Law Reform Commission, Multiculturalism and the Law, Report No. 57, Sydney, The Commission, 1992

must therefore be understood in much more, and very specific, detail if the Vietnamese, and other similar groups, are to have equal access to the law, to be treated equally under the law and if proposed reforms are to be effective.

The Vietnamese are therefore more than just another wave of immigrants to Australia. Instead they possess what I call a 'triple status'. This means that they are not only migrants but most are also refugees and, as well, bearers of a distinctive history and culture which is particular to Vietnam. That is, they are not only NESB migrants for whom a range of services need to be provided, they are also refugees who require supplementary and different kinds of services. In addition they are Vietnamese. This means that as Vietnamese they arrive in Australia with a history and life experience quite different from newcomers from Europe or migrants from countries with long histories of British or European colonisation. This idea of the Vietnamese, or any other similar group, as possessing a 'triple status' in a country of resettlement is not well understood in either the literature or in Australian government policy directed to their welfare. If this idea of a 'triple status' is as significant as I propose, it means that all three characteristics will need to be taken into account in the development and implementation of policies which affect the adaptation of the Vietnamese to Australian society. Recognition of this 'triple status' will also be an important tool for interrogating law and multicultural policy for the presence of hidden Anglo–Celtic bias which may disadvantage some Vietnamese, and some members of other similarly placed groups, both in the law and the legal process.

The thesis is structured as follows. In chapter two I examine the model of equality which underpins multicultural policy in Australia and Canada as both countries have adopted similar approaches to the management of large immigration programs in the post–World War II period. I argue in this chapter that while multiculturalism maintains a rhetoric of social and legal equality for ethnic minority groups and does accommodate some differences among individuals and groups of citizens in both countries, the kinds of differences which are taken into account tend to be superficial and associated with, for

example, food, dress or the celebration of cultural festivals. As a result, the concessions made to ethnic difference in multicultural policy do not challenge the structural inequalities of Anglo–Celtic dominance in these culturally diverse societies. The reasons for this failure to accommodate fully differences among ethnic groups are to be found in the underlying principles and values of liberal–democratic theory which determine how each society is organised. Therefore, they are reflected in the operation of the legal system.

In chapter three I further examine the liberal model of equality but this time in relation to how it operates both within and before the law in Australia. I argue that the legal model of equality is resistant to fundamental change because of the dominance within it of liberal ideas of rationality, universality, objectivity and impartiality. The analysis of these liberal principles reveals that the legal model of equality is narrowly conceived, is limited in application and contains a hidden male and ethnocentric norm. I argue further that the presence of these factors in the law and the legal process ultimately constrains equality legislation from delivering more than an inadequate formal equality to disadvantaged groups in liberal–democratic societies such as Australia. In an overview of the critiques of equality legislation in the feminist and critical legal studies literature, I argue that these critiques contain a conceptual challenge to the legal model of equality which expose its limitations. In the space created by this exposure, concepts such as 'triple status' can be used as a wedge to extend the way in which equality is understood for ethnic group minorities. Finally, I provide an example of how liberal values undermine efforts to effect egalitarian change for members of ethnic groups in an examination of some aspects of the 1992 ALRC report on multiculturalism and the law.

Having established in chapters two and three the limited nature of reform which can be expected in societies where liberal values are the norm, in chapter four I set the scene for the research project by telling the story of the Vietnamese in Australia. This places the study in a context of concerns about the kind and quality of assistance offered to refugees in the process of their adaptation to Australian society. The chapter contains a brief

overview of Vietnamese history, beliefs and cultural practices, demographic details of the Vietnamese in Australia and short discussions of the most important resettlement difficulties which are associated with being a refugee. It also includes an account of the problems experienced by the Vietnamese in their dealings with Australian institutions, with a particular emphasis on the legal system. As these difficulties are encountered in the story, I also assess the need for a 'triple status' to be applied to the relevant government polices which affect Vietnamese welfare.

Chapter five is a description of the research aims and the methodology I employed to carry out the study. Survey research in refugee communities does not conform to more orthodox methodologies and I therefore supply a detailed account of my research program. This includes how I overcame standard methodological problems, the results of preliminary interviews, the design and rationale for the research, the techniques which I used to recruit the sample, the development of the questionnaire and the conduct of interviews. The chapter concludes with a profile of the survey respondents.

The research findings are described and analysed in the two following chapters. In chapter six I analyse the survey data to locate the range of difficulties which the respondents reported in understanding the law in Australia. The respondents fell into three groups in this section of the analysis. The first group comprised a small proportion of Vietnamese who said they had no problems understanding the law; the second group were a larger number who had some problems of understanding and the third group were those who said they knew nothing about the law. The characteristics of these three groups are then analysed to determine which factors were significant for the development of legal knowledge and skills in this group of the Vietnamese. The chapter then continues with an analysis of the largest section of the data. This was concerned with the details of the respondents' experience with twenty–five life situations which require legal knowledge or expertise. In this analysis difficulties of access to knowledge about the law and the legal process are identified.

In chapter seven I first analyse the replies to that part of the questionnaire which sought

respondent attitudes to a variety of values and law–related concepts. The analysis reveals the sources of misunderstanding which occur regularly between some Vietnamese and some officers of the Australian legal system in the areas of civil, family and criminal law. In the second section of this chapter, I take the research a step further and discuss how reform to the law could be better managed. This section includes an elaboration of the concept of a 'triple status' and how it might fruitfully be applied to some of the recommendations in the ALRC report on multiculturalism and the law.

The concluding chapter of the thesis presents and discusses the key findings of the research, draws together the various themes and arguments of the thesis and indicates the areas where further research is necessary. It also includes a proposal for how the idea of a 'triple status', as applicable to all first generation settlers in Australia, could be used as a tool for not only identifying differences among immigrants from different countries but also for formulating law and policy, for implementing reform and for evaluating support programs. I suggest too, that the questions which are raised in the interrogation of law and policy by using a criterion of 'triple status', confront the narrowness of the liberal conception of equality and create the conditions where ideas about equality can become more inclusive and substantive at the same time. I conclude that although full equality before the law does not exist at present for many disadvantaged groups in Australia, this should not mean the abandonment of efforts to reform the law. Change is possible in liberal–democratic societies and there have been enough recommendations from inquiries in the past two decades to show us how to take the next step towards securing substantive equality for all Australians.

CHAPTER 2: EQUALITY AND MULTICULTURALISM

Introduction

The purpose of this chapter is to uncover the model of equality which underpins multicultural policy in Canada and Australia. In a discussion of the origins, foundations, development and critique of multicultural policy in these two countries, I argue that while multiculturalism accommodates some differences among individuals and among groups of citizens, the kinds of differences which are taken into account tend to be superficial and associated with, for example, food, dress or the celebration of cultural festivals. As a result, the concessions to ethnic difference in multicultural policy do not challenge the structural inequalities of Anglo–Celtic dominance in Canadian or Australian institutional life. In concluding this chapter I will suggest that, at worst, multiculturalism is assimilation by another name, where the degree of experienced equality for 'migrants' will be in proportion to their similarity to the host population in language, education and socio–economic position. At best, multiculturalism will be seen as a policy which is evolving in response to academic and social criticism and adheres ultimately to values of social justice and the delivery of substantive equality.

Historically, multicultural societies have existed since the days of the Roman empire where subjects from diverse cultural origins were politically united under a single system of law and administration.[1] The term 'multicultural', as it is applied to western societies in the second half of the 20th century, is no longer associated with an imperial political tradition but is more commonly used to describe, on the one hand, countries such as

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[1] Maurice Cranston, 'Multiculturalism and the Sovereignty of the Nation', Australia and World Affairs, No 8, Autumn 1991, p. 21

Britain and many European states who accepted a variety of displaced peoples in the post–World War II period and, on the other hand, 'settler' societies such as the United States, Canada and Australia where mass immigration in the 20th century has substantially altered the racial or ethnic composition of the population.[2] The 'settler' countries also have residues of indigenous peoples who, conquered and usually decimated by the first wave of immigrants, now live on the margins of the wider society.

In the western countries which have supported mass immigration in this century, government policy assumed that it was only a matter of time before immigrants would be assimilated or integrated into the host society.[3] When it became clear in the mid–1960s that presumptions of unproblematic assimilation of diverse linguistic, religious and 'racial'[4] groups were misplaced, research and policy debates revived and challenged the understanding of 'ethnicity'[5] as it had been articulated in the 'Chicago School' of race and ethnicity since the 1920s.[6] Since then, a variety of these debates have been subsumed under an ill–defined category of 'multiculturalism'. In general, the literature of 'ethnicity' or 'multiculturalism' is concerned with the management of ethnic relations as it relates to

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2 The term 'settler' is borrowed from Laksiri Jayasuriya, 'Citizenship and Welfare: Rediscovering Marshall', in P. Saunders, and S. Graham (eds), Beyond Economic Rationalism: Alternative Futures for Social Policy, Sydney, Research Centre, University of New South Wales, 1993, p. 14

3 John Rex, 'Multiculturalism, Anti–Racism and Equality of Opportunity in Britain' in R. Nile (ed.), Immigration and the Politics of Ethnicity and Race in Australia and Britain, Carlton, Victoria, Bureau of Immigration Research and London, University of London, 1991, p. 99. See also, F. M. Moghaddam, and E. A. Solliday, ' "Balanced Multiculturalism" and the Challenge of Peaceful Coexistence in Pluralistic Societies', Psychology and Developing Societies, Vol. 3, No. 1, Jan–June 1991 for a study of Third World and communist regimes which have pursued assimilative policies which also have not succeeded in eradicating ethnicity.

4 'Race' is variously defined in the literature but usually refers to peoples whose skin colour is much darker than the majority or host population or whose facial characteristics are markedly different.

5 'Ethnicity' too attracts a variety of definitions. It can mean country of birth or nation of origin; it can be hyphenated as in Afro or Asian–American; it can describe ancestry as in Chinese Vietnamese or be attached to religious affiliation as in Bosnian Muslim or Russian Jew. It is not used to describe indigenous peoples and usually refers to minority immigrant groups of the first or second generation.

6 This school of thought promoted a contact–competition–accommodation–assimilation framework which presumed that ethnicity would not be an enduring characteristic of immigrant groups within the United States. P. L. Van den Berghe, 'Australia, Canada and the United States: Ethnic Melting Pots or Plural Societies?' Australia and New Zealand Journal of Sociology, Vol. 19, No. 2, July 1983, p. 239.

social conflict within host societies. The perception that social conflict exists is a result of the political mobilisation of ethnic groups who, because of their experience of discrimination, pursue goals of equality with the dominant groups in terms of equal opportunity and equal treatment. However, from a public policy point of view, there are significant differences, located in each country's historical development, between how such 'conflict' is managed and how diverse ethnicities are constituted as 'the problem'.

In Britain and Europe the literature is chiefly concerned with questions of skin colour as definitive of ethnicity and of how racism directed against 'black' and 'Asian' immigrants restricts their access to equal opportunity and thus inhibits the process of assimilation of these groups into the host population.[7] There is also a literature of black/white relations in the United States which is dominated by the 'black' struggle for integration as it is articulated in the civil rights movement. The social position of other ethnic groups in the United States is still controlled by assimilation in the 'melting pot' ideology where meritocracy is said to be the guarantee of equality.[8] As a result, the multicultural debate in the United States which is concerned with the ethnicity question has been focussed on language policy and the rights of minority groups to bilingual education and access to public institutional procedures in their own language. This move is opposed by assimilationists who demand that English be declared the 'official' language of the United States.[9] Another US debate is concentrated in the universities where an emerging critique of western civilisation *per se* has deteriorated into a war of values between radical and

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7 Rex, op.cit. p. 98

8 Evelyn Kallen, 'Multiculturalism: Ideology, Policy and Reality', Journal of Canadian Studies, Vol. 17, No. 1, (Printemps 1982 Spring), p. 52. See also, F. C. Nelsen, 'Theories of Assimilation in Historical Perspective', Revista Internacional de Sociologia, Vol. 38, No. 36, Oct–Dec 1980 for a discussion of the 'melting pot' ideology in the USA.

9 Ronald J. Schmidt, 'Language Policy Conflict in the United States', in Crawford Young (ed.) The Rising Tide of Cultural Pluralism, Wisconsin, The University of Wisconsin Press, 1993, p. 73

conservative educators about the cultural content of undergraduate courses in the humanities.[10]

The American, British and European debates do not concern us here but demonstrate only that the term 'multiculturalism' is used in a variety of ways as a tool for classification and analysis. It is only in two major 'settler' societies, Canada and Australia, that multiculturalism has evolved as a government policy to replace policies of assimilation or integration. Although the political impetus for creating the policy was different in both countries, the primary purpose of avoiding, controlling or containing social conflict was the same.[11] Secondary considerations of addressing social justice issues and securing equality of opportunity were also similar. Likewise, there is a convergence in the critical debates surrounding the implementation of multicultural policy as it is currently conceived in the two societies, which suggests that in practice it does not, indeed cannot, deliver its promised equality to all citizens. To understand why multicultural policy fails to achieve its stated aims, this chapter will examine its foundations, development and implementation in Canada and Australia. I will also summarise the major critiques of multiculturalism in both countries.

Foundations of Multiculturalism

It is widely agreed in the literature that the model for multicultural policy in Canada and Australia has been constructed in a framework of cultural pluralism. Briefly, the term 'cultural pluralism' was first used to describe the 'great immigration' to the United States

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10 See, for instance, Roger Kimball, 'Multiculturalism and the American University', Quadrant, July/August 1991, Midge Decter, 'E Pluribus Nihil: Multiculturalism and Black Children', Commentary, Vol. 92, No. 3, September 1991 and Dinesh D'Souza, 'Multiculturalism, True or False', Policy Review, No. 56, Spring 1991

11 In Australia, critical scrutiny of the White Australia policy and migrant welfare provisions in the 1960s combined with a change of government in 1972 to produce new policies on immigration. See B. Cope, S. Castles, and M. Kalantzis, Immigration, Ethnic Conflicts and Social Cohesion, Canberra, AGPS, 1991, pp. 9–12. In Canada, pressures for change stemmed from a growing assertiveness of aboriginal peoples, the force of Quebecois nationalism and the fears of ethnic group minorities that they would become second–class citizens in a bilingual, bi–cultural Canada, See A. Fleras and J. L. Elliott, The Challenge of Diversity: Multiculturalism in Canada, Ontario, Nelson Canada, 1992, pp. 71–2. These circumstances will be discussed in more detail in the following sections.

between the 1880s and World War I.[12] The combination of subsequent historical events, however, meant that the idea of cultural pluralism never developed into a political reality.[13] In fact, by the 1950s, Young maintains that '"Multi–culturalism" as public policy would have been unimaginable'.[14]

Inherent in the idea of cultural pluralism are assumptions that each ethnic group within a society will have a desire to maintain its ethnic identity and that each group will share equally in the distribution of resources. A policy of cultural pluralism therefore entails the necessity for a plurality of social structures — structural pluralism — where every group, including the dominant group, will have access to equal amounts of political, social and economic power. Cultural pluralism as a political doctrine or ideology therefore describes an idealist state where a variety of cultures can live together in harmony. It prescribes mutual tolerance, encouragement and celebration of cultural differences within a nation state as long as this does not threaten an overall social cohesion or national security.[15] These kinds of prescriptions are very much part of the political rhetoric of multiculturalism in both Canada and Australia.

Since the 1950s, three conceptions of 'cultural pluralism' have emerged in academic theorising which Young labels 'instrumentalist', 'primordialist' and 'constructivist'.[16] The 'instrumentalist' version favoured by structural–functionalists and neo–Marxists in the 1970s was linked to the rediscovery of 'ethnicity' as a political tool in the 'pursuit of

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12 Young, op. cit. p. 12

13 In brief, these events were: the restrictive nature of the 1924 immigration act which reduced the flow of migrants from eastern and southern Europe; the great depression in the 1930s which emphasised class rather than ethnic or racial divisions; the unifying effect of World War II on the country as a whole; and the commitment to 'integration' in the early civil rights movement rather than any form of 'multiculturalism'. Ibid.

14 Ibid.

15 See, for example, D. L. Jayasuriya, (a) 'Australian Multiculturalism Adrift: The Search for a New Paradigm, Journal of Vietnamese Studies, Vol. 1, No. 3, January 1990 , p. 5

16 Young, op.cit. p. 21

material advantage'. 'Ethnicity' could be variously analysed to identify political factors which activated it or, in the neo–marxist debate, as 'a bridge to class theory'.[17] Judging that materialist explanations of 'ethnic group action' were unsatisfactory, the 'primordialist' school explored the 'psychological and cultural dimensions ... which might surround ethnic conflict' from the mid–1970s. Young includes cultural anthropologists such as Geertz, Barth and Keyes in this school due to their understanding of culture as constitutive of personal identity.[18] The 'constructivist' stream of cultural pluralism is the most recently developed and is contained in the work of post–structuralists such as Amselle, Vail and Roosens in the late 1980s. In this discourse, 'ethnicity' is an ideological creation and, to be adequately understood, requires 'deconstruction'.[19] A feminist critque of cultural pluralism appears in this debate and points out that gender is crucial to the lived experience of identity in any culture.[20] Sapiro, for example, argues that in the politics of ethnic identity 'being male or female is fundamental to social identity'. She proposes that a sex/gender analysis must be part of cultural theorising. Such an analysis needs to examine the role of women as not only the symbolic culture carriers in their wifely and mothering role — as they are in the malestream literature — but also as creators and maintainers of culture in their social and political activities.[21]

The idea of cultural pluralism as a theoretical foundation for policies of multiculturalism can thus be seen to rest on shifting sands. Given that Canada and Australia adopted multiculturalism policies in the 'instrumentalist' stage of the debate in the early 1970s, it is small wonder that these policies have been subject to not only a barrage of criticism but

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17 Ibid. p. 22.

18 Ibid. p. 23

19 Ibid. p. 24

20 Virginia Sapiro, 'Engendering Cultural Differences' in Ibid. pp. 37–38

21 Ibid. pp. 47–48

also to multi–directional forces which have required constant redefinitions. Theorists juggle with these redefinitions in debates about language, education, discrimination, inequality, social justice, liberal democracy, socio–economic disadvantage and political power. A central criticism, however, is that multicultural policy as cultural pluralism has never included its essential correlate of structural pluralism. Thus all differences among groups are not truly accommodated and the dominant group maintains a *status quo* of fundamental inequality.

Multiculturalism in Canada

Meanings

The term 'multiculturalism' has a variety of meanings in Canada. At one level it is simply descriptive of social reality where there are two official languages, English and French, numerous immigrant ethnic groups from all over the globe, Native peoples who maintain different lifestyles and religious minorities who have 'separate and distinctive communities'.[22] At another level, multiculturalism is an ideology derived from cultural pluralism — commonly referred to as the Canadian mosaic — which 'emphasises equality of opportunity and non-discrimination'.[23] Thirdly, it refers to Government policy designed to create national unity within ethnic diversity[24] and a fourth meaning is that multiculturalism is a 'resource for promoting political and minority interests'.[25] It is generally agreed in the literature that, in practice, multicultural policy falls well short of realising either its egalitarian ideals or its potential for social change.

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22 A. H. Richmond, 'Canadian Unemployment and the Threat to Multiculturalism', Journal of Canadian Studies, Vol. 17, No. 1, (Printemps 1982 Spring), p. 81

23 Ibid.

24 Kallen, op. cit. p. 51

25 J. L. Elliott and A. Fleras, Unequal Relations: An Introduction to Race and Ethnic Dynamics in Canada, Ontario, Prentice–Hall Canada Inc., 1992, p. 273

Development

Multiculturalism as public policy was introduced into Canada in 1971. The stimulus for its introduction 'lay in the negative response of immigrant ethnic minorities to the model of bilingualism and biculturalism' which was proposed in the findings of the *Royal Commission on Bi–lingualism and Bi–Culturalism* conducted during the 1960s.[26] Fearing second–class citizenship, ethnic groups mobilised to demand equal treatment with the English and French charter groups favoured by the 'Bi and Bi' Commission. As a result, the Commission continued their inquiries and produced a report in 1969 which left a number of important questions unanswered but contained

> sixteen recommendations for the implementation of an official government policy of multilingualism and multiculturalism designed as a model of integration for immigrant ethnic collectivities.[27]

However, when the government announced its multiculturalism policy two years later, Prime Minister Trudeau did not endorse the Commission's recommendations for multilingualism and stressed instead that 'the preservation of ethnic identity would be a voluntary matter both for the individual and the group'.[28] Thus ethnic groups would be able to claim a measure of government support for the maintenance of their cultures if they expressly wished to do so but this would not extend to the official recognition of languages other than English or French. Lupul observes that Trudeau's limited and highly qualified policy was 'largely due to the problem of reconciling the concepts of

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26 Kallen, op. cit. p.53. This commission had been set up to defuse Quebecois resentment of 'their exclusion from the central political institutions and symbolic order of Canadian society'. See Fleras and Elliott, op.cit. p. 72

27 Kallen, Ibid. Lupul also suggests that because the Commission did not define how 'ethnic groups' or group rights are to be understood or consider the implications for multiculturalism of, for instance, geographical disparities, an existing bilingualism and the increase of industrialisation, urbanisation and intermarriage, the report was disjointed and doomed to failure. Manoly R. Lupul, 'The Political Implementation of Multiculturalism', Journal of Canadian Studies, Vol. 17, No. 1, (Printemps 1982 Spring), p. 94

28 Kallen, op. cit.

anglophone–francophone dualism and ethnocultural pluralism'.[29] Where, ideally, cultural pluralism extends equal recognition to all ethnic groups within a society, Canadian multiculturalism is explicit in its support for members of ethnic groups to celebrate a superficial diversity which consists of crafts, concert items and retrospective accounts of immigration experiences, none of which raise questions about the actual distribution of power and thus present no challenge to the *status quo* .[30]

The relegation of cultural practices to the private lives of ethnic groups and individuals is an enduring criticism of multicultural policy in Canada and Australia. It is said that this privatisation of culture demonstrates that ultimately government policy aims for immigrants to be assimilated into the society and have access to power and equal opportunity only insofar as they resemble the host population.[31] The feminist analysis of the public/private sphere is also useful here. In the same way that women are disempowered in the assignment of their unpaid work in the family to the so–called 'private' sphere of social, political and economic life, so too are migrants disempowered when important parts of their life experiences are consigned to this 'private' sphere. As I shall demonstrate in chapter three, cultural difference, like gender difference, does not fit

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29 Lupul, op. cit. p.95. It has also been suggested that the Canadian government encouraged the political mobilisation of ethnic groups to contain French demands for a separate state in Quebec. See Carol Bacchi, Affirmative Action in Context: Category Politics and the Case for 'Women', Sage, Forthcoming, p. 158

30 Gerd Schroeter, 'In Search of Ethnicity: Multiculturalism in Canada', Journal of Ethnic Studies, Vol. 6, No. 1, Spring 1978, pp. 98–107. See also, L. W. Roberts and R. A. Clifton, 'Exploring the Ideology of Canadian Multiculturalism', Canadian Public Policy, Vol. VIII, No. 1, Winter 1982, p. 91; Lupul, op. cit. p. 93–4 and Kallen, op. cit. p. 55

31 Kallen, op. cit. p. 54. See also, M. Kelner and E. Kallen, 'The Multicultural Policy: Canada's Response to Ethnic Diversity', Journal of Comparative Sociology, Vol. 2, 1974 for confirmation that multiculturalism policy always intended to be integrationist. In Australia, Jayasuriya has maintained for many years that a model of cultural pluralism is finally assimilationist. See, for example, L. Jayasuriya, 'Immigration Policies and Ethnic Relations in Australia', Canada 2000: Race Relations and Public Policy: Conference Proceedings, Canada, University of Guelph, 1987(a), p. 125 L. Jayasuriya, 'Rethinking Australian Multiculturalism: Towards a New Paradigm', The Australian Quarterly, Autumn 1990[b]

the 'autonomous individual' model of liberal democratic theory and practice or the white/middle–class/educated/male norm which sustains it.[32]

Implementation

The initial implementation of multiculturalism in Canada in the 1970s included the establishment of small bureaucracies and advisory bodies to administer the policy and the funding of scholarly studies of ethnicity. In addition, and with 'less than generous funding', a wide range of ethnocultural activities were encouraged and supported.[33] However, multiculturalism policy was assigned to a weak, junior ministry which did not enjoy the cooperation of the Prime Minister, other powerful ministries or important members of the bureaucracy.[34] As a result, the policy programs never matched the political rhetoric, minority rights of non–English and non–French groups remained unprotected and there were no public mechanisms for ensuring equal access to political, economic or social power.[35]

What political commitment existed in the first years of multiculturalism began to dwindle in the late 1970s. For example, ministerial appointments to the main advisory body, the Canadian Consultative Council on Multiculturalism (CCCM), were reduced to one year

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32 The public/private debate in feminist theorising began in the early 1970s and has been central to numerous critiques of patriarchy, class society, labour relations and systems of justice. See, for example, Dorothy Broom (ed), Unfinished Business, North Sydney, Allen & Unwin, 1984; E. Frazer, J. Hornsby, and S. Lovibond, (eds.), Ethics: A Feminist Reader, Oxford, Blackwell, 1992; S. Gunew, (ed.), Feminist Knowledge: Critique and Construct, London, Routledge, 1990; G. Kaplan, Contemporary Western European Feminism, North Sydney, Allen & Unwin, 1992; C. L. Bacchi, Same Difference: Feminism and Sexual Difference, St. Leonards NSW, Allen & Unwin, 1990; Gill Bottomley, Marie De Lepervanche, and Jeannie Martin, Intersexions: Gender/Class/Culture/Ethnicity, North Sydney, Allen & Unwin, 1991; Katherine O'Donovan, Sexual Divisions in Law, London, Weidenfeld and Nicolson, 1985; Anne Bottomley and Joanne Conoghan (eds.), Feminist Theory and Legal Strategy, Oxford, Blackwell, 1993; M. A. Fineman, and N. S. Thomadsen, At the Boundaries of Law, New York, Routledge, 1991; Susan Moller Okin, Justice, Gender and the Family, New York, Basic Books, 1989 and E. V. Spelman, Inessential Woman, London, The Women's Press, 1990

33 Lupul, op. cit. p.93. See also, Anne–Marie Furness, 'Development of Local Services and Community Action on Behalf of Multiculturalism', Social–Work–Papers, Vol. 17, Summer 1983

34 Lupul, Ibid. p. 95–97

35 Kallen, op. cit. p. 56

periods with a resulting lack of continuity in policy administration and a fragmenting of any impact on federal decision–making.[36] Multicultural policies were again compromised in the early 1980s, when budgetary constraints further restricted the funds available for immigrant and ethnic group related programs.[37] Lack of coordination also marked the Government's evaluation of multicultural policy when, to assess the first ten years of the policy, various workshops and conferences were duplicated around the country and as a result 'failed to go beyond community and regional concerns'.[38]

However, there was a resurgence of political interest in multicultural policy after 1985 when Clause 15 of the Charter of Rights and Freedoms attached to the *Constitution Act* of 1982 came into operation.[39] Clause 15 defined 'equality rights', outlawed discrimination and provided for affirmative action for disadvantaged individuals or groups.[40] The implementation of Clause 15 coincided with other events as well. First, there were international obligations to ratify the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights.* Second, with the first major increase in the flow of 'visible minority' immigrants in the late 1970s and early 1980s,[41] there was a growing awareness of racial discrimination in Canadian society, located in employment, housing and education, which the Government was now obliged to address.[42] This led to the

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36 K. V. Ujimoto, 'Visible Minorities and Multiculturalism: Planned Social Change Strategies for the Next Decade', Journal of Canadian Studies, Vol. 17, No. 1, (Printemps 1982 Spring), p. 115

37 Richmond, op.cit. p. 90

38 Ujimoto, op. cit. p.115

39 A. H. Richmond, Immigration and Ethnic Conflict, New York, St. Martin's Press, 1988, p. 132

40 Ibid.

41 This is a problematic term in Canadian policy. No one knows where it originated but Bacchi sees it as 'an attempt to bypass references to 'race' which were considered risky and potentially offensive'. It does not include, however, immigrants from countries where skin colour or physical features do not distinguish them from the majority population. Bacchi, forthcoming, op.cit. p. 168

42 Fleras and Elliott op.cit. p. 75 and J. R. Burnet with H. Palmer, "Coming Canadians": An Introduction to a History of Canada's Peoples, Ontario, McClelland and Stewart, 1988, p, 178

expansion of the multicultural policy to include affirmative action or 'employment equity'[43] programs as well as the promotion of ethnic business enterprises which would take advantage of overseas connections and attract international investment.[44] These developments were followed in 1988 by the introduction of the world's first *Multiculturalism Act* which sought to

> preserve, enhance, and incorporate cultural differences into the functioning of Canadian society, while ensuring equal access and full participation for all Canadians in the social, political, and economic spheres.[45]

Thus the framework for multiculturalism in Canada, at the Federal level, changed from one of providing cultural maintenance for those individuals or groups who wished to retain their ethnic identity, to one which, in a recognition of discrimination in institutional practice, emphasised the need for legal, economic and social equality.

The entrenchment in law of Canada's commitment to a culturally diverse society was also more than a symbolic step to secure equal rights for minority groups. The *Multiculturalism Act*, with its provisions for ensuring institutional change by requiring large business enterprises to report the ethnic makeup of their workforces annually to the parliament, made it difficult to ignore claims of discrimination from ethnic groups. It also removed the policy from the arena of party political or electoral whims.[46] Quebec, however, continues to oppose the Federal multiculturalist initiatives and declared its own policy of 'interculturalism' in 1981. 'Intercultural' policy was followed in 1991 by a new integration and immigration policy which respects and encourages cultural diversity within a framework which 'establishes the unquestioned supremacy of French as the

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[43] 'Employment equity' as a way of understanding Canadian affirmative action was coined by Rosalie Abella who headed the Commission on Equality in Employment in 1984. It describes 'a comprehensive planning process designed to bring about not only equality of opportunity but also equality of results'. Bacchi, forthcoming, op.cit. p. 150

[44] Fleras and Elliott, op.cit.

[45] Ibid.

[46] Ibid. pp. 78–80

language and culture of Quebec'.[47] Multiculturalism is thus basically an anglophone policy.[48] However, Quebec's position notwithstanding, the development and changes wrought in Federal multiculturalism in Canada have not been implemented without controversy.

Overview of critiques

In early theoretical criticisms, multicultural policy was seen as corrupting of the liberal–democratic principle because, according to Brotz, apart from tastes in food and dancing, everyone in Canada, except the indigenous peoples who were in a 'transitional phase', aspired to the same 'bourgeois–democratic' way of life. There were therefore, no cultural differences in Canada which had to be catered for in a policy of multiculturalism.[49] Others argued that the policy was not only Brotz's 'muddle' but was also misconceived because ethnic groups cannot survive without separate social structures. Furthermore, multiculturalism never intended to provide such structures and therefore the policy only supported a symbolic ethnicity which did not deserve government attention or funding.[50] However, according to Burnet, probably the most numerous band of critics were opposed to multiculturalism on the grounds that it constituted a political program with clearly articulated political means and ends rather than a serious attempt to address the social disadvantage and inequality suffered by minority ethnic groups.[51] In this debate,

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47 Ibid. pp. 82–84. See also, Elliott & Fleras, op.cit. pp. 196–223 for a short history of the politically unstable nature of the relationship between the French and English charter groups in Canada.

48 Buchignani also suggests that French fears of being reduced to an ethnic group under multiculturalism and the rise of Quebecois nationalism means there is very little ideological room for a theory of cultural pluralism in Quebec politics. N. Buchignani, 'Canadian Ethnic Research and Multiculturalism', Journal of Canadian Studies, Vol. 17, No. 1, Spring 1982, p. 18)

49 H. Brotz, 'Multiculturalism in Canada: A Muddle', Canadian Public Policy, Vol. 6, No. 1, (Winter 1980), pp. 41–46

50 Roberts and Clifton, op.cit. pp. 89–92

51 J. Burnet, 'The Social and Historical Context of Ethnic Relations' in R. C. Gardner and R. Kalin (eds), A Canadian Social Psychology of Ethnic Relations, Agincourt, Methuen, 1981, p. 31. See also J. Cummins, 'Lies We Live By: National Identity and Social Justice', International Journal of the Sociology of Languages, No. 110, 1994

multiculturalism existed to capture the ethnic vote, to counterbalance resentment in the west over perceived favouritism toward Quebec and to 'pre–empt the encroachment of American cultural values'.[52]

Since the early 1980s 'race relations' have also been part of the critical debate surrounding multicultural policy. In this section of the debate Canadian scholars have characterised 'racial' groups as 'visible minorities', a term which refers to 'Orientals', 'Asians' and 'Blacks'.[53] As Bacchi points out, this term is problematic because it excludes 'non–visible' migrants who also suffer discrimination, is dependent on self identification in affirmative action programs and does not discriminate among different levels of disadvantage within the 'visible' minority groups.[54] Heribert also suggests that the existence of racism is largely denied in Canada and that the ideological promotion of multiculturalism effectively conceals continuous discrimination.[55] Other authors too, identify persistent racism as a feature of Canadian social, economic and political life.[56] Some propose that racism and other kinds of discrimination could be addressed if the Government was willing to make use of the extensive research in ethnocultural studies to develop their policy of multiculturalism into a social philosophy. If this was done, they say, it would lead to the creation of a national body which would coordinate policy and

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52 Elliott & Fleras, op.cit. p. 282

53 Ujimoto, op. cit. p. 112

54 Bacchi, forthcoming, op.cit. p. 168

55 Adam Heribert, 'Combating Racism', Queen's Quarterly, Vol. 89, No. 4, Winter 1982, pp. 785–793

56 See K. A. Moodley, 'The Predicament of Racial Affirmative Action: A Critical Overview of "Equality Now" ', Queen's Quarterly, Vol. 91, No. 4, Winter 1984 for a scathing analysis of the Government report entitled 'Equality Now' which, he says, treats race as an invidious distinction, does not distinguish between immigrants and native minorities, has an idea that affirmative action can solve continuous racism and relies on data produced by self–interested witnesses. See also, S. Ramcharan, 'Multiculturalism and Inequality: Non–White Migrants in the Canadian Mosiac', California Sociologist, Vol. 7, No. 1, Winter 1984 who argues that multiculturalism is being used as a tool by the majority to maintain power and influence in socio–economic institutions and that racial inequality can only be overcome by cultural integration.

promote both cross–cultural understanding and the attainment of socio–economic equity.[57]

On the other hand, there is sustained criticism of the kind and quality of ethnocultural research which has been produced in Canada in the past two decades. In a comprehensive review of this research, Buchignani identifies numerous gaps and problems in this body of work such as the exclusion of ethnic women's concerns, the status of 'invisible' groups and rural ethnicity. He is concerned too that ethnic phenomena like the effects of immigration on both migrants and the host society, the relations among different ethnic groups, the levels and strength of discrimination and the politics of ethnicity are neglected. In addition, he demonstrates that research is paternalistic, conservative, driven by academic and government interests and largely ignores the work done outside Canada.[58] A social philosophy based on this research would therefore produce a distorted picture of how ethnic groups function in Canadian society. Perceptions of disadvantage would concentrate on urban males from select migrant groups and ignore the problems of all women, unselected and rural groups and intergroup relations.

At a functional level, supporters of multiculturalism in Canada endorse the funding of ethnic communities because it is seen to provide cultural continuity and a sense of identity and belonging for immigrants who feel alienated in a foreign society. This view tends to perceive 'ethnic collectivities in expressive, rather than instrumental terms' and does not disturb existing inequalities.[59] Others who oppose the policy, argue that the

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57 M. R. Lupul, 'Discrimination and Multiculturalism as Social Philosophy', Canadian Ethnic Studies, Vol. 21, No. 2, 1989, pp. 1–12 and Ujimoto, op. cit. pp. 111–112

58 Buchignani, op.cit. pp. 21–30. These gaps in the literature of ethnicity persist in Canada in the 1990s. See N. Buchignani and P. Letkemann, in J. W. Berry and J. A. Laponce, Ethnicity and Culture in Canada: The Research Landscape, Toronto, University of Toronto Press, 1994, p. 221

59 Ujimoto, op. cit. p.54. See also, Jean Burnet, 'Ethnicity: Canadian Experience and Policy', Sociological Focus, Vol. 9, No. 2, April 1976 who argues that the policy works for people regardless of either idealistic or cynical motivation that may have led to the policy. There is also some evidence that contact with others from the same ethnic background influences the adaptation process for new migrants.

encouragement of ethnic difference is tantamount to advocating ethnic separatism and a consequent social and economic disadvantage for members of ethnic enclaves. It is also said to obstruct rather than enhance the development of national unity.[60] Kallen is even more critical. She argues that

> the artificial separation of the three categories of Canadian ethnic collectivities (immigrants, charter population and indigenes) for political purposes — represents the age–old Colonial technique of divide and rule utilised by majority ethnic elites to guarantee and perpetuate their ascendancy.[61]

While it may be true that the Anglo–Celt majority have maintained their power in Canada as a result of Trudeau's manoeuvring over multiculturalism policy, it is also the case that the Francophones posed a far more serious threat to national unity at the time the policy was introduced.[62] Trudeau's strategy can therefore also be interpreted as one of compromise or containment of French demands in the face of a possible national fracturing if minority groups were granted the same linguistic concessions as those granted to the much larger French–speaking population.[63] Critics have also seen multiculturalism as an ideological device for masking persistent economic and social inequality for the migrant population and this criticism has raised the question of whether multiculturalism in a modern liberal democratic society can even be expected to satisfy everyone's demands. As Elliott and Fleras make clear,

> Multicultural initiatives must simultaneously preserve a precarious balance of power between the imperatives of the state, the rights of ethnic

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See C. Boekestijn, 'Intercultural Migration and the Development of Personal Identity: The Dilemma between Identity Maintenance and Cultural Adaptation', International Journal of Intercultural Relations, Vol. 12, No. 2, 1988

60 Kallen, op.cit.

61 Ibid.

62 See Paul Lamy, 'Bilingualizing a Civil Service: Politics, Policies and Objectives in Canada', Journal of Comparative Sociology, Vol 2, 1974 for a description of the unrest in French–speaking Quebec over their lack of representation in the English–speaking Federal civil service.

63 Lupul, op. cit. p.97

minorities, community standards and local laws, and the needs of the governing party.[64]

This is a difficult balancing act indeed but nevertheless one which obviously makes few concessions to a consultative, communitarian or any other alternative view of the social order. Existing power relations and structural inequalities are thus not seriously disturbed by Canada's policy of multiculturalism which expands and contracts in reaction to political exigencies rather than pursuing well–defined goals of ensuring social justice for all its citizens.

Summary

In summary, the introduction of multiculturalism policy in Canada can be seen as a haphazard affair, hastily conceived and implemented to appease minority ethnic groups and contain Francophone dissent at a time of political instability between the English and French charter groups. Even though it was based on an incomplete conception of cultural pluralism, multiculturalism has been successful in some, albeit negative, ways and a failure in others. With the exception of the 'race riot' in Toronto in 1992, its promotion of national unity within a bilingual framework has not resulted in the 'race riots' of Britain and the United States although racism persists and the tension between anglophone and francophone interests remains unresolved.[65] The policy has failed, however, to live up to the rhetoric of its ideal of delivering social justice because it uses the liberal–democratic model of equality which enshrines equal opportunity, affirmative action and anti–discrimination legislation as the method of addressing social disadvantage. However, this is a failure of the model rather than multiculturalism itself.[66] Other reasons for the failure of multiculturalism to effect substantial social

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64 Elliott & Fleras, op.cit. p. 291

65 J. Collins and F. Henry, Racism, Ethnicity and Immigration in Canada and Australia, Working Paper No. 25, Sydney, University of Technology, March 1993, p. 22

66 I will deal with the problematics of the liberal–democratic model of equality at the end of the following section.

change for disadvantaged ethnic groups in Canada include a weak political commitment, a lack of adequate resources and confusion over policy objectives. In the last respect the picture is not very different from that of Australia.

Multiculturalism in Australia

Meanings

Much of the debate about multiculturalism in Australia is in relation to what it means. In this debate 'supporters of the concept appeal for a clear definition [and] opponents dismiss it as empty rhetoric'.[67] While as an idea or policy it has been successful in promoting and sustaining the development of ethnic radio, SBS television, Migrant Resource Centres, whole government departments and the Telephone Interpreter Service, it remains true, as Liffman said as early as 1983, that it has no

> coherent theoretical and practical content, or a meaning which is genuinely understood and agreed upon by either its advocates or its opponents, let alone the community at large.[68]

This contest over meaning, and consequent absence of a shared meaning, has given rise to twenty years of criticism of either the idea or the policy, or both, from all shades of the political spectrum. As I show later, the concept and the policies are said be conceptually flawed, incoherent, socially divisive, essentially contradictory and even racist. Like

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67 P. Putnis, 'Constructing multiculturalism: Political and popular discourse', Australian Journal of Communication, December 1989, p. 156. Jupp contests these criticisms by demonstrating that in comparison to major societies like the USA, the UK or West Germany, multiculturalism in Australia 'looks calmly coherent'. J. Jupp, 'One Among Many' in David Goodman, D. J. O'Hearn, and C. Wallace-Crabbe (eds.), Multicultural Australia: The Challenges of Change, Newham, Victoria, Scribe, 1991, p. 125

68 Michael Liffman, "Multiculturalism: Where to, with whom—and why?", in Social Alternatives, Vol. 3, No. 3, 1983, p. 13. Five years later, in 1988, the Fitzgerald report on immigration made the same criticism, The Weekend Australian, June 4/5, 1988 p. 21 as did Jayasuriya in 1990(a), op.cit. p. 3. A national survey on multiculturalism (its meanings and aims) was undertaken by the Office of Multicultural Affairs between October 1988 and February 1989. Analysis of the findings 'indicate that the meaning(s) of multiculturalism require further clarification and inquiry' and that support for multiculturalism is not unqualified even among the NESB population of the sample. L. Foster, 'The OMA Survey on Issues in Multicultural Australia', The Australian Quarterly, Spring 1990, p. 291. See also R. Ho, 'Multiculturalism in Australia: A Survey of Attitudes', Human Relations, Vol. 43, No. 3, 1990, p. 269 who states that 'there is still considerable confusion over the policy of multiculturalism'.

Canada, multiculturalism in Australia is descriptive of a social reality.[69] It is also an ideological prescription for the social organisation of ethnic differences in policies which are said to promote social cohesion, equal opportunity and the retention of cultural identity.[70]

Development

In the post–World War II period of mass migration from Britain and Europe to other countries, Australian immigration policy was determinedly assimilationist.[71] This was due in part to the White Australia Policy instituted in the late 1880s which insisted that 'a harmonious Australian society had to remain homogeneous if social cohesion was to be maintained'.[72] When it was evident in the late 1950s that expanded immigration policies did not result in unmanageable social conflict and, further, that even second generation migrants did not automatically become 'good Australians' but in fact suffered from alienation and isolation in the new society,[73] the idea of assimilation and the White Australia Policy began to be more critically scrutinised.[74]

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69 In Australia forty percent of the population were born overseas or have one parent born overseas.

70 J. Zubrzycki, 'Public Policy in a Multicultural Australia', Quadrant, July 1987, p. 49

71 There were no settlement, language or education policies and information about Australia was printed in English. Jock Collins, Migrant Hands in a Distant Land: Australia's post-war immigration, (2nd ed.), Sydney, Pluto Press, 1991[a] , p.229

72 Cope *et al.*, op.cit., p. 5. The threat of social conflict was contained in the genesis of the White Australia Policy where, amongst other factors, the union movement of the late 1880s sought to protect wage levels and standards of living against the Chinese and Afghan willingness to work for lower wages. The need to maintain social cohesion is still a central focus of the immigration and multiculturalism debates in the 1990s. See, for example, Ibid. and J. Collins, Cohesion with Diversity? Immigration and Multiculturalism in Canada and Australia, Working Paper Series No. 28, University of Technology, Sydney, School of Finance and Economics, March 1993

73 J. I. Craig, cited in Cope *et al.*, op.cit., p. 9. See also M. L. Kovacs and A. J. Cropley, 'Alienation and the Assimilation of Immigrants', Australian Journal of Social Issues, Vol. 10, No. 3, 1975, p. 228 who advocated multiculturalism on the Canadian model as a 'strategy for facilitating the processes of assimilation'.

74 There was some modification to the White Australia Policy in the early 1960s and even though it was formally abandoned in 1973, the anti–Asian sentiment which underpinned the policy is still easily aroused in Australian debates on immigration and the maintenance of social cohesion. The Blainey furore in the 1980s is one example. Ibid. pp. 14–15

With the increase of immigration numbers in the 1960s and in response to ethnic group complaints about the label 'new Australians' as descriptive of their inferiority in society, 'integration' briefly became the new term which described migrant acculturation to Australia.[75] This was assimilation by another name but the idea of integration nevertheless employed a more 'sophisticated perspective' of migrant settlement difficulties and accorded some recognition to the assistance provided by ethnic organisations to migrants during the settlement process.[76] By the mid–1960s, however, there was a growing awareness of persistent migrant disadvantage in the areas of welfare, education, employment, health and housing and the meaning of integration began to shift toward one of cultural pluralism.[77]

There is some controversy about whether this latter idea was picked up by the newly elected Labor and reformist Whitlam Government of 1972. Cope *et al.*, suggest that Al Grassby's formulation of multicultural policy in 1973 remained firmly in the tradition of integration, albeit supported in a new way by welfare reform, and expressly rejected cultural pluralism. This was his 'family of the nation' conception of an Australian society which no longer discriminated against immigrants.[78] His successor, Clyde Cameron, 'certainly did not countenance cultural pluralism' and reduced immigration intakes when he became the new Minister for Immigration in 1974.[79] Other authors maintain that the

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75 Ibid. p. 9. Collins also notes that it became increasingly difficult to attract immigrants from Europe as their economies recovered and, once arrived, to keep them in Australia. He cites departure rates of 16 percent in this period as indicative of migrant disillusionment. Collins, 1991 [a] op.cit. p. 230

76 A. Jakubowicz, ' "Normalising Aliens": The Australian Welfare State and the Control of Immigrant Settlement' in R. Kennedy (ed.) Australian Welfare: Historical Sociology, South Melbourne, Macmillan, 1989, p. 269

77 Cope *et al.*, op.cit., pp. 9–10. Zubrzycki claims that he was the first person to canvas the idea of cultural pluralism in Australia in 1968 and that 'regrettably' the term was changed to 'multiculturalism' in 1973 by Al Grassby, the then Minister for Immigration in the Whitlam Government. See Zubrzycki, op.cit., p. 48

78 Cope *et al.*, op.cit. p. 12

79 Ibid.

term multicultural was always 'shorthand' for cultural pluralism,[80] or that it was uncritically appropriated from earlier public policy debates and renamed,[81] or that it was simply 'borrowed' from Canada.[82] Regardless of how the term and the policy began their lives in the early 1970s, there is little doubt that understandings of multiculturalism as cultural pluralism were established by the late 1970s when the Liberal and National parties were once again in power.[83]

Implementation

When first promulgated by the incoming Whitlam Labor Government in the early 1970s, the new approach of multiculturalism in immigration and welfare policy was seen not only as a new social ideal which was sensitive to cultural difference but also as a bi–partisan approach to public policy which encouraged and celebrated such diversity.[84] The Government adopted a needs–based strategy in their reforms which, for migrants, 'moved beyond the *denial* of migrant problems and the view of migrants *as* problems'.[85] Multiculturalism was thus not a formal policy in the Canadian sense of a Prime Ministerial announcement but more a change of attitude and direction in immigration and settlement policies from the discriminatory and monocultural preoccupations of the conservative past. Thus, for example, a new points system was introduced, the assisted passage scheme was extended to include all races and the five–year naturalisation period was

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80 Jayasuriya, 1990 (a) op.cit. p. 4

81 Zubrzycki, op.cit. Zubrzycki recently called for the abandonment of the word 'multiculturalism' because it is 'clumsy', 'pompous', 'ambiguous' and 'has become too associated with incidents of political separatism'. The Weekend Australian, 8–9 April 1995

82 D. L. Jayasuriya, 'State, Nation and Diversity in Australia', Current Affairs Bulletin, November 1991, p. 22

83 Collins, 1991 op.cit. p. 232

84 Liffman, op. cit. p. 13. Although the term "multiculturalism" was first coined in the 1960s, it is more closely associated, in Australia, with the Whitlam Government's immigration policies. The Fraser Government of 1975 continued to use the term for the changes they made to immigration and settlement policies.

85 Lois Foster and David Stockley, 'The Rise and Decline of Australian Multiculturalism: 1973–1988', Politics, Vol. 23, No. 2, 1988, p. 2

reduced to three.[86] This is not to say that Australia now had an open door to non–European immigration. Quite the contrary was the case. The emphasis on chain migration rather than mass migration — the government was intent on reducing actual numbers of migrants — meant that very few Asians were admitted.[87] The 'multi–cultural' policy in this period was not high on the government's long list of reform priorities and only the *Racial Discrimination Act* of 1975 has proved to be a lasting monument to the Whitlam government's contribution to multiculturalism. The form of multiculturalism which was in place by 1975 therefore had 'little effect on the major institutions' of the time but it did incorporate 'genuine notions of access and equity' which were to be important in later policy developments.[88]

Between 1975 and 1983, when the conservative parties were again in power, multiculturalism under the Fraser Government became a formal policy in the Canadian style. In contrast to Labor's policy emphasis on social welfare in general — where migrants were only a part of all disadvantaged groups — the coalition stressed instead 'ethnicity' as constituting the disadvantage for these groups. Where Labor had broken up the Department of Immigration into the mainstream departments of, for instance, labour, welfare and education, Fraser reinstated the department and renamed it the Department of Immigration and Ethnic Affairs. As a result of the first major review of post–arrival migrant services and programs in Australia — the Galbally report of 1978 — there was an overall reduction in government expenditure on migrant services.[89] This was achieved by disallowing tax rebates for remittances to overseas dependents and 'shifting migrant services from the general rhetoric of social welfare to often marginal "ethnic specific"

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86 Ibid.

87 S. Castles, M. Kalantzis, M. Morrissey and B. Cope, Mistaken Identity: Multiculturalism and the Demise of Nationalism in Australia, Sydney, Pluto Press, 1988, p. 58

88 Foster and Stockley, op.cit. p. 2

89 Australia. Committee for the Review of Post-Arrival Programs and Services for Migrants, (Chairman: F. Galbally), Migrant Services and Programs, Canberra, AGPS, 1978

services'.[90] This had the effect of promoting a particular kind of multiculturalism which not only endured to the mid–1980s but which Foster and Stockley maintain 'drained [it] of the potential for radicalism, a class component and a sustained critique of Australian society'.[91] Cope *et al.* also trace significant changes in 'multi–cultural' language during this period. They identify shifts from 'disadvantage' to 'difference', from 'cultural difference' to 'cultural dissonance', from a 'social theory of class' to 'multiple social divisions where none have priority' and to a view of ethnic groups as homogeneous.[92] In this scenario, 'leaders' of ethnic groups were seen as representative of their constituencies and incorporated into government initiatives.

'Galbally multiculturalism', as it was called in this period, nevertheless provided valuable new services for the migrant population which included ethnic radio and multicultural television (SBS), limited financial aid for ethnic schools and multicultural education, as well as developing the existing linguistic and culturally diverse programs and services in health, education and welfare, for example, and in interpreting and translating.[93] It also created the Australian Institute of Multicultural Affairs (AIMA) 'to engage in and commission research and advise government bodies on multicultural issues'.[94] Although the Galbally report had based its policy recommendations on four basic principles of equality of opportunity and access to services, rights to the maintenance of culture and the need for some special services for migrants, the emphasis was on self–help to achieve these goals rather than on government subsidies.[95] Missing from the Fraser

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90 Cope *et al.*, op.cit. p. 14

91 Foster and Stockley, op.cit. p. 3. See also, Ibid. p. 13

92 Cope *et al.*, op.cit. p. 14

93 Foster and Stockley, op.cit. p. 4

94 F. Hawkins, 'Multiculturalism in Two Countries: The Canadian and Australian Experience', Journal of Canadian Studies, Vol. 17, No. 1, Spring 1982, p. 73

95 Collins, 1991[a] op.cit. p. 234

Government's conception and implementation of multiculturalism policy were 'issues of social justice, of structural barriers to that end, and of genuine equality of opportunity'.[96]

The Labor party was returned to power in 1983 and the Hawke Government did little to change multicultural policy for three years although it was clear that 'Galbally' offerings to migrants had been 'symbolic, token, poorly conceived or under–resourced' and that migrant, now 'ethnic', disadvantage persisted.[97] In 1984, Professor Geoffrey Blainey, a well known historian at Melbourne University, made his now infamous speech on immigration policy which suggested that the level of Asian immigration was too high and would produce social conflict in an Australia currently experiencing high levels of unemployment.[98] This speech, delivered in difficult economic times, ignited a year–long public debate about immigration policies and multiculturalism which polarised both academic and public opinion for years to come.[99]

In 1986 another review of migrant and multicultural programs — the Jupp Report — identified four principles which should guide multicultural policies: equal opportunity to participate in every sphere of social and political life; equal access to and shares of government resources; equal participation in policy making; and equal rights in law to the practice of religion, culture and language as long as any of these practices did not interfere with the rights of others to do the same.[100] These principles were clearly a restoration of the welfare reformism of the Whitlam era but straightened economic conditions were seen as a reason which no longer allowed a return to the full mainstreaming of migrant

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96 Foster and Stockley, op.cit. p. 4

97 Liffman, op.cit. p.16

98 Cope *et al.*, op.cit. p. 14

99 Ibid. p. 15. See also Geoffrey Blainey, All for Australia, Methuen Haynes, Sydney, 1984

100 A. Jamrozik and C. Boland, 'Social Welfare Policy for a Multicultural Society' in J. Jupp (ed.), The Challenge of Diversity: Policy Options for a Multicultural Australia, Canberra, AGPS, 1989, p. 218

services.[101] In the event, the Federal budget of 1986/87, just prior to the release of the Jupp report, delivered drastic, some said draconian, cuts to all sectors of government spending including migrant support services.[102]

The electoral backlash from ethnic groups, the churches and the welfare lobby to this seeming abandonment of multiculturalism, plus the tabling of the Jupp report a few months later, produced a reversal of Federal policies in 1987 where some services were restored at the cost of others. In 1988, however, the Fitzgerald review of immigration policy produced a report which severely criticised immigration policy as *ad hoc*, incoherent and divisive.[103] This report also suggested that multicultural policy discriminated against Australians.[104] The report reignited the Blainey debate and led to a short–lived change in the Liberal Party's policy which not only departed from the political bi–partisanship on immigration for the first time since 1945 but also cost it victory in the 1988 federal election.[105] These events of the mid–1980s served as a sharp reminder to the Hawke government that multiculturalism was electorally important and in 1989, the *National Agenda for a Multicultural Australia* was announced. Designed as 'a policy for managing the consequences of cultural diversity in the interests of the individual and

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101 Castles *et al.*, p.74

102 For example, AIMA and the Multicultural Education Program were abolished, funding was reduced for the teaching of English as a second language (ESL) and a merger of SBS with the ABC was proposed. Due to the ensuing protests the merger did not proceed, ESL was partially restored and the Office of Multicultural Affairs (OMA), attached to the Department of the Prime Minister, was created to advise on and monitor policy and programs, carry out research and initiate information and education programs. Ibid. pp. 75–77

103 Committee to Advise on Australia's Immigration Policies, (Chairman: S. Fitzgerald). Immigration, a Commitment to Australia / The Report of the Committee to Advise on Australia's Immigration Policies., Canberra, AGPS, 1988. See also S. Fitzgerald, 'Report on immigration policy: origins and implications' Australian Quarterly Vol. 60, No. 3, 1988

104 Collins, 1991[a], op.cit. p. 289

105 Cope *et al.*, op.cit. p. 16. Howard's promotion of his 'One Nation' policy was widely, and misleadingly, seen as an attack on Asian immigration and was a factor in his loss of the Liberal party leadership soon after.

society as a whole' the *Agenda* contained an emphatic redefinition of how multicultural policy was to be understood from the government's point of view.

The *Agenda* was addressed to all Australians and stipulated three dimensions as follows: rights to cultural identity, social justice and the need for economic efficiency.[106] Within these dimensions, the policy outlined eight goals to be achieved in multicultural policies and programs. First, there was to be a primary commitment to Australia's national interests; second, there was a right to freedom from discrimination; third, an equality of life chances; fourth, an equality of participation; fifth, an opportunity for all to develop and use their human potential; sixth, opportunities to be proficient in English and other languages; seventh, opportunity to share cultural heritages; and, finally, that Australian institutions should 'acknowledge, reflect and respond to the cultural diversity of the Australian community'.[107] The policy also described the limits of multiculturalism as being based on the premise that all citizens have a primary loyalty to Australia and her national interests; that they accept the basic structures and principles of Australian society and that it be understood that rights to express one's culture involved reciprocal responsibilities to respect the rights of others to do the same.[108]

The *National Agenda for a Multicultural Australia* was a major restatement and new direction for multiculturalism in the 1990s. It deviated substantially from the Galbally/Fraser policies which preceded it and reintroduced, more specifically and in more detail, issues of social justice and the pursuit of equality of opportunity for all Australians. In addition, the *Agenda* gave rise, two months after its announcement, to the Australian Law Reform Commission's (ALRC) inquiry into Multiculturalism and the

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106 Office of Multicultural Affairs, National Agenda for a Multicultural Australia:..Sharing Our Future, Canberra, AGPS, 1989, p. vii

107 Ibid. p. 1

108 Ibid. p. vii

Law. The ALRC reported nearly three years later in March 1992.[109] However, there was a new language emphasis in the *Agenda* on 'management', 'primary loyalty', 'economic responsibility', 'individual' rights and adherence to the 'basic structures and principles of Australian society' which described assimilation not cultural pluralism in any of its forms.

Multiculturalism in Australia has, therefore, a chequered history. Rises and falls in its political importance depended on changes in government and, more recently, on new directions in 'economic' management as articulated in the *National Agenda*. This means that there is a danger in this latest policy that economic considerations will be the linchpin for funding cuts to multicultural programs. Notwithstanding this danger, the *Agenda's* continuing commitment to social justice as a central platform of multiculturalism provides room, at least, for challenges to its effectiveness to be mounted and argued. The idea of 'triple status' is one such challenge. For example, where it can be demonstrated that, despite multicultural policy, ethnic group disadvantage persists, the rhetoric of social justice can be called into question.

Overview of critiques

As in Canada, changes to multicultural policy have been accompanied by a spirited public debate. Debates on multiculturalism in Australia have historically been linked with immigration issues until they were categorically separated by the Hawke government in 1989.[110] There is a vast literature on immigration which often makes mention of multicultural policy but in this section I confine the discussion to authors whose central concern is multiculturalism as theory and practice rather than immigration. There are three major strands in this debate. The first is made up of the anti–multiculturalists, the second and third of uncritical and critical supporters. I will deal with each in this order.

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109 I will deal with the contents and ramifications of this report for the Vietnamese in following chapters.

110 Ibid. As Betts points out however, this does not mean there is no *de facto* connection. See K. Betts, 'Australia's Distorted Immigration Policy' in Goodman *et al.*, op.cit. p. 164

Anti–multicultural criticism of multiculturalism is directed at its economic cost and its potential for social conflict. In one of its earliest expressions, Chipman complained that

> vast sums of public revenue are being spent at municipal, state and federal levels, sometimes through augmenting already bloated education budgets to provide 'multi–cultural studies' or courses in 'community languages'; in other cases by creating vaguely defined posts labelled multi–cultural or inter–cultural, in increasingly diverse areas of public administration.[111]

Fearing that such 'hard' multiculturalism was at base a move away from Millian liberalism toward cultural relativism and the inevitable oppression of some members within ethnic groups, he perceived the funding of multicultural projects as a 'threat to Australian society, and a racket to boot'.[112] Chipman's sentiments were supported by some other academics, journalists and politicians throughout the 1980s.[113] Underpinning these attacks on multiculturalism were real fears of societal division along the lines of Northern Ireland or Lebanon for example, plus issues of cultural superiority, racism and nostalgia for a monocultural or British past.[114]

Multiculturalism as a 'threat to Australian society' continued to be a theme in debates in the 1980s. Fuelled by Blainey and the media in 1984 and supported by the New Right, a variety of arguments were marshalled to attack immigration policy. These authors

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111 L. Chipman, 'The Menace of Multi–Culturalism', Quadrant, October 1980, p. 3

112 Ibid. p. 5. See also Des Keegan, 'It's time for the silent majority to speak up', The Australian, 17 December 1985 and Frank Knopfelmacher, 'Save Australia's British Culture', The Age, 31 May, 1984

113 See A. Reid, 'Separate ethnic services could split the nation', The Bulletin, 2/9/80, p. 40 and Collins, 1991[a] , op.cit. p. 238

114 Liffman, op.cit. p. 14 and Collins, Ibid.. See also, P. Coleman, 'A Pluralist Australia? Conservatives and Radicals', Quadrant, December 1984, p. 30 who argues that Anglo–Australian values have not ever changed and do not need to in the future and T. D. O'Reilly, 'Alienation: Embracing the destroyer', Quadrant, June 1989, p.44–45 for a nostalgic discussion of his lost childhood neighbourhood to new immigrant settlers.

perceived that current policies were certain to lead to societal division in the future.[115] The arguments included the New Right's claim that equality for migrants in the labour market was government interference in what should be a 'free market' where competition creates wealth and only the fittest deserve to survive. In this argument, all migrants should be expected to assimilate 'into the Australian ethos'.[116] In addition, Cooray portrayed multiculturalism as needing 'an iron clad system of apartheid' to succeed and that without such a system it would fail and only serve to 'ferment inter–communal disharmony'.[117] When the predicted racial and ethnic conflicts did not eventuate, anti–multicultural critics of the late 1980s and 1990s turned their attention to the economic costs of multiculturalism which were said to be, in a critique sustained by Rimmer for several years, excessive, hidden, unfair, 'massively duplicated' and not accountable.[118]

Opposing this critique of multiculturalism were those supporters of government policy who argued, on the one hand, for a cultural pluralism confined to the expressive aspects of ethnic identity, the provision of equal opportunity and the outlawing of discrimination and, on the other hand, those who saw the need for structural reform. Those, like Zubrzycki, who subscribe to a restricted view of cultural pluralism, followed a Tawney and Titmuss version of the liberal–democratic state where government intervention is necessary to ameliorate the worst excesses of the 'free market' but limited to protecting

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115 John Hinkson, 'Assimilation or Multiculturalism: A False Dilemma', Arena, No. 67, 1984, p. 11. See also, Castles *et al.*, op.cit. pp. 116–137 for an incisive analysis of the New Right's influence in Australia.

116 Jakubowicz, 1989, op.cit. p. 294–296

117 L. J. M. Cooray, 'Multiculturalism in Australia: Who needs it?', Quadrant, April 1986, p. 28

118 For example, see S. J. Rimmer, 'The Politics of Multicultural Funding', IPA Review, August–October 1988, pp. 34 & 36; S. Rimmer, 'Do We Need the "National Agenda for a Multicultural Australia"?' Policy, Summer 1989, pp 50–51 and S. J. Rimmer, Multiculturalism and Australia's Future, Kalgoorlie Press, 1992, pp. 1–15. See also, See J. Jupp, '... and statistics', Australian Society, March 1989, p. 20 and J. Collins, 'What is Wrong with Multiculturalism', Ethnic Spotlight, Vol. 24, August 1991[b], pp. 11–16 who rebut Rimmer's claims.

individual rights and ensuring 'an adequate system of equality of opportunity'.[119] Smolicz too, argues in this vein for multiculturalism policy to guarantee minority rights for the learning and use of native languages while not denying the necessity for English in everyday communications.[120]

The majority of critics, however, recognise contradictions in a multiculturalism based on cultural pluralism where one group is dominant in a fundamentally unequal society. Within this latter critique there are radical and less radical positions. The radicals are led by Jakubowicz who for many years has argued from a marxist perspective that multiculturalism is a distraction from issues of class, race and gender relations and is a policy aimed at 'controlling and subjugating minorities' for the purposes of capital accumulation.[121] In a variation on this theme others claim that the Fraser and Hawke governments have reconstructed multicultural policy from a social justice model to one of corporate management where the emphasis is on economic efficiency.[122] This shift to the 'management of ethnic relations', they write, problematises 'ethnicity' and 'leads to attempts to control and to shape legitimate knowledge re migration and multiculturalism'.[123] From a feminist perspective within this debate, de Lepervanche sees migrant women as doubly disadvantaged in the labour market and subject to stricter state control than other women through the selective rules of family reunion

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119 Zubrzycki, op.cit. p.48. Zubrzycki was instrumental in formulating the 1980s and later interpretation of multiculturalism which emphasises an adherence to 'a common core of institutions, rights and obligations if group differences are to be resolved'. J. Zubrzycki, Multiculturalism for All Australians: Our Developing Nationhood, Canberra, AGPS, 1982, p.15

120 J. J. Smolicz, 'Multiculturalism in Australia: Rhetoric or Reality' New Community, Vol. XII, No. 3, Winter 1985, p. 461

121 Jakubowicz, 1989, op.cit. p. 297. Encel takes issue with the marxist analysis of ethnicity as it is related to multiculturalism and maintains that it is confused and 'highly implausible to regard multiculturalism as the central ground of class conflict'. S. Encel, 'Ethnicity and multiculturalism' The Australian Quarterly, Spring 1986, pp. 316–317

122 Foster and Stockley, op.cit. pp. 5–8

123 Lois Foster and David Stockley, 'The politics of ethnicity: Multicultural policy in Australia', Journal of Intercultural Studies, Vol. 10, No. 2, 1989, p. 28

immigration.[124] Martin also observes that the location of migrant women is politically and analytically absent from both malestream multicultural debates and the dominant Anglocentric feminist debates in Australia.[125]

Overall, the less radical critics of 'multiculturalism posing as cultural pluralism' are primarily concerned with how multiculturalism is in the first place to be understood and with issues of social justice and inequality in a wide range of areas which include health, welfare, education, law and employment. Many have been active in the multiculturalism debate since the early 1980s and have developed their ideas in tandem with government changes to policy and in response to public and academic debate. For example, Collins and Jupp have regularly assessed the contradictions, advantages and disadvantages of multiculturalism in the context of immigration policy, racism, nationalism, ethnicity and the labour market in Australia and overseas. Collins maintains that

> Multiculturalism as a philosophy and practice in Australia and Canada is full of contradictions. It purports to be for all, but fits uneasily with indigenous peoples in both countries. It stresses cultural aspects but often ignores economic aspects of inequality: or, to put it another way, multiculturalism in Australia and Canada has often emphasised lifestyle — dance, dress, dialect and diet — to the neglect ... of economic equality or life chances.[126]

Over the years Jupp has taken a more optimistic view of multiculturalism's success but remains aware that the under–representation of migrant populations in the political and institutional spheres reflects the prevalence of 'homosocial reproduction'.[127] I would take issue, however, with his claim that multiculturalism 'has not imposed Anglo–Celtic

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124 M. de Lepervanche, 'The Family: In the National Interest?' in Bottomley *et al.*, 1991, op.cit. p. 145

125 Jeannie Martin, 'Multiculturalism and Feminism' in Bottomley *et al.*, 1991, Ibid. p. 131

126 Collins, 1993, op.cit. p. 15. See the bibliography (pp. 30–31) for a list of Collins' publications since 1984.

127 J. Jupp, 'The Politics of Multiculturalism', The Australian Quarterly, Autumn 1986, p.99. Jupp has published regularly in the field of multiculturalism since 1981. See also J.L Jupp (ed.), Ethnic Politics in Australia, Sydney, George Allen & Unwin, 1984

hegemony' since the early 1970s.[128] Both authors also exhibit a great deal of patience with the slowness of social change, count the positives rather than the negatives and, discounting political rhetoric to the contrary, have lower expectations than many others of what multicultural policy can ultimately achieve in effecting structural change in a liberal–democratic society.

Others, like David Cox, have pursued migrant disadvantage in welfare policy in recent years and identified a number of prevailing myths about the service delivery of multicultural programs which, he says, require confrontation and reconceptualisation.[129] A central focus for Seitz is the operation of power and influence in Australia, in the law and economics in particular, which she says, in their hidden demands for Anglo–conformity, demonstrate that multiculturalism is just another name for assimilation.[130] It is in Jayasuriya's work, however, that we can see the development of the multicultural critique most clearly. He writes from a social justice and equality point of view and consistently focuses on a number of themes. These include: the social construction of ethnicity and its connection with class; the controversial nature of cultural pluralism; the need to disaggregate data on 'migrants' for any meaningful analysis of social disadvantage; the problems associated with 'access and equity'; and the necessity to change the model of equality contained in multiculturalism from one of equality of opportunity and treatment to one of equality of outcomes. I cannot do justice to the

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128 Jupp, 1991, op.cit., p. 133. Jupp's own findings of 'homosocial reproduction' in 1986 appear to contradict this later assertion. See also Charles Husband, 'Multiculturalism as Official Policy in Australia' in Nile (ed.) op.cit. p. 127 for his criticism of the language and tenor of the *National Agenda*, where he goes to some lengths to demonstrate that 'Australian multiculturalism is taking place within the hegemonic agenda of established Anglo–Celtic conceptions of Australia' which do not expose structural inequities and institutional racism.

129 D. Cox, 'Social Justice and Service Delivery' in Goodman *et al.*, pp. 215–222. Cox was convinced of the need for some kind of structural pluralism twenty years ago in D. Cox, 'Pluralism in Australia', ANZJS, Vol. 12, No. 2, 1976

130 Anne Seitz, 'A Hitchhiker's Guide' in Goodman *et al.*, op.cit. pp. 110–114. See also Cheryl Saunders, 'In Search of a System of Migration Review' in the same volume, pp. 134–138.

breadth and depth of Jayasuriya's scholarship in this overview. I will therefore focus on the aspects of his work which contribute to the argument in the present thesis.

Jayasuriya is concerned with both the philosophical underpinnings of multiculturalism and how the policy works in practice. He finds that the social construction of ethnicity, initiated under 'Galbally' multiculturalism, divides migrants into groups which are then forced to organise under the 'ethnic group' label to receive funding for their activities.[131] Jayasuriya contends that this 'liberal ethnic identity model of multiculturalism' serves the interests of dominant groups and is an 'effective means of social and political control'.[132] He says too, that ethnic organisations have 'succumbed to this perception of their status as a social group' and thus pursue ethnic 'identity' goals such as cultural and linguistic maintenance rather than minority 'rights' to mainstream services.[133] However, he points to research which demonstrates that the majority of migrants are not members of ethnic organisations. In his opinion, the leaders of these groups are therefore not representative of migrant populations but are positioned to be co–opted into the bureaucratic framework of multicultural policy.[134] The end result of this kind of multiculturalism is that funding for migrant services to ethnic groups mostly benefits 'middle–class ethnics and the petit bourgeoisie' who dominate the leadership of ethnic organisations and leave 'the vast majority of migrants no better off than before'.[135]

Jayasuriya has consistently argued for many years that, in spite of its rhetoric to the contrary, a 'culturalist' approach to multicultural policy is about lifestyles rather than life

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131 Jayasuriya, 1987 (a), op.cit. pp. 123–124

132 L. Jayasuriya, 'Language and Culture in Australian Public Policy', Vox, (Canberra), No. 2, 1989, p. 47

133 Jayasuriya, 1987 (a), op.cit. p.130

134 Ibid., pp. 131–132

135 L. Jayasuriya, 'The Facts, Policies and Rhetoric of Multiculturalism', Polycom, Vol. 37, June 1984 (b), p.4–7. This criticism seems to be too harsh as it suggests, without any real evidence, that ethnic organisations do little to help their constituents. My experience in Vietnamese community organisations has been quite different.

chances, about assimilation rather than any kind of cultural pluralism.[136] Policy therefore does not address the structural inequalities — in the labour market and in access to services — suffered by the majority of 'migrants' and traps them in their ethnicity.[137] He suggests that if the money provided to ethnic organisations went instead into the adequate resourcing of mainstream services, then more of the migrant population would be helped to overcome the persistent disadvantage which currently accrues to social constructs of 'ethnicity'.[138] Further, if multiculturalism was about minority rights instead of ethnicity, such an approach would focus primarily on social justice, issues of substantive equality and be 'directed towards removing barriers, arising from unequal power relations and preventing equity, access and participation'.[139]

By the late 1980s it was clear that multicultural policy was not going to return to the Whitlam era of mainstreaming migrant services and Jayasuriya argued, not for the first time, the need for a new paradigm for multiculturalism. The present policy, he said, was formulated in terms of cultural pluralism which was not working, rather than structural pluralism which had not been tried. What was needed was a new paradigm of 'democratic pluralism'.[140] Such a paradigm, with its emphasis on citizenship and rights rather than membership of a disadvantaged group, would see issues of access and equity for ethnic groups become, as they should be, issues of equality and justice for minority groups. In proposing a new paradigm, Jayasuriya challenged the narrow, liberal–

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136 Culture is a problematic term for Jayasuriya who links the understanding of culture with the social construction of 'ethnicity' for policy purposes which are about containing, controlling and ultimately marginalising the variety of needs of migrant groups. For his most elaborated discussion of this topic see L. Jayasuriya, , 'The Problematic of Culture and Identity in Social Functioning', Journal of Multicultural Social Work, Vol. 2, No. 4, 1992, pp. 37–58

137 Jayasuriya, 1984 (b), op.cit. p. 7. Jayasuriya often draws attention to the need to disaggregate data on migrants in order to locate the social reality of disparate groups of people. See, for example, Jayasuriya, 1984 (b), p. 3 and 1987 (a), p.116

138 L. Jayasuriya, 'Into the Mainstream', Australian Society, 1 March 1984 (a), pp. 25–26

139 L. Jayasuriya, 'Ethnic Minorities and Social Justice in Australian Society', Australian Journal of Social Issues, Vol. 22, No. 3, August 1987 (b), p. 495

140 Jayasuriya, 1990, op.cit. p. 11

democratic and individualistic view of citizenship as a set of duties and obligations where citizenship is limited to negative rights and, following T. H. Marshall and his latter–day critics, expanded it to include a set of positive social rights involving a claim on resources.[141]

Full participation in society, however, is a pre–condition for the exercise of positive social rights and this requires the representation of minority groups in decision–making power structures. Their under–representation in these structures means that, although high numbers of migrants enjoy political citizenship in Australia, members of ethnic minority groups are excluded from full participation in the culturalist model of multiculturalism.[142] In Australia there is no policy discussion of equality of outcomes for minority groups as there is in Canada, and Jayasuriya observes that the universalism and individualism inherent in liberal rights theory and dominant in Australian institutions is unlikely to provide it.[143] It is necessary therefore for 'democratic pluralism' to go beyond a conventional rights mentality towards a 'post–marshallian version of citizenship' which invokes notions of community and means that ethnic groups are not 'marginalised and isolated from the mainstream'.[144]

Jayasuriya's development of citizenship is part of a wider interest in the concept amongst political theorists in general.[145] In the area of cultural pluralism, Iris Young has been prominent in criticising the tendency of liberal theories of justice to be universal, abstract,

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141 Ibid. p. 13–14

142 Laksiri Jayasuriya, 'Citizenship, Democratic Pluralism and Ethnic Minorities in Australia', in Nile, op.cit. p. 30. I question Jayasuriya's inclusion of women in his list of minority groups in this discussion.

143 Ibid.

144 Ibid. pp. 37–38

145 Will Kymlicka and Wayne Norman, 'Return of the Citizen: A Survey of Recent Work on Citizenship Theory', Ethics, Vol. 104, January 1994, p. 352

committed to impartiality and thus oppressive of marginalised groups.[146] To promote even an expanded theory of citizenship as a way of overcoming this oppression is, for her, to again fall into the trap of universalising human identity. She maintains that 'such a desire for political unity will suppress difference, and tend to exclude some voices and perspectives'.[147] However, the politics of difference, which Young advocates should replace liberal ideas of citizenship, is criticised by Kymlicka and Norman. They perceive such considerations of difference as confused and not sufficiently distinguished from their purposes and outcomes. For example, special representation rights for many disadvantaged groups are temporary and different from self–government rights for indigenous peoples which are not. Both are different again from multicultural rights which may or may not be temporary but in any case encourage the integration of minority groups into the wider society.[148] Kymlicka claims that the kind of differentiated citizenship demanded by cultural pluralists already exists to some extent in all liberal democracies and that to demand any more entails 'enormous practical obstacles' which may eventually be self–defeating.[149]

Harris too makes a number of pertinent criticisms of Jayasuriya's communitarian case for citizenship rights to overcome persistent migrant disadvantage under Australian multiculturalism. She is concerned that citizenship as a unitary category does not take enough account of how citizenship is differentially constructed 'along the broad axes of class, race and gender' or how it is embedded in the bureaucratic administration of, for instance, the income security system, the processing of patients through casualty and the

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146 Iris Marion Young, Justice and the Politics of Difference, Princeton, New Jersey, Princeton University Press, 1990, pp. 1–2

147 Ibid., pp. 116–118

148 Kymlicka and Norman, op.cit. p. 372–373

149 Ibid., pp. 373–375

language used by social workers with their clients.[150] She also has difficulty with some of the prescriptions which flow from Jayasuriya's elaboration of community. While the integration of all citizens into a 'community' is desirable, Harris points out that communities, at the local level particularly, can be 'judgemental and punishing as well as supportive' and can discriminate between their members just a much as governments. She also questions whether the language of citizenship would be useful for the defenceless and unpopular minorities, street kids or the mentally ill for instance, when their community rejects them.[151] These criticisms of citizenship are timely and relevant to the present study. As I discuss in later chapters, the Vietnamese in the research sample were not integrated into the kind of community desired by Jayasuriya and the Anglo-Celtic domination of the legal bureaucracy, especially in the use of legal language, was a particular stumbling block.

Jayasuriya's proposal of 'citizenship' as a way out of the dilemma of persistent 'migrant' inequality, is, however, part of his desire to change the model of equality contained in multiculturalism. He perceives correctly that the liberal notion of equality is limited to equality of opportunity and treatment and that this model cannot take account of prior disadvantage. It therefore needs to be expanded to include equality of outcomes. For him, this expansion would be accomplished if 'ethnicity' ceased to be the source of claims for resources to overcome disadvantage and instead was replaced with more comprehensive 'rights' to mainstream services. I sympathise with Jayasuriya's efforts to undermine the liberal model of equality but I also agree with his critics that the 'communitarian citizenship' idea will fail to achieve the necessary transformation. As I argue throughout the thesis, and more substantially in chapter three, the liberal model of equality is resistant to change because of its underlying principles, one of which is

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150 P. Harris, 'Comments on Laksiri Jayasuriya's Paper' in Saunders and Graham, op.cit. p.31. I would add the language used by lawyers with their NESB clients to this list of examples.

151 Ibid. p. 32

universality. Equality of outcomes cannot be realised, therefore, unless the model can include important differences among the variety of groupings in a multicultural society.

This overview of the critique of multiculturalism in Australia reveals that for those arguing for substantial, structural reform in the interests of equal opportunity and equal access to justice for members of ethnic groups, the idea of multiculturalism is seen as romantic idealism and the policy, in its failure to produce either equality or justice, as therefore lacking the rigorous analysis it must have to bring about the necessary structural change. For those concerned with an economic recession and high unemployment rates producing widespread disadvantage for many Australians, even reduced rates of immigration are not enough to allay fears that multiculturalism is a recipe for social disharmony and division. The Blainey debate of 1984 and later was expressive of this latter view especially as it related to the new acceptance of refugees and immigrants from Southeast Asia. Finding as many apologists as it did opponents, a bitter legacy remains from the hostility, racism and revived xenophobia of that debate.

This is not to say that multiculturalism is without its supporters. In the literature many writers argue that as an idea it is a useful tool for understanding the complexities of Australian social and political life and that as a policy it is an effective means of promoting gradual change. However, as Wallace–Crabbe puts it, 'multiculturalism is not just a matter of weaving together ethnic groups into some rich pattern' but also needs to be responsive to other groupings in a culturally complex society.[152] Nevertheless, if multiculturalism is to be understood as a 'weaving together' rather than as a concerted attempt to achieve social justice for all disadvantaged groups in Australian society, then 'multicultural policies [will be] perceived as merely ethnic in their discriminations'. That is to say, if the focus is only on 'ethnicity', multicultural policy will 'have the potential to

152 For example, the very young and the very old, the disabled and the able-bodied, women as well as men, the worker and the unemployed. Goodman *et al.*, (eds.), op. cit. p. 4

be divisive'.[153] I would go further and add that while multicultural policy does not allow for some ethnic differentiation as well, it will fail to achieve its purpose fully.

Summary

Multiculturalism in Australia started in the early 1970s as a social ideal and a program for welfare reform. Although the rhetoric of social justice has not diminished in either frequency or volume, there have been three major policy shifts since that time which have not yet addressed the structural causes of migrant disadvantage and inequality. The first was the shifting of migrant claims from mainstream services to the 'ethnic group' margins in the late 1970s. The second was a shift to neglect in the fiasco of the mid–1980s when programs were cut and then hastily reinstated as the political fallout became too threatening. The third shift was the move, in the *National Agenda* of 1989, to unequivocal definitions, explicit Anglocentric limits and a corporatist style management of social relations for all Australians.

There is no doubt that the development, career path and criticism of multiculturalism in Canada and Australia have been similar in many ways. For example, both countries have made limited concessions to claims from deprived ethnic minorities for a larger share of resources. Both countries have also contained and controlled ethnic group participation in their institutional frameworks. Australia and Canada are different, however, in two significant ways. First, the levels of political and funding commitment devoted to the implementation of multicultural policy in Australia have been greater, particularly in the areas of ethnic broadcasting and the provision of telephone interpreter services. The second difference is a consequence of this different commitment. The strong ideological differences about the implementation of multicultural policy between the major parties of government in Australia resulted in a more hotly contested bid for the 'ethnic vote'. This competition meant that it became more difficult to reduce funding for ethnic services without incurring a politically damaging backlash. However, neither country has

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[153] Ibid. p. 5

modified its multicultural policies to conform with the formal rhetoric of social justice in any substantive way. Anglo–Celtic hegemony is maintained in both societies. Policy reforms and legislative change tinker at the edges of this dominance but do not substantially alter the *status quo* of fundamental socio–economic inequality.

Even so, within the confines of the modern liberal state, where the social justice emphasis is on the protection of individual rights and where the individual is conceived in the abstract as unconnected to a social context, this outcome is hardly surprising. As Hawkins understands it:

> multiculturalism is difficult to handle politically because it does not fit in well — that is to say there is no very clear place for it — in a liberal democratic society which already has established values and traditions over exactly the same territory, ie., values relating to the rights and obligations of citizenship, justice, equality, political participation and human rights generally, and which embraces, above all, the principle of universality and not the principle of particularism.[154]

Multicultural policy does nevertheless work at other levels to increase cultural awareness and tolerance in Canadian and Australian society, to outlaw rather than condone discrimination and to enhance opportunities for some members of some disadvantaged ethnic groups.[155] In contrast to the overtly racist and discriminatory policies of the past, multiculturalism can thus be seen as a progressive but certainly not perfect policy for accommodating ethnic diversity within the sovereign liberal state.

Conclusion

Australian and Canadian multiculturalism have sought to address the persistent social, legal and political inequality suffered by their immigrant populations in legislative reform. Laws to prohibit discrimination, to provide for equal opportunity and affirmative action,

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154 Hawkins, op.cit. p.77

155 Peter S. Li, Ethnic Inequality in a Class Society, Toronto, Wall and Thompson, 1988, p. 140

have thus been developed within the liberal–democratic framework dominant in both societies. Critics of multiculturalism in both countries have demonstrated in much detail and from a variety of perspectives, that such laws do not provide substantive equality for already disadvantaged members of ethnic minority groups. In their search for solutions to the persistent inequality suffered by these groups, scholars like Jayasuriya are right to suggest that it is necessary to reformulate the modern liberal theory which underpins such laws. His attempt to expand the limited parameters of liberal theory by developing Marshall's original theory of citizenship is useful as far as it goes. However, any reworking of liberalism will ultimately fail if it does not unearth the underlying principles which determine how we even think about the theory itself as well as its modification. The re–visioning of liberal theory must therefore come to terms with the abstract individual who inhabits its foundations and the values of universalism, rationality, objectivity and impartiality which constitute the edifice on which the theory is built. I will examine these concepts in the following chapter.

CHAPTER 3 : EQUALITY AND THE LAW

Introduction

In this chapter I will examine the model of equality which underpins the understanding and administration of justice in the Australian legal system. I have argued in the previous chapter that, although multicultural policy in Canada and Australia struggles with questions of social and legal equality for minority ethnic groups, it cannot deliver the promised equality for several reasons which flow from one another. The homogeneous 'migrant' model of multiculturalism is constructed by white Anglo–Celt dominance in both societies which, within the ideology of liberal capitalism, not only does not take specific differences among ethnic groups into account but also privileges the dominant group and disadvantages all those whose values are 'other'. The privileging of the dominant group, however, is unacknowledged in liberal understandings of the universality of human values in time and space and the principles which can be derived from it as a result. To maintain the primacy of the universal in this way individuals must be thought about as interchangeable, as possessing no important differences.[1] The human capacity for reason is thought to justify the universalising principle but it follows, in the real world of legal judgement and government policy, that individuals as principally rational beings must be abstracted from their histories, their life situations and their connections to others. In liberal ideology and law such abstraction relies on Cartesian

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[1] As Thornton puts it: 'The language of liberal jurisprudence reflects a society of free and equal individuals who act as independent, self–defining agents'. Margaret Thornton, 'Feminist Jurisprudence: Illusion or Reality?' Australian Journal of Law and Society, Vol. 3, 1986, p. 22

methods of reasoning and gives rise to highly valued principles of objectivity and impartiality, principles which then underpin the moral, social and legal order.[2]

From these values and principles flows an emphasis on legally enforceable rights, attached to the autonomous individual, which are said to ensure that all citizens enjoy equal protection and treatment before the law. In a liberal–democratic society this emphasis is expressed in programs of legislative reform as a method of addressing social and legal disadvantage. For example, equal opportunity, employment equity, affirmative action and anti–discrimination laws have been invoked in Canada and Australia as part of a multicultural policy aimed at reducing migrant disadvantage in, for example, employment, education and the legal system. Despite the undoubted goodwill of some legislators, many groups, including migrants, remain disadvantaged in all these areas because such laws contain hidden class, gender and ethnocentric bias. To say this is to say nothing new although I will revisit the debates where scholars within the critical legal studies and feminist movements demonstrate that normative legal doctrine has been constructed by empowered white men and thus reflects their values and interests. These debates have ramifications for scholars of multiculturalism who wish to understand the process and limits of effecting social change through legislative reform.

I demonstrated in the previous chapter that critics of multiculturalism concerned to make the policy work more effectively, construct a number of ways to overcome the dilemma of persistent migrant disadvantage. These scholars are engaged in a worthy but benighted project, however, if their new directions are not realistic about what can be achieved within a liberal–democratic society which relies on legislative reform to achieve egalitarian change. I argue in this chapter that the dominance of the legislative model of equality is resistant to fundamental change because of its foundational assumption of universality and

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[2] Cartesian rationality is understood here to be that mode of dualistic thinking which assumes 'that the mind is in principle separable from the body and that knowledge is a product of individual minds'. Alison M. Jagger, Feminist Politics and Human Nature, Totowa, New Jersey, Rowman & Allenheld, 1983, p. 40. See also, Frances Olsen, 'Feminism and Critical Legal Theory: An American Perspective', International Journal of the Sociology of Law, Vol. 18, 1990, p. 201

the principles which flow from this assumption. Further, I suggest that, unless this model of equality can be expanded to include some important differences among ethnic groups, future reform will be, as it has been in the past, by way of marginal changes. These marginal changes may benefit some members of ethnic minority groups but they do not substantially alter the *status quo* of enduring inequality with the more privileged Anglo–Celt majority.

In this chapter I will examine first how equality before the law is understood in modern western society. This will be followed by a critical discussion of legal principles and legislative attempts to address social inequality in the critical legal studies and feminist traditions. These debates reveal how the underlying principles of law in liberal–democratic societies contribute to the difficulty of effecting substantive change. Lastly, I will provide evidence for law's intransigence in an examination of some aspects of the Australian Law Reform Commission's (ALRC) report on Multiculturalism and the Law in 1992.

Equality and the law

The idea of equality which underlies the administration of law in English-speaking western societies derives from the Aristotelian notion of justice where like cases should be treated alike and unlike cases should be treated differently. This means that the law must ensure that equal treatment is meted out in the courts unless a relevant difference between cases exists. A central tenet of legal systems in common law countries such as Australia is, therefore, that all citizens are equal before the law. This legal equality is understood in two ways. One, citizens are said to be equal *before* the law and two, they are equal *in* the law. Equality *before* the law means equality in the application of legal rules — rules are applied to all in the same way — and equality *in* the law means equality in the content of legal rules; that is, 'legal rules should not contain any discriminating and privileging

provisions'.[3] In this view, legal equality is narrowly defined as non–arbitrariness, as confined to established rules and, in the absence of legislation to the contrary, not concerned with any discriminatory outcomes of legal decision–making.[4] It is concerned only with the correct — and, on its own terms, therefore just — application of the relevant legal rule in any particular case.

Despite the fact that social inequality is a defining feature of western society, liberalism defines equality as only equality before the law and only in the public sphere.[5] Within this idea, the accepted wisdom is that legal rules and procedures, developed and tested over time, ensure equality before the law in important and relevant respects and that the law treats everyone impartially.[6] This claim to universal equality in the administration of justice is based on the 'philosophical fiction of abstract individuality' which underpins western liberalism.[7] The inherent illogicality of this concept of radical individuality is exposed by scholars from every shade of the political spectrum. For example, Gray, in a thoughtful but deeply conservative critique of modern expressions of liberalism, argues that the universalising of the autonomous individual is not only unhistorical but also a denial of the 'complexity of the social networks in which each of us moves'.[8] Jagger too, believes that the idea 'generates inadequate conceptions of freedom and of equality' and

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3 W. Sadurski, 'Equality Before the Law: A Conceptual Analysis', The Australian Law Journal, Vol. 60, March 1986, p. 131

4 Beth Gaze and Melinda Jones, Law, Liberty and Australian Democracy, North Ryde NSW, Law Book Company, 1990, pp. 401–402

5 Although liberalism does not aspire to eliminate the state, 'it guards jealously the autonomy of the individual, watching out for encroachments on the private sphere'. Anne Phillips (ed.), Feminism and Equality, Oxford, Blackwell, 1987, p.13

6 What human characteristics are classified in law as important and relevant human commonalities will vary in historical periods and between jurisdictions. It is, however, widely agreed in the literature that equality in law is incompatible with classifications founded on those human features which are 'immutable and involuntary'. Sadurski, op.cit. p. 134

7 John Gray, 'The Politics of Cultural Diversity', Quadrant, November 1987, p. 31

8 Ibid. p. 33

ultimately undermines the liberal approach to political theory.[9] This happens because the 'liberal insistence on "formal" equality' makes it easy to ignore the various and specific needs of 'real' people and leads to the claim that satisfying the needs of any *group* amounts to reverse discrimination. Kymlicka contests this oft–made claim that liberalism cannot accommodate group rights in a persuasive re–reading of classical liberalism which he says demonstrates that post–World War II theorising has lost sight of original liberal concerns for the protection of minority cultures.[10] From a communitarian point of view, Taylor criticises the 'overwhelmingly monological bent of mainstream modern philosophy' and emphasises the 'dialogical' nature of acquiring human identity. By this he means that 'we define our identity always in dialogue with, sometimes in struggle against, the things our significant others want to see in us'.[11] While Kymlicka agrees with some of Taylor's criticisms of modern liberalism, he disputes this particular claim that liberalism is so individualistic that the social nature of human identity and choice is denied.[12] Unger too is critical of modern philosophical method which, in imagining a 'choosing self whose concerns can be defined in abstraction from the concrete social worlds to which it belongs', not only ignores the moral insights of history but also prescribes a superficial unity of beliefs and purposes which must be accepted as given.[13]

The philosophical debate about the worth or otherwise of the radical individual in liberal theory cannot be pursued here. Suffice it to say that, notwithstanding the profound and

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9 Jagger, op. cit. pp. 44–47. Kymlicka disputes Jagger's representation of liberalism and says her analysis is a misreading of what liberals do in fact say and that she provides no 'textual support' for her characterisation of liberal individuality. Although Kymlicka agrees that Jagger's mistakes are 'a common enough view of liberalism', he thinks she goes too far and makes liberal individuality into an absurdity. Will Kymlicka, Liberalism, Community and Culture, Oxford, Clarendon, 1991, pp. 14–15

10 Ibid. pp. 206–216. If Kymlicka is right it may then be more correct to say that contemporary liberalism *does not* rather than *cannot* accommodate group rights.

11 Charles Taylor, Multiculturalism and the "Politics of Recognition", Princeton, New Jersey, Princeton University Press, 1992, p. 32–33

12 Will Kymlicka, Contemporary Political Philosophy, Oxford, Clarendon Press, 1990, p. 216

13 Roberto M. Unger, 'The Critical Legal Studies Movement', Harvard Law Review, Vol. 96, 1983, pp. 656–657

comprehensive criticism of both the concept and the consequences of liberal individuality, the notion of 'universality' remains embedded in the moral, social and legal order and influences ideas about equality which in turn determine the development of legal principles and rules in the administration of justice. Chief amongst such legal principles are those of objectivity and impartiality. Both concepts have been extensively criticised by scholars in the critical and feminist legal studies movements of the past few decades.

Objectivity

Objectivism in law is understood in two ways. First, it is described as 'the belief that the authoritative legal materials — the system of statutes, cases, and accepted legal ideas — embody and sustain a defensible scheme of human association'.[14] This is to say that the law is 'out there' and can be known by anyone with sufficient legal skills to identify it. In this understanding, the law is therefore an object, a discrete body of knowledge which exists independently of those who know it, use it and are subject to it. Second, the law is thought to be objective in the traditional scientific sense of being value–free.[15] As Kerruish explains, 'there is no notion of standpoint in Jurisprudence. It is a discourse which is blind to its own relativity'.[16]

The legal process of distinguishing between cases by deciding which facts are relevant and which are not in different cases, is what Kerruish calls the 'jurisprudence game' of constructing and maintaining law's claim to truth through demonstrations of objectivity.[17] To establish this claim to objectivity, legal reasoning first draws 'boundaries around an

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14 Ibid. p. 565

15 That the doing of all kinds of 'science' is not value–free has long been established by, for example, philosophers of science and practitioners in anthropology and sociology. However, 'science holds a privileged place in the 20th century because of its supposed valuefree, non–theological, and objective descriptions of the real world, and because of the popular view that scientific investigations attain some absolute truth through the process of empirical proof'. Margaret Davies, Asking the Law Question, North Ryde NSW, Law Book Company, 1994, p. 96–97

16 Valerie Kerruish, Jurisprudence as Ideology, London, Routledge, 1991, p. 108

17 Ibid. p. 108–110

area of inquiry' and then justifies them.[18] These doctrinal boundaries isolate legal questions from the moral, social and political order and serve to legitimate, in a circular fashion, the law's own method of reasoning.[19] The inclusion of only pre–determined so–called 'legal' matters within the boundaries of legal inquiry is, however, not politically neutral but 'the power of the ideology of "objectivity" is such that in the past it has been seen in precisely this way, and continues to be'.[20]

Nor is boundary definition just the prerogative of judges. The routine daily practice of providing legal advice which does not require the 'correct interpretation of the legal text' nevertheless involves lawyers in translating 'everyday affairs into legal issues' and disqualifying alternative accounts of events no matter how important they might be to the client.[21] Jurisprudence thus sustains the fiction that 'law has the capacity to give an objective or objectively right or the one right answer' to the question of how relevance is determined.[22] The judicial practice of distinguishing cases thus constructs sameness from difference — no two cases are exactly alike and therefore have the potential to be treated differently — and then names this sameness as equality of treatment before the law.

Law's legitimacy thus rests unambiguously on an idealised decision–making process which, according to Kairys, means that

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18 Mary Jane Mossman, 'Feminism and Legal Method: The Difference it Makes', Australian Journal of Law and Society, Vol. 3, 1986, p. 44

19 As Bartlett describes it, lawyers 'examine the facts of a legal issue or dispute, [they] identify the essential features of those facts, [they] determine what legal principles should guide the resolution of the dispute, and [they] apply those principles to the facts. This process unfolds not in a linear, sequential, or strictly logical manner, but rather in a pragmatic, interactive manner. Facts determine which rules are appropriate, and rules determine which facts are relevant'. Katherine T. Bartlett, 'Feminist Legal Methods', Harvard Law Review, Vol. 103, No. 4, February 1990, p. 836. See also Kerruish, op.cit. p. 112 and Davies, op.cit. p. 117

20 Davies, op.cit. p. 88

21 Carol Smart, 'Law's Power, the Sexed Body, and Feminist Discourse', Journal of Law and Society, Vol. 17, No. 2, Summer 1990, pp. 197–198

22 Kerruish, op.cit. p. 110

> (1) the law on a particular issue is preexisting, clear, predictable, and available to anyone with reasonable legal skill; (2) the facts relevant to disposition of a case are ascertained by objective hearing and evidentiary rules that reasonably ensure that the truth will emerge; (3) the result in a particular case is determined by a rather routine application of the law to the facts; and (4) except for the occasional bad judge, any reasonable competent and fair judge will reach the "correct" decision.[23]

In the legal realism scholarship of the 1920s and the more recent critical legal studies movement, this idealistic model of the law is exposed as spurious; first, in its denial of the social and political content of judicial decision–making and second, in its pretence that legal method is, or even can be, objective.[24] Judicial decisions are consistently shown in the literature to be determined less by the logic of legal argument — where a convincing case can be made for a variety of outcomes — and the application of precedent, than they are by personal, policy and political preferences.[25] This is not to suggest that judicial decision–making is necessarily capricious but to point out that in the final analysis judges must often choose which facts are relevant to legal doctrine in a present case and again which facts are relevant to those of an earlier case. They must then decide which of the principles and rules of any precedent are to be applied. As Mensch makes clear, decisions about the relevance of distinguishing facts can never be logically impelled and are 'obviously value–laden and dependent on the historical context'. This also applies to the interpretation of statutes where 'words ... and their definition inevitably var[y] with

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23 David Kairys, (ed.), The Politics of Law: A Progressive Critique, Revised Edition, New York, Pantheon Books, 1990, p. 1

24 Elizabeth Mensch, 'The History of Mainstream Legal Thought' in Kairys, Ibid. p. 22

25 Karl E. Klare, 'Critical Theory and Labor Relations Law', in Kairys, op.cit., p. 63. See also Davies, op.cit. p. 118 who states that it is 'humanly *impossible* to make a strict distinction between legal and non–legal reasons'; Unger, op.cit. p. 570 who calls for a halt to 'the analogy–mongering' of legal argument where because everything can be defended nothing can be and Dale Gibson, 'Blind Justice and Other Legal Myths: The Lies that Law Lives By', Dalhousie Review, Vol. 66, No. 4, Winter 1986–87, p. 441 who points to the irrationality often present in judicial determinations of the relevant grounds for applications of precedent.

particular context and with the meaning brought to them by [the] judges'.[26] Thus reality is 'filtered' through judicial discretion and 'comes to serve as law's truth'.[27]

Law's claim to truth and equality through the 'objectivity' of the legal process is a central concern of many feminist legal scholars.[28] In a complex, comprehensive and sustained analysis of women's inequality both before and in the law, feminists expose the 'maleness' of legal reasoning in its emphasis on Cartesian rationality. They also demonstrate the intrusion into legal judgements of policy considerations and gendered viewpoints which are clear refutations of its claim to objectivity.[29] That the law is not objective but does, in fact, have a point of view which can be identified as that of the empowered white male, is demonstrated by many scholars in studies of, for example, jurisprudence, legal language, anti–discrimination legislation, civil, family and criminal law.[30]

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26 Mensch, op.cit. and

27 Naffine, op.cit. p. 46

28 There is a large and wide–ranging literature concerned with women's inequality at law from a variety of feminist perspectives. Broadly speaking, liberal feminists argue that the law is and should be rational, abstract, objective and principled and it is only a matter of making the law live up to its ideals for women to be treated equally. See for example, A. Sachs, and J. H. Wilson, Sexism and the Law: A Study of Male Beliefs and Legal Bias in Britain and The United States, Oxford, Martin Robertson, 1978. Other more radical scholars accept that the law is rational , objective and so on and characterise these qualities as male, patriarchal and ideologically oppressive of women. See for example, Catherine MacKinnon, Feminism Unmodified: Discourses on Life and Law, Cambridge, Mass., Harvard University Press, 1987. Another branch of feminist criticism argues that the law cannot be rational, objective, abstract and principled even on its own terms. See for example, Carol Smart, Feminism and the Power of Law, London, Routledge, 1989. It should be noted that there are agreements, disagreements and overlaps within and between these very broad categories of feminist legal scholarship.

29 Olsen, op. cit. p. 210

30 For a comprehensive review of the trends and major developments in the feminist critique of law and her own identification of the model legal subject as a particular kind of middle–class man see Naffine, op.cit. See also Karen Busby, 'The maleness of legal language', Manitoba Law Journal, Vol. 18, 1989 and Lucinda M. Finley, 'Breaking Women's Silence: The Dilemma of the Gendered Nature of Legal Reasoning', Notre Dame Law Review, Vol. 64, 1989, p. 893

Feminist scholars go beyond the analysis of the maleness of law, however, and examine the possibility of inserting other voices into the legal process.[31] They do not underestimate the difficulty of this project and point to the underlying assumptions of liberal theory which do not 'admit that the legal viewpoint is contingent on the social order and one's position therein'.[32] In demonstrating that women are disadvantaged at law because they are 'other' in the scheme of legal understandings, they also articulate that this 'otherness' applies to any disadvantaged group.[33] The power of the law to define and confine such 'otherness' is a problem for Eveline who would have the equality debate move on from a position of highlighting disadvantage and emphasise instead the advantage which benefits the in–group of, in the case of law, privileged white males. This reversal within the debate is necessary for change, she argues, if 'claims against inequality are [not to be] relegated to a defensive position, a position that implicitly reinforces the practices the claims seek to challenge'.[34] I agree with Eveline that the unearned benefits enjoyed by the in–group must be exposed and acknowledged. However, I am not sure that investigating and highlighting the complexities of the way in which many groups are disadvantaged before the law should be sacrificed in the process. In the case of 'triple status' as a tool for identifying ethnic group disadvantage in law and policy, for instance, it is not clear to me how this could be explained in a discussion which focussed on the power held and exercised by privileged white males. I fear that this focus might well render invisible the subtleties of difference and disadvantage which

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31 See Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development, Cambridge, Mass., Harvard University Press, 1982 whose work has been very influential in this debate. See also Bacchi, 1990, op.cit. p. 264 who articulates 'how difficult it is in a world where men hold most of the positions of power to conceive of a point of reference *other than man* ... [or] to think of women as *other than 'different'* '.

32 This is particularly evidenced in the dominant paradigm of justice posited by John Rawls where his 'veil of ignorance' deliberately and necessarily obscures the social context of individuals. Katherine O'Donovan, 'Engendering Justice: Women's Perspectives and the Rule of Law', University of Toronto Law Journal, Vol. 39, 1989, p. 141. See also Mossman, op.cit. p. 32

33 Martha Minow, 'Justice Engendered', Harvard Law Review, Vol. 101, No. 10, 1987, p. 16. See also Finley, op.cit. p. 892.

34 Joan Eveline, 'The Politics of Advantage', Political Theory Newsletter, Vol. 5, 1993, pp. 53–54

are encompassed in the concept of a 'triple status'. How, too, are we to discuss the advantage of the in–group except in relation to the disadvantage of the 'other'? These are difficult and important questions which I cannot pursue here. Suffice it to say that we must continue to confront the inadequacies of legal doctrines like objectivity in any way that is possible.

Impartiality

Critical legal scholars also have concerns about the power of the law to define the 'other' and confirm in their analyses of legal procedure that the law is no more objective than it is, in its other claim to truth, impartial. In the literature of justice and rights impartiality is 'the hallmark of moral reason'.[35] This ideal of impartiality is constituted in liberalism's conception of universal rationality which is necessarily detached from human particularity and from people's desires and interests. As Young puts it:

> Impartial reason aims to adopt a point of view outside concrete situations of action, a transcendental "view from nowhere" that carries the perspective, attributes, character, and interests of no particular subject or set of subjects.[36]

This reduction of the multiple nature of human personality and experience to a unity and the consequent exclusion of differences among people, is exemplified in the stand taken by the Rawlsian subject's aperspectivity in the 'original position' and *his* disconnection from any personal, social and political context.[37] This ideal or myth of impartial, universal rationality is foundational to liberal theories of the state although it has been

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35 Young, op.cit., p. 99

36 Ibid., p. 100

37 That the Rawlsian subject is neither impartial nor representative of any fictional account of the universal in human nature but in fact displays the characteristics of a western liberal middle–class male is affirmed in many analyses of Rawls theory of justice. See, for instance, Ibid., p. 110–111; O'Donovan, op.cit. p. 131 and Leslie Bender, 'A Lawyer's Primer on Feminist Theory and Tort', Journal of Legal Education, Vol. 38, No. 3, 1988, pp. 26

demonstrated by many as an impossibility which inevitably masks the partiality of perspectives held by actual decision–makers.[38]

There is no clear–cut definition of impartiality in the critical literature of liberal and legal notions of justice and equality. Writers use the term interchangeably and in conjunction with other terms such as 'neutrality', 'point–of–view', 'value–free' and 'objectivity'.[39] Impartiality is also included as a necessary component of 'universality', the 'generality' of laws and as linked to 'rationality' in theories of justice.[40] There are obvious connections here between these terms and philosophically liberal ideas of impartiality which are concerned with the role of the state in the governance of human affairs and the consequent demand for formalism in the legal system of which it is a part.[41] When the law is said to make claims that it is impartial in these texts there is a taken–for–granted understanding that impartiality is a distance created between judge and disputants, that legal concepts contain no bias, that the law is blind to so–called irrelevant differences among people and that impartiality means legal rules will be applied equally regardless of gender, class or race.[42] Hence it comes as no surprise that the symbol of justice is a blindfolded woman who can only hear 'objective' evidence and feel the weight of argument tipping her scales

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38 Young, op.cit., pp. 114–115. See also Dennis Patterson, 'Postmodernism/Feminism/Law', Cornell Law Review, Vol. 77, 1991–1992, pp. 286–287 and Unger, op.cit. pp. 579–583

39 See, for example, Naffine, op.cit. pp. 39–44; Kymlicka, 1991, op.cit. pp. 76–77 and Davies, op.cit. p.141

40 Kymlicka 1990, op.cit. pp. 68–70 and pp. 262–263

41 According to Kymlicka, 'A distinctive feature of contemporary liberal theory is its emphasis on "neutrality"—the view that the state should not reward or penalise particular conceptions of the good life but, rather, should provide a neutral framework within which different and potentially conflicting conceptions of the good can be pursued'. Kymlicka, Will, 'Liberal Individualism and Liberal Neutrality' Ethics, Vol. 99, July 1989, p. 883. Although formalism has been extensively criticised since the 1920s as the myth of legal neutrality, Hutchinson maintains that the concept remains alive and well in contemporary legal practice. Hutchison, A. C. cited in Stephen Bottomley, Neil Gunningham, and Stephen Parker, Law in Context, Annandale NSW, Federation Press, 1991, p. 53

42 As Bottomley *et al.*, put it, 'In essence, procedural legality requires that trials be conducted by *unbiased and disinterested* tribunals which hear both sides of the case and expose themselves to public scrutiny' (emphasis added). Ibid., p. 48

before bringing down the sword of judgement.[43] The construction of legal impartiality thus assumes not only that people must be abstracted from their social context as they are subject to the law but also that the law itself and its officers are separated from and unaffected by their own identities, histories and social position. I have dealt with some of these considerations in the previous section but now I will focus on those aspects of impartiality in the law which assume that legal concepts, principles and rules, in themselves, contain no bias.

In the critical legal studies movement a number of authors provide illustrations of how legal concepts are developed in a thoroughly human way for historically contingent and political purposes. The power of the law is such, however, that when these concepts are created they are endowed with the authority of law and are thereafter considered to be impartial. For example, in an examination of the history of mainstream American legal thought, Mensch traced the development of private contract law from the 18th century to the present and discovered that concepts of property and free contract contained assumptions of individual autonomy possessed only by the wealthy and powerful. These assumptions had the effect of actively discriminating against those who were less privileged.[44] Unrelenting critiques in this century produced some lessening of the harshness of property and contract law between the 1940s and 1960s but Mensch observes that the return to Republican values since the election of Richard Nixon in the 1970s has seen the Supreme Court revert 'to its traditional American role as protector of hierarchy and vested rights'.[45]

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43 As Gibson notes, the blindfolded woman is an odd symbol for the law because while it conveys 'the freedom of justice from improper influences such as favouritism, discrimination, bribery and threats ... difficulty arises from the fact that although equality requires similar situations to be treated similarly, no two situations are identical, and it isn't always easy to decide which differences are legally relevant and which are not ... [as a result] the blindfold must go'. Gibson, op.cit. p. 434

44 Mensch in Kairys, op.cit. pp. 19–20. See also Jay M. Feinman and Peter Gabel, 'Contract Law as Ideology' in Kairys, Ibid., pp. 373–374 who argue that images of autonomy and legal protection in the modern 'freedom of contract' concept mask their oppressive outcomes and that as a result 'the law is one of many vehicles for the development and transmission of ideological imagery'.

45 Mensch in Kairys, op.cit. p. 33

Klare too, identifies the law as more protective of elite interests in the development of American labour law in the post–World War II period. While a right to strike remains as a fundamental but residual right for workers, labour law

> gradually evolved a conception of legitimate collective action that simultaneously *encourages and confines* worker self–expression through concerted activity and industrial conflict. Labor law invites and authorizes workers to articulate and advance their interests through self–organization, yet carefully regulates and blunts workers' collective action.[46]

The legal concept of 'freedom of contract' is also invoked as an impartial understanding of the labour relationship which Klare says 'reinforces employer power' in spite of the doctrine of 'unconscionability'.[47] Under the industrial relations and arbitration system in Australia, workers have had more protection of their wages and conditions in this century than Americans have ever had. However, the 'freedom of contract' concept has gained increasing favour in Australian government and employer circles in recent years. Introduced in the guise of 'enterprise bargaining' we must wait to see if, in the future, court settlements of industrial disputes result in a lessening of workers' control over their labour power, its conditions and its rewards as it has in North America.

The feminist critique of law's claims to impartiality in legal doctrine corresponds to the deconstruction of a supposed neutrality in scholarship across disciplines which Thornton says has demonstrated that it is 'indelibly male' and 'culture–bound in its misogynism ... classism and racism'.[48] She adds, however, that the legal feminist critique of law has been 'less conspicuous' in the literature partly because

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46 Klare in Kairys, op.cit. p. 71

47 Ibid., p.73. See also Feinman and Gabel in Kairys, op.cit. p. 383

48 Thornton, op.cit., p. 16. See also Kathleen A. Lahey, "... Until women themselves have told all that they have to tell ...", Osgoode Hall Law Journal, Vol. 23, No. 3, 1985, pp. 523–526 for a similar critique of the maleness of scholarship in general.

> the cartography of law is rigorously controlled in the interests of the state, for the legal system is the primary custodian of the mores of liberalism.[49]

Nevertheless, this body of literature directs attention 'to the relationship of gender to the allocation of power and control'.[50] The power of legal language is often the focus in this branch of the debate, especially as it relates to the ubiquitous male pronoun of most statutes and rules.[51]

Mainstream jurists have claimed until recently that the term 'he' is generic and denoting of all persons but Scutt documents a five hundred year old 'heated debate' on the question of how the male pronoun is to be interpreted.[52] Although the English and Australian *Acts Interpretation Act* of 1850 and 1901 respectively, provided for existing Acts 'importing the masculine gender' to be taken as including females, it did not stop judges deciding that women were not persons when they claimed rights to be trained at universities for entry into the medical and legal professions, to vote in elections or to stand for parliament.[53] Notwithstanding the existence of the *Acts Interpretation Act*, it was not until the 1980s in Australia that any Federal or State political commitment was made to gender–neutral language in legislation. However, even this reform may not be enough to end

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49 Thornton, op.cit.

50 Ann C. Shalleck, 'Feminist Legal Theory and the Reading of *O'Brien v. Cunard*, Missouri Law Review, Vol. 57, 1992, pp. 378–379. In a detailed analysis of *O'Brien v. Cunard*, Shalleck points to the suppression of Mary O'Brien's version of events, the gendered nature of the doctrine of consent in understanding the use of force and the framing of the legal issues in terms of male kinds of behaviour. See also Taunya Lovell Banks, 'Teaching Laws with Flaws: Adopting a Pluralistic Approach to Torts', Missouri Law Review, Vol. 57, 1992, pp. 443–454 for an acute analysis of the same case which exposes the race, culture, gender and class dimensions of the decision in *O'Brien v. Cunard.*

51 See, for example, Katherine de Jong, 'On Equality and Language', Canadian Journal of Women and the Law, Vol. 1, No. 1, 1985, pp. 119–133 who argues that 'the shape and meaning of language are no more random than are the shape and meaning of law, and that both language and law simultaneously reflect and continue to affect the status of women'.

52 Jocelynne A. Scutt, 'Sexism in Legal Language', The Australian Law Journal, Vol. 59, March 1985, p. 163

53 Ibid., p.164–168. See also Mossman, op.cit. pp. 32–44 for a similar discussion of Canadian, British and American cases where the legal reasoning employed to circumvent the inclusion of women as persons under particular Acts–notwithstanding the *Acts Interpretation Act*–was as torturous and irrational as it was in the cases analysed by Scutt.

discrimination if the Canadian experience of using 'gender–neutrality' in the Constitution and legislation is any example.[54]

A further problem with gender–neutral language in a legal system where impartiality is an entrenched and valued principle is that when 'person' is substituted for such words as, 'mother' and 'child', or 'self' for 'he' and 'she', or 'spouse' for 'husband' and 'wife', people are abstracted from their identities and their relationships with one another. As a result, important inequalities are hidden from view. As Graycar and Morgan put it

> Since ... gender–neutral laws move away from an explicit focus on men as the sole participants in legal transactions, they have the potential to include women ... [and] may also serve a powerful ideological function of obscuring the important issue of "who is doing what to whom".[55]

Gender neutrality is thus a false neutrality because it ignores 'the irreducible biological differences between the sexes ... their differently assigned social roles' and the fact that in gender–structured societies people's experiences are dependent on what sex they are.[56]

Another important legal concept which is challenged in feminist legal scholarship as containing a hidden bias is that of 'reasonableness'. This concept is a crucial one in legal argument and judgement as it determines the culpability of parties in tort, contract, criminal and family law disputes. Originally the 'reasonable man' — now the 'reasonable person' — was the 'man on the Clapham omnibus' of English common law, 'the man who rides the (now nonexistent) Bondi tram' in Australian law and 'the man who takes

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54 As Boyle notes, the gender–neutral change of the law of rape to one of sexual assault means that women can now be convicted of this crime. She adds: 'This is a legal change that corresponds to no documented social problem but it was made in order to bring the language of the law into compliance with the provisions of the Charter'. Christine Boyle, 'Sexual Assault and the Feminist Judge', Canadian Journal of Women and the Law, Vol. 93, No. 1, 1985, p. 97. See also Bacchi, 1990, op.cit. p. 221 who urges caution for the adoption of similar changes to sex–specific legislation in Australia.

55 Graycar and Morgan, op.cit. p. 402

56 Okin, op.cit. p. 11. See also Dawn H. Currie, 'Feminist Encounters with Postmodernism: Exploring the Impasse of Debates on Patriarchy and Law', Canadian Journal of Women and the Law, Vol. 5, No. 1, 1992, p. 65

the magazines at home, and in the evening pushes the lawn mower in his shirt sleeves' in American law.[57] These 'characterisations have been described as typifying the "ordinariness" of this man, against which all conduct must be measured'.[58] This legal construction of 'reasonableness' is an attempt to establish a universal standard for human behaviour but it has been repeatedly shown that the standard is not only identifiably male in its conceptual assumptions but also racist and classist.[59] The gender–neutral change from 'man' to 'person' thus serves to obscure the underlying ethnocentric male norm of the 'reasonableness' concept. Even the use of the 'reasonable woman' standard in some American cases has not always led to a more inclusive understanding of 'reasonableness' but to a further stereotyping of women as victims, as passive and as in need of protection.[60]

A further example of how 'reasonableness' is not an impartial concept can be seen in the universal 'standard of care' which people can be expected to take in not inflicting harm on others before they are considered liable in law for that harm. This standard uses concepts of 'caution' and 'reasonableness' frequently equated with 'cost–benefit and risk–utility analyses' which turn human suffering into sums of money.[61] These concepts epitomise the negative rights in liberalism where autonomous and abstract individuals have a right not to be harmed by other individuals who are essentially strangers. As a consequence,

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57 Caroline, Forell, 'Reasonable Woman Standard of Care', University of Tasmania Law Review, Vol. 11, No. 1, 1992, p. 4

58 Wendy Parker, 'The reasonable person: a gendered concept?', Victoria University of Wellington Law Review, Vol. 23, No. 2, 1993, pp. 105–106

59 Lahey, Kathleen A., 'Reasonable Women and the Law' in Fineman and Thomadsen, op.cit. p. 5. See also Ibid., p.110; Bender, op.cit. pp. 20–23 and Forell, op.cit.

60 Naomi R. Cahn, 'The Looseness of Legal Language: The Reasonable Woman Standard in Theory and Practice', Cornell Law Review, Vol. 77, 1991–1992, pp. 1415–1417. Forell makes a case, however, for the use of a reasonable woman standard in cases of civil remedies for discriminatory harms suffered by women where 'emotional or dignitary' injuries are sexual or involve 'disparities in physical strength'. Forell, op.cit. p. 5

61 Bender, op.cit. p. 31. Bender goes on to suggest that tort law would be greatly improved if it began with 'a premise of responsibility rather than rights, of interconnectedness rather than separation, and a priority of safety rather than profit or efficiency.'

the western legal 'standard of care' excludes other conceptions of care associated with, for instance, relationships in the family, between neighbours or within other groups where 'cultural' understandings of what constitutes responsibility for others is very different.

In summary of the argument this far, I have maintained in a brief overview of the literature that the liberal notions of universality, objectivity and impartiality are not politically neutral concepts but are, in fact, crucially important ideals which not only sustain a particular social order but also underpin the administration of justice in western societies such as Australia. In spite of persistent criticism from a number of quarters since at least the 1920s, these concepts continue to be dominant in mainstream jurisprudence debates about equality and in theories of distributive justice. That these concepts have seriously limiting effects in the kinds of legislation formulated within such a liberal framework is the subject of the next section.

Legislative equality

Social movements campaigning for equality in the 19th and 20th centuries have consistently demanded legislative reform to combat discrimination in political representation, employment and education and to secure a wide range of human and civil rights. There can be no doubt that reforms such as the granting of adult suffrage, improved access to higher education, anti–discrimination and equal opportunity legislation have been progressive. Such law reform — for the sake of brevity I will refer to this range of laws as equality legislation — has reduced levels of social disadvantage for some sections of the population in most western societies since its implementation in the 1970s and 1980s. In addition, the existence of equality legislation has raised our consciousness about the kinds of discrimination which are no longer socially acceptable. However, it is now generally recognised in the literature that formal equality, as it is epitomised in legislation, can promise only limited results in the achievement of substantive equality for disadvantaged groups for two reasons. First, it cannot reach into areas of prior disadvantage such as ethnic origin, education, gender or socio-economic status and as a

result reproduces existing inequalities. Second, the reforms were introduced within a politically liberal framework which creates problems for the effective achievement of more than formal equality.

The most substantial critique of equality legislation has been developed by feminist scholars in the sameness/difference debate of male dominance in general and the equal vs special treatment debate in feminist legal theory.[62] In recent work, however, Bacchi has convincingly demonstrated that taking 'sameness' or 'difference' as a focal point in equality debates diverts attention from the more central issues of 'political conditions which force women into these [false] alternatives'.[63] What is needed she says, is a wholly new human model of equality rather than the present male–based one which tacks on women's needs as 'special' but does nothing to alter the underlying liberal principles which determine the shape, impact and application of equality legislation.[64] As Thornton explains:

> in the public sphere, the equation of maleness with universal necessarily precludes attempts to transform the prevailing standard, with the result that some attempts at law reform have served to reinforce rather than to redress gender inequalities. ... So successful has been the prevailing ideology of

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62 Here it is argued that equal treatment as sameness relies on women having to conform to the male model of the legal subject and that the model, reflecting some men's lives, cannot accommodate the realities of women's lives which are structured differently. There is a need therefore for women to seek special treatment in legal provisions because they are 'different'. The dilemma of this position has been that women run the risk of biologically based stigmatisation which further disadvantages them. See Olsen, op.cit. pp. 199–208 for an overview of the various feminist positions in this wide–ranging debate and Bacchi, op.cit. p. xvi who argues that it is misconceived to construct the equality debate in terms of sameness or difference because it distracts us from the larger need to develop a broader understanding of equality.

63 Ibid., p. 265. See also Martha Minow, 'Feminist Reason: Getting It and Losing It', Journal of Legal Education, Vol. 38, 1988, pp. 47–48 who suggests that feminists in the sameness/difference debate are prone to essentialising [and hiding] women's point of view as neutral and universal in the same way as the male norm they try to dislodge. Feminist critiques of equality legislation must go beyond gender, she says, into contexts of 'religion, ethnicity, race, handicap, sexual preference, socioeconomic class, and age' if they are to be credible.

64 Ibid., pp. 162–179. See also, Patricia Schulz, 'Institutional Obstacles to Equality Between the Sexes', Women's Studies Forum, Vol. 9, No. 1, 1986, pp. 5–11 who, in an analysis of how the legal system in Switzerland is biased in favour of men, also calls for the development of a new meaning for equality.

> law as a neutral arbiter of disputes and as a positive instrument of social change ... that little attention has been directed to the possibility that the form of the law might itself be flawed.[65]

The form of equality law is considered problematic by a number of feminist scholars who argue that it is a comparative model which allows only 'those women who choose to act as men do to receive the rewards that men receive'.[66] Smart and MacKinnon claim, in different ways, that the law itself forces critics to think within its own false paradigms of rationality, objectivity and neutrality and thereby prevents them from redefining the issues and the role that the law may have in addressing those issues.[67] In addition, the legal processes predicated on these values — the intent requirement, the allocations of burden of proof, the requirement of 'similar situation across the gender line' — inhibit and restrict women's ability to win discrimination cases at law.[68]

In mounting a critique of the principles which inform British equality legislation, Lacey maintains that sex discrimination laws framed in gender–neutral language apply to both sexes and render women's specific concerns invisible. In addition, they rigidly enforce the narrow legal model of equality which rules out affirmative action.[69] Equal opportunity laws, she claims, presuppose 'a world inhabited by autonomous individuals making choices' and assume that each person has the same choices and abilities to pursue their aims. The laws are also limited in their confinement to the public sphere where they

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65 Thornton, op.cit. p. 8. See also Finley, op.cit. p. 893 who states that '[p]rivileged white men are the norm for equality law'.

66 Olsen, op.cit., pp. 206–207

67 Smart, 1989, op.cit., pp. 82–83. For MacKinnon this whole debate is a distraction from the real issue of inequality of power. For women, she says, sex is a social status based on who is permitted to do what to whom; only derivatively is sex a difference. For her, considering gender as a matter of sameness and difference covers up the reality of gender as a system of social hierarchy, as an inequality. Difference, she states, 'is the velvet glove on the iron hand of domination'. Catherine A. MacKinnon, Toward a Feminist Theory of the State, Cambridge, Mass., Harvard University Press, 1989, pp. 215–234

68 MacKinnon, Ibid., pp. 230–231

69 Nicola Lacey, 'Legislation Against Sex Discrimination: Questions from a Feminist Perspective', Journal of Law and Society, Vol. 14, No. 4, Winter 1987, p. 416

cannot affect the subordination of women in the family. They are piecemeal as well because only some privileged women will be able to take advantage of the remedies.[70] Dickens argues further that all these difficulties are the result of limitations in liberal notions of equality which are geared to negative rights, use non–neutral standards and do nothing about overcoming the effects in the present of discrimination in the past.[71] Even in Australia where there is affirmative action legislation and national wage settings, she observes that women remain disadvantaged in the labour market because of the underlying assumptions of all anti–discrimination legislation.[72]

Relations of power and domination are also the focus for much criticism of equality legislation. In a discussion of affirmative action and the myth of merit, Young suggests that affirmative action programs 'challenge principles of liberal equality' because their focal point is groups rather than individuals and because they violate the principle of equal treatment.[73] Notwithstanding this challenge, however, equality legislation remains too narrowly conceived to address questions of institutional bias contained in race, gender and class stereotypes which continue to privilege those who are 'white or male, and usually both'.[74] Neither can this narrowness of legal liberalism be enlarged without, according to Unger, the development of a 'credible theory of social transformation'. In its absence, he says, liberalism is condemned to programmatic reform which consists of either 'utopian fantasies' or 'marginal adjustments' which do not alter the *status quo* .[75]

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70 Ibid., p.415. Lacey lists the inadequacies of not only the remedies of equality legislation but also of the legal process including difficulties of proof and the under–resourcing of complaint tribunals.

71 Linda Dickens, 'Road Blocks on the Route to Equality: The Failure of Sex Discrimination Legislation in Britain', Melbourne University Law Review, Vol. 18, December 1991, p. 290

72 Ibid., p. 296

73 Young, op.cit. pp. 192–194

74 Ibid., p.194. See also Deborah L. Rhode, 'Feminism and the State', Harvard Law Review, Vol. 107, No. 6, April 1994, p. 1196 who argues that current anti–discrimination law misses all but the most flagrant forms of discrimination.

75 Unger, op.cit. p. 583. In this discussion, Unger is concerned with critiquing objectivism in legal doctrine as resistant to a more inclusive and liberating view of the social world. However, his insights

Saunders too, is persuaded that the core concepts of law and the adversary system are unlikely to be more than modified to accommodate cultural diversity because it 'would involve a revolution of the structure, training and thinking of the entire legal profession and judiciary as well as elsewhere in the community'.[76] Unger and Saunders would both be right if change is understood as happening all at once as it does in the utopian fantasy. While 'marginal adjustments' and 'modifications' do bring about gradual improvements within the legal system for some people and do serve, over time, to raise the public consciousness of behaviour which is no longer acceptable, they do not challenge the conceptual boundaries of legal liberalism. The critique of equality legislation, however, which demonstrates the need for adjustments and modifications, exposes the inadequacies of core legal concepts and opens up a chink in the armour of liberal equality. Into that opening can be pressed a wedge like 'triple status' which demands that the power of anglocentrism to confine ethnic group difference within the 'other' be recognised.

For Smart and others, the power of 'the law' to define itself and exclude other points of view is part of the difficulty of effecting substantive change through the mechanism of reforming legislation.[77] For her, the 'dominant forms of knowledge [like law] are always specific, gendered and subjective' and feminist attempts to construct a 'different ontological basis for knowledge' risk being drawn into defending women's disadvantaged position in law on law's own terms.[78] Smart's alternative is to take the post–structuralist feminist path of analysing

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can also be applied to the constraints inherent in liberal formulations of equality legislation which epitomise the marginal nature of these reforms.

76 Cheryl Saunders, op.cit. p. 135

77 Smart 1989, op.cit. p. 4–5. See also Judith E. Grbich, 'The Body in Legal Theory', University of Tasmania Law Review, Vol. 11, No. 1, 1992, p. 33 who argues that to engage in legal theorising in legal language is to defer to, and be defeated by, the deeply gendered meanings which are already embedded in legal ideology.

78 Smart 1990, op.cit. pp. 198. See also Jane E. Larson, 'Symposium Introduction: Third Wave—Can Feminists Use the Law to Effect Social Change in the 1990s?', Northwestern University Law Review, Vol. 87, No. 4, 1993, p. 1253 who asks if it is possible 'to use legal tools without tailoring not only the language, but also the goals of a reform movement to the law's existing priorities and understandings' and Eveline, op.cit. who makes a similar point.

> the ways in which law constructs and reconstructs masculinity and femininity, and maleness and femaleness, and contributes routinely to a common–sense perception of difference which sustains the social and sexual practices which feminism is attempting to challenge.[79]

Currie agrees that deconstruction of the law at this level is certainly helpful for more thoroughly identifying 'the subject position of law as masculine' and 'more readily explain[ing] why feminist law reforms have failed'.[80] However, she is uncomfortable with the postmodernist stance which she says does not reveal either a political or theoretical way forward for overcoming oppressive and discriminatory legal practices.[81]

Overcoming oppression is a central theme in black feminist writing which is critical of not only equality legislation but also the mainstream feminist critique which identifies a white male norm but fails to notice the 'centrality of white female experiences in the conceptualization of gender discrimination'.[82] Describing the marginalisation of black women at law, Crenshaw perceives that the dominant ideas informing anti–discrimination legislation function in a single issue framework where a complainant has to be a woman or black — but not both — to succeed in proving discrimination. The intersection of race and gender is thus ignored in equality legislation because

> the scope of antidiscrimination law is so limited, sex and race discrimination have come to be defined in terms of the experiences of those who are privileged *but for* their racial or sexual characteristics. Put differently, the paradigm of sex discrimination tends to be based on the experiences of white women; the model of race discrimination tends to be based on the experiences of the most privileged Blacks.[83]

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79 Ibid., p. 201

80 Currie, op.cit. p. 77

81 Ibid., pp. 75–76

82 Kimberle Crenshaw, 'A Black Feminist Critique of Antidiscrimination Law and Politics' in Kairys, op.cit. p. 198

83 Ibid., pp. 201–202

Crenshaw argues further that the 'but for' and 'single axis' analysis of discrimination legislation describes an approach which is less concerned with addressing the concerns of the most disadvantaged than it is in maintaining law's neutrality in legal decision–making.[84] Notwithstanding these shortcomings, Crenshaw, in another context, perceives a tension between a 'restrictive' and an 'expansive' view of equality legislation which, as Bacchi points out, 'create[s] a space' for making further claims. It was through these spaces that indirect discrimination and affirmative action laws and policies flowed on from the inadequacies of the original anti–discrimination legislation.[85] In a similar way, 'triple status', as a practical tool for interrogating law and policy, is a flow on from the inadequacies of a multiculturalism which denies important differences among ethnic group minorities.

Another consistent criticism of equality legislation is the individualised nature of both the legislation and the complaint mechanisms which blame the victim and lead to the treatment of 'all instances of discrimination as individual aberrations in order to deny the existence of systematic discrimination'. Thornton suggests that widespread discrimination must remain hidden in the legal process because its acknowledgment would be deeply destabilising of the liberal promise of equality.[86] A similar criticism of the legislation's focus on individuals is made by critical race theorists in debates about the effectiveness of anti–discrimination measures for blacks and other minorities in the United States. Despite a widely held belief in the white population that racial discrimination was abolished in the United States in the civil rights era of the 1960s, the legislation has failed utterly to

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84 Ibid., p. 201. See also Patricia Williams, 'The Obliging Shell: An Informal Essay on Formal Equal Opportunity', Michigan Law Review, Vol. 87, No. 8, August 1989, pp. 2128–2143 who, in an analysis of discrimination cases, exposes how American law maintains its so–called neutrality by holding itself out to be colour–blind.

85 Bacchi, forthcoming, op. cit., p.35

86 Margaret Thornton, 'The Indirection of Sex Discrimination', University of Tasmania Law Review, Vol. 12, No. 1, 1993, p. 100

address 'the persistence of rampant, racially identifiable inequality'.[87] Supreme Court decisons since 1989 which reflected Reagan's opposition to affirmative action, have reversed the small gains made in the preceding twenty years. Freeman argues that this should come as no surprise given the 'contradictory character of antidiscrimination law, the agenda for which was constrained from the outset by abstract principles of formal equality'.[88] In the face of this deterioration in equality measures, some authors consider racism and sexism to be so embedded in American society that nothing will change so long as there are powerful interests which benefit from the *status quo* .[89]

It is clear from these critiques of equality legislation that, within the liberal model of equality, empowered white males hold positions of privilege and that groups who do not possess these privileged characteristics are systematically categorised as 'other'. Despite the existence of equality legislation for more than two decades, discrimination persists for those 'others' who do not conform to the liberal standard of autonomous individuality, who do not fit into the model of the abstract and universal legal subject. The failure of equality legislation is thus the failure of liberal values in the legal system to either recognise the complexity of human society or address issues of social and legal inequality which flow from that complexity. I have argued in this chapter that liberal values undermine and limit legislative attempts to reduce legal disadvantage for many groups who are 'other' in Australian society. It remains now to provide an example of how those values inhibit and constrain the process of effecting change within the law and legal procedure. I will do this in an examination of some aspects of the Australian Law Reform Commission's report on multiculturalism and the law.

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87 Alan Freeman, 'Antidiscrimination Law: The View from 1989' in Kairys, op.cit. p. 122. See also Richard Delgado, 'Shadowboxing: An Essay on Power', Cornell Law Review, Vol. 77, 1992, p. 823 who argues that the majority society possess the cultural power to define racial reality in such a way that relatively few acts are seen as racist and that ' "racism" is limited to those rare individual (not institutional) acts of a vicious, indefensible, shocking sort'.

88 Freeman, Ibid.

89 Richard Delgado and Jean Stefancic, 'Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?', Cornell Law Review, Vol. 77, 1992, pp. 1288–1289

Multiculturalism and the Law

In 1989 the Australian Law Reform Commission (ALRC) was asked, as part of the National Agenda for a Multicultural Australia, to consider whether aspects of Australian law were appropriate to its multicultural society. Its terms of reference were:

> to consider whether Australian family law, criminal law and contract law were appropriate for a society made up of people from different cultural backgrounds and from ethnically diverse communities. The Commission's task was to consider whether the principles underlying the relevant laws, and the mechanisms available for the resolving of disputes arising under or concerning the law, take adequate account of the cultural diversity of Australian society.[90]

The inquiry reported in March 1992 and found that widespread disadvantage before and in the law still attached to 'migrant' status. The Commission made fifty–six recommendations for change.[91] Migrant disadvantage at law had been previously documented in the Sackville Inquiry of 1975 and the ALRC report confirmed that little had changed in the intervening seventeen years.[92]

Given the terms of reference of the 'Multiculturalism and the Law' inquiry, the ALRC did not engage in the controversy surrounding what is meant by 'multiculturalism' but adopted the Hawke Government's definition of the term.[93] In adopting this approach, the Commission stated that it 'did not intend to ask whether the assumptions on which

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90 ALRC, 1992, op.cit., p. 3

91 The recommendations included general propositions such as the provision of education and information programs, rights to interpreters and particular legislative and procedural reforms for Family, Criminal and Contract law. Most recommendations could be implemented with relative ease if the political will existed to make the necessary funds available for education programs, support networks and the training of legal personnel. I will deal with the ramifications of this report for the Vietnamese in following chapters.

92 Sackville, op.cit.

93 Multiculturalism is defined by the *National Agenda for a Multicultural Australia: Sharing our Future,* p. vii, as a policy for 'managing the consequences of cultural diversity in the interests of the individual and society as a whole'. It includes the right of all Australians, within carefully defined limits, to express and share their individual cultural heritage and to equality of treatment and opportunity.

multiculturalism, as formulated by the *National Agenda*, were valid nor whether multiculturalism was an appropriate social policy'.[94] As I have argued in the previous chapter, this uncritical approach to the meaning of multiculturalism meant that the Commission's task was firmly situated within the liberal model of equality which is limited to equality of opportunity and treatment. While it is important to emphasise, as the ALRC has done, the shared values and characteristics among the variety of cultural groupings found in Australia, insufficient attention to significant differences between NESB and Australian–born groups can also result in eventually ineffective legislative and policy reforms. Before discussing aspects of this inquiry and its stated goals of reducing migrant disadvantage before the law, it is necessary to have an overview of the recommendations made by the ALRC.

Overview of ALRC recommendations

Most of the recommendations in the ALRC's final report are uncontroversial, progressive and worthwhile. For example, information and education programs which increase migrants' knowledge of the law and the legal profession's knowledge of other cultures will contribute to greater understanding from both sides of the cultural divide. Increased rights, and improved access, to professional interpreting services are also long overdue reforms. Eight recommendations deal with improving access to interpreters for NESB people but 'the report avoided the wider issues of communication within the legal system'. It should not be assumed therefore that this reliance on interpreters to 'serve as tokens or symbols' of equality for 'migrants' in the legal process necessarily makes the outcome any 'fairer' or 'better'.[95] In contract law it is useful for NESB migrants to be further protected from the "small print" of credit and insurance contracts which can leave them with crippling debts. Where the criminal law is concerned, the Commission

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94 Pauline Kearney, Multiculturalism and the Law, Issues Paper no. 9, Sydney, Australian Law Reform Commission, 1990 p.3

95 Kathy Laster and Veronica L. Taylor, Interpreters and the Legal System, Annandale, NSW, Federation Press, 1994, pp. 9–10

recommended that racist violence should be an offence and that the broadcasting of material likely to incite racial hatred should be prohibited. It also suggested a more stringent scrutiny of Parliamentary Bills for possible infringements to the cultural and religious freedom of individuals. There are, however, some qualifications to be made.

In the area of criminal justice, as the final report points out, the role of the Commonwealth Government is limited because criminal justice is largely a state responsibility.[96] Although there are moves toward establishing a uniform Model Criminal Code for adoption by the States in Australia, this development is a long way off and there is a need for the findings of the present inquiry to be incorporated immediately into State and Territory law if rights are to be protected and equality of treatment before the law is to be guaranteed for members of ethnic minorities accused of crime.[97] Without this State legislation the ALRC's recommendations in relation to criminal justice will not help the majority of non–English speaking background people involved in criminal proceedings.

If the States adopted such legislation, however, the ALRC's recommendations for criminal law reform go some of the way to redressing well–known and long–standing injustices occurring regularly in criminal justice administration. For NESB groups these injustices arise in the areas of, for example, police relations, access to interpreters, knowledge of rights, ignorance of the legal process, judicial and legal profession ignorance of diverse cultural expression and the law's use of arcane legal language.[98] A total of twenty–two recommendations cover these fields of inquiry in the final report although there were a number of other areas which were discussed but not followed by any recommendations for change. For example, the Commission did not recommend that a 'cultural defence' should be available to those who commit an offence because not to

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96 ALRC, 1992, p. 198

97 Ibid. p. 199

98 Ibid. pp. 169-179. The power of this language and the ways in which it is tactically manipulated in an adversarial system can, however, place interpreters in difficult situations where the disadvantage to NESB clients is increased. Laster and Taylor, op.cit. p. xvi

commit the offence would violate a cultural norm.[99] Neither did it recommend that justifiable ignorance of the law could be used as a defence.[100] Considerations of cultural norms and ignorance of the law can be taken into account, however, in recommendations which provide for discretion in pre–trial decision-making where police, prosecutors and magistrates can decide, on these grounds, whether or not to take proceedings further.[101]

In the ALRC's discussion of family law the problem of jurisdiction does not arise as it does in criminal law. In family law matters it is helpful that the Commission recognised that it is culturally appropriate support services which are needed to aid families in crisis rather than the heavy hand of the law. The eleven recommendations for change in this area included amendments to access and equity aims and objectives for all government policies, programs and Scrutiny of Bills committees. It was also recommended that these amendments take account of the diversity of Australian family forms and functions.[102] Other suggestions for change recognised the difficulty some new settlers have in establishing the validity of their marriages, the problems encountered when religious restrictions conflict with Australian law and the difficulties of enforcing pre–marriage contracts. In relation to children at the time of divorce, the welfare of the child remained

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99 Examples of this would be when Sikh males do not wear compulsory safety helmets because it violates a cultural norm to remove their turbans and, for Turkish men, the carrying of ceremonial daggers is a cultural norm but such daggers are deadly weapons under Australian law and it is unlawful to carry them in public places. These issues raise a number of difficult questions about how far Australian law should go in the accommodation of 'cultural norms' which violate existing legislation. Throughout its inquiry, the ALRC drew the line by adhering to the principle of only making recommendations for change within the 'basic structures and principles of Australian society'. I return to these issues in later sections of the thesis.

100 ALRC, 1992, op.cit. pp. 175-180

101 These recommendations are controversial and I will deal with the repercussions they have for the Vietnamese in later chapters

102 The very general nature of this aspect of the ALRC recommendations is another area of difficulty because it is not clear which family forms and functions are going to be taken into account. I will deal with these issues in more detail in later chapters.

the paramount consideration but a new emphasis was placed on the importance for children of maintaining cultural relationships.[103]

It was also clear from the extensive community consultations and the large number of submissions received from NESB individuals and groups, that the Commission rightly identified the use of community networks as one of the most effective means of distributing information and education services for the majority of any given ethnic population.[104] Studies have consistently found that many NESB people use their ethnic associations not only to maintain cultural traditions but also to get information about Australian institutions.[105] Using these networks, education programs about the law would reach selective proportions of any given ethnic group. Finally, the ALRC report included a draft of a *Law Reform (Multiculturalism) Bill 1992* which incorporated the necessary legislative changes for its recommendations to take effect.[106] In 1996 the Bill had still not been introduced into the Federal Parliament.

Liberal legalism and law reform

In its task of considering whether the principles underlying the relevant laws and the legal process took adequate account of the cultural diversity of Australian society, the Commission understood that Anglo–Celtic cultural values dominated Australian law. It sought therefore to 'extend the boundaries of the legal system to give greater recognition

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103 Ibid. pp. xxviii-xxx. There are specific cultural beliefs and practices within the Vietnamese community in relation to marriage relationships and responsibilities which make the use of proposed family law reform provisions problematic for the Vietnamese. Some of these beliefs and practices are addressed by the ALRC recommendations for improving access to services. For example, it is clear from the report that the eastern states have been more adequately funded than South Australia for the provision of decentralised and culturally appropriate counselling, mediation and legal services as well as refuges for Indochinese women suffering from family violence.

104 Ibid. p. 23

105 Ibid.; See also Collins, 1991, op. cit. p. 209. In the case of the Vietnamese, however, in relation to the criminal justice and family support systems, the use of community networks becomes problematic. The difficulties, as we shall see later, are complex in origin and interwoven with the nature and composition of the refugee movement from Vietnam since 1975 as much as the historical institutional inadequacies of Australia's immigration policies and expectations. Not the least of these latter difficulties is the notion of multiculturalism.

106 ALRC, 1992, pp. 289–300

to cultural diversity' and also to go beyond the confines of a mere formal equality.[107] There were two major limitations, however, on how far the Commission could go in proposing reforms. First, they had to ensure that recommendations did not 'prejudice the basis of social cohesion' as it was articulated in the *National Agenda* [108] and second, they rejected outright the possibility of legal pluralism, that is, separate laws for particular ethnic groups.[109] The Commission was also committed to universal principles derived from international human rights instruments to which Australia is a party.[110] This commitment placed them in the typically legal position of having to balance competing rights among groups and individuals and of having to determine the relevance of differences between groups and individuals within those groups.[111] These restrictions and commitments reinforced the Commission's task as being confined within the liberal–democratic framework of 'making adjustments to the law', adjustments which nevertheless 'maintain the integrity of the underlying legal principles' of equality and individual freedom.[112]

In this brief overview of ALRC recommendations , it can be seen that the Commission succeeded in its task. It made adjustments to the law in proposed amendments to the

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107 Ibid., pp. 9–10

108 The Commission was aware of the difficulty of differentiating 'between those values which are necessary for cohesion and those which may be *adjusted* to allow for diversity' (my emphasis). They were also conscious of the danger of using cohesion 'to justify the imposition of the values of a dominant group on a minority'. However, it was not made clear at this point in the report how this juggling act was to be managed but, as I discuss in more detail later, the recommendations in the final report do not propose radical changes to the law or the legal process. Ibid., p. 11

109 Ibid. The Commission had already considered this question in its earlier inquiry into Aboriginal Customary Law where they decided that the risks of further discrimination, labelling, stereotyping and oppression of individuals within a cultural group, outweigh any advantages of having separate laws.

110 Ibid., p. 12. Such instruments include the *International Covenant on Civil and Political Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Rights of the Child* and the *International Covenant on Economic, Social and Cultural Rights.*

111 For example, the right to religious freedom may conflict with the equality rights of women and the relevance of cultural background can create conflict in both the criminal and family law. Ibid., pp. 12–14

112 Ibid., p. 14

Family Law Act 1975, the *Crimes Act 1914*, the *Contract Act 1984* and the *Trade Practices Act 1974*. It also maintained the integrity of legal principles by not allowing, for example, a 'cultural' or 'justifiable ignorance of the law' defence to be available for NESB people accused of crime. Despite the Commission's aims to the contrary, it is the difficulty between 'making adjustments' and 'maintaining legal principles' that the problem of achieving more than formal equality for members of NESB migrant groups is created.

There are a number of difficulties. For example, migrants are not a homogeneous group and in the aggregation of their multiple realities under the 'migrant' label, important specific differences among groups are rendered invisible. Universalised in this way, 'migrants' can easily continue to be categorised as 'other'. Next, reforms within the domain of family law were more concerned with policy and services connected to the family law process rather than with the legislation itself. These reforms recommended that the diversity of family forms and functions should be taken into consideration in 'access and equity aims and objectives' which apply to government services. However, the reforms need to go further. To recommend that detailed access and equity plans must be established by all 'federally funded family support services' is to make a start on the development of culturally appropriate services but this does nothing to accommodate very different conceptions of the family.[113] In cultural groupings where the configuration, roles and function of the family are integral to identity, even 'culturally appropriate' services will still be designed, structured and provided in Anglo-Celtic formations which may defeat their purpose.[114]

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[113] Ibid. p. 89

[114] How this comes about will be explained in more detail in later chapters. The problem at this point is, once again, the very general nature of the ALRC recommendations. The language of 'the diversity of family forms and functions' and 'access and equity' are not specific enough to take into account more than superficial differences among ethnic groups. Reforms undertaken in this framework do not expand the concept of equality beyond that of opportunity and treatment. There is also the problem of whether or not family forms which could be oppressive for some of their members, will be tolerated because they are 'culturally appropriate'.

In addition, the amount and kind of police, prosecution and judicial discretion recommended in proposed criminal law reforms rely wholly on an individual legal officer's cross–cultural awareness and his or her subjective appraisal of the offender's behaviour, language competence and ignorance of the law. In many situations these reforms may result in a conflict of interest which the offender will be powerless to resolve. These and other anomalies in the ALRC recommendations will be dealt with in more detail in following chapters but as they are listed here they illustrate the limited nature of the reforms in terms of institutional change.

Notwithstanding these limitations, the ALRC called for a new and improved sensitivity to cultural difference in recommendations for cross–cultural training for legal and court personnel, recognised that language barriers are problematic for the securing of administrative justice and identified the need for education and support programs. These measures are valuable reforms to the legal process which raise our consciousness about important differences among people, differences which have to be taken into account within the liberal model of equality. This is to say that the reforms only attempt to deliver equal treatment before the law rather than a more substantive equality of outcomes. The reforms do not alter the narrow nature of liberal legal equality, they do not change the underlying 'Anglo–Celt empowered male' norm of the equality standard and they do not reconceptualise Anglo–centric concepts such as 'reasonableness' or 'standard of care', all of which are fundamental restrictions on the achievement of substantive equality before and in the law.

It is in the Commission's decision not to 'make adjustments' to the concept of 'reasonableness' that we can observe the difficulty of undermining the entrenched liberal principles of the law.[115] In its discussion paper on criminal law the ALRC originally proposed that

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115 The evolution and continuing importance of this concept in establishing guilt or liability in law is discussed in more detail in the previous section on impartiality.

> where a court has to determine the intention or state of mind of the accused or the reasonableness of an act or omission or belief, the court should have regard to the cultural values, beliefs and practices of the accused.[116]

This proposal called for a change to existing rules of evidence which do not at present allow the calling of evidence to assist a judge or jury to understand better the state of mind of an accused person from a different 'cultural' background. Determining the state of mind of a person accused of a criminal offence is a vital dimension in deciding that person's guilt or innocence. As such, it can never be a matter of determining a 'fact' but is always a question of values. In other words, as judges or members of a jury we can only perceive the motives of another in the light of our own beliefs of what is a reasonable way to act and what is not. When the Commission proposed this change therefore, they were aware that the predominance of Anglo–Celtic values in the law could discriminate against accused persons from a different culture.

In the preamble to their final decision on this question, the Commission articulated its perception that it was 'ineffective and unjust in a multicultural society' to impose a concept of reasonableness where the 'rules imposing liability or ascribing guilt have evolved and developed in relation to the Anglo–Saxon prototype'.[117] Notwithstanding this perception and the support in many submissions to the inquiry for a broadening of the concept, the Commission withdrew its earlier proposal and decided that the uniform standard should remain.[118] The explanation for this decision was described, in part, as follows:

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116 Jenny Earle and Pauline Kearney, Multiculturalism: Criminal law, Discussion Paper 48, Sydney, Australian Law Reform Commission, 1991, p. 21

117 ALRC, 1992, p. 183

118 The proposal to broaden the legal concept of 'reasonableness' was supported by submissions from the South Australian government, three state police departments, a state Chief Justice, a Legal Aid Commission, legal reform bodies, individuals and the Ethnic Affairs Commission. Reservations and doubts about an expected proliferation of different standards of 'reasonableness' were expressed by much fewer people: two committees of the Anglican Church, one police department and individuals, who all argued for a uniform standard of 'reasonableness' to be retained. Ibid., pp. 186–187

> A better result will be achieved if the standard is encouraged to evolve to reflect the cultural diversity in the Australian community. The Commission considers that the recommendations made in this report as a whole will help to accelerate this process. A greater understanding of cultural diversity among all those involved in the administration of justice is particularly important. Efforts should also be made to ensure that membership of the judiciary, magistracy and the legal profession is not drawn only from a narrow elite as this fosters perceptions of bias when value judgements have to be made.[119]

This explanation raises some questions however. First, how will the standard be encouraged to evolve, not to mention accelerated, when there is little evidence that the recommendations from the report are being implemented four years after its release? Second, who is going to make the 'effort' to alter the makeup of the now predominantly privileged, Anglo–Celt male membership of the judiciary and legal profession? Studies have shown for many years that even though women are now at least half of graduating law students, the women themselves are drawn from the same or even more privileged sections of the community as the men have been in the past.[120] There is also evidence that women lawyer's career paths differ significantly from men's because of their child–bearing and child–rearing responsibilities.[121] As a consequence, low percentages of women lawyers are offered partnerships in law firms, only eight per cent of barristers are women and it is from the pool of barristers that future judges are chosen.[122] Neither does the legal profession reflect the multicultural nature of society. As Weisbrot reports, '[t]he Pearce Committee's survey of recent law graduates ... found that 87 per cent were

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119 Ibid. p. 187

120 David Weisbrot, Australian Lawyers, Melbourne, Longman Cheshire, 1990, p. 86. Weisbrot's study also records that 'University law students typically come from homes which are significantly more affluent than the norm; most attended prestigious private secondary schools; their parents mainly have professional or management backgrounds, and many already have family connections in the legal profession. Ibid., p. 79

121 Linda Kirk, 'Women in the Legal Profession', Law Society Bulletin, Vol. 16, No. 7, August 1994, p. 12

122 Weisbrot, op. cit., pp. 87–88.

Australian–born and another eight per cent were from other English–speaking countries'.[123] Given the elite class position of law students who is going to address the socio–economic and educational disadvantage suffered by many migrants in order to recruit NESB students into law schools? These are all crucial questions which need to be dealt with prior to any evolution of the legal concept of 'reasonableness'. It therefore appears that in the interim, the maintenance of the present standard will continue to be, as the ALRC initially determined, 'ineffective and unjust in a multicultural society'.

In summary, I have argued in this chapter that the model of equality which underpins the understanding and administration of justice in the Australian legal system is underpinned by the liberal values of abstract individuality, universality, objectivity and impartiality. I have maintained that the existence of these values in the form and application of equality legislation is seriously limiting of attempts to address disadvantage at law for many groups in Australian society, not the least of whom are ethnic minorities. On closer examination these values have been found to support a hidden norm for the legal subject and a hidden standard for equality. The norm and the standard are both that of the empowered white male. Using the critical literature of legal inequality and a government inquiry addressed particularly to the needs of migrants, I have also argued that the law systematically categorises individuals and groups not conforming to this norm and standard as 'other'. On this understanding, the law does not accommodate 'difference' except at a superficial level where the introduction of equality legislation appears to be meeting the needs of disadvantaged groups but in reality benefits only those privileged individuals who most closely approximate the hidden norm.

Conclusion

The problem of law's intransigence in the face of sustained criticism is the problem of liberalism in a democratic capitalist society. As Unger has stated it, liberalism does not have a credible theory of social transformation and so is condemned to making only

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123 Ibid., p. 92

marginal adjustments in any program of reform. The only alternative, for him, is the utopian fantasy of revolutionising the system to such an extent that the problematic values of liberalism, the narrowness of its conceptions of social progress and the elitism of its ideals of equality are dislodged in favour of a more inclusive model of society which does not deprive citizens of their history, identity and social context. Such a revolution is not credible either. The society we have, for all its shortcomings, does have social legitimacy and delivers a standard of living which is the envy of many who are less fortunate. However, I have suggested that there is a third option for reform. As the critique of legal equality confronts the inadequacies of liberalism, it creates a place where such concepts as a 'triple status' can be inserted and used as a tool to broaden the narrow horizons of legal equality.

The realisation that we are not as oppressed in Australia as many others, does not mean, however, that we cannot rail against the perceived inadequacies of the *status quo.* What it does mean is that we will only ever be able to achieve changes, especially in relation to the law, through concerted and systematic efforts to extend the parameters of liberal equality. In a democracy this is at least possible. Liberal society and its legal system has instituted change in the wake of past campaigns for a more equal society and it will do so in the future. What we need to remember is that those reforms will be limited by ideas which are foundational to liberalism but, even so, no less real. Where the law implements equality legislation, where multiculturalism seeks to address disadvantage, reforms are necessarily, perhaps unavoidably, couched — as ALRC recommendations are — in general terms. It is in this very generality that well–meaning policy reforms can flounder and ultimately be less effective. To demonstrate how this might happen it is useful to look more closely at the case of the Vietnamese.

CHAPTER 4: THE VIETNAMESE: A STORY

Introduction

In this chapter I tell the story of the Vietnamese in Australia to place the research which follows in its historical context. I begin with a brief discussion of Australian government policy as it applied to the exodus of refugees from Vietnam in 1975 and later. This section describes the constellation of policies, events and attitudes which was the political milieu in which Vietnamese refugees arrived in Australia. There was, and still is, little general knowledge in the Australian community of the Vietnamese people which goes beyond media reports of the Vietnam war, the popular opposition to sending Australian troops to fight there and its aftermath. I therefore go on to sketch the contours of Vietnamese history and outline a view of traditional Vietnamese religious beliefs, moral values and social practices. We need to understand as well who the Vietnamese were who were accepted into Australia as refugees. In the section which comes next I provide demographic details of these Vietnamese and discuss the chief resettlement difficulties which are associated with being a refugee. This is followed by the settlement experience of Vietnamese refugees as they came into contact with the wider Australian society and its institutions, particularly that of the legal system.

I tell the story in this way to establish the basis for my contention that resettlement policies would be improved if a 'triple status' accrued to new settlers who are not only migrants but also refugees from distinct geographical regions. As the story unfolds, the complexities of resettlement and adaptation are revealed. So too, the inadequacies of policies which treat new settlers as simply 'migrants' are brought into sharper relief. The difficulties encountered by the Vietnamese and western institutions in adapting to

each other's needs in countries of resettlement has been the subject of much research in the past twenty years and I incorporate this literature into the story.

Australian Government Policy and Refugees from Vietnam

When, in 1975, many thousands of Vietnamese fled their country after the fall of Saigon to the communist forces of North Vietnam, the United Nations High Commission for Refugees (UNHCR) and the United States government had to put considerable pressure on the Australian government to help, as other countries were helping, in the resettlement of refugees from the South–East Asian countries of first asylum.[1] Australia did accept some 10,000 refugees between 1975 and 1978, but it was reluctant to offer more substantial help. This reluctance can be gauged from the fact that it was not until the second UN sponsored International Conference on Indo-Chinese Refugees, held in Geneva in July 1979, instituted the Orderly Departure Program, that Australia made a firm commitment to an annual, increased and planned intake of refugees from Vietnam.[2]

The reasons for Australia's tardy commitment are complex and cannot be detailed here. In essence, the issues were politically sensitive ones to do with historical fears of Asian immigration articulated in the White Australia Policy, Australia's role in the Vietnam war, an economic recession and a turbulent change of the federal government in 1975. Despite national and international media campaigns to raise sympathy for the plight of the refugees, public opinion polls also demonstrated that the majority of Australians were not in favour of accepting migrants from Vietnam.[3]

For the first wave of refugees, problems of resettlement surfaced quickly. Inducted into existing migrant hostels, there was little understanding between 1975 and 1978 of

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1 For example, Canada, France, Norway, Germany and the United States were among the countries which responded more generously to the refugee crisis than Australia did in the first instance.

2 Nancy Viviani, The Long Journey: Vietnamese Migration and Settlement in Australia, Melbourne, Melbourne University Press, 1984, p. 87

3 Ibid., p. 102

refugee needs, let alone those of the Vietnamese.[4] Traumatised, alienated, fearful, with few trained interpreters, no existing community support and 'encumbered with misinformation', early refugees were utterly bewildered by the complicated and bureaucratic delivery of services.[5] Food and eating arrangements, very important in the Vietnamese family, were inappropriate as was the use of Vietnamese students already in Australia as interpreters.[6] This latter strategy usurped traditional relationships between the young and their elders and was singularly disruptive of communications between refugees and service providers. Well-meaning and efficient government officials sought Vietnamese co-operation in efforts to teach them English and to find them accommodation and employment, but policies at this time were ill-formulated, contradictory and resulted in confusion and resentment on both sides.[7]

By 1978 some of these conditions were ameliorated as studies of the refugee resettlement process emerged in the United States, Canada and Australia. The studies drew attention to the uniqueness and persistence of Vietnamese culture, the trauma of flight experienced by refugees and the need for a comprehensive approach to resettlement policies which took historical, psychological and cultural factors into account.[8] In Australia the release of the Galbally Report in 1978, commissioned by the

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4 Longitudinal research into the settlement of Vietnamese in Australia had been initiated and funded by the then Whitlam Labor Government immediately after the fall of Saigon in April 1975. However, the incoming Fraser Liberal Government in November of that year terminated the study in February 1976 giving the need to economise on government spending as the reason. Jean I. Martin, 'Research on Vietnamese Refugees in Australia', Migration Action, Vol. 3, Nos. 2–4, Spring 1976–Autumn 1978

5 S. Encel (ed.), The Ethnic Dimension: Papers on Ethnicity and Pluralism by Jean Martin, Sydney, George Allen & Unwin, 1981, p. 161

6 Australia. Department of Immigration and Ethnic Affairs (DIEA), "Please listen to what I'm not saying": A report on the survey of settlement experiences of Indochinese refugees 1978–80, Canberra, Australian Government Publishing Service, 1982, p. 43

7 Encel, op.cit. pp. 159–161

8 As early as 1977, Vietnamese settlement studies were carried out in most of the western countries which accepted refugees for resettlement from the mid–1970s and early 1980s. See, for example, in the USA G. P. Kelly, From Vietnam to America: A Chronicle of the Vietnamese Immigration to the United States, Boulder, Colorado, Westview Press, 1977, R. P. Baker and D. S. North, The 1975 Refugees: Their First Five Years in America, Washington, DC, New Transcentury Foundation, 1984 and Paul J. Strand and Woodrow Jones Jr., Indochinese Refugees in America: Problems of Adaptation and Assimilation,

government in response to the studies, recommended sweeping changes to current policy and a major increase in government support for migrant resettlement.[9] Although the report was implemented thoroughly and resulted in some helpful schemes, it was not understood until further studies were completed in the mid 1980s that resettlement for the Vietnamese was as much a problem for Australian institutions and attitudes as it was for the Vietnamese themselves. For instance, the Federal/State division of responsibility for financing a variety of services gave rise to much confusion and the policies which sought to disperse refugees so that ghettos were not formed, did not appreciate that Vietnamese community support was vital for the eventual, successful resettlement of new arrivals.[10] There was also substantial ignorance until the mid–1980s of the social divisions, bounded by ethnicity, class and religion, which existed within the Vietnamese population in Australia. Media reports highlighting differences between refugees from South–East Asia and the rest of the population also produced stereotyped images which presumed a social and racial homogeneity amongst all Asian refugees including those from Cambodia and Laos.[11]

Durham, North Carolina, Duke University Press, 1985; in Britain M. Braham and P. Fenwick, The Boat People in Britain: The Ockenden Venture Resettlement Survey, Guildford, The Ockenden Venture, 1981, P. Jones, Vietnamese Refugees: A study of their reception and resettlement in the United Kingdom, London, Home Office, 1982 and F. Edholme, J. Sayer and H. Roberts, The Reception and Resettlement of Vietnamese Refugees, Unpublished, Community Relations Report (London), 1982; in Canada H. Adelman (ed.), The Indochinese Refugee Movement: The Canadian response, Toronto, Operation Lifeline, 1980, Elliot L. Tepper (ed.), Southeast Asian Exodus: From Tradition to Resettlement: Understanding Refugees from Laos, Kampuchea and Vietnam in Canada, Carleton University, Ottowa, Canadian Asian Studies Association, 1980 and K. B. Chan and D. Indra, Uprooting, Loss and Adaptation: The Resettlement of Indochinese Refugees in Canada, Ottowa, Canadian Public Health Association, 1987; in Norway J. Knudsen, Boat People in Transit, Bergen, University of Bergen, 1983 and J. Knudsen, Vietnamese Survivors: Processes Involved in Refugee Coping and Adaptation, Bergen, University of Bergen, 1988; in Sweden, H. Beach and L Ragvald, A New Wave on a Northern Shore: The Indochinese refugees in Sweden, Norrkping, Statens Invandraverk, 1982; in Australia, N. Viviani, op.cit., L. Hawthorne, Refugee: The Vietnamese Experience, London, O.U.P., 1982 and R. Gardner, H. Neville and J. Snell, Vietnamese Settlement in Springvale, Melbourne, Graduate School of Environmental Science, Monash University, 1983 and Victorian Ethnic Affairs Commission (VEAC), Indo-Chinese Refugees in Victoria, East Melbourne, 1983

9 Viviani, 1984, op.cit. pp. 161–162

10 Ibid. p. 16

11 Ibid. pp. 13–14. That even the Vietnamese are not a homogeneous group will be shown in a later section.

Vietnamese refugees thus arrived in Australia in difficult economic and political times. They were the largest group of Asians to be granted entry into Australia in the twentieth century since the official abandonment of the White Australia policy in 1973 and they faced considerable residual racism as a result. Australians generally, and immigration and welfare workers in particular, had little or no knowledge of the Vietnamese people or their society and, as we see in the following sections, this ignorance led to much mutual frustration and misunderstanding.

Vietnamese history and traditions

If we are to understand why ethnic origin is an important ingredient in the notion of a 'triple status' and should be applied to the Vietnamese in Australian settlement policies which affect them, it is necessary to know something of their history, beliefs and circumstances prior to their arrival in Australia. Only if we comprehend these elements of, in this case, Vietnamese identity, will we be able to identify both their uniqueness and their difference from other migrants which justify the application of a 'triple status'.[12] For example, and as I discuss in more detail in the following sections, Vietnamese language forms, societal values and social norms all evolved independently of European influences until French colonisation in the mid–19th century. Although the French introduced western styles of government, education, urban living and health care, traditional customs and values were often retained by many older Vietnamese, particularly in rural areas, both as a preferred system of social organisation and as a form of resistance to an often brutal colonisation.[13] The values attached to being 'Vietnamese' can therefore be more significant for some individuals or communities than we might at first imagine. This characteristic and other factors need to be taken

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12 It should be noted that every migrant group is unique in these respects.

13 Nguyen Ngoc Van, 'Western Cultural Influences on Traditional Vietnamese Society', in Nguyen Xuan Thu and Desmond Cahill, Understanding Vietnamese Refugees in Australia, Coburg, Victoria, Phillip Institute of Technology, 1986, p. 83

into account in policies and programs which are concerned with the successful adaptation of the Vietnamese to Australian society.

History

The Vietnamese are an ancient people whose early history is still communicated in myth, legend, dance and song. Vietnamese legends date from the Hong Bang dynasty of 2879 to 258 BC.[14] Conquered by China in 111 BC, it was not until 934 that Vietnam regained its independence. Numerous uprisings during this period, the most famous of which was led by the warrior queens, the Trung sisters, from 49 to 39 BC, gave rise to an 'historical pattern' of national resistance to the colonial invader which persists to the present time.[15] This tradition of a precious nationalism needs to be understood in relation to the many attempts at resistance to the French colonisation of Vietnam which began in the 1850s and continued until 1954 when the French were finally defeated by the North Vietnam forces led by Ho Chi Minh.[16] This victory, however, was not complete. The Geneva Agreements which ended the nine years of war saw the European powers of the day draw a dividing line between North and South Vietnam, at the seventeenth parallel, as a demilitarised zone. Political settlement between the rival governments and free elections were to follow within two years but neither eventuated. The Vietnam war from 1961 to 1975 was the result.[17]

As a result of the communist victory over the French in 1954, huge numbers of people fled from North Vietnam to the South. One official source puts the figure at 927,000, sixty percent of whom were Catholics who feared that a communist regime in the North

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14 N. H. Chi, "Vietnam: The Culture of War" in Tepper op.cit. p. 5

15 Ibid., p. 16 and Kim Huong Vu, 'Traditional Vietnamese Culture and Behaviour', Migration Action, Vol. III, Nos. 2–4, Spring 1976–Autumn 1978, p. 17

16 David G. Marr, Vietnamese Tradition on Trial, 1920–1945, Berkeley, University of California Press, 1981, p. 3

17 Frank Lewins and Judith Ly, The First Wave : The Settlement of Australia's First Vietnamese Refugees, Sydney, George Allen & Unwin, 1985, p. 3

was not likely to allow religious freedom to continue. Refugee movement at this time was, however, almost nothing compared to the suffering which followed. As Lewins and Ly report, by 1974,

> well over half of South Vietnam's estimated population of 19 million people had been forced to move as refugees, often many times over, in the years after the war escalated in 1965.[18]

Shortly before and after the fall of Saigon to Ho Chi Minh's forces in April 1975, over 200,000 people escaped from South Vietnam in panic and fear. They were to be followed, in successive waves over the next fifteen years, by an estimated one and a half million more.[19]

For the majority of the Vietnamese though, there was no thought of leaving in the early days of the new Republic. For many, the defeat of the Americans was the defeat of yet another colonial power. The task of reconstruction, however, was massive, especially since foreign aid from the United States was cut off. From personal accounts of people who chose in the first place to stay but later escaped, it is evident that the new government was inexperienced, inept and strongly influenced by hierarchies within the Communist party which distributed scarce resources first to party leaders, second to government managers and lastly to common citizens.[20] Almost immediately, standards of living fell dramatically, food was limited and freedom of movement became a thing of the past. The presence of security agents dominated every facet of life and authorities required no warrant to make arrests on the basis of vague, circumstantial or even incorrect information.[21] One initial patriot who had been a student actively

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18 Ibid. p. 6

19 UNHCR. Information Service, Canberra, September 1990

20 Nguyen Long with Harry H. Kendall, After Saigon Fell: Daily Life under the Vietnamese Communists, Berkeley, Institute of East Asian Studies, University of California Press, 1981, p. 104 and Nguyen Thi Hong, 'Living in Vietnam after 1975—The Long Saga' in Nguyen and Cahill, op.cit. p. 19

21 Nguyen with Kendall, op.cit. p. 33

opposed to the corrupt regimes in South Vietnam during the war, was arrested and incarcerated for more than two years before being released with no reason given for either his imprisonment or his release. His book *The Vietnamese Gulag*, and his descriptions of his existence in prison, bear a close resemblance to those of Alexander Solzhenitsyn in the Soviet Union under Stalin.[22]

Refugees from Vietnam who were accepted for resettlement in Australia thus brought with them the experience of at least ten and, if they were originally from North Vietnam, up to thirty years of war. Those younger than thirty in 1975 may have known nothing else. Many also brought with them a host of memories created in fear: of imminent death — to themselves or members of their family; of the pervasive destruction of their country; of imprisonment, torture or banishment to 'new economic zones' from which few people returned; of hazardous and failed attempts to escape; of living under a totalitarian regime where the only law was that of survival. That sense of survival at all costs was a feature of life under Communist rule after 1975. As one writer remembers it:

> The real corruption, however, was of the soul. One had to learn how to lie, not occasionally but continually and as part of the system. One had to be able to say things which one did not believe, and say them ardently, not just in a casual fashion. One had to be able to camouflage one's actions and one's thoughts, concealing the inner self from all but the most intimate, trusted friends. In effect, therefore, one had to live dual or triple lives simultaneously. One life was displayed publicly to neighbours and security personnel. Another life was lived in back alleys and closed offices where one dealt in black market goods and made arrangements for boat motors — all part of the struggle for survival. And yet another life was the life of one's private thoughts and dreams, when the individual tried to blot out reality and conjure up hope.[23]

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22 Doan Van Toai and David Chanoff, The Vietnamese Gulag, New York, Simon and Schuster, 1986

23 Robert A. Scalapino in Nguyen with Kendall, op. cit. pp. 155-157

The existence and combinations of these histories and life circumstances in the Vietnamese refugee mean that their settlement needs will be substantially different from those who migrate voluntarily to Australia.

Religion and values in Vietnam

It is important in the context of this part of the Vietnamese story to know a little of their religions and traditional values. Due to sporadic attempts by the Portuguese to bring Christianity to Vietnam in the sixteenth century and French colonialism in the nineteenth century, about twenty percent of Vietnamese are Christians.[24] The dominant religion is Vietnamese Buddhism and the Cult of the Ancestors permeates both sets of beliefs.[25] Vietnamese Buddhist values are embedded in the Vietnamese way of life and are foundational to Vietnamese relationships with others. By far the most important of these values are those associated with the family, where individual interest is subordinate, if not irrelevant, to the welfare of the whole group.[26] Strong and extremely complex bonds of filial respect combine with parental responsibility for support and guidance of the young in a wide–ranging kin network. As My–Van Tran explains, there is a strict hierarchy in the Vietnamese family:

> Each family member has a unique rank. As a result there is great precision in inter–personal relationships. Terms denoting these precise relationships are used in daily speech. Each individual is designated numerically according to the rank of his or her age within their generation. The Western style of calling all members by name is considered improper and impolite. This Vietnamese system is a constant reminder of family

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24 From 1817 on, missionaries were persecuted and it was not until after conquest by France in the 1880s that a prohibition on Catholicism was lifted. Christianity, as a result, was again associated in Vietnam with domination by a foreign power. This association was compounded when Buddhist monks were tortured for their peaceful resistance to the French. Venerated as heroes and martyrs by the resistance movements, Buddhism is thus strongly linked to nationalist sentiments. Thich Nhat Hanh, Vietnam: The Lotus in the Sea of Fire, London, SCM Press, 1967, pp. 26–50

25 Vietnamese Buddhism is a combination of Indian Buddhism and Chinese Confucianism and Taoism. Ibid. pp. 23-24. See also Nguyen Dang Liem, 'Indo–Chinese Cross–Cultural Communication and Adjustment', in Nguyen and Cahill, op.cit. pp. 47–48 for the importance of the Cult of the Ancestors in Vietnamese spiritual beliefs.

26 Vu, op.cit.

rank and thereby guarantees awareness and acceptance of family duties and responsibilities.[27]

A concept of honour is also paramount in the Vietnamese family and stringent social censure is applied to members dishonouring the family name. Should disgrace occur, families are accustomed to dealing with such matters internally and without help from outside. Thus honour is maintained without loss of face.[28]

Traditional Vietnamese society also maintained a rigid division of labour between men and women. This did not leave women completely powerless — they could own and inherit property equally with men for instance — but it did confine their day-to-day decision-making influence to the domestic sphere. There was a customary obedience as well, owed by women, younger adults and children, to the male head of the household — be that the grand–father, father, elder brother or husband. He, in turn, was responsible for obeying authority figures in the society and although husbands must respect their wives they are not bound to obey them.[29] This could often make for what westerners would interpret as authoritative approaches to behaviour which, for children at least, was strictly, if lovingly, controlled.[30] However, Tran maintains that this perceived 'lack of family democracy' does not take into account Vietnamese 'acceptance, in full, of parental responsibilities ... [where] parents are held fully responsible and accountable for any misconduct by their children'.[31]

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27 My–Van Tran, 'Some Aspects of the Vietnamese Family', in Sr. Marie Tran Thi Nien *et al.*. (eds.), Vietnamese Language and Culture, Adelaide, Vietnamese Community in Australia, 1988, p. 18. See also Nguyen Dang Liem, op.cit. p. 45

28 Nguyen van Thang, Interview 12/3/90

29 Kien Dang and Caroline Alcorso, Better on Your Own: A Survey of Domestic Violence Victims in the Vietnamese, Khmer and Lao Communities, Lidcombe, N.S.W., Vietnamese Women's Association, 1990, p. 10

30 Nguyen van Thang, Interview 12/3/90

31 Tran, 1988, op.cit. p. 19

In addition to these strong family values, moral life in Vietnamese Buddhism is guided by the 'observance of the five virtues: humaneness, steadfastness, courtesy, reason and trustworthiness'.[32] Doctrines encourage believers to attain moral and intellectual perfection rather than pursue material wealth, to have compassion even if it interferes with the exercise of justice, and to gain cultural equilibrium 'based on the harmony of reason, sentiment, society and individual'.[33] In practical dealings with others the Vietnamese are also encouraged to avoid unpleasant confrontation and foster harmony through the use of tact, delicacy and gentleness. As Kim Huong Vu explains:

> Subtlety and indirectness are considered wise and straightforwardness is usually seen as naive and offending. Concern for harmony sometimes leads a Vietnamese to feel more at ease telling a well-meaning lie than a truth that hurts. ... [I]n response to a request, a Vietnamese wants to satisfy and please the other person and therefore would usually reply in the affirmative even if he (sic) might not mean it.[34]

This ideal belief system contrasts sharply with the dominant Anglo-Celt Christianity which influences values in Australia. From To Thi Anh's point of view, the differences in values are those between eastern and western ideal values where he perceives that in the realm of what constitutes knowledge, eastern values tend to emphasise intuition, the symbolic and wisdom, while western values tend to rely more on reason, abstraction and science.[35] In attitudes toward nature he characterises the western intellectual tradition as active and analytic, with a desire to master, conquer and exploit nature for human ends whereas the eastern tradition supports a passive and contemplative attitude

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32 Vu, op.cit. p. 18

33 Ibid.

34 Ibid. p. 19. See also Nguyen Dang Liem, op.cit. p. 46

35 To Thi Anh, Eastern–Western Cultural Values: Conflict or Harmony, Manila, East Asian Pastoral Institute, 1975, pp. 90-96

which expresses a oneness of humans with nature and seeks a harmony with all things.[36]

This brief outline of Vietnamese history and culture does not do justice to the richness, variety and complexity of traditional Vietnamese religious beliefs and social practices. It serves only to illustrate, however sketchily, that Vietnamese values and beliefs appear to be very different from the dominant Anglo-Celt and European values in Australia. It also demonstrates that the western emphasis on individualism in modern industrial societies differs markedly from the more familial and communitarian society which was the norm in Vietnam. This is not to suggest that beliefs about ideal models of living are held in their entirety by all Vietnamese any more than all Christian beliefs are held by all Christians in Australia. What it does mean is that when we consider how Australia can go some way to meeting the adaptive needs of Vietnamese people accepted in Australia for resettlement, we are better able to understand that they are not just another wave of predominantly Christian immigrants from Europe who can be expected to adapt in the same way as did their predecessors. 'Culture shock' is a real experience for Vietnamese upon arrival in Australia and therefore must be added to the refugees' list of traumatic events.[37] The existence and sources of trauma experienced by refugees must also be well understood if programs and services designed to aid settlement and adaptation are to be successful. This is where a notion of 'triple status' can extend the horizons of policy–makers beyond the limitations of the 'NESB migrant' to include, where it is appropriate, the refugee experience and the ethnic origin of new settlers. This is not as simple a task as it may seem when it comes to 'the Vietnamese' as a group of people who have settled in Australia. The Vietnamese were not an internally homogeneous people in Vietnam any more than they are in Australia.

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36 Ibid. pp. 96-102

37 Nguyen Dang Liem lists the symptoms of culture shock as 'severe mental, emotional, behavioural and psychosomatic difficulties' and says it affects all age groups, op.cit. p. 53

The Vietnamese in Australia

The Vietnamese who have settled in Australia are not an homogeneous group, nor are they representative of a cross–section of the population in Vietnam. Traditionally there were four basic divisions within Vietnamese society.[38] There were the differences between people from the north who lived in a harsh and poor environment and those from the south who lived and worked in fertile areas with easier access to cultural centres and universities. There were also rigid class differences within both regional groups. Education, occupation and family social status were associated with an urban–dwelling class while the small rural farmers and those who lived by fishing — both groups with little more than primary education — were considered to be peasants. There was a wide social gap between the two classes.

Religious differences existed between Vietnamese Buddhism and Catholicism. Catholics were a small proportion of the Vietnamese population, but a large proportion of the refugees. As I have noted above, they fled from the North in 1954 after Ho Chi Minh's victory over the French, and fled again with the Communist advance into South Vietnam in 1975. Finally, there was also a minority Chinese Vietnamese population, concentrated in the South, who were mostly business people. In the main, ethnic Vietnamese and Chinese Vietnamese did not interact socially nor share the practice of each others' beliefs. The Chinese Vietnamese were 'forced' to leave Vietnam in huge numbers in 1978–1979 when their businesses were confiscated by the new regime.

Demography

A rough profile of Vietnamese refugees escaping between 1979 and 1982 would find that the majority were elite Northerners resident in the South, South Vietnamese elites, Catholics and Chinese.[39] These were the groups who had most to lose under a Communist regime and, certainly in the early days, they were the 'richer, stronger and

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38 Nguyen van Thang, Interview ,12/3/90

39 Viviani, 1984 , op.cit. p. 130.

better connected groups' favoured to succeed in their escape.[40] It is important to understand the nature of these groupings of early arrivals because it was from within these groups that some of the more powerful community organisations in Australia were originally founded. In the 1990s there is now a variety of Vietnamese community organisations, each of which has a distinctive ideology which governs its activities. No single organisation or community group would therefore be representative of all Vietnamese.

There are, however, other characteristics of the Vietnamese population which need to be taken into consideration. At the end of 1982, 57,777 Vietnamese had entered Australia.[41] They were a comparatively young group with large numbers needing employment and a high proportion of school age children.[42] There were very few elderly people.[43] In the early years there were distinctly more males, a factor which has been modified in recent years, and most refugees were unskilled by Australian standards.[44] Fifty percent of the population were married but did not necessarily have their spouses with them and there was an overall low number of complete families.[45] As I noted earlier there were ethnic, class, regional and religious differences within the Vietnamese population with Catholics and Chinese Vietnamese being over-represented.

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40 Lewins and Ly, op.cit. p. 17

41 At the 1991 census this number stood at 121,813. Bureau of Immigration and Population Research (BIPR), Community Profiles 1991 Census: Viet Nam Born, Canberra, AGPS, 1994, p. 5

42 Exact numbers are not known but Hazelhurst reports that of 133,000 refugees arriving between 1977 and 1985, more than 38,000 were aged between 15-24 yrs. Kayleen M. Hazelhurst, Migration, Ethnicity and Crime in Australian Society, Canberra, Australian Institute of Criminology, 1987, p.101. See also Diane Zulfacar, Surviving without Parents: Indo–Chinese Refugee Minors in N.S.W., Sydney, N.S.W. Government Printing Office, 1984, pp. 4–7

43Viviani, 1984, op.cit. p. 130

44Ibid. pp. 131–134. The Bureau of Immigration and Population Research records a 57% increase of Vietnamese females between 1986 and 1991. This increase reduces but does not eliminate the male bias in the Vietnamese population which stood at 55.2% in 1986 and at 52.3% in 1991. South Australia was home to 9,193 Vietnamese, 4,904 males and 4,289 females. BIPR, op.cit. p. 5

45Viviani, 1984, op.cit., p. 132.

Subsequent family reunification programs have probably addressed some of the family imbalances from earlier years but since 1982 Australia has substantially reduced its commitment to both refugee intakes and family reunion programs from nearly 22,000 in 1981-82 to 12,000 in 1986-87.[46] Immigration criteria for the family reunion group have also been tightened to exclude extended family members. Those family members who are eligible to migrate must be paid for by the relations already resident in Australia who are 'among the poorest section in the Australian community', having only recently been refugees themselves.[47] In passing, it should be noted that the Hawke Labor government systematically reduced Australia's refugee intake from 1983 onwards.[48] This policy was implemented by stealth while Third World countries of first asylum bore the brunt of 198,139 refugees registered in camps as at 31st July 1990.[49] These unpredictable variations in government immigration policy present significant problems for the Vietnamese now resident in Australia, not the least of which is the continuing fragmentation of their families.[50] Such family fragmentation adds considerable stress to the resettlement process for all refugees.

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[46]This may be reflected in the 14.9% proportion of Vietnamese one–parent families registered in the 1991 census. This figure is still considerably higher than the total Australian population of one–parent families which stood at 10.2% in 1991. BIPR, op.cit. p. 10

[47] What has Happened to Australia's Commitment to Refugees? Broadway, NSW, Refugee Council of Australia, 1986, Facts Sheet. Recent refugees also suffer from high rates of unemployment in economically difficult times. As Viviani *et al.*. report: in 1981 the unemployment rate for Vietnamese men was 24.7% (Aust. 5.3%) and for women 28.8% (Aust. 6.5%). By 1986 31.8% of Vietnamese men and 41.5% of women were unemployed compared to the Australian rates of 8.7% for men and 9.1% for women. In July 1991, the overall rate for Vietnamese unemployment remained high at 30.9%. However, these figures mask an unemployment rate of 45-65% for Vietnamese aged 15-24 years and 40-65% for those aged 40-65 years. Viviani *et al.*., op.cit. pp. 48–50

[48] In addition, while Australia has readily paid an annual contribution to support the UNHCR, the value of the contribution has diminished from $29 million in 1981 to $4.7 million in 1988. Amin Saikal (ed.), Refugees in the Modern World, ANU Canberra, Department of International Relations, 1989, p. 7

[49] UNHCR, op. cit

[50] There have been considerable problems with migration law in Australia since Federation. They will be discussed in more detail in the section dealing with the Department of Immigration and Ethnic Affairs in chapter six.

A further feature of the demography of the Vietnamese in Australia is that between the years 1975–1982 large numbers of unaccompanied and detached minors were accepted for settlement in Australia.[51] Many of these young people were fostered into Australian families for care and were enabled to continue their education. For some, this was a successful process which resulted in eventual reunion with their own families.[52] For others, foster–care did not work for a number of reasons including conflicting expectations of the foster–relationship, inadequate selection procedures and counselling support for both the foster–parents and foster–child, and exploitation of the foster–child as domestic labour.[53] Language difficulties, age on arrival, the degree of interruption to schooling already endured, extraordinary loneliness and the pressure of obligations to family still in Vietnam, for example, often meant that young people were unable to adapt quickly enough for success in a very different family, social and educational system.[54]

Leaving school for work was a solution for some, joining with other Vietnamese in shared housing helped others.[55] Where these options were not available, however, where lack of language and skills spelled long–term unemployment, these young Vietnamese were vulnerable to existing street cultures where there was every likelihood that they would be introduced to drugs and petty crime. In this they were no different from other young Australians in similar circumstances. Research indicates, however, that despite sensational media reporting to the contrary, crime rates for the young

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51 Detached minors came with or were sponsored by relatives other than parents

52 Nguyen Xuan Thu (ed.), Life with Past Images, Coburg, Victoria, Phillip Institute of Technology, 1986

53 Zulfacar, op.cit. See also, Mark Raper, 'Vietnamese Unaccompanied Minors', Migration Action, Vol. VII, No. 1, 1984 and Nancy Schulz and Ann Sontz, 'Voyagers in the Land: A Report on Unaccompanied Southeast Asian Refugee Children', Richmond, Vic., CHOMI Reprint, 1985

54 Tham Thi Dang Wei, "The Vietnamese Child: Adjustments and Conflicts", in A Handbook for Teachers of Vietnamese Refugee Students, Richmond, Vic., CHOMI Reprint No. 394, 1980

55 bid.

Vietnamese were in 1989 proportionately about half those for the Australian born population.[56] Even so, if young Vietnamese adopt a street lifestyle their physical visibility renders them more vulnerable than other young Australians to discrimination and police harassment.[57]

In summary of the Vietnamese story so far, I have shown that they came to Australia at a time when long–standing anti–Asian immigration policies had barely been abolished.[58] In order to understand what the Vietnamese brought with them to begin new lives in Australia I have briefly outlined some of the key features of their history, belief systems and social traditions. I have also provided demographic details of the Vietnamese population in Australia and touched on some of the internal divisions and imbalances within this group of people. Maintaining the theme of establishing the need for a 'triple status' to be applied in settlement policies for new settlers to Australia, I turn now to an examination of the resettlement difficulties experienced by the Vietnamese as they began their adaptation to Australian society.

Resettlement difficulties

In the case of the Vietnamese in Australia there are some facets of their resettlement which are common to all migrants, others which are relevant to refugee populations and

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56 Patricia Weiser Easteal, Vietnamese Refugees: Crime Rates of Minors and Youths in N.S.W., Canberra, Australian Institute of Criminology, 1989, p. 39

57 Harassment of young Asians by police was reported by many speakers at the First National Summit On Police And Ethnic Youth Relations held in Melbourne in June 1995. For example, findings from the NSW Youth Justice Coalition report stated that 'Asian young people are two times more likely to be searched and four times more likely to be arrested and three times more likely to be injured during their contact with police than young people describing themselves from an Australian background'. Vincent Doan, 'Response Paper to "When Two Worlds Collide: Culture and the Police" ', Conference Paper, Unpublished, First National Summit On Police And Ethnic Youth Relations 1995, Melbourne, June 1995, p. 4. From the same conference see also Robert White, 'Public Space and Gangs: Racism, Policing and Ethnic Youth Gangs' and Carmel Guerra, 'Ethnic Minority Young People: Challenging the Myth' who voiced similar concerns about racist behaviour by police in all states towards youth who were visibly different.

58 In chapter two we also saw how the influx of refugees raised fears of increased unemployment in a period of economic downturn and gave rise to racist debates.

some which are unique to them.[59] For example, they share with other migrants of non–English speaking backgrounds little or no knowledge of the English language or the Australian way of life. Government services and bureaucratic structures can be a mystery as can concepts of health, welfare and education. Housing may not be appropriate or may be more expensive than they can afford. Non–recognition of overseas qualifications and vulnerability to unemployment are other important factors affecting newly arrived migrants to Australia.[60]

For refugees, there are added complications. A refugee, according to the 1951 Refugee Convention and the 1950 Statute of the Office of the United Nations High Commission for Refugees (UNHCR)

> is any person who, owing to well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group or political opinion, is outside the country of his (sic) nationality and is unable or, owing to such fear, is unwilling to avail himself (sic) of the protection of that country; or who, not having a nationality and being outside the country of his (sic) former habitual residence as a result of such events, is unable or unwilling to return to it.

In addition, arrival in a country of resettlement may not be refugees' first displacement from or within their own country. As in the case of the post–World War II refugees from Eastern Europe and the present day Vietnamese they may have spent years of internal displacement before waiting in crowded, insanitary transit camps of first asylum for another country to accept them. In these situations they are likely to be separated from their families and be suffering from the trauma of prolonged war in their homelands. They may have been running away from that war for many years. They are unlikely to have any money or possessions, save a change of clothes, with which to start

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59 DIEA, op.cit. p. 2

60 Ibid. pp. 3, 38, 49

a new life.[61] They will almost certainly be grieving for family members who are dead, left behind or whose whereabouts are unknown. They will be living in fear of the past and the future and, along with their thoughts of survival, there will be guilt that others close to them have not survived.[62] Since, by definition, refugees cannot return home, at least in the short term, they are denied the access other migrants have to their country of birth for visits which might be used to confirm their decision to stay in Australia or to see relatives.[63] Resettlement difficulties unique to the Vietnamese are those which stem from their ethnic origin, history, beliefs and social traditions but it should be noted that every migrant or refugee group is unique in similar ways.

Each status, however, that of migrant, that of refugee and that of ethnic origin has an effect on how individuals and families manage the transition to a new life in Australia. The transition is also influenced by numerous other factors which include time of arrival, employment opportunities, family composition, class, religious beliefs, age and so on.[64] In addition, it is vital to understand how the Vietnamese perceive and react to the various services with which they come into contact in terms of their own expectations. For example, all the settlement studies consistently found that Vietnamese refugees were reluctant to voice criticism when clothing was too large, food distasteful, language classes too difficult, or housing inappropriate. It appeared that their customary behaviour of withdrawal from confrontation, their tolerant acceptance of situations, their polite wish to please rather than to offend and their traditional diffidence and respect towards authority all combined to mask both the internal and

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61 The decision to leave Vietnam was often made on the spur of the moment as an opportunity presented itself. There was no chance to pack even a change of clothes or say goodbye to loved ones. See, for example, Thor May, 'The price of freedom', Australian Society, Vol. 3, No. 10, October 1984

62 See, for example, Hawthorne, op.cit. and Saik Lim, 'Welfare Services for Indo–Chinese Refugee Children: The South Australian Experience', Richmond, Victoria, CHOMI Reprint No. 366, 1979 for further details of the trauma suffered by refugees from Vietnam.

63 DIEA, op.cit. p. 39

64 Viviani, 1984, op.cit. p. 195

external difficulties they experienced. Their desire not to appear ungrateful was a further brake on their willingness to express dissatisfaction. However, it may also be the case that the observed compliance and unquestioning acceptance of their conditions which was attributed in studies to 'cultural traits', was also the effect of fear or traumatic events and experiences which they did not talk about to interviewers.[65]

The most pressing needs for all new settlers to Australia, however, particularly if they do not speak English, are to learn the language, find accommodation and get a job. Continuing the story of the Vietnamese, I will now look at how effectively government services provided for each of these needs and the difficulties which arose for this group as a result of being catered for only as 'migrants'.

Language acquisition

All settlement studies reported that on arrival in Australia the Vietnamese made extensive use of opportunities to learn English. However, many refugees encountered problems with the English classes which were provided full-time at migrant hostels and part-time by the Education Department for those who had gained employment. Some of these problems were to do with the difficulty of learning while in a confused and insecure state in an alien environment but most were to do with the way in which the language courses were taught.[66] Refugees with no previous experience of another language — the majority — and some not literate in their own language, could not keep up with teachers who could speak only English. The lack of bilingual teachers meant that many Vietnamese dropped out of courses in despair or alternatively learned very little that was relevant. The ten to twelve weeks length of the course also meant that for those who did manage to complete the course, there was no chance for them to

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65 In the four years of my work with the Vietnamese in South Australia I certainly observed the 'cultural traits' mentioned here. Respondents also mentioned these traits to me as constituting customary and appropriate behaviour for Vietnamese people. However, I was aware from other sources that many of my Vietnamese contacts had been through horrific life experiences. I was very careful therefore not to solicit information which might cause them further pain.

66 DIEA. op.cit. p. 73

consolidate what they had learned.[67] Part–time continuing courses were attended by some after they had secured employment but, because those classes were added to the demands of work and family, these courses were not successful. It was found that language acquisition was much better served by the employer–sponsored classes which were attended during the day with no loss of wages and where the course content was oriented to daily life and work situations.[68]

A further difficulty of English language learning for the Vietnamese was the teaching method. The Vietnamese are accustomed to learning in very formal settings and the more relaxed Australian style resulted in frustration on both sides. Refugees did not perceive their needs as being met and teachers' expectations were unfulfilled.[69] There was also a gender difference in language acquisition, with men usually becoming more proficient than women. This was thought to be the result of women's reduced access to classes due to family commitments, lack of transport and child–care facilities, and, if they were not working outside the home, employment situations which would help them improve their English.[70]

The provision of language tuition for 'migrants' thus failed to take into account the consequences of being a refugee and the specific needs of the Vietnamese. Had the 'triple status' of these students been applied to the structure, timing and teaching of language courses, the style, content and methodology of Australian teaching would have been modified to achieve more successful outcomes.[71] As we shall see in

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67 Ibid. p. 77

68 Ibid. p. 78

69 Ibid.

70 VEAC , op.cit. p. 86. See also Eileen Pittaway, Refugee Women—Still at Risk in Australia, Canberra, AGPS, 1991 and Louise M. Goold, Their Plight Continues: A Study into the Current Settlement Needs of Indo-Chinese Women aged 15–24 in South Australia, Adelaide, SAIT, 1986.

71 For example, the style of teaching would have been more formal, the content repetitive and the methodology would have made use of bi–lingual aides. There is also a case to be made for additional language courses to be provided in the workplace, during working hours, where the content of courses

discussions of other institutional frameworks, there was a, presumably unintended, cultural superiority being manifested in dealings with new arrivals in Australia which was ignorant of their needs, values and priorities.

Employment

After language acquisition, employment was identified in settlement studies as the next most pressing need for refugees. Vietnamese experience in this area varied significantly from state to state and from metropolitan to country areas. Levels of English on arrival, age, gender and previous education all affected employment opportunity as well.[72] By and large, studies have reported that the Vietnamese demonstrated high levels of initiative in obtaining jobs by 'gate knocking' and by using contacts in the Vietnamese community. Most were regularly employed in factories.[73] This situation is not much different from the employment experience of other migrants but it is significant that the Vietnamese met with considerable racial prejudice and antagonism from other more established migrant groups in the workplace. It was presumed that this occurred because new arrivals were more exploitable in terms of wages and health and safety issues and that this represented a threat to previous migrants' jobs. Viviani also reported that the small stature of Vietnamese placed them at a disadvantage and at some risk when they worked with factory machinery designed for taller Australians.[74] Once again, the Vietnamese did not complain of hardship.

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would be geared to practical needs. This would also obviate the need for evening classes which place additional strains on workers who are tired and less able to absorb new information.

72 Viviani , 1984 , op.cit. p. 220

73 Nancy Viviani, 'The Vietnamese in Australia : new problems in old forms' in I. H. Burnley, S. Encel and G. McCall (eds.), Immigration and Ethnicity in the 1980s, Melbourne, Longman Cheshire, 1985, p. 241

74 Viviani, 1984, op.cit. p. 226

The relegation of migrants into the dirtiest, unskilled occupations which Australians do not want is not a new phenomenon.[75] But, as with the post–World War II migrants, Australia's non–recognition of overseas qualifications and use of arbitrary skill categories ignore skill levels in other countries. This practice inflates unskilled classifications and wastes a sizeable amount of talent which could be put to good use in migrant communities. As Viviani states it:

> The Vietnamese community needs its doctors, teachers, university students and businessmen, so that racial stereotyping will be avoided. As it is, the Vietnamese are too easily seen as poor, working class factory people.[76]

Another difficult adjustment the refugees had to make was the financial necessity in Australia for women to work outside the home. In the traditional Vietnamese family, women are primarily responsible for domestic and child–rearing tasks where, ideally, they enjoy considerable authority and respect.[77] However, they are also used to being highly self–reliant and resourceful and readily organise or take part in family economic ventures.[78] These latter skills were also more particularly developed during and after the war when the absence or death of male wage earners forced women into income producing activities to support themselves and their children.[79] Working in factories though, was a new experience and placed a double burden on both their own and their

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75 That migrant workers tend to be concentrated in unskilled or semi-skilled occupations rejected by indigenous workers is confirmed in other studies. See, for example, Jock Collins, 1988, op.cit. p. 5.

76 Viviani, 1985, op.cit. p. 245. See also Fiona Mackie, 'Blind Ethnocentrism', Arena ,No. 67, 1984, pp. 94–98 for a brief review of the literature concerned with the stereotyping of post World War II immigrants.

77 This was not always the case though. Dang and Alcorso report in their study of domestic violence victims in the Indo–Chinese community in NSW that, for half of the victims, the abuse had begun in their country of origin, op. cit., p. 16

78 Vu, op.cit. p. 18

79 My–Van Tran, 'Vietnamese Women Two Hundred Years of Progress', First National Conference of Vietnamese Women in Australia, Conference Proceedings, Sydney, Vietnamese Women's Association in NSW Inc., May 1994, p. 9 and Nguyen Thi Hong, op.cit. p. 21

husbands' expectations of fulfilling their traditional familial role. The absence of extended family supports also meant that considerable strains were placed on marriage relationships which were and still are, in some cases, expressed in husbands physically, emotionally and economically abusing their wives.[80] Informal reports of wife abuse are not rare in the Vietnamese community but the abuse is rarely made public.[81]

The problems faced by the Vietnamese in the workplace are therefore not very different from those faced by all new NESB settlers. These problems include racial prejudice and declassing and deskilling due to non–recognition of overseas qualifications. For women there are additional difficulties in the lack of suitable child–care and extended family support. The only difference between the Vietnamese and other newcomers might lie in the higher levels of tertiary educated professionals in the Vietnamese refugee population in Australia which means they would suffer more from the non–recognition of their qualifications.[82] Recent research too, which has recorded changes in the economic circumstances of the Vietnamese population, points to continuing high levels of unemployment and low social mobility for some groups of Vietnamese.[83] The implications of these findings in terms of their refugee or Vietnamese status are unclear.

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[80] This is only one cause of the strains placed on marriages in the resettlement process. Others include the husband's drinking, drugtaking and gambling to excess, unemployment, lower employment status or his relationship with another woman. Dang and Alcorso, op. cit., p. 15

[81] Phillipa Aston, Interview, 19/3/90. Some Vietnamese women are using women's shelters as a respite from violence in domestic situations but such action places them in a very tenuous position in their community and they almost inevitably return to their homes. Women's challenging of the accepted norms in this way is understood to be generating a great deal of conflict in the Vietnamese community in Adelaide as Nguyen van Thang, Interview, 12/3/90 confirms. The only study which exists in this area is from N.S.W. Most of the women in this sample had left their husbands at the time of interview though not all saw it as a permanent separation. The study also made clear that much violence is endured by women for years and is usually unreported. Dang and Alcorso, op.cit. p. 27

[82] The research sample of my study is weighted toward the more highly educated. For details see the profile of survey respondents at the end of chapter five.

[83] See for example, in Australia, Nancy Viviani, James Coughlan and Trevor Rowland, Indochinese in Australia: The Issues of Unemployment and Residential Concentration, Canberra, AGPS, 1993, Ba Phuc Tran, A Study of Low Income Earners in the Vietnamese Community, Victoria, Poverty Action Program Research Project, Unpublished, 1990 and My–Van Tran and Robert Holton, Sadness is Losing Our Country, Happiness is Knowing Peace: Vietnamese Social Mobility in Australia, 1975-1990, Paper No. 12, Working Papers on Multiculturalism, Wollongong, The Centre for Multicultural Studies, University of Wollongong, 1991. In the US, see Steven J. Gold, Refugee Communities: A Comparative Field Study,

Housing

Migrant hostel living was not generally a happy experience for the Vietnamese. Most refugees were anxious to find their own accommodation as soon as they could afford to do so. Reliant on the private sector rental market they most frequently found somewhere to live with the help of friends and relatives. At first they may have shared accommodation with other families but eventually, according to the studies, they moved several times before being able to purchase their own home.[84] In South Australia where, historically, public housing has enjoyed a far higher government priority than in other states, a research report in 1979 referred to Vietnamese unfamiliarity with the Australian system of public housing.[85] This meant that, although new arrivals were helped to apply for public housing, many did not make any further contact with the SAHT. It was thought that language problems and a poor understanding of the system and the procedures probably combined 'to prevent some refugee families in need from following up their applications'.[86]

Government policy and media reports tend to understand the Vietnamese as living in enclaves and therefore not prepared to interact with the wider community. The studies show, however, that housing options for refugees are limited and housing choices are made more on the basis of low rental, proximity to employment, transport, shopping and schools.[87] Being close to relatives and friends is also important but the other

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Newbury Park, California, Sage, 1992 and Paul James Rutledge, The Vietnamese Experience in America, Bloomington, Indiana University Press, 1992; op.cit.

84 VEAC, op.cit. p. 102. According to the 1991 census Vietnamese households stand out in their concentration in rented dwellings where 45% occupy rented accommodation compared to 27% of all other Australians. BIPR, op.cit. p. 30

85 In Vietnam, government housing is for officials and bureaucrats only and not generally available. Phillipa Milne, Indo-Chinese Refugees in South Australia, Research Unit, South Australian Housing Trust (SAHT), 1979, p. 18

86 Ibid.

87 A later study of secondary internal migration, however, found that it was the location of Migrant Centres which was very influential in refugees' choice of both initial and subsequent housing location. However, it is also true that these Migrant Receiving Centres were situated near low rental and large industrial zones. See Warwick Wilson, 'Residential relocation and settlement adjustment of Vietnamese

factors are more determining of location.[88] Although migrant enclaves are a demographic reality and, as we now know, have positive benefits in the practical and emotional support provided by such concentrations, there is a perception that because the Vietnamese live in disadvantaged areas, are a clearly identifiable group and create pressures on services already in short supply, they are therefore a 'problem'.[89] It is a short step from there to the stereotyping of Asian migrants in general and the victimisation of Vietnamese by longer–term residents in particular.[90]

Except for their experience of racism, the housing difficulties experienced by the Vietnamese are again not very different from those of all NESB 'migrants' or other very poor Australians. The problems are the result of an economic structure where, in the private housing market on which refugees must rely, low rents are only to be found in poorer urban areas.[91] Overcrowding was also a feature of early settlement as Vietnamese banded together in their efforts to survive in an often hostile environment.

Of the three most urgent needs Vietnamese refugees experience on arrival in Australia — that of language acquisition, accommodation and employment — only policies and services relating to learning English appear to be in need of the application of a 'triple status'. Finding affordable accommodation and suitable employment are problems for all migrants with few resources as they are for poorer Australians. Improvements in these areas are the responsibility of the wider economic and welfare systems rather than resettlement policy for new settlers. It remains to be seen if this is true for the problems

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refugees in Sydney', Australian Geographical Studies: Journal of the Institute of Australian Geographers, Vol. 28, No. 2, October 1990, p. 164

88VEAC, op.cit. p. 108. The results of the Wilson study on this question found the reverse to be true—that is, that closeness to relatives and friends was more important than other considerations. Ibid. p. 166

89Ibid. p. 115

90Ibid. p. 24

91For a more detailed discussion on the availability of housing and the spatial location of the Vietnamese in some Australian states see Viviani *et al.*., op.cit. pp. 14–18

encountered by the Vietnamese in their dealings with Australian institutions, especially those related to the legal system.

The Vietnamese and Australian institutions

In this section on the interaction between the Vietnamese and institutional life in Australia, the principal focus is the question of their access to the legal system. However it would be a mistake to isolate the law as separate and distinct from the other institutions which are equally affecting of Vietnamese refugees' daily life. Contact with the health, welfare and education systems in Australia may be the new arrival's first experience of western–style bureaucracies where legal requirements are fundamental to their operations. For example, to obtain Medicare benefits it is necessary to be registered; to obtain income support and other welfare benefits there are multiple categories of entitlement which may entail the signing of statutory declarations; and in education there is a legal obligation for children to attend school until they are fifteen. It is also useful to see if a 'triple status' needs to extended to these policy areas for the Vietnamese to be assured of at least equal access and treatment within these government services and instrumentalities.

Health

It has long been argued that the Australian health system does not take migrant needs into account.[92] The western model of health operates

> with a medical–scientific model of health care, which defines psychological and social considerations as marginal and largely untreatable except when evident in the form of gross malfunctioning, [and doctors] continue to do their job with the minimum of insight into the experience of migrants or of other health personnel in contact with migrant patients.[93]

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92 Jean Martin, The Migrant Presence: Australian Responses 1947–77, Sydney, George Allen & Unwin, 1978, pp. 146, 168 and Western, op.cit. pp. 289-291

93 Ibid. p. 181

There is a notable lack of scholarly interest in this subject as well, with medical writers, sociologists and anthropologists yet to study Anglo-Celtic Australian conceptualisations of health and illness, let alone the beliefs and behaviours of peoples of ethnic background.[94] The early studies of Vietnamese resettlement often included consideration of the effects of trauma suffered in the refugee experience but it was not appreciated at the time that the symptoms of such trauma are often delayed. As more knowledge of the refugee experience was gained, including that of torture in Vietnamese camps and prisons, the focus of recent research has centred, in the US particularly, on psychological studies of aspects of Vietnamese adaptation to western countries in the areas of mental and physical health.[95] These studies drew attention to the incidence of post–traumatic stress syndrome in refugees and helped clarify the nature of the difficulties suffered by refugees in the process of settlement and adaptation in a new country.

The health care system in Australia is probably familiar to the majority of Vietnamese who, prior to migration, would have utilised Western medical facilities such as military, public and private hospitals, clinics and dispensaries. However, access to these facilities was variable, with rural dwellers remaining dependent on traditional medical practitioners and mid–wives. In urban areas both systems co–existed and the Vietnamese were accustomed to consulting both traditional and Western practitioners, as well as self-medicating, 'according to the nature of the illness and the perceived efficiency of treatment and care of the alternative systems'.[96]

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94 Lenore Manderson and Megan Matthews, 'Care and Conflict: Vietnamese medical beliefs and the Australian health care system' in Burnley et.al. op.cit. p. 248

95 See, for example, on health Y. S. Ben–Porath, Issues in Psycho-Social Adjustment of Refugees, Minnesota, Technical Assistance Center, 1987; C. Williams and J. Westermayer (eds.), Refugee Mental Health in Resettlement Countries, Washington, Hemisphere Publishing, 1986 and M. Beiser, 'Influences of Time, Ethnicity, and Attachment on Depression in Southeast Asian Refugees', American Journal of Psychiatry, Vol. 145, No. 1, January 1988, pp. 46-51.

96 Ibid. p. 252. Traditional Vietnamese medical theory derives from a synthesis of Vietnamese folk medicine—somewhat magically and spiritually oriented—and Chinese medicine which uses herbs, tonics, oils and medicinal methods of healing. The theories are complex and cannot be explored here. Suffice it

A notion of 'triple status' may, however need to be used in health care policy in the case of Vietnamese women during pregnancy and childbirth. As I have already noted, very few Vietnamese arrived in Australia with their families intact and it was often many years before spouses and children could be reunited. When I was interviewing the respondents for this study, it was my experience that this separation between spouses was reflected in family composition. I often found there were older children attending secondary school or university and very young pre–school children as well. When this was linked to the length of residence for each spouse, it was obvious that couples had decided to increase their family size soon after the wife's arrival. This would have been at a time when the women had few English language skills, were aged in the late child–bearing years and would almost certainly be suffering from 'culture shock'.

In Vietnam there are a number of customary practices surrounding pregnancy and childbirth which are not related to western styles of health care. This has serious implications for Vietnamese women giving birth to children in Australia, especially if they are newly arrived. As young women they are instructed in the ancient prescriptions and taboos and it can be a time of great anxiety for these women if they cannot, in an Australian hospital, fulfil the necessary rituals. Typically, however, privately held beliefs are not communicated to hospital staff and staff remain unaware of the conflict and stress being caused.[97] If a 'triple status' were applied to health care policy in these cases, many difficulties would be overcome.

Welfare

Welfare policies in Australia encompass a wide range of income support measures and services which are available to those people who are eligible to receive them. While income support is funded by the Commonwealth Government, many services are provided by the State or by combined funding from the Commonwealth and State as is

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to say that Vietnamese attitudes to health and sickness are ultimately linked with dietary behaviour in the maintenance of a balance between the vital life forces of Yin and Yang and thus are quite foreign to the western style of medicine.

97 Manderson and Matthews, op.cit. p. 258

the case in the granting of legal aid. Marriage guidance counsellors, Family and Community Services, Youth Support Services, Neighbourhood Houses and Mediation Services, Senior Citizens Centres and Community Legal Centres are just some of the services Australians expect to be available if or when they are needed. There is also a plethora of voluntary agencies such as Red Cross, the Salvation Army and St. Vincent de Paul which operate welfare organisations for the needy.

This Australian concept of public, community–based welfare is utterly foreign to the Vietnamese. The extended family is usually the source of welfare assistance and problem solving for most Vietnamese people. There is also the reciprocal nature of obligations between family members. It is quite unthinkable for a Vietnamese not to care for ageing parents or to seek financial or marriage counselling. Alien concepts such as these create significant difficulties for refugees in the resettlement process. Where income support is concerned, the various Commonwealth bodies which offer funding are bewilderingly bureaucratic and beyond the comprehension of many newly arrived refugees.[98] One example of this was the special benefits received on arrival which were transformed into education allowances, paid by DIEA, if refugees attended language classes. When that benefit expired at the completion of the course, unemployment benefit was then paid if the recipient was still without a job. Problems arose when the ending of one benefit overlapped the commencement of another. When refugees accepted the double payments without question, they were reported as devious, calculating and as deliberately misleading the authorities.[99]

It is easy to see how these misunderstandings occurred in the light of Vietnamese ignorance of welfare systems but while Australian service providers presume that

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98 Jupp says this is true for all migrants and that in 1995 service delivery was still 'hopelessly fragmented'. James Jupp, 'Australia's Settlement Service Provision: An Overview', Conference Paper, Third National Immigration and Population Outlook Conference, Unpublished, Adelaide, 22–24 February 1995, p. 5

99 DIEA, op.cit. pp. 72-73

information given to 'migrants' is merely a matter of competent translation, those services will fail to be effectively or equally delivered.[100] Even years after successful settlement in Australia in other areas of their lives, the Vietnamese 'have not come to terms conceptually with community–based facilities' and problems they have been unable to solve within kin networks remain without solutions.[101] This is not to say that the Australian welfare system has remained inflexible in relation to the special needs of Vietnamese refugees. As we shall see in chapter six the respondents in this study at least, had very low levels of difficulty with the Department of Social Security. Nevertheless, the application of a 'triple status' would benefit newcomers to Australia if it was incorporated formally into welfare policy. There would then be more administrative understanding of the refugees' plight in learning about complex bureaucracies, legal requirements and an appreciation of how different conceptualisations of welfare can lead to misunderstandings.

Education

Since at least the early 1980s, studies of participation in education by migrant children from non-English speaking backgrounds have identified a number of factors which restrict or inhibit the success of migrant children at school. These include the economic circumstances of their parents, political considerations, lack of ability to communicate, cultural conflicts over issues such as co-education, and teachers' lack of knowledge or understanding of student backgrounds.[102] While there are some success stories of migrant children adapting and excelling in the Australian education system at the

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100 David R. Cox, Welfare Practice in a Multicultural Society, New Jersey, Prentice Hall, 1989, pp. 253ff

101 DIEA. op.cit. p. 49

102 Colin J. Marsh, 'Access & Success of School Children from non-English-speaking Backgrounds' in Jupp, 1989(a), op.cit. p. 84

tertiary level, it is much more the case that young immigrant Australians tend to perform less well at all levels than other students.[103]

In the literature, language competence is thought to be the most important feature of successful participation but there are other contributing considerations such as parental expectations, student aspirations, class and gender characteristics as well as the availability of financial and emotional support which influence student achievement.[104] Unfortunately there are no multi–dimensional studies which offer a comprehensive account of the interaction of all these factors when linked to national origin.[105] It can be stated, nevertheless, that research so far has established a pattern of disadvantage affecting migrant children in Australian schools. Not the least important aspect of this pattern of disadvantage is the influence of teachers and the content of the curriculum. For example, most studies are highly critical of the lack of resources made available for English language learning.[106] This criticism mentions the lack of bilingual teachers, the overcrowding of language centres and the inflexible length of courses which place young people in mainstream schools before they are competent users of the language. When students do move to schools there is then a lack, or poor use of, bilingual teacher aides in the classroom to support the newcomers.[107]

Other deficiencies in the system include poor pre–service and in–service training for teachers who remain ignorant of the cultural backgrounds of their students and of

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103 Ibid. p. 87.

104 See, for example, R. Hewitt, "Characteristics and Performances of Students from Other Ethnic Backgrounds" cited in Marsh, Ibid. p. 87; Mary Kalantiz and Bill Cope, 'Multiculturalism and Education Policy' in Gill Bottomley and M. M. De Lepervanche (eds.), Ethnicity, Class and Gender in Australia, Sydney, George Allen and Unwin, 1984, p. 90; Department of Education and Youth Affairs (DEYA), Immigrant and Refugee Youth in Transition from School to Work or Further Study, Canberra, AGPS, 1983, pp. 14–16 and J. J. Smolicz and M. J. Secombe, The Australian School through Children's Eyes: A Polish-Australian View, Carlton, Victoria, Melbourne University Press, 1981, p. 42.

105 Hewitt in Marsh, op.cit. p.86.

106 Kalantiz and Cope, op.cit. p.90; DEYA, op.cit. p. 16; Marsh, op.cit. p. 92.

107 Ibid. pp. 20-23.

cultural practices and ideologies which may produce conflict and misunderstanding.[108] This ignorance often results in low teacher expectations of all migrants which adversely affect these students' achievements.[109] Curriculums too, rarely reflect or cater for the need for students from diverse cultures to maintain and value their identity.[110] The Anglocentric cultural superiority of these policies and practices thus deprive all students of the knowledge and understanding they require to live in a 'multicultural' society. For the young Vietnamese refugee there are added difficulties.

Large numbers of refugees from Vietnam were under seventeen years of age and many of these children were unaccompanied by members of their families. The big influx of school–age refugee children into Australian schools was a cause of great concern for teachers as well as a 'source of anxiety and fear' for the Vietnamese children themselves.[111] Transplanted into a foreign environment, Vietnamese young people were ill-prepared for the emotional, cultural, social and educational adjustments which had to be made if they were to succeed in the Australian system.[112]

For example, at the emotional level, the experience of the war, of escape or evacuation, of separation from, or death of, close relatives, of the sudden change of lifestyle in transit camps and again in Australia, were all sources of trauma which left imprints on children, the depth of which, one study suggests, is hard to measure.[113] Social conflicts

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108 Australian Institute of Multicultural Affairs (AIMA), Reducing the Risk: Unemployed Migrant Youth and Labour Market Programs, Melbourne, Victoria, AIMA, 1985, p. 14.

109 DEYA, op.cit. pp. 12, 18, 24, 26-28; See also Marsh, op.cit. p.93 and Gwenda Davey, A Strange Place To Go: Child Migrants to Australia: A Resource Book, Melbourne, AIMA, 1986

110 Kalantiz and Cope, op.cit. p. 91; Marsh, op.cit. p. 93

111 Tham Thi Dang Wei, "The Vietnamese Child: Adjustments and Conflicts", in A Handbook for Teachers of Vietnamese Refugee Students, Richmond, Vic., CHOMI Reprint No. 394, 1980, p. 1.

112 Ibid. This is especially true of the unaccompanied minors who are in Australia without the support of their families. Zulfacar, op.cit. pp. 16-22

113 Tham, op.cit. p. 2. See also Jenny E. Leak, "Smiling on the Outside, Crying on the Inside", Bedford Park, South Australia, SACAE, 1982 and Elizabeth Collins, 'Indochinese Refugee Children in Melbourne Primary Schools', Information Paper, Victorian Ministry of Immigration and Ethnic Affairs, 1982

for Vietnamese children occurred too in the different expectations of their performance held by parents and teachers. Traditional Vietnamese attitudes of respect and obedience toward teachers, were not understood by Australian teachers who tend to encourage direct and spontaneous interrelationships among students, teachers, and peers.[114] The inability of Vietnamese students to relate in the same way resulted in their being seen as 'unmotivated and uncooperative' by teachers or as a source of amusement to their peers.[115] The changes in food, eating habits, clothing and weather were also disturbing for the young Vietnamese but it was the opposition between the two forces generated by home and school which most often caused 'bewilderment, frustration and confusion'.[116]

Educational adjustments also had to be made when the young Vietnamese were confronted with the very different teaching and learning styles in the Australian system.[117] Accustomed to learning by way of listening, watching and imitating, with teachers using a lecture–style method to transmit knowledge, Vietnamese students found it very difficult to participate actively in the class discussion type, and group activity approach to learning, which is favoured in Australian schools.[118] Co–education was also unfamiliar to the Vietnamese and older students were uncomfortable and shy when asked to work with students of the opposite sex. This was especially true for girls. Sex education is not taught in Vietnamese schools and students suffered extreme embarrassment, shame and discomfort in these classes.[119]

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114 Nguyen Van Nha, 'Issues Concerning Vietnamese Children in Australian Schools' in Nguyen and Cahill, op.cit. pp. 90-91

115 Tham, op. cit. p. 3

116 Ibid.

117 Paula Kelly and Robert Bennoun, Students from Indo–China: Educational Issues—A Resource Book, Canberra, Australian Centre for Indo–Chinese Research, 1984, pp. 105, 109.

118 Tham, op.cit. p. 4, and Nguyen Van Nha, op. cit. pp. 91–93. See also, Thao Le, 'Some Basic Sociolinguistic Aspects in Vietnamese' in Nguyen and Cahill, op.cit. p. 87

119 Ibid. and Kelly and Bennoun, op.cit. p. 109.

Other dimensions of the educational difficulties faced by Vietnamese students were those to do with age and the length of time for which their schooling had been interrupted. In their extensive and detailed study of Indo–Chinese students in Australia, Kelly and Bennoun found that, depending on the age at which interruptions took place, conceptual development could be delayed. This educational gap was not understood in Australian policies or practices and resulted in students being unable to progress satisfactorily no matter how hard they worked. The inevitable loss of confidence and feelings of failure then led to high drop out rates and a great deal of unhappiness.[120]

A student's actual age also created difficulties. It was common for the age of the young Vietnamese to be mis–stated by up to three years lower or higher than his or her actual date of birth. Sometimes alterations had been made to documents to avoid compulsory military conscription in Vietnam but there was also a belief that, if children were thought to be younger, there was more chance of them continuing their education in countries of resettlement. In addition, there were cases of simple error or no knowledge of birth dates due to the death of relatives or the destruction of records. When, for other reasons, records of age were corrected, some young Vietnamese were then excluded from schools or repositioned in grade levels which could be above or below their current abilities.[121]

The individual circumstances of students were also important for how, and how well, adjustments were made to the Australian education system. The amount and quality of family, educational and financial support were vital as was the physical space available to continue with study. Commitments to family still in Vietnam or transit camps, crowded living conditions, loneliness and lack of language often proved too much for the young Vietnamese. They knew they were expected to achieve educationally as well

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120 Kelly and Bennoun, op.cit., p. 75

121 Ibid. p. 102.

as support their families, but could not do both.[122] Without education or skills the youth affected in this way were vulnerable to high rates of unemployment especially in times of economic downturn.[123]

The young Vietnamese refugees with or without their parents thus faced formidable obstacles in their contact with the education system in Australia. Had a 'triple status' been understood and applied to policy by education authorities, there is the possibility that educational outcomes for many Vietnamese students would have been happier. Some schools in some States did recognise migrant and refugee children's needs and instituted appropriate teacher education, methods and curricula.[124] For example, in one school in the ACT, pronunciation programs were conducted twice a week at lunch time. This had 'positive social consequences' for Indochinese students in the classroom, in the playground and for the development of friendships with Australian–born classmates. Grammar, reading and writing classes which were structured and conducted in the formal style familiar to the Indochinese, were also very popular and beneficial for students' progress even though they were not 'officially accredited' classes.[125] The anxiety and poor concentration which typically accompanies the refugee experience was catered for in a Queensland school by using the services of Buddhist clergy on a weekly basis and in some South Australian schools by allowing students to attend for only part of the day. Students were free to increase their hours of attendance when the felt they could cope 'physically and mentally'.[126] It was clear from the success rates which these

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122 Ibid. pp. 92, 95. See also Jerzy Krupinski and Graham Burrows (eds.), The Price of Freedom: Young Indochinese Refugees in Australia, Sydney, Pergamon Press, 1986

123 See Emilia Della Torre, 'Ethnic Youth Jobless in Australia', The Bulletin of the National Clearinghouse for Youth Studies, Vol. V, No. 1, (May 1986) pp. 14-17 for an analysis of ABS statistics (1981 and 1985) demonstrating that first generation ethnic youth bear a disproportionate share of the unemployment burden in Australia

124 See Kelly and Bennoun, op.cit. for programs initiated by individual schools in S.A., p. 69; in NSW, pp. 72-75; in the A.C.T., p. 75 and in Qld., p. 80.

125 Ibid., p. 75

126 Ibid.

schools achieved in their creative approaches to the many problems experienced by migrant and refugee children, that their example should be followed by way of a national policy. Only when such a policy is put in place will all Australian children have equal access to education.

In summary of the Vietnamese experience of learning to deal with the Australian institutions of health, welfare and education, I have demonstrated the need for a 'triple status' to be applied to parts, or the whole, of all policy areas. In the next section of this story of the Vietnamese and institutions, I take a different and more detailed approach to the examination of the legal system.

The Legal System

In this section on the legal system I apply the idea of a 'triple status' to the discussion itself by examining how migrants, how refugees and how the Vietnamese might experience difficulties with the legal system and how they might be disadvantaged within it. First of all though, I provide some more details of the legal system in Australia.

Australian law is inherited from English common law which has sought traditionally to protect the rights of the individual.[127] The system is sustained, in one writer's opinion, by 'the people's belief that it can achieve justice for all'.[128] In the light of the discussion in chapter three on equality and the law, this belief can clearly be regarded as a myth. Expectations that all people share a similar knowledge of the law — enshrined in the

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127 Common law is defined as that part of English law which is based on rules developed by the royal courts during the first three centuries after the Norman conquest (1066) as a system applicable to the whole country, as opposed to local customs. A Concise Dictionary of Law, Oxford, O.U.P., 1983.

128 S. Davies cited in Greta Bird, The Process of Law in Australia: Intercultural Perspectives, North Ryde, Butterworths, 1988, p. 20

doctrine that 'ignorance of the law is no excuse' — and have equal access to its protection are rarely, if ever, fulfilled.[129] As Bird puts it:

> the Australian legal system was created by Anglo-Celtic males in positions of power, and Aborigines, migrants, women and the poor are not equal [before the law] with white, Australian-born, prosperous males.[130]

The system is also adversarial in nature.[131] This means that in court situations it relies on a verbal contest of wits between two or more highly trained individuals, a seemingly passive judge and a win or lose result which disregards the satisfaction of the parties.[132] The body of law itself, is constituted in common or judge-made law and statute or legislative law. In Australia, responsibility for administration of this law, or the judicial process, is divided between the Commonwealth Government on the one hand, and the separate State Governments on the other. It is a complex, unwieldy system which does not lend itself to short or simple explanations. Suffice it to say here, that most Australians do not understand in any detail how it works.

Migrants and the Legal System

It is generally acknowledged in the literature that migrants from non–English speaking backgrounds are disadvantaged in the Australian legal system. As we have seen in previous chapters, Anglo–Celtic values are reflected in laws which discriminate against

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129 Davies in Bird, op.cit. This doctrine of 'ignorance as no excuse' was approved by the High Court of Australia in 1968. See also Greta Bird, 'The Role of Law in a Multicultural Society' in Jupp, 1989(a), op.cit. p. 262

130 Bird, op.cit. p. 435

131 This is defined as a system of criminal justice in which the truth is revealed by the process of prosecution and defence. It is the primary duty of the prosecution and defence to press their respective viewpoints while the judge acts as an impartial umpire, who allows the facts to emerge from this procedure. A Concise Dictionary of Law, op.cit.

132 While this system has its supporters, there are also critics who complain that hostility and tension often remain after court proceedings have been concluded, that disputants are powerless to affect the outcome of trials, that the judge's role is too passive, and that the system is expensive and elitist. As a result there have been moves in recent years to create a number of specialist tribunals which operate with less formal procedures and other dispute resolution forums which rely on arbitration, mediation and conciliation. See Bird, op.cit. pp. 165, 228.

migrants in a number of ways. This can be the case even on the basis of their migrant status alone.[133] For instance, a length of residence eligibility criterion for a range of income support measures, some voting rights and employment in many sectors of both the State and Commonwealth Public Service, denies these rights to non–British migrants who must wait two years before applying for naturalisation. Non–British migrants can also be deported under Commonwealth laws in the first five years of residency if they are convicted of a crime which is punishable by a sentence of one year or more in gaol. In addition, only those migrants who have been granted permanent residency have the right to appeal to the Administrative Appeals Tribunal against the decision to be deported.[134] Immigrants, especially women, have also been substantially disadvantaged in the compensation they receive for work–related injuries. According to Bird, stereotypes of the migrant worker as malingerer have arisen in the general community and have affected the personal interaction between

> the injured worker and doctors, social workers, lawyers, conciliators and judges who, altogether, in their written reports, oral evidence, case presentation and decision making, determined the outcome of the compensation claim.[135]

This creation of 'migrant' stereotypes ignores the low socio-economic status accorded to most migrants and their relegation to, and over-representation in, the 'dirty work' and hazardous areas of employment which native–born Australians do not want.[136]

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133 See Western, op.cit. pp. 274–275, Australian Institute of Multicultural Affairs, Evaluation of Post–Arrival Programs and Services, Melbourne, AIMA, 1982, pp. 279-281 and Bird in Jupp, 1989(a), op.cit. pp. 255–256 for detailed discussions of legislation which overtly discriminates against NESB migrants in Australia

134 Western, op.cit. p. 275. Francis says, however, that the use of this power is 'vanishingly small'. R. D. Francis 'Crime and the Foreign Born in Australia' in D. Chappell and P. Wilson (eds.), The Australian Criminal Justice System: The Mid 1980s, Sydney, Butterworths, 1986, p. 140

135 Bird, op.cit. p. 158

136 Ibid. p. 157

Other areas of inequality for migrants in relation to the law include the provision of legal information, the legal process itself and the availability and quality of interpreting services. Access to legal aid and consumer protection are thought to be inadequate as is the nature and operation of anti–discrimination law, the delivery of legal education and the development of legal doctrine.[137] Migrants also bring with them different attitudes to the law, different expectations of the legal process and different perceptions of the role of the police. These different attitudes and expectations can be a source of conflict for both migrants and legal officers.[138]

However, it is the language barrier which compounds all these difficulties as they are experienced by migrants in their dealings with the law. In the numerous legalities of daily life, the lack of fluency in the English language, both oral and written, will disadvantage migrants from non–English speaking backgrounds. For example, in the purchase of household goods migrants are vulnerable when they sign high interest hire–purchase contracts. These contracts often contain clauses stipulating penalty rates for arrears in payment of which migrants may remain ignorant until it is too late.[139] The complex legal requirements for the purchase of motor vehicles — registration, insurance, access to finance and the gaining of a drivers' licence — pose difficulties which are substantial in the event of an accident involving property damage or personal injury. The whole concept of insurance — for one's life, home, household goods, health and public liability — may be outside migrants' experience and, in the event of loss or injury, leave them exposed to crippling debts.

If migrants are employed it is unlikely that they will be aware of occupational health and safety laws unless informed by their employer. In exploitative work situations this

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137 Bird in Jupp, 1989(a), op.cit. p. 256.

138 For example, Southern Europeans may call the police to admonish rather than arrest the offending party in a marital dispute. Also, fingerprinting, routine in Australia for those charged with an offence, is reserved only for perpetrators of serious crime in Italy. Western, op.cit. p. 276.

139 Ibid. p. 273.

too is unlikely. They are therefore at risk of injury if machinery is not safe and if safety notices are displayed only in English. Wherever discrimination occurs, if landlords break the law, if consumer goods are faulty or if people are negligent, many non–English speaking background migrants will not know their legal rights.

In terms of criminal law, migrants in Australia, the United States, Canada, Europe and Britain all have low crime rates in the first and second generations.[140] Even so, for those migrants encountering the criminal law, there is likely to be significant conflict and misunderstanding. Ignorance of the law, unfamiliarity with police roles and procedures, different meanings attached to behaviour and expectations, and inability to communicate effectively, often result in mutual fear and distrust between migrants and the police.[141] Although it has been recommended in reports and studies for many years that linguistically disadvantaged groups should have access to an interpreter when being interrogated by police, police discretionary powers and lack of interpreter services mean, more often than not, that migrants are not guaranteed this right even in the Commonwealth's jurisdiction and in the few State jurisdictions where it is required by law.[142] There is also some doubt that migrant offenders are informed of their rights when arrested.[143] These rights are: to make a phone call, to have a solicitor and interpreter present, to be silent and that no–one is obliged to sign police statements of record of interview.[144]

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140 Francis, op.cit. p. 54. See also David R. Cox, 'Migrant Youth and Juvenile Delinquency', in Borowski and Murray (eds.), op.cit. p. 127

141 Bird, op.cit. p. 424 and Hazelhurst, op.cit. p. 80

142 See AIMA, 1982, op.cit. pp. 265-272; the Galbally Report cited in Chappell and Wilson, 1986, op.cit. p. 136; Bird, op.cit. pp. 191–193 and Western, op.cit. p. 277 for discussions of the pressing but still unmet need for qualified interpreters to be available for migrants involved in the legal process.

143 Laster and Taylor, op.cit. p. 34

144 Kayleen M. Hazelhurst and Margot Kerley, 'Migrants and the Criminal Justice System' in Jupp 1989(a) op.cit. p. 272.

The concept of bail is also not readily understood by many migrants and often mistaken as the payment of the fine.[145] Time delays in the court process and the adversarial system itself are a source of bewilderment for migrants unfamiliar with Anglo-Australian courts where the presentation of evidence is selective and heavily reliant on legal language.[146] Access to legal aid and lawyers is necessary to negotiate the legal process but knowledge of legal aid has been found to be 'abysmal' in ethnic communities and mistrust of lawyers prevalent.[147] It is therefore not surprising that migrants are less often represented in the lower courts, where the majority of criminal cases are heard and terminated.[148] The low use of interpreters in these courts — Francis records it at only eight percent — is also cause for concern.[149] As Jakubowicz and Buckley found in 1975:

> A clear association has been shown to exist between having legal representation and securing a less severe penalty, the person represented having at least six–and–a–half times better chance of securing an outright judgement in his (sic) favour. ... [C]onversely, the unrepresented appears to be three times more likely to be sent to prison.[150]

Ignorance of the law as 'no excuse' is also a much debated issue in relation to migrants and the legal process. Hazelhurst thinks that 'it is an unfair expectation to have no excuse of ignorance of the law when the legal system itself is unstructured to serve and inform a large sector of the population'.[151] While this rule remains a part of acceptable

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145 Ibid. and Western, op.cit. p. 277.

146 Hazelhurst, op.cit. p. 91

147 Ibid. p.88.

148 Francis, op.cit.

149 Ibid., p. 71

150 Jakubowicz and Buckley cited in Western, op.cit. p. 278

151 Ibid. p. 114

legal argument and judicial thinking, it is clear that migrants from non–Anglo–Celtic backgrounds will be disadvantaged in the court process.

It is perhaps in matters of family law, however, that most migrants will experience the greatest difficulties. Many other cultures, especially those within non–English speaking countries, have traditions of customary law surrounding marriage and divorce which are quite different from, and often conflicting with, those in Australia. It is usual, for instance, for marriages to be arranged by either the man's or woman's family and not uncommon for first cousins to be considered as suitable partners.[152] Complex exchanges of property also take place at the time of marriage which can either become the property of the husband, be retained by the wife or be administered jointly for the duration of the marriage.[153] Likewise, divorce or separation can be acceptable, frowned upon or forbidden. Whatever the case, it is, however, unlikely that State procedures will be involved. In countries where Islamic law prevails, the process of dissolving a marriage is a purely religious affair and, where familial law dominates, a matter to be settled between the families involved.[154]

Custody and access provisions, under the *Family Law Act* 1975 in Australia, can also contain quite foreign concepts for a number of migrant groups. In many patrilineal societies, it is customary for the father's family to take responsibility for children of the marriage, especially sons, but this does not require formal custody or adoption procedures. In fact, in cultures where extended kin networks define family composition there is no notion of children belonging, exclusively, to their natural parents. When born, children are automatically members of the whole family group and, with or without the divorce of their parents, may be cared for by any number of other family

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152 Des Storer (ed.), Ethnic Family Values in Australia, Sydney, Prentice-Hall, 1985, pp. 81, 135, 159, 188, 239, 271

153 Ibid. pp. 83, 124, 245

154 Ibid. pp. 114, 128, 169, 189, 244, 280

members.[155] Australian regulations on marriageable age, custody of children, women's rights, property entitlements and divorce itself can thus be quite alien arrangements which often strike at the core of migrant values.[156] Notwithstanding this conflict of values, the ALRC report on multiculturalism and the law was again adamant that gender equality and child protection laws would not be compromised in the interests of accommodating other 'cultural' norms which in Australia were considered to be discriminatory.[157] I endorse this view. As I have argued in chapter three, equality legislation in this century has delivered hard won benefits to Australians which few would be willing to see lost or even reduced.[158] In particular, family law reforms since 1975 have played an important part in mitigating the discrimination suffered by women and children at the time of divorce. It would be a regressive step therefore, if new settlers who come from countries where such reforms have not taken place, were to be required, because of their 'cultural norms', to suffer discriminations no longer tolerated by the majority of other Australians. Even so, drawing a line here between what Australian law can be expected to accommodate in terms of cultural norms and what it will not, does not negate the need for cultural sensitivity to be exercised by officers of the law when such conflicts arise. On the contrary, members of ethnic groups in these situations will need to be carefully and thoroughly well informed of the reasons why the practice of a particular norm is not acceptable in Australia.

Refugees and the Legal System

For the refugee the difficulties experienced by 'migrants' are multiplied. Refugees in Australia possess characteristics which differentiate them from voluntary migrants in

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155 Ibid. pp. 115, 190, 273, 281

156 Bird, op.cit. p. 122

157 ALRC, 1992, op.cit. pp. 90–135

158 I include in this list of benefits such things as adult, women's and aboriginal suffrage, improved access to higher education, income and welfare support measures for a wide range of people who are temporarily or permanently disadvantaged, the abolition of the marriage bar and the White Australia policy and all anti–discrimination legislation.

important ways. These include the degree to which they may have suffered from the violence of war or under politically totalitarian regimes; the amount of time, resources and money they had to prepare for departure; whether important members of family had to be left behind; memories of relatives who did not survive the war, the escape or the journey to the country of first asylum; the hardship, the length and uncertainty of the time spent in makeshift transit camps and the overarching fear and anxiety which accompanies existing only to survive when the future is unknown.[159]

Refugees' only thoughts on arrival in a safe country of resettlement are for continuing survival. They experience fear in the face of authority, especially the police, are suffering from grief and guilt for lost or dead relatives and their overriding concerns are less for themselves than for separated family members.[160] With few, if any, possessions and in an alien environment, they can absorb very little information. Those refugees who live first in hostels are told some things about the Australian legal system in the few months that they spend there. It is well documented that this is a waste of time. They have other things on their mind.[161] It is not surprising then, that refugees will have little concern for their legal rights in the first years of settlement. In this situation they are thus easily victimised or exploited as they struggle to make a new life in lowly paid jobs without the English language or familial and financial support.

The Vietnamese and the Legal System

Questions relating to the need for legal services have been included in a few Australian settlement surveys of the Indochinese refugee population. In each case Vietnamese respondents demonstrated little or no interest in the acquisition of legal information. These survey results show that the respondents, who were at the time in critical need of

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159 See Saik Lim, op.cit. and DIEA, op.cit.

160 Viviani, 1984, op.cit. p. 177 and DIEA, .op.cit. p. 3

161 VEAC, op.cit. p. 122. This information should be available in bilingual pamphlets distributed in residential locations and through Vietnamese organisations. DIEA, op.cit. p. 3.

language, employment and housing services, did not perceive the need for legal knowledge as a priority.[162] There was, however, a Victorian study which recommended that general information on the legal system should be accessible to these refugees in the second and third years of settlement.[163] Again in Victoria, a study conducted in 1987 examined whether the legal system discriminated against the Vietnamese, whether the Vietnamese had adequate access to the legal process and if the legal system facilitated their full participation in society.[164]

There was also one small South Australian report which presented a brief overview of Indochinese legal needs in general and critically assessed the value of existing practices especially in the area of police relations with Vietnamese youth.[165] Another study in 1990 of a group of low income Vietnamese in Victoria, found that 'most respondents find the legal system in Australia quite bewildering'.[166] Only one study — an unpublished doctoral thesis in the United States — has investigated the adaptation of Vietnamese refugees to legal institutions.[167] This latter study found widespread ignorance and distrust of the American legal process amongst its respondents and recommended a variety of educational approaches if the Vietnamese were to successfully adapt to the legal system in the United States.

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162 In Pittaway's study interest in legal services was nil, op.cit. p.75 and in Victorian research only 5-7% of Vietnamese perceived legal matters to be a difficulty in the settlement process, VEAC, 1983, pp. 56, 57 & 75

163 VEAC, Ibid. p. 122

164 Pamela L Wilson and Lyndon Storey, Migrants and the Law: The Vietnamese: A Case Study, Footscray, Victoria, Footscray Community Legal Centre, 1991

165 Philippa Aston, A Fair Go For All, Woodville, ICRA, The Refugee Association, 1990

166 Ba Phuc Tran, op.cit. p.71

167 Huey–Long John Song, No White-feathered Crows: Chinese Immigrants' and Vietnamese Refugees' Adaptation to American Legal Institutions, PhD Thesis in Social Ecology, University of California, Irvine, 1988, Unpublished

The unique difficulties experienced by the Vietnamese in their contact with Australian institutions derive from their history, beliefs, values and social practices. In recent history, the legal system in Vietnam was that imposed by the colonial French in the 1880s. In that sense it is a foreign system to the Vietnamese whose traditional, and in some ways still dominant, method of solving disputes of all kinds has been that it takes place within and between families.[168] As a colonised people, the Vietnamese were subject to French law which was often, for them, harsh and cruelly oppressive. Thus, the law of governments was something to be avoided and, if possible, subverted. Vietnamese who lived in or near cities were familiar with the law's demands and had to learn its bureaucratic ways, but for the rural dweller it may as well not have existed.[169]

The French judicial process is inquisitorial and operates in marked contrast to the adversarial system in Australia. Adversarial methods of eliciting the truth in any court case are tied to a battle mentality of argument and counter–argument conducted within the well–drawn boundaries of the laws of evidence and the 'prior stances of each party'.[170] The inquisitorial method, on the other hand, relies on searching for the truth by 'reconstructing the past in a holistic and non-abrasive way'.[171] In Australian courts, the judge or magistrate is the arbiter or referee presiding over the court to ensure that rules are followed correctly and takes part only to decide points of law, pass judgement and determine punishment. The inquisitorial counterpart is, however, a central participant, assisting in the investigation of 'eliciting and determining matters of fact'.[172]

Migrants familiar with this system — and this would include some Vietnamese — thus have expectations that judges will protect and even advance their interests in the court

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168 Nguyen van Thang, Interview 12/3/90

169 Storer, (ed.), op.cit. p. 280

170 A. Crouch cited in Bird, op.cit. p. 168

171 Ibid.

172 Ibid. p. 169

process. Such expectations of the judge in the adversarial system are ill–founded and 'result in dismay at what is conceived to be the judge's lack of interest in ensuring that justice is done'.[173] Those Vietnamese who may be involved in court proceedings in Australia can thus have no sense of judicial interest in their fate and no idea of how justice may be achieved.[174] This kind of outcome for Australian citizens flies in the face of the basic philosophy underlying the legal system that justice must not only be done, but also must be seen to be done.

To their colonial history must be added the most recent history of Vietnam, that of over thirty years of war, where the rule of law and order became meaningless. Unstable populations, with diminishing food supplies, had to rely on black markets and bribery for survival, on a false economy provided by the presence of American largesse, on deceit and subterfuge to escape death. When we remember that very large and disproportionate numbers of young people under twenty–five were among the first Vietnamese settled in Australia, it is immediately obvious that notions of binding contracts, licences to drive, to fish and to build, or to carry a weapon, are outside their experience.[175] This is not to suggest that the Vietnamese are not a law–abiding people. Quite the contrary is true. However, it does demonstrate that for the Vietnamese, there can be no ready understanding of how Australian law is constituted when there has only been the law of survival in their past.

As I have already noted on a number of occasions, the Vietnamese family is said to be the source of identity, support, guidance, well-being and welfare. The family is also the source of law where codes of honour and reciprocity prescribe strict models of behaviour, especially for the young. Even older children are obedient to their parents

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173 Ibid.

174 Hazelhurst and Herley in Jupp 1989(a) op.cit. p. 271

175 Of 133,000 refugees arriving between 1977 and 1985, more than 38,000 were aged between 15-24 yrs. Hazelhurst, op.cit., p.101.

until the parents die and it is a cause of great distress for Vietnamese in Australia if parents are elsewhere and the family cannot be reunited.[176] Members of the family who do not conform to these codes of honour — who break the law in other words — are dealt with by internal mechanisms of conflict resolution. For example, much discussion takes place between offending members and their elders until the member conforms, or, in extreme cases, is obliged to leave the family.[177] To be bereft and in prison for the Vietnamese is to be without a family and, although such ostracism might sound harsh to Australian ears, I would have to question whether the western system of incarceration for most law–breakers is any better. Be that as it may, problem–solving in the Vietnamese family has the potential to be a much more co-operative process than the western reliance on confrontational methods of policing and court appearances. In passing, it is also much cheaper.

This familial system of law is not, however, without its injustices — to the young, to women, to the individual and to the outsider. Similar injustices occur in the Australian system.[178] Nevertheless, the familial system is dependant on a cohesive, integrated society which the Vietnamese no longer have to support them. Fragmented families cannot function in the same way although they struggle to do so. When confronted with breaches of the law in Australia, be they of regulations, the criminal code or matters of divorce and child custody, many Vietnamese have no conceptual framework to deal with such perceived public shame. As their customary behaviour encourages submission to authority, absolute politeness, a patient willingness to please and

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176 Ibid.

177 Kelly and Bennoun, op.cit. p. 37

178 See Borowski and Murray, op.cit., for inequalities in the juvenile justice systems; Western, op.cit., pp. 177-184 for differential access to the law according to social class and also pp. 95-98 for the discrimination before the law still suffered by women; and Christine Stafford, 'Aborigines: A comparative analysis of institutionalised racism and violence' in Chappell and Wilson, 1986 op.cit., pp. 39-56 for the past and present injustice suffered by Aboriginal Australians at the mercy of the legal system in Australia.

withdrawal from confrontation, their interaction with authorities leads to confusion and misunderstandings on both sides.[179]

Not the least source of misunderstanding is the fear and mistrust the Vietnamese have of the police.[180] In the post–1975 government of Vietnam, information given to the police could result in the disappearance of family members to New Economic Zones or 're–education camps' from which many people did not return.[181] To be apprehended by police in this period meant arrest and imprisonment, without trial, for an unspecified time. Small wonder that a speeding ticket in Australia is enough to induce trauma in the Vietnamese or that when caught in minor misdemeanours they will be afraid to give their correct name or implicate others.[182]

Police ethnic liaison units in some States are helping to break down these barriers to understanding. In areas where police relationships have been established with the Vietnamese community, the fear and distrust of police is being eroded.[183] However, it is the relations between a small group of Vietnamese youth and the wider police force which is of particular concern to both workers in the field and the police liaison units.[184] These youths are often either not attached to a family or alienated from one. In these circumstances their education is usually incomplete, they are unskilled and have high rates of unemployment. In addition, the distinctive physical features of the

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179 Bob Smith, Interview 19/3/90

180 Fear of the police is likely to be common for refugees generally but here I discuss the specific source of fear for the Vietnamese.

181 In 1976 alone, 1.4 million people were compulsorily relocated in the southern countryside where 'some areas were expanses of nothing but jungle, or bare earth too barren to yield crops'. Barry Wain, The Refused: The Agony of the Indochina Refugees, New York, Simon and Schuster, 1981, pp. 40-41. These facts were also confirmed in interviews with community workers. See Philippa Aston, Interview 19/3/90; Nguyen van Thang, Interview 12/3/90

182 Bob Smith, Interview 19/3/90

183 Ibid.

184 Philippa Aston, Interview 19/3/90

young Vietnamese make their occupation of public space more visible and, it is thought, more susceptible to increased policing.[185] Stereotyping by the police is an added danger in situations involving young Vietnamese as are media reports emphasising the ethnic background of alleged offenders where facts get distorted to suit the 'story of the moment'.[186] That Vietnamese youth have very low rates of offending, and offend at not quite half the rate of the non–Vietnamese according to a three year study conducted in New South Wales (1985-1987), is an indication that the majority of young Vietnamese have no contact with the police at all.[187] It is therefore a small, alienated and vulnerable group of young people who are at risk.

In sum, migrants have concerns with the law at all levels — the linguistic, the conceptual and the practical.[188] For refugees, these concerns are multiplied until their settlement in Australia has been established, until their family is reunited or, at least, known to be surviving and stable. For the Vietnamese, or indeed any particular non-English speaking background group, there are considerations of their history, traditions and social practices which need to be taken into account in laws and policies which affect their resettlement and adaptation to Australian society. However, in Australia, there are limits to how far multicultural policy and the law will accommodate competing values and traditions. Sometimes other values will be accommodated and sometimes, if they are dangerous or discriminatory under Australian law, they will not. They cannot, in all justice, be completely ignored.

Conclusion

This story of the Vietnamese in Australia is not, of course, the whole story but one which sought to place the study which follows in its historical context and show its

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185 Hazelhurst, op.cit. p. 101

186 Ibid. p.113.

187 Easteal, op.cit. p. xii .

188 Bird, op.cit. p. 433

relationship to existing research. The literature demonstrates that there has been little detailed research into the legal needs, legal experience or levels of legal knowledge in the Vietnamese population in Australia. With the exception of the ALRC report in 1992, there is also little information about how best to provide legal education to either the Vietnamese or other NESB groups. This remains true despite the failure of existing methods — mostly translation of pamphlet type information distributed through government departments and community service outlets — to reach the targeted audience consistently. The present study is thus a first exploratory step in providing data which may help to fill the information void.

The story also set out to establish the basis for the concept of a 'triple status' as applicable to laws and policies which affect new settlers to Australia. I have demonstrated the limitations of the category 'migrant' and how its use omits the effects of the refugee experience and ignores the history and social traditions of newcomers' ethnic origin. Application of the 'triple status' to the discussion of the legal system in Australia reveals that law and policy reformers have a great deal more to understand about 'multicultural' Australia and the delivery of even formal equality to all its citizens.

CHAPTER 5: RESEARCH AIMS, METHODOLOGY AND PROFILE OF SURVEY RESPONDENTS

Introduction

Research in ethnic communities presents a number of methodological problems for the researcher who does not belong to that community. Language and communication barriers are just two examples. When the majority of an ethnic community are also refugees, these interactional problems are intensified. As I have shown in chapter four, refugees suffer significant trauma in the process of leaving their own country and being resettled in another. Because of this reality, often coupled with having lived through long periods of intense warfare and under politically oppressive regimes, surveys within refugee communities are notoriously difficult to conduct.[1] The experience of this research has not been any different. Methodological problems necessarily limit the extent to which the findings from the present research can be generalised. Notwithstanding these limitations, the research does reveal aspects of Vietnamese interaction with the legal system which are useful for understanding more about the values and beliefs within the Vietnamese community which may conflict with Australian cultural norms. This knowledge can then help determine if or where a 'triple status' needs to be applied in policy and programs designed to address structural inequalities within the legal system.

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[1] See, for example, in the United States, Elena S H. Yu and William T. Liu, 'Methodological Problems and Policy Implications in Vietnamese Refugee Research', International Migration Review, Vol. XX, No. 2, 1986; in Australia, Viviani, 1984, op. cit. and Tran and Holton, op.cit. This latter study, conducted in SA and NSW chose a purposive sampling technique with a final number of 628 respondents. The response and refusal rates are not recorded.

A combination of modified qualitative and quantitative methods was chosen to carry out the research. This decision was a result of preliminary interviews with welfare workers in the Vietnamese community who perceived, as a result of their interaction with clients, that there was a widespread misunderstanding amongst Vietnamese of the nature and processes of the Australian legal system. Quantitative methods were therefore useful for recording the incidence of legal problems or difficulties and qualitative approaches were necessary to elicit personal responses and reactions to events which could perhaps be related to individual circumstances. The combination of methods also presented an opportunity to discover commonalities of responses in the data which might be related to variables such as class, age, gender, family composition or length of residence in Australia.

In this chapter I first outline the aims of the research. I then address briefly the methodological problems which are encountered in conducting this kind of project in a refugee community and the limitations placed on the research as a result. Fuller explanations of how I dealt with these problems in the study occur in the detailed unfolding of the methodology. This is followed by a description of the background to the study by way of an introduction to the rationale for the design of the research and an account of all the stages of the study. I focus especially on the knowledge which I gained in preliminary interviews with welfare workers in Vietnamese and Australian community organisations. It is important to note that the formulation of questions, the questionnaire design, the solving of problems and the knowledge of refugees and their difficulties in resettlement which I discovered at this early stage, guided the research into its final form. In the final section of the chapter I provide a profile of the survey respondents.

Aims of the research

The principal aim of the research was to discover the nature and extent of barriers between the Vietnamese and the legal system in South Australia. The research aimed to answer the following questions:

(1) To what extent are the Vietnamese experiencing difficulty in understanding and dealing with the Australian legal system?

(2) What are the factors in the previous and present life experience of the Vietnamese which need to be taken into account in their development of legal skills?

(3) To what extent and why do Australian legal institutions inhibit access to the legal system for the Vietnamese?

(4) What are the Vietnamese and Australian values and beliefs which contribute to mutual misunderstandings in relation to the law in Australia?

The research was thus exploratory and did not intend to measure the statistical incidence of legal system usage by the Vietnamese in South Australia. It sought rather to examine the interaction of some Vietnamese with the legal system as they came into contact with it, or failed to come into contact with it, in their daily lives.

Methodological problems

Methodological problems encountered by researchers in refugee communities in the United States and Australia include sampling obstacles, questions of accuracy of basic socio-demographic data, interactional difficulties, ethnic membership, politically oriented factional divides and regional and class divisions within a refugee community. I address each of these problems in turn in order to clarify both the nature and limitations of the data which was eventually collected.

Sampling obstacles

A statistically representative sample of the research population is required of any study which aims to generalise its findings to the wider population with any degree of probability.[2] However, the random sampling of the population which is required for this method depends on lists of its constituent members. It has been found in other studies of refugee communities that there is a high degree of internal and interstate

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2 D. A. de Vaus, Surveys in Social Research, 3rd Edition, North Sydney, Allen and Unwin, 1991, p. 60

mobility in the first years of settlement as people struggle to establish their new lives. This means that lists which do exist — mailing lists for community newsletters, membership lists of cultural, religious or welfare organisations for instance — are, one, confined to registered members; two, very often out of date; three, subject to duplication and four, not necessarily representative of the whole population.[3] For these reasons a statistically representative sample was not aimed for in this research. Rather, a purposive sample has been selected from a number of groups to represent, as far as possible, those Vietnamese who were known to be vulnerable to discrimination or exploitation through ignorance of their legal rights. Such a sample clearly does not represent the Vietnamese population as a whole. In an exploratory study, however, the data from a purposive sample of respondents provides a base line for further, more representative, research in the future.

Questions of accuracy

Questions of the accuracy of data in this kind of research are raised because there is a great deal of fear in refugee communities. For example, fear of the consequences of providing information and ignorance of the purpose of any survey first of all influences the willingness of potential respondents to take part in the study. Fear also affects how questions are perceived by respondents and whether they answer truthfully or merely try to guess what the researcher wants to know. This is particularly true for Vietnamese people who are not familiar with social surveys of any kind and have a serious mistrust, quite justifiable in view of their experience under the post–1975 communist regime, of parting with personal information which is written down and recorded. It was thus made clear to me in the interviews with community welfare workers that any information gathering exercise involving the Vietnamese would need to be preceded by a period of time where trust was built up and consolidated between the researcher and

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3 All the larger studies of Vietnamese populations record these sampling obstacles. See, for example, Yu and Liu, op.cit., p. 490; and Song, op.cit. p. 137

members of the community.[4] To this end, I spent one day a week as a voluntary worker for the Vietnamese Community in South Australia during 1991 and early 1992. The work in this community organisation allowed me to establish contacts with other groups of workers and clients in the wider Vietnamese population and, importantly, gained me the support of many influential Vietnamese who saw the research project as both timely and valuable. Eventually, letters of introduction from cultural leaders in the interviewing phase of the study were often the key to gaining respondent cooperation.[5]

Interactional difficulties

In survey research interactional difficulties are those which occur between the interviewer and respondent. They are a feature of any social research which is not situated in the researcher's own milieu. Impossible to avoid outside that world, they are multiplied when language and cultural divides are crossed. Language itself, non-translatable meanings and concepts, manners, behaviours and dress can all contribute to misunderstandings, unintentional offence or alienation for the researcher and the respondents alike. It is imperative therefore, for the researcher to be familiar with the history, customs and structural features of the subject community. For me, this meant that extensive reading about Vietnamese history and culture was necessary. The building of friendships within the community was also important as was a demonstrable commitment to their concerns.

Ethnic membership

Ethnic minority groups within communities exist in many populations. Depending on their racial or religious differentiation, length of residence or degree of assimilation, they may or may not identify themselves, or be identified, as belonging to the dominant culture. If members of minority groups are included in the study sample of a dominant

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4 Philippa Aston, Interview, 19/3/90, Nguyen van Thang, Interview, 12/3/90, Peter Pham Nguyen, Interview, 2/4/90, Sergeant Bob Smith, Interview, 19/3/90

5 In the Yu and Liu and the Song studies, the researchers do not appear to have spent extensive time in their subject communities and recorded much more difficulty in eliciting information.

group they can thus introduce significant bias to the sample.[6] The Chinese Vietnamese in this research constituted such a minority group. They were not thought, by the Vietnamese, to be similar enough to the Vietnamese nationals to be included in the survey. In practice, however, exclusion was not always so simple. I discuss this further in the section dealing with interviews.

Factional divides

Factions of political opinion exist in every community and the Vietnamese are no exception. However, the South Australian population is small in comparison with the eastern states and there are fewer organisations to war with one another.[7] It is certainly the opinion of workers and my experience that, while there appears to be a healthy competition for program funding and cultural ascendancy among the various groups, this has not yet deteriorated into destructive practices.[8] On the contrary, there appears to be a great deal of cooperation among the various groups. This is not to say that factional divides do not exist, only that they are not readily observable to the outsider.

Regional and class divisions

The regional divisions in the Vietnamese community have been identified as those between people from the North and those from the South of Vietnam. Class differences exist and are functional between rural and city dwellers, the highly educated and those who are not.[9] These divisions will be described as variables in the data analysis. Although there are also religious differences within the Vietnamese population, religious affiliation rarely appeared to have significance or create difficulties for welfare workers or respondents. Alternatively, religious differences could have still been important but in ways which were not revealed to me.

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6 de Vaus, op.cit., p. 108

7 The census of 1991 recorded that there were approximately 11,000 Vietnamese in South Australia compared to a total of over 133, 000 in Australia. Bureau of Immigration and Population Research, Australian Immigration Consolidated Statistics, No. 17, 1991–92, Canberra, AGPS, 1993, p. 9

8 Personal communication from a number of workers in various cultural organisations.

9 Fr. Jeffries Foale, Interview, 10/4/90

Research design

Background to the study

The initial assumption of the research was that the study would focus on a sample of the Indo–Chinese population in South Australia. It soon became clear, however, that interviewing the Indo-Chinese as such was no simple matter for two reasons. First the Indo-Chinese are not a single group of people. There are Cambodians, Lao, Hmong, Khmer and Vietnamese peoples all of whom have separate national identities within the geographical area of 'Indo–China'. Second, within each of these nationalities there are regional, religious and ethnic differences. The largest ethnic group is the Chinese and, as a separate group within national borders, they could not be presumed to share precisely the same values, beliefs and social practices as the dominant culture.

The differentiation among groups of people from 'Indo–China' therefore meant that the focus of the study had to be narrowed down. The Vietnamese were selected to be the focal point of the research for two reasons. First, they were the largest population of relatively recent immigrants in South Australia and second, they had been in the country for anything up to sixteen years and were still arriving. As a group they were therefore in varying stages of being settled. This circumstance provided the opportunity to compare those stages of settlement with levels of knowledge in the community about the Australian legal system. In addition, their ability to cope with situations requiring legal competence could be related to other variables. A decision was also made at this time, on the advice of the Vietnamese welfare workers, to exclude the Chinese Vietnamese from the study. It was claimed by them that the Chinese were culturally distinct from Vietnamese nationals.[10] This was thought to be so because

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10 A similar decision was also made by Bousquet in her study of the Parisian Vietnamese community. See Gisele L. Bousquet, Behind the Bamboo Hedge: The Impact of Homeland Politics in the Parisian Vietnamese Community, Ann Arbor, University of Michigan Press, 1991, p. 9. See also de Vaus, op.cit. pp. 71-73 for the methodological necessity of establishing the homogeneity of the subject population. That the Chinese Vietnamese have quite different patterns of adaptation to Western culture which is directly attributable to their ethnicity has also been borne out in a study by Desbarats in the United States. See Jacqueline Desbarats, 'Ethnic Differences in Adaptation: Sino–Vietnamese Refugees in the United States', International Migration Review, Vol. 20, No. 2, Summer 1986

even though some Chinese may have settled in Vietnam hundreds of years ago, they still tended to live in enclaves, speak their own language at home and maintain their own schools, religious practice, banks, businesses and so on, rather than being dispersed throughout the general population.[11]

It also became apparent in the course of my early literature review of the area that there was a difference between the needs and settlement patterns of refugees and migrants. It seemed that being a refugee significantly complicated the process of settling in another country and that this was not generally recognised or reflected in Government policy–making or provision of services. Geographic origin, too, emerged as an important factor in that people from South-East Asia or 'Indo–China' were coming from vastly different cultural backgrounds from previous migrants from Britain and Europe. Once again, there was little understanding of this in the literature in terms of the newcomer's experience of the legal system. The convergence of these considerations in the early days of the study gave rise to the idea of a 'triple status' as applicable to the Vietnamese and consequently became an organising theme for the thesis.

By way of summary to the background of the research the following reasons emerged for pursuing the study:

(i) there was no knowledge of the legal needs or experience of the Vietnamese;

(ii) existing services were seen as inadequate, inappropriate or both;

(iii) the Vietnamese themselves wanted the information;

(iv) there was little understanding in existing policy of what it means to be a refugee;

(v) there was scant general knowledge of Vietnamese history, beliefs or social practices;

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11 This is not to say that no intermarriage and blending of the two populations has not taken place over time and that some Vietnamese of Chinese extraction consider themselves to be Vietnamese first and Chinese second. It is, however, still perceived to be true that intermarriage or social intermingling is not welcomed by either side. Nguyen van Thang, Interview, 12/3/90 and Rosemary Radford, Interview, 11/7/92

(vi) there were no empirical studies in Australia of this particular area.

Rationale

A range of traditional research designs were considered for this study. Given the dearth of research of similar scope in the area, there were, however, few models to follow.[12] Mass sampling of the Vietnamese population, as a quantitative method of establishing statistically significant findings and administered in the form of postal questionnaires, was not seen as either possible or culturally appropriate.[13] Even conducted under the auspices of official Vietnamese organisations, it was thought that such an approach would draw a very limited response and contain less than verifiable information. Telephone interviews were seen as producing more of the same difficulties.[14] Other possible approaches such as case studies and life histories which produce qualitative information were also considered. However, because the research is exploratory and aims to identify the broadest possible range of perceived legal difficulties and needs, these methods were seen to be inappropriate and too narrow as a principal method.[15]

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[12] A search of international sources yielded one similar study carried out in the United States, Song, Ibid. This study takes a quantitative approach to the research and although workers, most of them non–Vietnamese or non–Chinese, were interviewed in-depth to establish community attitudes to the legal system there was no in–depth interviewing of Vietnamese or Chinese survey respondents. Questionnaires were posted to 1520 Vietnamese households with a return rate of between 6% and 11.5% of completed questionnaires. It was not considered either feasible or necessarily productive to duplicate this methodology.

[13] This method is not possible because, as has been found in the Song, Liu and Yu studies, op. cit., no complete list exists of the whereabouts of potential respondents from which to draw a sample. Where limited lists do exist, as in mailing lists belonging to a variety of organisations, it has been found that the high mobility of the Vietnamese makes these lists almost redundant in terms of the sampling requirements of this method. The method is not culturally appropriate because, as I have noted already, the Vietnamese are not familiar with the nature of surveys and will only supply personal information in situations of trust. The language barrier is also an impediment which must be overcome as it cannot be presumed that all Vietnamese are literate in their own language.

[14] The major obstacles to telephone interviews with the Vietnamese are establishing researcher credentials and the language barrier. Most Vietnamese are not fluent English speakers and dislike using the telephone unless they can communicate in their own language. Philippa Aston, Interview, 19/3/90

[15] Case study and life history approaches rely on the gathering of highly detailed data collected from a small number of respondents over a period of time. It requires a great deal of respondent time and access to corroborating documentation. C. Hakim, Research Design: Strategies and Choices in the Design of Social Research, London, Allen & Unwin, 1987, pp. 61-73. Such an approach would be of limited value in achieving the aims of this research.

The overall research method then is a mixture of qualitative and quantitative methods.[16] The quantitative approach is characterised by a total of one hundred and seventy-five structured interviews representing almost 2% of the Vietnamese population in South Australia in an imperfect sample. The use of closed questioning techniques in some sections of the questionnaire was also part of this method. Qualitative information was gained by the inclusion of open ended questions wherever it was appropriate and the use of extended, face to face interviews. The research design of the study was made up of six parts as follows:

Part One	Worker interviews
Part Two	Researcher participation
Part Three	Questionnaire development
Part Four	Recruiting the sample
Part Five	Survey interviews
Part Six	Data analysis

I discuss the first five parts of the study in following sections. A statistical data program was used to analyse the survey information and I present the findings from this analysis in chapters six and seven.

Part I — Worker interviews

Part One of the study, conducted in the first year of research, was a series of unstructured interviews with eight Australian and Vietnamese community welfare workers who were dealing, on a daily basis, with the settlement, welfare and legal needs of the Vietnamese in South Australia. Three of the workers were Australians - a social worker who had been working with a refugee organisation for nine years, the Catholic priest who had started the Indochinese Refugee Association in the late 1970s and a member of the police force in the Multicultural Liaison Unit who had been working in and with this community for about three years.[17] One was a Chinese-American who

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16 See Ibid. and De Vaus, op. cit.

17 Philippa Aston , Interview, 19/3/90; Fr. Jeffries Foale, Interview, 10/4/90; Sergeant Bob Smith, Interview, 19/3/90;

had worked extensively with new arrivals in the late 1970s and early 1980s.[18] The other four workers were Vietnamese currently working in cultural or welfare organisations.[19]

These interviews were exploratory. A questionnaire as such was not prepared but a general framework for the interviews was devised in the form of a checklist of issues to be discussed. For example, the workers were asked what law related problems existed amongst their clients, whether there was a need for legal education within the community and, if so, how that need might be met. The interviews were tape–recorded, lasted two to four hours and were designed to establish the existence and nature of known legal needs and difficulties in the Vietnamese community. The interviews revealed that substantial legal difficulties were being experienced by some sections of the Vietnamese population over a wide range of areas. These problems were thought to be caused by a combination of misunderstandings between the Vietnamese, the bureaucracy and law enforcement agencies and the manner in which such misunderstandings interact with an Anglo-Celtic legal structure. In the course of these discussions a number of barriers between the Vietnamese and the legal system were identified. I have divided these barriers into two groups. The first I have named 'cultural' barriers because they consist of differences I perceive between Vietnamese and Australian philosophical concepts, psychological conditions and behavioural characteristics. The second group I have called 'structural' barriers because they are encountered by the Vietnamese in their dealings with Australian institutions. It needs to be understood in the following discussion of these barriers that, while they are necessarily described separately, they do in fact, intersect and overlap to varying degrees in the actuality of people's lives.

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18 Vivian Hope, Interview, 12/3/90

19 Peter Pham Nguyen, Interview, 2/4/90; Nguyen Van Thang, Interview, 12/3/90; Sr. Marie Nien, Interview, 30/5/90; Karen Phu, Interview, 12/3/90

Cultural barriers

Philosophical concepts

At the philosophical level, the Anglo–Celtic structure of law in Australia places an emphasis on the legal process in the administration of justice.[20] In addition, the separation of powers in the Australian Constitution grants to the judiciary complete autonomy in the interpretation of statutes and common law. Briefly, the dominant feature of this inherited system of dispute adjudication is the law's claim to truth through methods employing notions of rationality, neutrality and objectivity. As I have discussed in chapter three, these concepts have been extensively criticised in recent scholarship as narrow and misleading and as containing a hidden class, race and gender bias. The legal method itself is said, in the interests of justice, to create a distance between the legal process and the social reality of litigants or defendants. Despite criticism, however, the system continues to value this distance which is created and maintained in practice by the prescribed roles of lawyers and judges in the courts.

This system is quite foreign to the Vietnamese people whose chief method of solving social conflicts is familial.[21] Traditionally it is rare, and then only in the most serious of crimes, for them to resort to the more formal justice of the courts. Consequently, the operations of a State based legal system are outside the average Vietnamese person's experience and are not valued as dispensing justice in ordinary affairs.[22] In addition, this 'courts only for criminals' mentality means that an appearance in court brings great shame upon a family and is thus to be avoided and feared.[23]

Concepts of appropriate punishment for criminals are also quite different as a result. Where familial methods of arriving at the truth and providing solutions to conflict in

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20 Bird in Jupp, 1989(a), op. cit., p. 254

21 Nguyen Van Thang, Interview, 12/3/90 and Vivian Hope, Interview, 12/3/90

22 Peter Pham Nguyen, Interview, 2/4/90

23 Ibid. and Nguyen Van Thang, Interview, 12/3/90

Vietnamese society place much importance on mediation and conciliation, the rejection of these values by the criminal deserves swift and final retribution.[24] This means that criminals, once arrested, are deserving of severe punishment. Depending on the seriousness of the crime this can be life imprisonment with hard labour or the imposition of the death penalty. The State judicial system thus serves, in Vietnamese understanding, to distribute justice only to those considered beyond the pale of conventional society. The Australian concepts of bail, parole and rehabilitation as alternatives to capital punishment and long terms of imprisonment are, for many Vietnamese people, quite simply, incomprehensible.

Psychological conditions

Given these philosophical and conceptual differences it is not surprising that psychological barriers will arise. For Australians, the public nature of the legal process is an important safeguard guaranteeing both the accountability of the police and the judiciary as well as the protection of individual rights. This is expressed in the adage that 'Justice must not only be done, it must also be seen to be done'. There is an expectation in the society therefore, a psychological preparedness, that infringements of personal liberty or the resolution of legally based conflict will be addressed in the context of the public court system.[25] The private, familial nature of dispute resolution in Vietnamese society, on the other hand, means that such an expectation or preparedness does not exist. On the contrary, such a first course of action is unthinkable.

What this means in practice, for example, is that compulsory counselling sessions prior to family court proceedings will not be attended by Vietnamese involved in family

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24 Ibid. and Vivian Hope, Interview, 12/3/90

25 This is not to suggest that there is a litigious mentality in Australia as there is said to be in the United States for example. Rather it is the case that although most Australians do not, or cannot afford, resort to formal legal measures in the resolution of disputes, it is generally understood that such an option exists as an ultimate protection of their rights.

breakdown.[26] Little use either, will be made of appeal mechanisms to challenge court decisions or the rulings of a government department. The same would be true of complaint based tribunals which are designed to protect the individual against, for instance, police brutality, consumer fraud or the unscrupulous landlord.[27] As a consequence of these psychological differences, the Vietnamese are in grave danger of suffering not only exploitation as a result of their ignorance of the Australian legal process but also substantial injustice.

Behavioural characteristics

The third cultural barrier which was identified was that of behaviour. As I have discussed in chapter four, there are behavioural characteristics within Australian and Vietnamese cultural norms which can produce misunderstandings. The different meanings attached to smiling, eye contact, questioning, answering and body language are some examples.[28] Vietnamese codes of politeness are encompassed in an uncomplaining, if bewildered, acceptance of Australian manners but that very politeness often conveys to Australian observers an opposite meaning than the one which is intended.[29] For example, it is impolite in the Vietnamese culture to engage in eye contact when speaking to those in authority or those who are senior in either rank or age. Such behaviour is regarded as disrespectful, naive and very rude. For Australians, this lack of eye contact has connotations of inattention to what the speaker is saying, shiftiness or boredom. In short, the opposite to what is actually meant.

Another example is that of smiling. Australians do not feel obliged to smile if they are not pleased or if they are not amused. It would also be considered arrogant or patronising if authority figures in Australia smiled in situations which held adverse

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26 Peter Pham Nguyen, Interview, 2/4/90. These sessions are meant to minimise the trauma of separation and divorce but Vietnamese people are deeply shamed to have their personal difficulties made public outside the family.

27 Philippa Aston, Interview, 19/3/90

28 Vu, op.cit. pp. 17-19

29 Nguyen Dang Liem, op.cit. p. 56

consequences for the other party. For the Vietnamese the reverse is true. When engaging with others, especially strangers, smiling and agreeing with the other person is the Vietnamese way of simply being polite. So what happens when an Australian police officer pulls over a Vietnamese driver for speeding or some other traffic offence? The police officer naturally looks directly at the offender and states, without smiling, the reasons for stopping the motorist. The Vietnamese does not return the gaze but smiles a lot and agrees with everything the officer is saying even though she or he may be understanding little of what is being said. This is a minor example of how misunderstanding occurs when people are unfamiliar with each other's customary behaviours. In more serious situations the consequences of such misunderstanding can lead to substantial injustice.

Structural barriers

Structural barriers are those which are encountered by the Vietnamese in their dealings with Australian institutions. A number of these were identified in the interviews with workers. They included problems experienced with the bureaucracy, the legal system, government departments, health agencies, businesses and the education system. As is the case for all people coming to Australia from non-English speaking backgrounds, the central and most pervasive of these barriers, however, is that of language. Where language is not shared the importance of qualified interpreters and community support cannot be overestimated and it was here that further barriers were identified.

Language

Inability to speak and read English constitutes a significant legal disability for anyone living in Australia. Applying for tax file numbers or unemployment benefits, buying a car or household goods on time payment, receiving traffic infringement notices and numerous other activities with legal implications are carried out using forms printed in English. On many occasions these forms are posted to individuals and for the Vietnamese unable to read them they create a substantial problem. Often these forms are discarded when the person does not understand their importance only to find, some

months later, that a police officer is taking the trouble to deliver yet another form to them in person. Alternatively, if the form is not thrown away, the recipients must find their way to a friend, relative or community organisation where the form will be understood and help provided either to fill it out correctly or to comply with its requirements.

Interpreters

Although some government agencies and hospitals in South Australia employ Vietnamese–speaking staff in areas of high Vietnamese populations, this is not always the case in the legal process. It was one worker's and my own experience that the police rarely waited for an interpreter before questioning or charging a Vietnamese suspected of breaking the law, nor was it arranged for an interpreter to be present when suspects were seen by the duty solicitor or arraigned in the magistrates courts.[30] A reason given for the absence of interpreters was police assessment that the suspect had sufficient English to understand the legal process. In the case of duty solicitors, the absence of interpreters usually appeared to be a question of not having enough time to arrange for one to be present between learning of overnight arrests and court appearances the following day.

Community support

Vietnamese community support organisations are continuously required to negotiate between the non–English speaking members of their population and the wider society. These organisations are seriously under–funded and Government policy does not appear to appreciate fully that the extensive support services which they provide are a vital factor in the successful settlement and adaptation of newcomers to Australia. This is particularly so where legal issues are at stake. The reading of contracts — which may already be signed — the completion of numerous government forms and the upholding of rights in the legal process are all essential services which need to be valued and adequately resourced if the Vietnamese and other similar groups are to have

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[30] Philippa Aston, Interview, 19/3/90.

equal access to government departments and services. It is an understatement to say that, at present, they are neither sufficiently valued or adequately resourced.

Part two - Researcher participation

In the second year of the study, I used the knowledge of the Vietnamese gained from the literature review and the interviews with welfare workers to establish my profile in the general Vietnamese community as an interested, committed and trustworthy participant in a project concerned with their interests. This entailed spending one day a week for more than one year as a voluntary worker in a Vietnamese organisation. The work involved liaising and advocating with government departments, referral agencies, welfare organisations, local councils, lawyers and courts on behalf of Vietnamese clients. As well, clients often needed assistance to fill out a wide variety of forms printed in English such as those required by the Department of Social Security, the Australian Taxation Office, the Immigration Department, the Child Support Agency, the Courts or Statutory Declarations. Home visits were also made to clients where this was necessary. For example, I visited women who had recently been released from hospital following childbirth or after treatment for injuries received as a result of physical assault by their husbands.

In addition, I accompanied many clients when they were required to appear in the Magistrates Court at Adelaide or, more frequently, at Port Adelaide. This support function was necessary to enable clients, in the absence of interpreters, to follow court proceedings and to explain to them both procedures and outcomes. Support was also needed to facilitate bail arrangements, legal aid and lawyer contact. Assistance was also provided to the organisation in constructing applications for funding grants, arranging meetings with other agencies, editing materials translated from Vietnamese into English and in writing short articles for the monthly newsletter on various aspects of the Australian legal system.

Most importantly, during this time, I gained insights into the legal problems which the Vietnamese, as a group, were experiencing. These difficulties can be described as those

concerned with motor vehicle accidents, consumer contracts, family law, personal injuries, small business operations, immigration, relations with legal institutions such as police, courts and lawyers and a number of government departments. In all these matters it was plain that considerable misunderstanding existed within the Vietnamese community of the role, function and processes of the Australian legal system. Similarly, officers of the law exhibited little awareness of difficulties the Vietnamese might be having with the system.

Part three - Questionnaire development

As a result of consultations with workers, leaders, other members of the Vietnamese community and academic colleagues over this one year period it was decided that the most effective method of obtaining the required survey information for the study was by way of personal interviews rather than by distribution of questionnaires through the post or community organisations.[31] An interview schedule was developed and tested with a few Vietnamese who were competent English speakers. In a number of ways this questionnaire was inadequate. Some concepts were unclear, some questions were too broad and others were misleading.[32] In some places questions did not yield relevant information.[33] The questionnaire was then redesigned, further developed and tested another five times before it was considered satisfactory (see Appendix). In its final form the schedule was designed to elicit information in a number of areas. It was structured in three sections, as follows:

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31 This decision was motivated by the problems encountered with questions of accuracy in other studies. See Yu and Liu, op. cit., and Tran and Holton, op. cit.

32 For example, questions were unclear when respondents were asked to compare an experience with the legal system in Australia with something similar in Vietnam. This produced only confusion because events were not comparable and respondents did not know what I meant. Attempts to explain did not help. In seeking to discover what respondents knew about Australian law I asked open-ended questions such as "What did/do you know about the law/courts before/after you arrived?" The questions were too broad and useless in eliciting any substantial information. Terminology was sometimes misleading because it conveyed the wrong concept and had to be changed. Examples were 'problem' (changed to 'trouble'), 'rate' (changed to 'think'); 'rights' and 'role' were both removed as having no readily understandable equivalent in Vietnamese.

33 Questions about knowledge of the law in Vietnam before and after 1975, for example, were too general and could not take into account the individual's age, education level or personal situation at the times asked about.

Section A

The first section sought demographic information, the personal history of the refugee experience and brief settlement details. This included date and place of birth, sex, ethnic origin, religion, education, marital status and employment before and after 1975 in Vietnam as well as in Australia. Respondents also provided some details of the circumstances and reasons relating to their departure from Vietnam, their subsequent experience prior to arrival in Australia, their post–arrival internal migration and their source of income.

Section B

This section was developed to seek respondent attitudes to some questions about the law and legal processes in general. Discovering what these attitudes were would reveal Vietnamese understandings of the operation of legal systems and indicate how their ideas differed from Australian norms. Variations in responses would also identify changes or adaptations in traditional attitudes when related to other variables such as age on arrival, education or length of residence in Australia. The section also sought information relating to Vietnamese attitudes to gender roles, filial behaviour, friendship obligations, marriage relationships, family violence, the role of the state and racial discrimination. The attitude and value statements themselves were developed from information contained in transcripts of the worker interviews and conversations with a number of Vietnamese contacts about strongly held Vietnamese values in the selected areas. They consisted of a series of short dialogues and value statements in which closed answers demonstrated conceptualisations of, for example, legitimate authority, law and systems of justice delivery.

Section C

This last and longest part of the questionnaire asked detailed questions relating to the respondent's actual experiences of the legal system in South Australia. The section collected data on the contact a respondent had with twenty–one commonly encountered areas of the law such as the landlord and tenant relationship, consumer contracts,

contact with the police, courts and government departments. In civil, family and criminal matters, perceptions of fair treatment, knowledge of remedies and incidence of interpreter use were also recorded.

When successful pre-testing was complete, the questionnaire was translated into Vietnamese. The translation was then given to two other Vietnamese people and checked for inaccuracies. Only a few minor changes were necessary. During this time I also applied, unsuccessfully as it turned out, to a number of funding bodies for money to pay an interpreter. This lack of funding presented a serious problem for the research. My solution was to cut and paste the English and Vietnamese versions of the questionnaire so that each question in English was followed by its Vietnamese counterpart. I then sat beside respondents in the interview and directed their attention to the translation if it was necessary. This worked well with people who were literate in Vietnamese. For the respondents who were not literate I used the services of two volunteer interpreters. This arrangement had logistic problems which were time consuming to overcome but were dealt with nevertheless.

Part four - Recruiting the sample

With the help of various community organisations, Vietnamese people from a wide spectrum of the Vietnamese population were approached to take part in the survey. This was done in association with a letter from the President of the Vietnamese Community in SA — written in Vietnamese and on organisation letterhead — which was given to each prospective respondent. The letter introduced me as a friend of the community, explained the purpose of the study and the expected benefits to be gained by the community from having access to the survey information. The letter also urged readers to cooperate in the study and gave an assurance of complete confidentiality. This assurance included a promise that all interview schedules would be destroyed at the completion of the study.[34] The letter carried a small photo of me in one corner to

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[34] This is an unusual requirement in surveys but the assurance was verbally sought, in addition to the written confirmation, by many respondents prior to their participation. Given the Vietnamese fear of divulging personal information which is recorded in writing this assurance will be honoured.

further verify my credentials. When people were asked to take part in the survey allowance was made for any person to refuse. Of those who were approached, there were twelve refusals.

Sampling techniques

Acting on the advice of the President of the community organisation, the initial sample of respondents was recruited at the Vietnamese New Year celebrations held at the St. Claire Youth Centre, Woodville in February 1992. This is a very important cultural event for the Vietnamese and is usually attended by several thousand people. Posters advertising the need for respondents were prepared and displayed at the venue and staff from the organisation introduced me to a range of people. When doing this they explained in Vietnamese what the project was about before asking potential respondents to fill out a prepared form with their names, addresses and telephone numbers. Of fifty-three people approached, fifty agreed to be interviewed at a later date.

Further recruiting was carried out at the Indochinese and Australian Women's Association (ICHAWA) with the permission of the Director. Lists of clients who were single mothers were made available and some of these women were telephoned by a volunteer accredited interpreter at which time appointments were made for home visits with the interpreter. New arrivals attending English classes at ICHAWA and the women who came to a CAFHS program for mothers and young children were also introduced to the study. Those who were approached in these settings readily agreed to take part in the study and interviews were conducted on the spot if it was mutually convenient. Otherwise an appointment was made to visit the respondent at home, once again with a volunteer accredited interpreter from this organisation.

In addition, the snowball technique was used to recruit more participants.[35] This consisted of requesting the names of friends or relatives from respondents at the end of

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35 This method has been used in other studies of the Vietnamese. See, for example, Steven J. Gold, 'Differential Adjustment among New Immigrant Family Members', Journal of Contemporary Ethnography, Vol. 17, No. 4, January 1989, P.410. See also Gerry Rose, Deciphering Sociological Research, London, Macmillan, 1982, p. 50 for the validity of this technique

each interview who they thought might agree to be part of the survey. The snowballing was moderately successful, yielding about a two–third increase in recruits. Other respondents were recruited through the Department of Corrections, a TAFE English teacher at the Pennington Hostel for new arrivals and through personal friends. These, in turn, yielded interviews with the young men who were in trouble with the police and were presently incarcerated in the Adelaide Remand Centre, Yatala Gaol or on parole, recently arrived refugees from first asylum camps and young people who were alienated from their families.

It is clear from this *ad hoc* recruitment of survey respondents that the survey sample contains significant bias. While the initial sample was drawn from a large gathering of potential respondents, most of those who were approached to participate were already known to the three Vietnamese friends of mine who offered to facilitate introductions. The exceptions were those recruited by others who, after agreeing to participate, recruited their friends or, in the case of one teacher, his older students. I should also note that although the variety of Vietnamese organisations generate different categories of clients, recruiting from organisations restricts the sample to clients using the services and cannot include the Vietnamese who take no part in that organisation's activities. The characteristics of those Vietnamese who do not belong to, or seek the services of, any organisation thus remain unknown. While this bias has been explained as unavoidable it also means that care will have to be taken in generalising from the final results.

Part five - Survey interviews

Interviews were begun in March 1992 and completed in September 1993. The interviews took from one to two and a half hours to complete and the average length of time was about an hour and a half. A tape–recorder was not used as it was thought that its use would generate fear and non–compliance. Appointments were made a few days in advance and only in a few cases did I have to call back because the appointment was

not kept. Reasons given for broken appointments were usually because of illness, changes to shift work rosters, other emergencies or "So sorry, I forgot".

In this phase of the study there were two minor problems. The first was with one question in the interview which confused some participants and had to be re-translated. The second problem was that of excluding the Chinese Vietnamese. An early question on ethnic identification was intended to act as a screening mechanism but this did not work in practice. Having gained participants' cooperation I was reluctant to terminate the interview at that point because of their Chinese ancestry. Despite clear and careful recruiting of native Vietnamese respondents twelve Chinese Vietnamese were also interviewed. However, all these respondents spoke Vietnamese as their first language, were involved in Vietnamese organisations and appeared to identify themselves as Vietnamese first and Chinese second. These characteristics are unusual for the majority of Chinese Vietnamese people and for these reasons I have not excluded them from the data analysis.

Refusal rate

Twelve recruits were not interviewed for a variety of reasons. Three respondents had moved, two of these interstate; two others needed interpreters which I was unable to arrange; one said he did not have the time; another's phone was disconnected in the period between recruitment and interview appointment; two more were impossible to contact for an appointment; one other was never at home and after six visits I stopped trying; one young man living with his sister and her family was too scared to participate after the brother-in-law objected to his consent after I had arrived for the interview and the last one, a young woman, declined to be interviewed saying that she had come here with her brother, whom I had already seen, because "everything was the same".

Profile of Survey Respondents

The population sample for this study is not statistically perfect and I have shown why caution needs to be exercised when generalising from the survey results. It is, however, useful to compare, where possible, the demographic characteristics of the survey

sample with those of the Vietnamese population in South Australia at the time of the 1991 census conducted by the Australian Bureau of Statistics (ABS). This comparison will indicate in which ways and in what areas the survey sample is not representative of the general Vietnamese population.

Sex

Of the 175 respondents interviewed in the study 92 (53%) were male and 83 (47%) female. These percentages match exactly the proportion of Vietnamese males and females in the general population at the time of the census.

Age

As Table 5.1 indicates, the age structure of the survey sample is similar in four of the six age categories. In the remaining two categories, the 15–19 age group is under–represented and those aged from 40–49 are over-represented in comparison with the census figures.

Table 5.1: Age Structure of Survey Sample Compared with 1991 Census

	Survey Sample		*ABS*
Age Group	*No.*	*%*	*Census %*
15–19	5	3	14
20–29	59	33	30
30–39	59	33	32
40–49	31	17	13
50–59	10	6	6
60 +	11	6	7
Total	175	98*	102*

*In this and following tables percentage columns may not add to 100% due to results being rounded to whole numbers

This imbalance in the survey sample is due to one or more factors. First, respondents in the 15--9 age bracket, mostly secondary students, were not sought out, as a group, for interviews for three reasons. One, living with their parents they would not normally have much need for detailed legal knowledge or expertise at this time in their lives; two, they were not identified by community workers as experiencing difficulties in this

area and three, it was thought that they would learn about the legal system in the course of their education in the same way as do other young Australians. The small number of respondents in this age group were interviewed because they were unattached or detached from their families. Living as independent adults they were thus in need of legal knowledge in their everyday lives.

Secondly, the way in which the sample was initially recruited is likely to account for the over-representation of those aged 40–49. Introductions made at the New Year celebrations were largely to friends, fellow association members and clients of the community organisation workers. Overwhelmingly, these prospective interviewees were older people, usually with families. It was also a function of the time allowed for interviews that when the interview eventually took place, even though older children or young adults may have been present, only the parents were interviewed rather than the whole household. In addition, when the snowball technique was employed for further recruiting, relatives or friends tended to be people in similar age groups. As with the rest of the sample, this age imbalance needs to be taken into account when generalising from the results.

Refugee Status

It is significant for this research that 76% of the Vietnamese interviewed identified themselves as arriving in Australia as refugees. As discussed earlier, there are substantial differences in adaptation patterns and settlement needs between those who arrive in Australia as voluntary migrants and those who have been forced, for any number of reasons, to flee their homeland. In the case of the Vietnamese, those born in the North (23% of the sample) had endured, until the fall of Saigon in 1975, thirty years of war and those from the middle or South Vietnam at least ten years. If the intervening seventeen years from 1975 are subtracted from the age-at-interview groupings above (See Table 5.2), it is clear that, except for the youngest and oldest group, the overwhelming majority of respondents (89%) have known little else than continuous warfare in their lives.

Table 5.2: Age Structure of Sample in 1975

Age in 1975	*Survey No.*	*Sample %*
0-2	5	3
3-12	59	33
13-22	59	33
23-32	31	17
33-42	10	6
43+	11	6
Total	175	98

If the length of time spent in camps (Table 5.3) is then added to this experience of war coupled with high risk escape and family break up, it is not surprising that Vietnamese refugees arrive in Australia with little in the way of resources or knowledge of their new country's society, law or culture.

Table 5.3: Time spent in camps

Time in camp	*No.*	*%*
0-6 months	46	35
7-12 months	26	20
1-2 years	35	26
2 years or more	26	20
Total	133	101

Given these circumstances, which mean that refugees have to start their lives again while still suffering significant trauma, it is not difficult to understand that initial information provided in orientation programs about the Australian legal system is not absorbed by these new arrivals.

Length of Residence

Length of residence is an important variable when judging the adequacy of levels of legal knowledge in the Vietnamese population. Although recommendations were made in earlier studies and reports that legal information should be provided in the second or third year of settlement rather than at the time of arrival, the implementation of these recommendations has either been neglected or unsuccessful according to the one recent

study in Australia which has recorded this information.[36] In Table 5.4, survey sample and ABS percentages are similar only for those Vietnamese who have been in Australia for more than five years. The sample therefore over represents the more recently arrived Vietnamese who could be expected to experience greater difficulty in dealing with legal matters. For the purposes of this research, however, the sample is fairly evenly divided between those who have been here more or less than five years.

Table 5.4: Length of residence of Survey Sample Compared with 1991 Census

Years	*Survey No.*	*Sample %*	*ABS Census %*
Before 1975	0	0	0.7
0-1	30	17	13
2-3	28	16	10
4-5	20	11	8
6-10	69	39	36
11-15	28	16	17
Total	175	99	85*

*This percentage does not include persons under 15 and those who did not answer the question on the census form

It is probably arbitrary to suggest that five years is a reasonable length of time in which refugees may be well on the way to adapting to a new society as that depends very much on a multiplicity of other factors such as post–arrival opportunities for language acquisition and employment, age, education and family reunion. Nevertheless, it is still a useful point at which to compare levels of legal knowledge and expertise within the study sample of the Vietnamese community.

Education

Education is said to be highly valued in Vietnamese culture — teachers enjoyed a status second only to the King — but schooling beyond the primary level was often restricted to the urban–dwelling class. Because of the importance attached to education, the study sought data about years of schooling completed in both Vietnam and Australia.

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[36] Ba Phuc Tran, op.cit., pp. 71–72

Consistent with the generally youthful nature of the refugee population discussed in chapter four, well over half the sample (56%) gave their occupation as students prior to 1975. Post–1975 figures are, however, almost half that (26%) because schools and Universities were closed by the new government while teachers were 're-trained' and curriculums rewritten to reflect the new regime's ideology.[37] Notwithstanding these events, and as Table 5.5 demonstrates, the majority of survey respondents (64%) had undertaken or completed either their senior secondary or tertiary studies before they left Vietnam.[38]

Table 5.5: Years of Schooling in Vietnam

Education in Vietnam	*No.*	*% of Survey Sample*
None	2	1
Primary	41	23
Jun. Secondary	20	11
Sen. Secondary	68	39
Tertiary	44	25
Trade	0	0
Total	175	99

Nearly half the respondents (43%) resumed or continued their education in Australia and as I show in Table 5.6 there is a concentration of studies at tertiary level. This fact may be a reflection of the composition of the refugee population in Australia, the result of the way the sample was recruited or a combination of both.

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37 Nguyen van Thang, Interview, 12/3/90

38 In the French system of education which operated in Vietnam until 1975, schooling was divided into three levels; primary school from years 1-6, secondary from 6-10 and senior secondary from years 10-12. The last level was commonly held to be a preparation for University. Nguyen van Thang, Interview, 12/3/90

Table 5.6: Years of Schooling in Australia

Education in Australia	*No.*	*% of Survey Sample*
Secondary	27	36
Tertiary	44	59
Trade	4	5
Total	75	100

The educational profile of the sample therefore indicates that there is an uneven distribution of respondents among the various educational levels in this sample of the Vietnamese population. It is not possible to know from available data whether or not this weighting toward the more highly educated is similar to the norm in either Vietnam or Australia as information gained from the questions asked about education in the research sample are not comparable with those collected by the ABS. Census questions are concerned only with post–secondary qualifications already obtained rather than participation rates.[39] Even so, to explore whether education levels make a difference to the acquisition of legal knowledge, comparisons can still be made within the sample, in conjunction with other variables, between the more and less educated groups.

Labour Force Status

Whether or not respondents are in the labour force was also an important variable when analysing levels of legal competence within the survey sample. There are positive and negative implications for the research in this area. Some suppositions have to be made but, broadly speaking, those respondents who are employed are, on the one hand, more likely to have been at least exposed to facets of the law to do with work; for instance, industrial awards, occupational health and safety and workcover. They are also more likely to have a better command of the language if they are working with English–speaking Australians as well as being able to ask for advice if they need it. On the other hand, lack of language, ignorance of their legal rights and possible racism in the

39 Australian Bureau of Statistics, 1991 Census Dictionary, Canberra, ABS, 1991, p. 104

workplace can leave the Vietnamese vulnerable to extensive exploitation which does not advance their adaptation to Australian society.

When comparing the labour force status of the research sample with the ABS census figures, Table 5.7 shows that the employed and the unemployed are under-represented while those not in the labour force are considerably over-represented.

Table 5.7: Labour Force Status

Status	*Sample No*	*Sample %*	*ABS %*
Employed	53	30	35
Unemployed	40	23	28
Not in labour force	82	47	37
Total	175	100	100

This latter imbalance was probably a result of the single mothers and prisoners in the sample who were sought out for interviews because of their likely need for legal knowledge in their life situations.

At 23%, the unemployed in the sample are under–represented compared to the ABS figure of 28%, especially as 42% of these respondents had been in Australia for less than one year. However, if the unemployed are included with the 47% of respondents not in the labour force, it is likely that the overwhelming majority of Vietnamese in the sample have had little opportunity to become familiar with Australian institutions other than the Department of Social Security (DSS). Although this factor needs to be linked with other variables such as length of residence, age, education and so on, the implication for the research in this area is that ignorance of the law and the legal system in the findings will not be a reliable predictor of similar proportions of ignorance in the wider Vietnamese population.

Summary of profile characteristics

In comparison with the 1991 ABS census figures the research sample matches the distribution of the sexes, over-represents the 40–49 age group and under-represents

those aged 15–19. Where length of residence is a variable, the sample and the ABS vary in particular year groups but are both a little over half for those Vietnamese who have been in Australia for more than five years. For Labour Force status, the sample is skewed towards those not in the labour force.

In profile characteristics where ABS and sample figures are not comparable, the majority of respondents in the sample came to Australia as refugees and there is an uneven distribution among education levels which is weighted toward the more highly educated. Although the sample is skewed in some areas and caution will have to be exercised when generalising from the results, the exploratory nature of the study means that within sample comparisons can still be made and that new information provided from the data will indicate the areas for further research.

CHAPTER 6: DIFFICULTIES OF UNDERSTANDING AND ACCESS

Introduction

In this chapter the interview data is analysed to reveal the nature and extent of difficulties experienced by this sample of the Vietnamese in their dealings with the Australian legal system. The research seeks to answer four questions about the relationship between the Vietnamese and the legal system in South Australia. The first is to understand to what extent these Vietnamese are experiencing difficulty in their dealings with the Australian legal system. The second is to identify the factors in the previous and present life experience of the Vietnamese respondents which need to be taken into account in their development of legal skills. The third is to establish to what extent and how Australian legal institutions inhibit access to the legal system for these Vietnamese. The fourth question to be addressed, that of articulating the Vietnamese and Australian cultural values which contribute to mutual misunderstandings in relation to the law, will be discussed in chapter seven.

Difficulties of understanding

Each respondent was asked what, from their own experience, they found difficult to understand about the law in Australia. As Table 6.1 shows, most Vietnamese experienced difficulties and only 13% of the sample said they had no difficulties understanding the law.

Table 6.1: Difficulties of Understanding

Experienced difficulty	*Number*	*% of sample*
None	22	13
Lack of English	31	18
Language of law	15	9
Law too complex	13	7
Lack of information	13	7
Ignorant of law	50	29
Specific	31	18
Total	175	101

The majority of respondents experienced significant problems in, first, acquiring knowledge about the legal system — lack of information and ignorance of the law — (36%) and second, in understanding the information when they had it — lack of English, the language and complexity of the law (34%). There was a variety of answers given by the remaining 18% of respondents who had specific difficulties of understanding the law in Australia. These answers included adverse experiences with the police, being forbidden by law to defend themselves against intruders, a lack of protection for victims of crime and finding certain legal processes such as bail and trial by jury difficult to comprehend.

The data therefore demonstrates that the overwhelming majority of Vietnamese in this sample had experienced difficulties in learning about and understanding the Australian legal system. From this data I will establish if there are identifiable factors which help or hinder the respondents' development of legal skills.

Factors in the development of legal skills

If the categories in Table 6.1 are collapsed into more general classifications, respondents fall into three groups in relation to their legal expertise (Table 6.2). The first group are those respondents with no problems. The second group are those with some problems and the third group are those who remain ignorant of the law.

Table 6.2: Levels of legal expertise

Experienced difficulty	*Number*	*% of sample*
1. No problems	22	13
2. Some problems	90	51
3. Ignorant of law	63	36
Total	175	100

Respondents in the first group reported that they had no difficulties understanding the legal system (13%). The second group of those Vietnamese who had some problems understanding the law includes those who reported that lack of English language competence, legal language itself, the complex nature of the law or a range of specific difficulties were the source of their difficulties (51%). The third group are those who said they did not know anything about the law or did not know how or where to find legal information (36%). Keeping these groupings constant, the data was interrogated against other variables such as pre-arrival circumstances, settlement experiences, family composition, language acquisition, education, occupation and sources of income.

I examine first, however, the characteristics of the small group who surprisingly reported that they had no problems understanding the law and the legal system. Most of these twenty–two Vietnamese had either recent education in Australia or high levels of education in Vietnam. Eight (36%) had arrived in Australia as children aged between 11–18 and six of them had continued their education at secondary or tertiary institutions. Six others in this group had already obtained tertiary qualifications in Vietnam. In 1992 all but three had been in Australia for five years or more and most spoke English well. The three respondents who had been in Australia for less than five years were females, two of whom had limited English. Although these women had some minor contact with the legal system, they did not see their lack of knowledge as a problem. One of them relied on her husband who had been in Australia for a much longer period and the other, a single mother who had been a victim of her husband's physical abuse, had been helped

by shelter and welfare workers to negotiate her rights. The third woman was a student, who said she knew a "bit" about the law but "I do nothing wrong so don't worry".

One other respondent, who had been resident in Australia for nine years and was in prison at the time of interview, said he had no problems understanding the legal system even though he had been severely beaten by Victorian police at the time of his arrest three weeks prior to the interview.[1] In another incident he had also been cheated by a used car salesman but still maintained there was "nothing really difficult [about the law], every country has laws, we need to learn them". This attitude towards gaining legal knowledge in Australia was not shared by the majority of respondents in the whole sample, however, 69% of whom perceived that there were too many laws in Australia for the Vietnamese to understand.

The analysis of the small group of respondents who reported no problems understanding the law suggests that age at arrival, length of residence, language competence and levels of education are significant factors in the Vietnamese acquiring confidence with their knowledge of Australian law. The amount and kind of experience they had with the law also appears to be important for their perceptions of how much knowledge they in fact possessed and how much they needed. The data suggest that it may also be true that some of these respondents thought they had no problems but were unaware of their rights at the time of arrest, as consumers, tenants or as victims of crime.

In contrast, the results of the analysis of all groups revealed that pre-arrival circumstances, settlement difficulties, family separation, marital status, occupation and source of income were not, by themselves, indicative of more or less opportunity to gain

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[1] This respondent had been in Australia for nine years, lived in Melbourne, was married with four young children, was employed and had never before been in trouble with the police. According to the respondent, he had lent his car to a friend who, while driving to Adelaide, had been picked up for speeding. When the car was searched, heroin was found in the boot of the car and the friend denied all knowledge of its existence to the police. Because the car was registered in the respondent's name, he was arrested in Melbourne and extradited to Adelaide. The SA police arranged for a doctor to attend to his injuries but said they could do nothing about the beating because it happened in Victoria.

legal knowledge by the Vietnamese in this sample. Lower than tertiary levels of education increased the likelihood of ignorance of the law while arriving in Australia when aged 11–15 years was advantageous for the development of legal skills. The data also suggested that residing in Australia for more than five years and tertiary education in either Vietnam or Australia influenced, but did not guarantee, higher levels of legal expertise. The most significant single indicator of Vietnamese confidence with the legal system was found in English language competence. As I show in Table 6.3, a clear majority of respondents who understood English well experienced fewer difficulties with legal situations than those with less developed language skills. Those with limited English knew little about the law in Australia.

Table 6.3 English language competence

English language — spoken	*No problems understanding %*	*Some problems understanding %*	*Ignorance of the law %*
Poor	9	32	57
Fair	27	30	24
Good to Very Good	64	37	19
English language — reading			
Poor	18	33	60
Fair	18	19	14
Good to Very Good	63	48	25

This finding suggests that only competent English speakers understand the legal process. However, the arcane language of the law is a further problem. The language of contracts, a court summons, affidavits and wills for example, are difficult for most Australians to understand and can therefore be expected to present an additional, if not insurmountable, language hurdle for those people from non–English speaking backgrounds. The introduction of plain English law for all Australians has been on the agenda of reform groups for many years and the research findings in this study confirm

that such reforms are vital if NESB groups are to have equal access to the justice system.[2]

Difficulties of access

In order to discover if Australian legal institutions inhibit access to the legal system for the Vietnamese, respondents were asked if they had experienced any of twenty–five situations which require a knowledge of Australian law. These situations were to do with rental accommodation, buying a house or car, borrowing money from a financial institution, going into business, relations with neighbours, discrimination, injuries sustained in the workplace, obtaining a driver's licence, being involved in a car accident, being a victim of theft or personal assault, contact with the police, lawyers or courts, making statutory declarations or a will, sponsoring a relative from Vietnam and contact with the government departments of Social Security (DSS), Family and Community Services (FACS), Corrections and Immigration.

If respondents had experienced any of these situations they were then asked if they had met with problems as a result of their experience. For example, if a respondent had lived in rental accommodation they were asked if they had ever had trouble with a landlord and if they had ever seen a lawyer they were asked if they were satisfied with the service they received. Only three respondents reported no experience in any of the listed situations and each had been in Australia for less than a few months at the time of interview. The vast majority of the sample therefore had experienced one or more of the situations requiring legal knowledge. The respondents' experience of the life situations are shown in the first column of Table 6.4. In the second column, the levels of experienced difficulties are shown in descending order of frequency. The third column describes the

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[2] Research conducted in Australia and overseas has documented the obstacles to understanding contained in "legalese". In Australia see, for example, Law Reform Commission of Victoria, Legislation, legal rights and plain English, Discussion Paper No. 1, Melbourne, Law Reform Commission of Victoria, 1986, Anne Pauwels (ed.), Cross-Cultural Communication in Legal Settings, Melbourne, Monash University, 1992 and Australia. Law Reform Commission, Reform, Canberra, ALRC, October 1990, no. 60

percentage of respondents who were able to do something about their problem when it occurred. I will refer to each column of data in the following discussion.

Table 6.4: Experience of legal situations

Legal situation	*Had experience %*	*Had problems %*	*Took action %*
Discrimination	44	71*	28
Starting a business	9	62	50
Sponsoring relatives	36	52	50
Supreme court	3	50	0
Motor vehicle accident	27	42	50
Contact with police	41	40	25
District court	5	38	0
Victim of assault	9	37#	68
Victim of theft	39	29#	71
Work injury	12	29	83
Magistrates court	18	27	0
Dept. of Corrections	9	25	25
Rental accommodation	77	21	42
Contact with lawyer	32	20	9
Dept. of Immigration	56	20	38
House purchase	35	18	64
Borrowing finance	42	18	31
Made a will	5	17	0
Neighbours	na	15	62
DSS	86	15	52
Car purchase	67	12	57
Statutory declarations	23	8	0
FACS	35	7	0
Obtaining a drivers licence	76	5	43
Family court	2	0	na

*Represents those who felt powerless to take any action against the discrimination

#Incident not reported to police

In the first column of Table 6.4 we see that the most common situations were: renting accommodation, buying a car, obtaining a licence to drive or being a client of the DSS and the Department of Immigration and Ethnic Affairs. Between 35% and 54% of respondents had bought a house, borrowed money from a financial institution, been discriminated against in some way, been a victim of theft, had some contact with the

police, sponsored a relative from Vietnam or been a client of FACS.[3] Between 20% and 34% of Vietnamese had been in motor vehicle accidents, sought out a lawyer or made statutory declarations.[4] Under 20% of respondents had started a business, suffered an injury at work, been a victim of assault, appeared in any court, made a will or been in prison.

The second column of Table 6.4 shows that high proportions of the Vietnamese in this sample had not experienced difficulties in most of the situations. In only two areas — discrimination and starting a business — did more than 60% report problems. Between 35% and 59% of respondents had difficulties with motor vehicle accidents, as victims of assault, in contacts with police, with appearances in the Supreme or District courts or with sponsorship of relatives from Vietnam. For 20% to 34% of the Vietnamese there had been problems with landlords, with work injuries, when they were victims of theft, with the service received from lawyers, Magistrates court appearances and contact with the Departments of Immigration and Corrections. In the remainder of situations — buying a house or a car, borrowing money, getting a licence, relations with neighbours, making statutory declarations or a will and contacts with DSS and FACS — less than 20% of respondents had experienced difficulties.

The third column of Table 6.4 demonstrates that over two–thirds of the sample took some steps to address their perceived difficulties in law related matters when they were victims of assault or theft, when they purchased a house or when they suffered an injury in the workplace. Between a half and two–thirds of respondents took some action in relation to problems they had when starting a business, sponsoring relatives, purchasing

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[3] This last figure may be misleading. Many respondents did not recognise the name of this department and did not realise that it was from there that they obtained their health care and travel concession cards if they received income support or were on low incomes.

[4] This was another area of difficulty for most respondents. The term was unfamiliar and it was not until it was explained in detail that respondents were able to remember if they had ever made one. Even so, the percentage of respondents who have actually made statutory declarations is likely to be much higher than has been recorded here. Such statements are mandatory for obtaining legal aid and for the Department of Immigration when proving dates of birth, marriage and so on in the absence of documentation from Vietnam and when sponsoring relatives.

a car, as a result of motor vehicle accidents or dealing with the DSS and neighbours. Over one–third challenged unfair treatment from landlords, the Department of Immigration and Ethnic Affairs and difficulties encountered when obtaining a licence to drive. However, only a quarter or more respondents felt they were able to do anything about the rejection of their applications to borrow money and about overt discrimination in public, in the workplace and from the police or prison authorities. Under 10% of the respondents concerned did anything about their dissatisfaction with the service they had received from lawyers.

Moving from the highest to the lowest levels of experienced difficulties, the data was analysed to determine the kinds of problems which were experienced and how these were dealt with by the respondents. In this section of the interview, if respondents replied that they had experienced difficulties in a particular situation which had legal ramifications they were then asked what they had done about it at the time, whether or not they perceived the events as 'fair' and if not, why not. They were also asked if they had used an interpreter at the time of the incident and, if so, who interpreted for them. Further questions established if the interpreter was qualified, if they were satisfied with the interpreting and, if it was relevant, who paid for the interpreting service. Where it is appropriate, respondent replies to questions in Section B, the values and attitudes section of the interview schedule, are included in the discussion here but they are analysed in more detail in chapter seven.

High levels of difficulties

Discrimination

Respondents were asked whether or not they had at any time been treated badly or unfairly in a range of situations.[5] As it was known that the Vietnamese tend to be reluctant to complain when asked this kind of question, it was always followed by a

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[5] It was discovered in pilot interviews that 'discrimination' is a foreign concept to the Vietnamese. The idea of 'unfairness' was substituted as more suitable for revealing the kinds of actions which would be described as discrimination in Australian law.

prompt which gave them examples of racial discrimination; for example, had they not got a job, been called names or had things thrown at them because they were Vietnamese. Less than half the sample (44%) reported that they had been the victim of such discrimination.[6] Most discrimination took the form of verbal and non–verbal abuse in public places — on the street, at work or school and in shops — where respondents often felt intimidated and powerless to reply. There were cases though where discrimination took the form of physical aggression toward respondents or their property. For example, one respondent was spat upon while waiting at a bus stop and another had eggs smashed over his car and driveway. One woman, who had her children in the car at the time, was terrified by men in a truck who not only yelled abuse at her but also threw beer bottles at the car while she was driving.

While a few Vietnamese were inclined to dismiss these events as insignificant (5%) the remainder experienced the insults as a denial of their dignity as human beings (58%), as humiliating (20%), as unfriendly (12%) and 5% were 'scared'. Only 28% (n=22) of these respondents took any personal action to combat the perceived discrimination and very few (3%) used an interpreter at the time. The most common action taken was to request the offending party to stop the abuse. Although three respondents who experienced discrimination at work reported the offensive behaviour to superiors, only one employer was willing to confront the racist behaviour of other workers. Two other respondents retaliated by fighting when provoked and two more had called police for help. Two of the students who were harassed at school reported the offending students to teachers but one university student who felt able to challenge fellow students about racist taunts found herself powerless against the snide remarks made by a lecturer, in public, about the colour of her skin. When those who took no action to combat

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[6] This figure was thought by welfare workers to be much higher because they observed discriminatory behaviour in the course of their work with the Vietnamese which the Vietnamese themselves did not identify as such. For example, rudeness on the part of shopkeepers or public servants would be interpreted by Vietnamese as an Australian cultural trait which they had to accept rather than as racial discrimination. Aston, Interview, 19/3/90;. Smith, Interview, 19/3/90. Viviani et al, op.cit. p. 91 also reported an increase in overt and covert discriminatory behaviour toward the Vietnamese in both the street and the workplace between 1981 and 1991.

discriminatory treatment were asked why they did not complain most respondents simply shrugged or replied with short dismissive statements such as "What good would it do?", "Just ignore it", "Forget it" or, in cases of racist treatment at work, "If I complain I get the sack". The majority of these respondents (75%) had been in Australia for more than six years.

There is, however, another dimension to this lack of action by the Vietnamese when faced with overt discrimination. When they were asked in the 'attitudes' section of the questionnaire how they would respond in a discriminatory situation, 94% of respondents considered that they would either get help or officially complain about discrimination or ill–treatment. In the event, less than one–third took any action at all at the time of the reported discrimination and no respondent made an official complaint. The lack of response to overt discrimination by these Vietnamese is related both to what they believe to be appropriate behaviour in such situations and to the nature of their residence in Australia.

In terms of appropriate behaviour, Vietnamese approaches to problem solving are said to be non–confrontational, informal and indirect. The lodging of a written (formal and confronting) and thereby public (direct) complaint would therefore conflict with their stated values and be seen as impolite or insulting to the other party. In terms of the nature of their residence in Australia as refugees — as 'guests' in Vietnamese understandings — there are two factors which make complaining difficult. On the one hand respondents reported a sense of tenuousness in their continuing to reside in Australia — some have been threatened, quite incorrectly, with deportation — and on the other hand there are strong values which prohibit criticism of their host. It therefore appears that, while the Vietnamese in this sample experience discrimination as unfair and believe that it should not be tolerated, they are inhibited from using Australian complaint mechanisms and they feel vulnerable or fearful as refugees.

The data suggest that significant numbers of Vietnamese in this sample have suffered from racial discrimination in the street, in shops, in schools and in the workplace. While

most try to ignore discriminatory behaviour — seeing it as juvenile, ignorant or cowardly — their confidence as newcomers or as citizens is nevertheless undermined. However, a few respondents did challenge overt discrimination but it is not clear from the demographic or other interview data why some did and others did not.

Starting a business

Since the post–World War II expansion of immigration, starting a small business has been a way for many migrants to Australia of both escaping from low–paid factory employment and achieving social mobility for the second generation.[7] However, very few Vietnamese in the sample (9%) have chosen or been able to start a business since coming to Australia.[8] This undoubtedly reflects the poverty suffered by refugees beginning life in a strange country as much as it does the complex demands of starting a business in Australia. The capital requirements and complex federal, state and local council regulation of business activities in Australia exist in stark contrast to the informal, entrepreneurial arrangements which respondents remember from Vietnam. Of the sixteen Vietnamese who had attempted to start a business, fourteen were ultimately successful. Eight of these respondents (57%) had law–related problems in the process. Although all experienced different problems, the problems nevertheless occurred as a result of the respondent's unfamiliarity with Australian legal regulations.

For one respondent the business venture failed after three months, another respondent had difficulty borrowing finance and one other was sued for an injury sustained by a client on the business premises. Another did not know enough about regulations governing repairs to premises, machinery or fittings. One thought she was tricked into signing a contract by the previous owner with false claims about the profitability of the business and another said he bought goods for a second–hand dealership without

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7 Stephen Castles, 'From Migrant Worker to Ethnic Entrepreneur' in Goodman et al, op.cit. pp. 186–188

8 This low rate of participation in small business by the Vietnam–born is consistent with the ABS analysis of the 1986 census reported in Castles, Ibid., p. 183

knowing they were stolen. Another respondent was ignorant of regulations to do with wages and taxation obligations and the last employed an accountant to whom fees were paid but who did not perform the necessary services.

Over half of these Vietnamese (63%) thought they had been treated unfairly because of dishonest practices engaged in by others or their own unfamiliarity with the law. However, 50% also successfully sought help to remedy their situation. Three respondents used an interpreter at the time but only one was qualified. The other two interpreters were family members, one of whom was a child. All respondents had been in Australia for more than six years with 40% having been here for over eleven years.

Medium levels of difficulties

Sponsoring relatives

Studies of the Vietnamese have consistently demonstrated that once they have acquired the basic necessities of life following their arrival in countries of resettlement, those refugees with families still in camps or in Vietnam devote their energies to achieving family reunion. In Australia, applications to sponsor family members are made through the Department of Immigration and Ethnic Affairs. It is a complex procedure requiring advanced written language and bureaucratic skills and welfare workers in community organisations spend much of their time assisting clients to negotiate the elaborate processes.

In addition, the quotas and rules governing immigration law in Australia are subject to a good deal of variation according to economic conditions, the ebb and flow of public debate, international obligations, changing governments and political preferences.[9] For example, due to escalating applications for entry to Australia under the 'family reunion'

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[9] Until it was codified in 1989, migration legislation was deliberately 'short and vague' because it was 'originally designed to covertly implement the White Australia policy'. The system was heavily criticised as leading to 'arbitrary, inconsistent, inaccessible, unfair, and unaccountable decision–making'. Sean Cooney, 'The Transformation of Migration Law', Conference Paper, Third National Immigration and Population Outlook Conference, Adelaide, 22–24 February 1995, Unpublished, pp. 1–2

category in a climate of economic downturn, the definition of 'family' was narrowed in 1988 to exclude members beyond the immediate family of a couple and their children. Sisters, brothers, parents and cousins could still be sponsored but they had to qualify for entry into Australia under a 'points' system which advantaged the young, the healthy, the skilled, the educated and the financially secure. Since 1992 guarantees of total financial support for two years have also been required as well as the payment of application fees and air fares.[10]

Of the sixty–three respondents who had attempted to sponsor relatives to Australia, over half (52%) reported a number of difficulties with the Department of Immigration and Ethnic Affairs as a result. Widespread complaints included long queues, lost forms, staff indifference and slow, poor or inefficient service which required repeated interviews. Many also experienced long waiting times between the approval of applications and the arrival of their families. These waiting times could stretch from two to ten years during which time one respondent's wife died leaving the care of his six daughters, one of whom was severely disabled, in the care of relatives for three years.

More specifically, almost a quarter (24%) of the respondents who had attempted to sponsor relatives said they were not supplied with detailed information which they could understand about regulations, policies or the progress of their applications. Others said the problems arose because they were unemployed or had insufficient money and therefore could not sign the assurance of support. Complaints that applications were rejected affected 33% of respondents. This could happen because the rules changed on more than one occasion and some respondents had to reapply two or three times, sometimes to be rejected again because the criteria had become more restrictive. According to 18% of respondents, the Department did not reply to correspondence for periods up to one year, did not keep them informed of developments or lost their documents. A small group (6%) found the Department staff to be uncooperative when

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[10] Personal communication with the Department of Immigration and Ethnic Affairs

asked to check details of applications and it was also reported that staff lacked an appreciation of the reasons why required documents could not be produced. Some respondents in this group said they were given the wrong forms to complete and others said that mistakes made in the calculation of points were only corrected after formal appeal.

A further 18% acknowledged that their problems lay at the Vietnam end of the process. This situation posed problems for respondents who were told by the Department of Immigration and Ethnic Affairs that they could appeal the decision or inquire about the delay by writing to the Vietnamese office in Bangkok. As one respondent made clear, such a suggestion fails to appreciate that no Vietnamese would dare to take this action for fear, justified or not, of risking cancellation of their sponsorship or compromising their relatives still in Vietnam. It was also well known in the community that it was extremely difficult to get information from Vietnamese authorities and that it takes months to receive a reply if indeed there is a reply at all.

Half the respondents who had problems with the sponsorship process took no steps to protest or appeal perceived unfair treatment from the Department of Immigration and Ethnic Affairs. Only two (6%) respondents appealed Department decisions; one of them did so three times until, with his local Member of Parliament's support, he was successful. The remaining 44% who sought help to resolve the difficulties did so through friends or community organisations. Even so, 58% of the respondents still did not think they had been treated fairly by the Department because of changes to rules, the short time in which they were required to lodge an appeal, the lack of information or the process itself. Only 30% of these respondents used interpreters when they were dealing with the Department, 10% of whom were qualified. Most respondents who had problems with their applications (83%) had been in Australia for more than six years.

There is no conspicuous feature of these respondents' profile in this section of the data which points to a possible explanation for the apparently poor service some Vietnamese received from the Department of Immigration and Ethnic Affairs. From the Department's

point of view it must also be said that the constant policy changes requiring staff retraining created considerable difficulties in the maintenance of consistent decision making.[11] However, where more than half the respondents experienced difficulties in making applications to sponsor family members from Vietnam, the data reveals that a service which exists to facilitate and implement such sponsorships is often not equipped to deal with even the most basic requirements of communication. There is a suspicion too, that staff confusion and adherence to rigid and ever–changing bureaucratic rules may deaden a desirable sensitivity to the plight of applicants who are struggling not only with a new language but also a new life without the support of their families.

Motor vehicle accidents

In interviews with welfare workers conducted at the beginning of this study there was a perception that their Vietnamese clients were involved in high rates of motor vehicle accidents. It was thought that the high rates were due to a general lack of driving experience amongst the Vietnamese population. This issue of problems associated with motor vehicle accidents was addressed by the Parks Community Legal Service in 1987 when they produced a do–it–yourself motor vehicle accident kit in both English and Vietnamese.[12]

In this sample over one–quarter (27%) of respondents had been involved in one or more car accidents and nearly half of those (42%, n=20) had experienced legal difficulties as a result. The majority of these difficulties (70%) were related to dealings with the other party to the accident, 10% were problems with an insurance company, 15% were concerned with personal injury claims and 5% with the carrying out of repairs. Only 20% of these respondents were satisfied with the final outcomes of their accidents.

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11 The 'excessive' haste with which the new legislation was drawn up gave rise initially to 'several months of chaos'. Twenty amendments were made to the legislation and seventy changes to the regulations between 1989 and 1993 including two completely rewritten versions. In addition, the complexity of the Act, the legalese, the lack of a sound theoretical framework or even basic guiding principles and the absence of comprehensive national training for departmental staff meant that the law on migration was 'inaccessible to non–legally qualified persons'. Cooney, op.cit. pp. 4–6

12 This publication was being revised and reprinted in 1995.

Reasons for this dissatisfaction included not being at fault and still having to pay (38%), a perception that they were cheated by the other party, insurance companies or crash repairers (25%), receiving no satisfaction as a result of action taken, be that with the police, lawyers or insurance companies (19%), perceived discrimination from other parties to the accident or the police (12%) and faulty repairs (6%). While only 20% of respondents used an interpreter in their negotiations relating to the accident, this was not necessary in two cases because the other parties spoke Vietnamese.

It was also clear from all the respondent reports that at the time of their accidents they were unaware of legal requirements and avenues of redress which would have provided them with some protection under the law after the accident.[13] For example, one respondent had an accident — in a car still under warranty — which he said was a result of brake failure. When the dealer refused to take responsibility for the mechanical fault, the respondent did not know that he could have pursued the matter at no cost through the commercial arm of the Department of Public and Consumer Affairs.

Similarly, another respondent was ignorant of his rights when a crash repairer failed to carry out repairs adequately. Two other respondents were required to pay for accidents which they said were not their fault because the other party had admitted guilt at the scene of the accident, promised to pay and then proceeded to either blame them for the accident or default on payment. Another respondent felt cheated when she signed what she thought was a form for borrowing a loan car while her own was being repaired only to find later that she was being charged $200 for the use of the car.

The data suggest that in dealing with motor vehicle accidents some of the Vietnamese in this sample were disadvantaged in securing a just outcome as a result of their accident. These respondents all had at least four years residence in Australia but ignorance of the law and lack of fluency in spoken and written English contributed to the unfair outcomes.

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13 Such procedures include the recovery of damages through the Small Claims Court, the legal requirement to obtain the names and addresses of other parties and witnesses in case of immediate claims for damages or future personal injury claims.

However, it is also true that many Vietnamese are unfamiliar with the complex legalities of an insurance and court–based bureaucracy which settles claims between parties and this helps to explain why they either do not pursue legitimate claims or, if they do, they do not fully understand the process.

Contact with police

It is an important value in Australian society for citizens to have confidence in their police force. All police services in Australia spend part of their budgets in promoting this confidence by maintaining public relations and education units. Most states also have an independent statutory authority such as a Police Complaints Authority or an Ombudsman, where anyone who is not satisfied with their treatment from police can make a formal complaint and have their claims investigated. As a result of the war and its aftermath, refugees from Vietnam have no such expectation or experience. Especially after 1975, the police in Vietnam were greatly feared for their sweeping powers of arrest and incarceration without trial. They were also known to be corrupt. Of the 41% of respondents who said they had some contact with police in Australia, 40% (n=28) reported some difficulties with the encounter and most thought they had been treated unfairly. The difficulties and high rate of dissatisfaction, however, are not simply explained. On the one hand some Vietnamese appeared to expect far more in the way of services and exemplary behaviour from Australian police while others were prepared to tolerate high levels of brutality.

Some of the perceived unfair treatment experienced by the respondents resulted from misunderstandings of the law, of police jurisdiction and of police powers. For example, in the case of a spouse who had left the respondent, the police told one man that his wife was in a women's shelter but the respondent could not understand why the police could not, under the law, tell him his wife's address; for a pregnant woman whose husband had left her and gone to another state, the police in South Australia were unable to help her any more than by informing her that he was in fact known to be residing outside the state and therefore beyond their jurisdiction. Two other respondents (7%), both women

who were threatened with violence, were unhappy that the police took too long to arrive at the scene after they were called and were thus unable to be of assistance. Another case tragically involved the death of a respondent's ten week old infant at a child-care centre. Police inquiries found no fault with the centre's care of the child but the father was not convinced that his child had died from natural causes and thought the police could have done more.

Other instances of perceived unfairness appear to have resulted from ignorance of the law and communication barriers where respondents thought that the police did not listen to them. In five cases (18%) the incidents related to traffic control or motor vehicle accidents where interpreters were not available. One respondent was stopped by police while he was driving his brother's car which was carrying a police defect notice. He was fined for the offence despite his explanation of ignorance to the police at the time. Another respondent thought himself unfairly blamed at the scene of an accident where he perceived that the police were 'very rude' to him and not to the other parties. A more serious allegation of unfairness involved a respondent who was fined and had her licence suspended as a result of a report by another motorist that she was driving dangerously. Notified by mail of the allegations made in the report, she attended her local station and made a statement to the police, without an interpreter, of her version of the events. Treated sympathetically by the officer at the time it was later discovered in court that no record of this interview had been kept. Fortunately for the respondent, her case was taken up by a community welfare worker who arranged for legal representation. The outcome of this case is not known.

The most serious allegations of ill-treatment came from the eighteen respondents (64% of those who had problems with police contact but only 10% of the whole sample) who have been involved in, or drawn into, criminal activities. In these reports of contact with the police there are records of continual harassment and multiple threats and beatings which the respondents felt powerless to either prevent or complain about. Stories of strip searches in public places, of mistaken identity, of lies and other kinds of illegal threats,

of falsification of evidence, of house raids in the early hours of the morning where all the occupants were assaulted, of having guns held at heads, of being handcuffed so tightly that hands turned blue, were not unusual. For the most part respondents did not have an interpreter present in formal police interviews and two respondents said they were refused one after they had made such a request.

One other respondent who had only fair language skills said he was forced in a police interview to speak English and then "charged with my own words which were not good". He reported being very afraid at this interview and agreeing with whatever he was asked to say or do by the police. Although he said he requested an interpreter it was later stated in court by the police that he had not. The respondent believed that these circumstances were responsible for his ultimate conviction. Had this man been aware of his rights to remain silent and to have a solicitor and interpreter present when he was being questioned by police, it would be possible to say now that his conviction was justified. However, the problem remains that in his case, and in any others where police dishonesty or brutality has occurred, it can never be known whether or not the accused was truly guilty, whether or not, in the case of guilt, there were any mitigating circumstances which might have made a difference in the sentencing process, or whether the person was wrongly accused.

All respondents who reported suffering unfair treatment in their dealings with police were asked if they had been able to do anything about the perceived injustice. Most (75%) took no action and when asked why not, they replied that there was no point or, in one respondent's words, "If I complain I will not win. It's a waste of time". This was particularly true where respondents were accused of criminal offences. Of the more than forty reported instances of illegal behaviour by the police in these circumstances only two respondents on two occasions made official complaints about their treatment to the Police Complaints Authority. They were urged and helped to take this action by Australian welfare workers who were aware of some police officers' sustained victimisation and harassment of the Vietnamese in a geographical area where there were high

concentrations of Vietnamese in the population.[14] Although neither of the respondents ever heard of the outcome of any investigation into the incidents, some changes to police staff and policies took place in one locality soon after the complaints were made.

Although it is not known how often other Australians are similarly treated while in police custody or how many of them make formal complaints against the police, it is still useful to inquire further into the reasons why the Vietnamese do not complain given that 94% of the whole sample thought they should complain if they are unfairly treated. One explanation may be that they are accustomed to and expect police brutality and another may lie in the circumstances under which they came to Australia. These eighteen respondents were all young men who, except for three who were young children at the time, had arrived and lived in Australia without their families. I will explore this aspect of the data in the next chapter on sources of mutual misunderstandings.

In summary, it is clear that the majority of respondents who had contact with the police were satisfied with the service they received. For those who were not, it was established that some problems occurred because of difficulties with communication and others from Vietnamese ignorance of the law. For the remaining 10%, however, those respondents who had dealings with the criminal justice system, there is cause for grave concern about the way in which their rights are abused in police custody and their lack of understanding of, access to, or use of complaint authorities.

District Court

The jurisdiction of the South Australian District Court covers the hearing of criminal trials for all but the most serious indictable offences and civil claims up to $150,000. Eight respondents (5%) had taken claims to this court. Five of these cases were related to recovery of costs for motor vehicle accidents and one other attended the court to regain a licence. These six respondents thought they were treated fairly by the court even though

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14 Philippa Aston, Interview, 19/3/90

three of them did not understand anything of the process. In the remaining two cases both respondents thought they had been treated less than justly in the court process. One civil claimant was urged by her lawyer to pursue a personal injury claim for a number of years only to be advised on the day of the hearing to settle out of court because it was thought that she would not make a favourable impression on the judge who had been appointed to hear the case. In the criminal jurisdiction, the respondent, still maintaining his innocence of any offence, thought that he was pressured by his lawyer to plead guilty at the last minute and that in deciding his sentence, the judge took no notice of his good character which had been described in a pre–sentence report.

Without providing any more details of these two cases at this point, it appears from the stories provided at interview that ignorance of the law, the legal process and their legal rights was a significant factor in the unhappy outcomes of both cases. However, it must also be taken into account that I have reported only one side of the story and it is impossible to know whether or not these outcomes were truly unjust. Nonetheless, it can be said that both respondents were not given either sufficient information or an intelligible explanation of their situations which may have enabled them to make other, perhaps more fortuitous, choices. Nevertheless, what this section of the data reveals applies to anyone who appears in any Australian court and is disadvantaged by language, class, gender or poverty. If the legal system is to live up to the ideal of equality before the law for all, perceptions of injustice must be addressed. Clients of the court must not be further disadvantaged because of their ignorance of the law, confusion over legal procedure or the ethnocentric bias of a predominantly privileged and Anglo–Celtic judiciary and legal profession.

Victim of assault

In an attempt to gauge the level of interpersonal violence in the Vietnamese community, respondents were asked if they had ever been hit or injured by another person since arriving in Australia. Early in the study, interviews with community based workers revealed concerns about an escalating incidence of wife battering in Vietnamese families

although an overwhelming 97% of respondents said in the attitudes section of the interview that they did not approve of this behaviour. Community workers were also aware of violence occurring among some young men who were living on the fringes of the community. However, welfare workers also thought it unlikely that information about any kind of interpersonal violence would be reported in an interview because disclosing such facts would contravene codes of family honour. It is therefore significant that at the time of interview all but one of the respondents who reported assault were no longer living in family situations where the protection of honour would be an issue. This known reluctance to divulge information related to family or personal honour may well account for the small 9% (n=16) of respondents who said they had been assaulted at some time since arriving in Australia. It should also be noted as a bias in the sample that where it was known that Vietnamese in particular groups had been victims of interpersonal violence, these people were sought out for interviews.[15]

Of the small number of personal assaults reported, 38% were women who had been beaten by their spouse or a male relative. However, the extent of this kind of violence is believed to be much higher than this reporting reflects.[16] Physical violence among young Vietnamese men was recorded by 38% and a further 24% of the reported violence occurred between Vietnamese and Australian men. Almost two-thirds of all the victims (62%) reported the assaults to the police but over half of these Vietnamese (58%) did not think their plight was taken seriously and complained that the police took no action to charge the offenders when they were known. Three of these victims were women. One woman initially did not report her husband's continued violence because she had been

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15 Welfare workers in the various community organisations had special programs for single mothers for instance, while other workers were involved on a regular basis with young men in trouble with the police. I also sought to interview all those Vietnamese who were in police custody or prison in the interview period.

16 Although no reliable statistics exist it was suggested in the only study in this area published in NSW in 1990 that the rate of wife battery in the Indo-Chinese community was similar to the rates in Australia. That is, "between one in three and one in ten families may be the site of domestic violence". Dang and Alcorso, op.cit. p. 1

told by her husband that he could send her back to Vietnam if she told the police.[17] She did finally call the police on one occasion when she ran from the house because the husband was smashing furniture and threatening her with rape. She said she was told by the police at the time that they could not interfere unless someone was hurt.[18] Only one male respondent used an interpreter and he was not satisfied with the quality of the interpreting during a police interview because he was charged with the assault when in fact he said he was the victim.

In summary, the data suggests that there were low levels of interpersonal violence amongst the Vietnamese in this sample. It is suspected from other evidence, however, that much violence in the Vietnamese community goes unreported. Physical assaults were mostly confined to those between spouses and between young Vietnamese men. By and large these assaults were reported to the police although the outcomes of such reports were not always seen as being fair to the victim. The other important finding is that all these victims of assault were not well integrated into either the Vietnamese community or the wider Australian society. This lack of integration may be a result of the fact that they have been through the refugee and resettlement experience when they were quite young or when they were, in addition, without the support of their families.

There was also some indication in the data that traditional attitudes to 'honour', expressed in codes of silence, may be changing where family violence is concerned. In the attitudes and values section of the interview schedule respondents were asked to decide whether the police and courts should or should not interfere in families with serious problems. While 16% said they did not know a further 59% replied that outside interference was

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17 This ploy was known by community workers to be commonly used by Vietnamese men who had been in Australia for longer periods than their wives. With much less English language facility and usually little contact with the wider society, the women were thus able to be kept ignorant of their legal rights.

18 If the respondent was told this it was not true. The police in South Australia and other states have a duty to prevent breaches of the peace and have very wide powers to enter a private house to investigate both the threat and incidence of family violence.

appropriate but only after traditional methods had failed. The latter figure was much higher than I expected.

Supreme Court

The Supreme Court deals with cases of very serious crime and civil claims exceeding $150,000. There were six Vietnamese in this sample (3%) who said they had made appearances in this court; one respondent was a witness and the rest were defending criminal charges. All were young refugee males with limited education who had arrived in Australia more than four years ago when they were aged over eleven and under thirty years. None came to Australia with his family, was now married or living a settled life. Five were in custody on remand or in prison at the time of interview and none had good English skills. A qualified interpreter was used for all prison interviews.

All these respondents had an interpreter at the time of their court appearances and were satisfied with the interpreter's performance. However, three of them were still not able, at the time of interview, to understand all of the legal process. Reasons given for this were that the speed at which court personnel spoke meant it was sometimes hard to keep up and that they did not understand the meanings of words or procedures even when they were translated. The witness respondent said he understood nothing. Three respondents also thought they were treated unfairly by the court on some occasions, one because his lawyer did not arrive for a hearing and another because he had been refused bail and had been in custody awaiting trial for sixteen months at the time of interview. Some weeks after the interview the charges against him were dropped for lack of evidence and he was released. The other respondent thought the judge discriminated against him because he was young and therefore seen to be "bad". Involved in a fight with an older man, he reported that the older man was not charged for his part in the affray because, in the respondent's view, he was in business and therefore seen by the judge to be "respectable".

There is some evidence from other studies which suggests that refugees from Vietnam who arrive in Australia as unaccompanied or detached minors usually adapt successfully

to their new lives under very difficult circumstances.[19] However, it appears that the Vietnamese in this sample who are involved in serious crime are those who, because of their youth, interrupted and limited education, separation from family and prior experience have been unable to so adapt.

Low levels of difficulties

Work injury

Other studies have made mention of Vietnamese vulnerability to workplace injury because of their inability to read safety information written in English and because of their normally shorter height in relation to machinery designed for taller workers.[20] Little knowledge of English, occupational health and safety law or the value of union membership also mean that unscrupulous employers can exploit Vietnamese labour in the imposition of unsafe working conditions, long working periods without breaks and dismissal if injured workers are no longer able to carry out their duties.

In this sample only small proportions of Vietnamese (12%) had sustained injuries at work and of those twenty-one respondents most (71%) had experienced no problems as a result. For the remaining six respondents who did have problems — five men and one woman — four suffered continuous pain, one male lost his job and one other male was pressured to continue heavy construction work in spite of the doctor's recommendation that he only engage in light duties until his injuries healed. All six had been in Australia for more than four years and two were unemployed at the time of interview.

It appears from the data that some Vietnamese are injured at work and that for the most part they receive adequate protection under existing legislation. For those who continue

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19 Krupinski and Burrows, op.cit. p. 241 and Easteal op.cit. pp. 6,7,39. Nevertheless, other studies are not so optimistic and see unaccompanied or detached minors at high risk of psychiatric disorders as a result of their refugee and resettlement experience. See, for example, J. J. Jupp and J. Luckey, 'Educational Experiences in Australia of Indo–Chinese Adolescent Refugees', International Journal of Mental Health, Vol. 18, No. 4, 1990, p. 88 and Zulfacar op.cit. p. 103

20 See Viviani, 1984 op. cit., Viviani, 1993, op. cit. and Tran et al, 1991, op. cit.

to suffer, each of them reported that they had not been listened to by doctors or employers.[21] They said they continued to work while in pain because they needed their jobs; one respondent was able to use only his left hand. Only two of these respondents pursued their claims beyond Workcover arrangements and both were unsuccessful. The data thus reveals that there is a residue of respondents who continue to suffer as a result of work–related injuries but it is not known whether this is because, as Vietnamese, they do not have knowledge or access to further redress or whether there is a similar residue in the general population.

Rental accommodation

The overwhelming majority of Vietnamese have no choice but to rent accommodation soon after they arrive in Australia and this is reflected in the 77% of respondents reporting that they had rented either a house or a flat in suburban Adelaide. Of that number 21% (n=28) had experienced problems of some kind with landlords in the past. For 54% of these respondents the conflict with landlords had been because bonds were withheld when respondents moved out of the accommodation. For a further 21% the problems were to do with repairs not being carried out and 11% complained of unwarranted increases in rent. Small numbers (4%–7%) of Vietnamese experienced harassment by landlords, were evicted or could not read the English of the rental agreement at the time the problem occurred.

By far the majority of respondents who had difficulties (82%) thought they had been treated unfairly in the situation and a little over half (57%) did nothing to seek redress. Most of these Vietnamese (71%) thought they were cheated in the rental transactions; 21% reported their ignorance of the law as a reason for their exploitation and 8% thought they had suffered discrimination. Only five respondents (18%) had used an interpreter in

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[21] In her chapter on migrants and worker's compensation Greta Bird also demonstrates that migrant stereotyping led to a dismissive attitude toward migrant work injury and compromised their ability to gain adequate compensation. This was especially true for women workers. Bird, op.cit. p. 158. see also Mackie, op.cit. p. 98

their dealings with the landlord, all of whom were relatives or friends with no interpreting qualifications. One respondent was not satisfied with the interpreting done by her husband. In this incident the landlord had demanded that they pay half of the cost of repairs which needed to be done. She was reluctant to pay because she was aware that the condition of the house was the landlord's responsibility. However, her husband, who subsequently left the marriage, insisted that the money be paid. She gave the money to her husband but was never sure that her husband had been telling the truth.

Although many respondents (43%) challenged their landlords' treatment of them by arguing the issue or by getting a friend or community worker to help them confront the landlord, only a few (20%) were successful in, for example, retrieving the bond or having repairs carried out. Information from these respondents also demonstrated that some landlords were unscrupulous in taking advantage of Vietnamese ignorance of Australian law. For example, extra rent was demanded if tenants left before the expiry of the lease even though the proper notice had been given; bonds were withheld for cleaning when it had already been done or damage which was present when tenants moved in was required to be paid for when they left and eviction notices were signed although the tenants did not understand the contents of the form. In another case a landlord raised the rent but required the tenants not to alter the amount registered in the rent book. Told to comply or leave, the respondent felt forced to obey the landlord because he had nowhere else to go. Another landlord demanded $500 for painting when the respondent moved out of the accommodation. She only had $300 and the landlord took it. Other tenants were given notice to leave their accommodation, without further explanation, before their leases expired.

At the time of the reported incident with a landlord, none of the respondents knew of the Residential Tenancies Tribunal as a resource for dealing with dishonest landlords. Explanations of landlord/tenant legislation and avenues for redress are translated into Vietnamese and have been available free since 1985 from the Department of Public and Consumer Affairs. The data suggest therefore, that a small percentage of this sample

were vulnerable to exploitation by a few landlords and that information which is available to deal with such situations did not reach everyone who needed it.

Victim of theft

Traditionally the Vietnamese have their own methods of dealing with people who steal from others. In Vietnam, the society was characterised by tight knit communities where people were closely interdependent and a thief was easily identified. Once identified, thieves knew they would be approached by powerful elders of the victim's family and required to return the stolen goods. This system of sanctions worked in the traditional society to make theft a relatively rare event. According to many respondents in this sample, however, the incidence of theft rose dramatically after the fall of Saigon in 1975.[22] The withdrawal of American troops and foreign aid, the devastation of the countryside as a result of war and the confiscation of homes and businesses which came with the imposition of the communist regime, meant that the little available food was astronomically expensive and left much of the population with no choice but to steal what they could to survive. Under these conditions the traditional methods of theft control broke down.

Since coming to Australia the Vietnamese have had to adapt to a criminal sanctions method of dealing with theft although community workers were aware that the more traditional methods still applied where the population had stabilised and intra–community theft was a problem. Well over one-third (39%) of respondents reported that they had been a victim of one or more thefts of personal property since coming to Australia and almost half (49%) of these victims were receiving pensions or benefits at the time of interview.[23] The majority of victims (71%) reported the theft to the police.[24] A variety

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22 See also Nguyen Thi Hong, op.cit. p. 21 who says that destitution produced crime after 1975 and that 'there was not a single "occupation" which developed as "quickly and steadfastly" as did robbery and stealing'.

23 Although direct comparisons cannot be made between this sample and the general population it is nevertheless instructive to note that this represents a burglary rate of 390 per 1000 of population. A national survey of crime conducted by the ABS in 1993 found in SA that the metropolitan average rate for break and enter offences was 46.8 per 1000. In a number of geographical areas with high Vietnamese

of reasons were given for the non–reporting of thefts and these included the trivial nature of the offence (six), not knowing that the offence could be reported (one) and fear of, or lack of confidence in, the police (nine). These latter reasons were given by five of the respondents who were in prison at the time of interview and thus were unlikely to draw police attention to themselves by reporting a burglary. It was also reported by workers in the community that amongst this small offending population of Vietnamese, perpetrators of theft on one occasion may well be a victim soon after. One such respondent whose residence had been broken into many times said that he had been in prison four times and each time he had "come home to nothing". There is little sympathy in the wider Vietnamese community for these victims and it is unlikely that even if the perpetrator is known that traditional methods of recovering property will be carried out.

Most respondents (64%), however, thought they were treated fairly by the police when they reported a burglary. Of those respondents (n = 16) who were not satisfied with the outcomes, thirteen perceived that no action was taken by the police and three complained that the police did not take their reports seriously. It appears from the data therefore that even though the Vietnamese in this sample may have experienced higher than average rates of burglary, the majority have adapted to reporting such crimes to the police.

Magistrates Court

A basic and important tenet of the Australian legal system is that justice should not only be done but also be seen to be done. Adult courts are therefore open to the public and the hearing of cases is conducted within strict and complex rules of procedure which are not well understood by the average citizen. Adherence to these procedures is said to guarantee fairness to all parties but should this ideal not be realised in practice because of

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occupancy, however, there were rates between 74.8 and 116.6 per 1000 of population. Australian Bureau of Statistics, Crime and Safety: Australia, April 1993. However, other factors must also be taken into account. As these ABS figures confirm, areas with highly mobile populations are found in the literature to be subject to higher than average crime rates. In addition, the ABS survey information related only to the preceding twelve months whereas in this study 'victim of theft' information was gathered for the whole period in which the respondent had resided in Australia. This latter factor might account for some of the much higher rate reported in the present research.

24 This figure compares favourably with the SA average rate of reporting these offences as 65.4%. Ibid.

human frailty or error, a system of appeals to higher courts is available for the re-examination of such cases. Legal representation of people appearing in court is also fundamental to the negotiation required to argue a client's case according to procedures. In the Australian court system all breaches of the law, from the least to the most serious, are first dealt with in the Magistrates Court. This jurisdiction also hears committal proceedings, processes applications for restraint orders for victims of violence and bail applications for accused persons held in remand custody prior to a committal hearing or trial. Since 1992 this court has also had jurisdiction to hear civil claims not in excess of $60,000.

When asked if they had ever, for any reason, been in an Australian court, 18% (n=31) of respondents said they had attended the Magistrates Court on one or more occasions. More than half of these respondents (53%) had appeared for summary offences such as theft, possession of drugs and traffic or licence violations, 33% for indictable offences such as robbery, trafficking in drugs or causing actual or grievous bodily harm, 10% to seek restraint orders and one respondent in the capacity of witness as a victim of crime.

After reporting that they had attended the Magistrates Court, respondents were asked if they understood what was happening in the court. An unexpectedly high 73% said that they understood the legal process in the court and 77% thought they were treated fairly. Of the eight respondents (27%) who did not understand what was happening in the court, seven were young male refugees with limited education who had been in Australia for more than six years and who had arrived without their families. Most (six) were not living settled lives, were unmarried, had only fair to poor English and all were either unemployed or in prison at the time of interview. Only one respondent did not have a qualified interpreter present at the time of their appearance in the court.

Of the seven respondents (23%) who did not think they were treated fairly by the court, four did not have interpreters and only two of these four respondents had good English. The complaints of unfairness included that the magistrate was unreasonable, that the respondent's side of the story was not believed and one other, who had been in court

many times, often without an interpreter, said he had not ever understood what was going on.[25] The presence of interpreters did not appear to have altered the perceptions of judicial unfairness in the remaining three cases where the respondents maintained their innocence of the alleged offences.

In all the reported appearances in the Magistrates Court thirteen respondents (45%) did not have an interpreter and five (38%) of these respondents had only a fair or poor understanding of English. Two of those respondents had appeared on charges where they were imprisoned as a result and it is reasonable to suggest that a miscarriage of justice was possible in those cases. Respondents who had interpreters present at their appearances were asked if they were satisfied with the quality of interpreting. Only one respondent was dissatisfied and this was because the interpreter told him to plead guilty even though he said he was innocent.

In summary, the Vietnamese in this sample who have appeared in the Magistrates Court have done so largely because of minor offences related to traffic violations. Smaller numbers have appeared accused of petty crime and a few for more serious offences. A few women have also sought restraint orders against violent spouses. In all appearances the majority have understood the legal process and considered themselves fairly treated. For the small proportions of respondents who experienced difficulties with the process and who thought the outcomes of their cases was unjust, there is cause for some concern that this may be true where interpreters were not present or did not perform their task according to professional standards.

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25 A claim of unreasonableness was made in one case because the respondent thought the magistrate did not take his ignorance of traffic laws in South Australia into account and in another the respondent's offer to pay an overlooked fine was not accepted by the court. The respondent who did not think the magistrate believed him had only 'fair' English and did not have an interpreter present in the court. The last respondent's story is surprising given that he came to Australia with his parents as a young child and was educated in Australia to year eleven.

Contact with lawyer

As I have noted before, refugees from Vietnam have little or no experience of using a public legal system for the settling of disputes between individual citizens or between citizens and the state. This lack of experience creates significant difficulties for Vietnamese living in Australia. On the one hand many will not have a concept of what constitutes 'legal' issues and on the other they can be expected to have little or no knowledge of the legal process. For example, the idea that the state would regulate marriage, parental obligations, violence within the family or divorce and property settlement is utterly foreign for the Vietnamese who are not accustomed to the registration of marriages, divorce, remarriage for women or the settlement of disputes outside the family. Likewise there is no history in Vietnam of government funded social security or monetary compensation for injuries sustained at work or in other accidents.

The idea of trial by jury for criminal offences is also unfamiliar as is the notion of an accused person's innocence until guilt is proven. Equally strange is the right to, and complexities of, a legal defence. Although the vast majority of Australians also have little formal contact with lawyers or the courts they are commonly presumed to have an understanding of the role of law in the society and the need for lawyers in the legal process.[26] Most could therefore be expected to know, where a Vietnamese would not, if and when they needed a lawyer to help them deal with a problem.

Due to the sample bias which is skewed towards those Vietnamese known to have need of legal services, almost one-third of respondents (n=56) said that they had sought legal help for a variety of reasons. The highest percentage (34%) was in relation to criminal offences, 26% were for civil proceedings, 17% for family law matters, 19% as a result of motor vehicle accidents and 4% were victims of crime. The overwhelming majority of respondents (82%) were satisfied with the service they received from their lawyers.

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26 In the only survey of its kind in Australia the ABS found in 1990 that very small proportions of the population in NSW had used the services of a lawyer in the twelve months preceding the interview. Australian Bureau of Statistics, Usage of Legal Services, New South Wales, October 1990, Sydney, ABS, 1991

The remaining ten respondents thought they were treated unfairly by their lawyers for a number of reasons. The reasons included a perception of having received bad advice, dissatisfaction with the lawyer's work or the outcome of the case. For example, one respondent did not recover the money he thought he had fraudulently been persuaded to invest in a business and two others considered they were misled over legal costs. As a result, they incurred debts well beyond their means which, in one case, led to bankruptcy. Three respondents complained that the lawyer did not follow their instructions, two said the lawyer told them nothing they did not already know and two more thought they were left in ignorance of the lawyer's actions on their behalf and that the lawyer was not truly concerned for their circumstances.

It is impossible to determine from these brief, one-sided reports whether or not the lawyers employed in these instances were negligent in their duty to their clients. However, six respondents did not have a qualified interpreter present in their interviews with lawyers and three of these respondents had only a fair or poor understanding of English. Given the complex and often obscure nature of legal language it is at least possible that some of the respondents who thought themselves ill–served by particular lawyers were indeed at a disadvantage because there was no interpreter.

It appears from the data that, like most Australians, the Vietnamese rarely need the services of the legal profession and that when they do, most are satisfied with those services. For the small proportion of respondents who were dissatisfied with the legal work done for them by lawyers, there is probably room for improvement in the provision of interpreters. Such a provision, generously funded rather than the user–pays system currently operating, would ensure that Vietnamese and other NESB clients dealing with unfamiliar concepts and procedures have the same access to legal redress as other citizens.

Department of Immigration and Ethnic Affairs

Apart from processing applications for the sponsoring of relatives, the Department of Immigration and Ethnic Affairs has responsibility for all documents relating to an

immigrant's status, date and place of birth, marital status and so on. Refugees often do not have copies of such records from their native countries. In the absence of official documents, immigrants are required to make statutory declarations as a substitute for certified records. However, arrival in Australia from a refugee camp or Vietnam is likely to be accompanied by high levels of anxiety so that the content and signing of documents in English is probably not well understood.

To explore whether this sample had experienced difficulties with the Department of Immigration and Ethnic Affairs other than those to do with sponsoring relatives, respondents were asked if they had any other contact with the department. Well over half (56%) said they had — usually applications for citizenship — and the majority of these (80%) were satisfied with the service they received. Of the nineteen respondents who were dissatisfied, sixteen complaints related to additional sponsorships undertaken by the respondents and have been included in that section of the findings.

The remaining three respondents had problems with the department over documents or their applications for citizenship. All were females, two of whom were refugees, who had been in Australia from four to eight years. One had her application for citizenship refused because her English was poor. She was told to attend lessons for a further six months before reapplying. Another was refused because she had no birth certificate. When her application was denied she asked to see a senior officer in the department who told her to write to the Minister for Immigration to rectify her status. She had not done so at the time of interview. The third respondent had not registered the name of the father of her child when she gave birth soon after her arrival in Australia. This omission prevented her from sponsoring the father to come to Australia and although she produced photographs of them together in the camp, the department refused to believe she was telling the truth.

These stories do not reflect well on the Department of Immigration and Ethnic Affairs' appreciation of the trauma associated with being a refugee and the subsequent difficulties of making a new life in a strange country under very trying circumstances. However, it

must also be noted that the overwhelming majority of Vietnamese in this sample experienced no difficulties at all with the Department in any of their often complex applications for citizenship, sponsorship of relatives or alterations to documents.

Other contact with legal institutions

Respondents were asked at the end of this section of the questionnaire whether they had made any other contact with the legal system. Only 9% (n=16) said they had and overwhelmingly this related to the thirteen respondents who were in police custody on remand or imprisoned under the responsibility of the Department of Corrections. Only two of these respondents had complaints about their treatment. One found taunts from staff very upsetting and the other said a regulation to get out of bed when woken was very hard on prisoners who were sick.

Of the remaining three respondents, all of whom had been in Australia between eight and eleven years, one woman had approached the Human Rights and Equal Opportunity Commission over a case of sexual harassment in the workplace; one other woman with tertiary education in Vietnam and Australia who had otherwise very good English skills, sought advice over the telephone from the Legal Services Commission, the Department of Labour and the Working Women's Centre. However, because her accent was not understood she did not get the information she needed. She said these incidents made her feel very angry and frustrated. The third respondent, a man who also had advanced language skills and tertiary education, received a summons for a traffic fine he had already paid. Although he was annoyed about the summons he was able to correct the mistake without too much difficulty.

If those respondents on remand or imprisoned are not included in this section of the sample, less than 2% had a contact with the legal system which was not covered in the prior questions. However, this contact with other legal institutions is interesting because each incident was an example of respondents claiming and pursuing individual rights. The women, in particular, were not only aware of their rights in Australia and of services they could use but also took steps to assert those rights. Levels of education, length of

residence and proficiency in English were crucial factors in all cases but it was still unusual to find respondents in this sample with the knowledge and confidence to take such courses of action. It is perhaps a small indication that the Vietnamese continue to adapt to an Australian way of life.

Very low levels of difficulties

House purchase

Of the 35% of Vietnamese who had purchased a house since arriving in Australia only 18% (n=11) encountered problems. For eight respondents these problems were to do with broken promises where the agent, the vendor or the builder did not satisfactorily fulfil their part of the contract. There are no figures for how often this kind of thing happens to the Australian–born population but it is probably not uncommon. The remaining three respondents wished to, but were unable, to purchase their homes; one because he did not have enough deposit and the other two because the South Australian Housing Trust (SAHT) refused to sell to them although both respondents had sufficient funds and were aware that other residents in the area had been able to do so. In this section of the sample nearly all the respondents had been in Australia for more than four years.

Unlike the respondents who had problems with landlords, the majority of Vietnamese who encountered difficulties when buying a home sought help to overcome their problems although none of them used an interpreter in the process.[27] With varying degrees of success, agents and builders were pursued to fulfil contracts but in 50% of cases the respondents received no satisfaction. In these latter cases, agents told respondents they could do nothing about fixtures which were removed after the contract

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27 One respondent did not need an interpreter because the agent was Vietnamese. This was a case where the respondents discovered after they occupied the premises that the hot water system did not work. The agent approached the vendor about the matter but when the vendor claimed ignorance of the situation nothing more was done. It is not known whether the Vietnamese agent knew of ways in which this problem could be addressed in the interests of his clients.

was signed and this was enough for respondents to believe that they had not understood the nature or content of the contract.[28]

In a successful case, a respondent who was the victim of shoddy building work in a new housing development, called on neighbours to compare notes. As a result, the dissatisfied buyers together approached the builder with their complaints and the problems were subsequently rectified. It is probably significant that all these eleven respondents had been in Australia for more than four years, all but one had tertiary qualifications, were married and employed, and most had fair to good English while a few had very good language skills. In other words, these Vietnamese had established themselves in Australia and were living stable, settled lives with their families.

However, when, as clients of agents or builders, respondents did not gain satisfaction in their claims, there was no recourse to further help from lawyers, the Real Estate Institute or Public and Consumer Affairs. All of these bodies may have provided an avenue of redress. Once again, there is no information which can tell us if the Australian–born population would have behaved any differently in similar circumstances. It is clear from the data though, that the Vietnamese, and other similarly placed groups, are vulnerable to dishonest practices through not only limited language skills but also lack of knowledge of consumer protection laws and agencies.

Borrowing finance

Nearly half of this sample of Vietnamese (42%) had applied for a loan or credit facilities from a financial institution at some time since their arrival in Australia. The vast majority were successful but for the 18% (n=13) who encountered problems, ten respondents thought they had been treated unfairly. In the main, this was because the respondents' applications were refused. For the three Vietnamese who experienced other kinds of

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28 Clause G of the Contract note for the sale of property demands that all items which are excluded from sale be listed. If they are not listed they are then deemed to be included. It is not known whether the contracts in question contained these exclusions but it is certain that the respondents were unaware of them if they did in fact exist.

problems, one was a victim of bureaucratic error, one could not understand the structure of bank fees even after they were explained and a third, a woman whose husband had left her, repaid a loan, as a matter of honour, which her husband had taken out to fly her and their children to Australia.

None of the respondents used an interpreter in their dealings with financial institutions and not all those whose applications were refused understood why the financial institution had done so. Those who did know the reason were critical of rules which they perceived as discriminatory. For example, lack of a credit rating, as a reason for refusing an application for a credit card, puts first time borrowers in a 'catch-22' situation particularly difficult for refugees to overcome; a respondent who made errors filling out an application form which was then rejected was not allowed to reapply with a correctly filled out form; another was rejected on the basis of not having lived at his given address for more than three years. This latter requirement is especially onerous because it ignores the reasons why refugees must, or wish to, move. One other respondent was told that his application for a loan was rejected because his guarantor had no investments although the respondent said that the guarantor had a house and car and was earning $2000 a month.

The data thus indicates that in this sample of the Vietnamese the majority do not borrow money from financial institutions but that when they do they are largely successful. Only small proportions of respondents have experienced difficulties of access to borrowed funds. For these few respondents, it may be that Australian lending institutions' prescribed conditions for borrowing are not flexible enough to take into account the very different life circumstances of those who arrive here as refugees.

Wills

When a person dies in Australia all her or his property and assets are frozen and, except in the case of very small estates where there is no real property, application must be made to the Supreme Court for the granting of probate. When this is granted, usually after a period of some months, the assets of the deceased can be distributed among surviving

relatives. When a will exists, executors appointed at the time the will was made are charged with the task of disposing of the estate according to the wishes of the deceased. Where there is no will, the Public Trustee is appointed to do so in a lengthy and expensive process which must, by law, establish who has a legitimate claim on the estate before it can be distributed.

When the Vietnamese in this sample were asked if they had ever made a will, most did not know what was meant by the question. Once it was explained, 95% replied that they had not made a will. I learned that this is an inappropriate practice for Vietnamese people. Like many other areas of the Vietnamese social order, the way in which property is distributed after death is a family affair and is not openly talked about in a person's lifetime. Even to contemplate the disposal of property after death would, in Vietnamese tradition, be to wish for that person's death and be extremely bad luck. Even so, 5% (n=9) of the sample said they had made a will. Three had written their own and kept them at home and it is unlikely that these wills are valid documents in Australian law. The other six respondents had sought legal help to draft wills with either lawyers or through the Public Trustee. Half of these respondents were females, all had been refugees but were now married, living settled lives and had been resident in Australia between eight and thirteen years. All respondents, except one, had children and had bought a home.

Although traditional beliefs do not encourage the majority of Vietnamese to make a will, the Vietnamese population is relatively young at present and most have little in the way of property because of their arrival in Australia as refugees. However, if traditional beliefs endure they could pose significant problems for the community in the future under Australian laws. The small number of respondents who had made wills were settled, established, well educated and had no trouble with the English language. As more Vietnamese achieve the same kind of status it may well come about that the legal convenience of a last will and testament will override traditional practice.

Department of Social Security

The Department of Social Security (DSS) is a Commonwealth Government agency responsible for determining the eligibility for, and distribution of, almost all pensions and welfare benefits to those who qualify as permanent residents of Australia. These include age, invalid or sole parent pensions and unemployment or sickness benefits. The Vietnamese have no experience of government income support measures of any kind.

When asked if they had ever had any contact with DSS, 86% of respondents replied that they had. Questioned further about any problems they may have experienced with this very large government department, only 15% (n=23) had encountered difficulties. Of this number 35% said that staff were uncooperative at times, 26% had their claims for support rejected, 9% felt they had been harassed and 9% also complained of having to wait in DSS offices for long periods of time. A further 22% had more specific problems which included feeling humiliated, ashamed, angry, confused and inferior in their dealings with this department. There were also complaints of a lack of confidentiality when being interviewed at the front counter, of being treated as an object, of documents and forms being lost and of having benefits cancelled without clear or consistent explanations of the department's rules and requirements.

Almost half of these respondents who had experienced difficulties with the DSS did not complain about their problems. The remaining 52% sought help from a variety of sources including helpful departmental staff, a financial counsellor, community organisations and one who, because of perceived harassment in the form of repeated reviews, consulted a lawyer. A few said that problems were resolved in this way but 77% (n=17) still did not think they had been treated fairly. Eleven respondents in this latter group thought DSS decisions remained unreasonable because their personal circumstances were not appreciated or taken into account, three said they were not provided with information to help them understand decisions, two still felt ashamed about having to claim benefits at all and one person's benefit was discontinued. This last case involved a respondent's claim for unemployment benefits when he was not working

in his casual seasonal employment. Departmental staff told him they had telephoned the employer, another large bureaucracy, and were allegedly informed that the respondent was receiving wages. The respondent did not appeal this decision based on incorrect information and lived without income until he was again seasonally employed.

Only eight of these respondents used an interpreter in their negotiations with the department, most of whom were Vietnamese or Chinese Vietnamese departmental staff. Not everyone was satisfied with the communications as a result and there were instances where such staff brought their own values to bear on a respondent's application for benefits. One victim of family violence who had been hospitalised for treatment of injuries, was told by a Vietnamese staff member to return to her husband. In another case two young men were made to feel ashamed that they were not working. Both men felt very angry at the time and one, who did not pursue his application, had no income for two months as a result. When he was forced by circumstance to reapply he said he made sure it was in a branch office where there was no interpreter.

Vietnamese codes of behaviour are very sensitive to polite and respectful inter–personal relations. To be kept waiting when there is no obvious reason for doing so or to be spoken to rudely or abruptly, is tantamount to being treated as less than human and deeply offensive. As one respondent expressed himself in relation to problems with the DSS, he "would rather die of hunger than be humiliated like this". When they are advised or obliged to seek government income support, most Vietnamese, men in particular, have a strong sense of shame and are very anxious because of their inability to provide for themselves or their families. Even the young, when they leave school in November, are reluctant to register, as others do, for unemployment benefits. If they are unable to find employment in the ensuing months they are thus disadvantaged by the post–registration waiting period of six–weeks which applies to school leavers. One respondent, who survived until March by borrowing money from friends and relatives in order to live, was unsuccessful in his appeals to the department against the six–week

waiting time on the grounds that he had already saved the department the payment of benefits for three months.

In summary, it is clear from the data that the vast majority of Vietnamese in this sample who need income support in Australia, are being well served by the DSS. Where the small proportion of dissatisfied respondents are concerned, there appears to be room for improved staff understanding of Vietnamese traditions. These traditions affect their adaptation to both government–based social security and a bureaucratic system designed, on the one hand, to distribute monetary benefits to the needy and, on the other, to prevent or prosecute fraudulent claims.

Neighbours

The degree of acceptance which migrants or refugees experience after coming to Australia may well be epitomised for them in the quality of relationships they have with their neighbours. For a clear majority of Vietnamese in the sample, relations with neighbours were cordial but for the 15% (n=26) who had encountered problems most difficulties had not been amicably resolved. In general, conflict arose because of excessive noise or unfriendliness on the part of the neighbours but in five cases the respondents' own noise was a cause for complaint. Even so, six of these respondents had been the victims of very unpleasant behaviour on the part of their neighbours which, in the retelling, appeared to be racially motivated. However, only two respondents were willing to attribute this behaviour to outright discrimination.

Examples of this behaviour included demands to clean oil leaks from car parking facilities other than the respondent's own parking space, the placing of foul–smelling rubbish in a respondent's bin, throwing stones at respondents' homes, damaging their cars or continually knocking on front doors before running away. By far the worst example, however, was where a respondent fixed a broken fence himself because the landlord would not. While he worked a neighbour screamed abuse at him through a window and then smashed the fence when the repairs were finished. The respondent asked the landlord to do something about the neighbour's vandalism only to be told by the landlord

that the neighbour did not like the Vietnamese. The respondent continued to suffer months of abusive behaviour from this neighbour whenever he was observed outside his accommodation. Finally, the neighbour wanted the fence fixed again and when the landlord asked the respondent to carry out the repairs, he did so in his spare time. On this occasion the neighbour emerged after a few hours and approved of his work. He reported that there was no more swearing and abuse after this time.

Well over half the respondents in this section of the sample took some action to resolve the difficulties they were experiencing with their neighbours. The ten who did not feel able to do so often tolerated quite unacceptable treatment. Three respondents moved as a result of intractable problems which they thought they could do nothing about. For example, neighbours who were very noisy at night took a respondent's car out of the driveway and drove it around the neighbourhood before returning it; the same people also removed a sofa from the front verandah of the respondent's home and placed it in a nearby park. In another case, the respondent moved because the neighbour would do nothing about the stench from his property where he kept greyhounds. Vietnamese reluctance to call the police and fear of reprisal from aggressive neighbours probably explains why some of the respondents endured unreasonable treatment from neighbours. However, they were also unaware of state and local by–laws which prohibit much of the behaviour they tolerated.

Interestingly, all but one of these respondents had been in Australia for more than six years. This indicates that recently arrived Vietnamese are either not experiencing or not reporting problems with their neighbours. If they are not experiencing problems, this section of the data reveals that most Vietnamese are finding acceptance in their suburban neighbourhoods and that discrimination from neighbours is rare. For the small proportion of respondents who had trouble with their neighbours, it was unusual for them to think the matter either resolved or the outcome reasonable. It is clear too that these Vietnamese were unaware at the time that they had rights under law which may have provided them with redress.

Car purchase

Perhaps the first major purchase the Vietnamese make after arriving in Australia is that of a car. There is a wealth of consumer protection legislation surrounding the sale of secondhand motor vehicles and although 67% of the sample had bought at least one car only 12% of these respondents (n=14) had experienced problems in a transaction.[29] In general the problems involved misrepresentation about the condition of the vehicle or pressure applied by the vendor to sign contracts or pay a deposit before the buyer had finally decided on the purchase. One respondent was told to "get out" of a car yard because he was Vietnamese. All fourteen respondents had been in Australia for more than four years at the time of interview. Almost all the respondents who had difficulties when buying a car thought they had been treated unfairly and over half of this number took some action to remedy the situation. Remedies included returning to the dealer themselves and requesting that repairs or conditions in the contract be carried out or getting a friend or community worker to come with them for the same purpose. One woman saw a solicitor. Over 60% in the group seeking remedies spoke English well and had been in Australia for more than five years.

Intimidation tactics used by some dealers preyed upon Vietnamese ignorance of the law in most of the remaining 43% of cases where respondents who were cheated thought that it was their fault for trusting the vendor to tell them the truth. All but one of these respondents were female and unaware of their right to independent inspections of motor vehicles they were intending to buy. Most of the women had good to very good English and all had been in Australia for over six years. In the single case where the male respondent sought a second opinion the dealer demanded a deposit of $1000 which he said would be returned if the report was unfavourable. When the respondent wanted his money back he was told that he had to buy the car or lose his deposit. He bought the car but did not think anyone could do anything about the dealer's dishonest behaviour.

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29 See for example, *Misrepresentation Act, 1972, Second-hand Motor Vehicles Act, 1983 and Fair Trading Act, 1987.*

Only two respondents used interpreters in seeking remedies for their problem with secondhand car dealers. The woman who saw a solicitor because the car she had bought was subsequently discovered to be still under contractual repayments to a finance company from the previous owner, had a qualified interpreter present during her interview for which she paid the costs. Her own English skills were good and she was satisfied with the quality of the interpreting. In the second case, a used car salesman had lied to the respondent about the vehicle's capacity to run on petrol and gas. When he found, after purchase, that the car could only run on gas, he returned to the dealership, with his brother as an interpreter, to see the manager. He was satisfied with his brother's interpreting but the manager denied all knowledge of the salesman's claims and told the respondent it would cost a further $250 to convert the car to petrol consumption.

The data here demonstrates that consumer legislation is protecting the majority of Vietnamese who buy motor vehicles, even if they are not aware of it. A small percentage of this sample have nevertheless been defrauded in their transactions with secondhand car salesmen. Most vulnerable were the women who did not know about, or did not ask for, independent inspections of motor vehicles they wished to buy. It was a majority of women too who, through ignorance, took no action to remedy their situation when they discovered they had been cheated.

Statutory declarations

Statutory declarations or affidavits — statements in writing swearing under oath the truth of an event or personal circumstances and witnessed by a registered notary — are legally binding documents required for a wide range of life situations. These include, for instance, applications for many social security payments, for legal aid, for the sponsorship of intending immigrants, to become a guarantor for a borrower, for the alteration of official documents and for insurance claims. The making of such declarations, using a prescribed format and language, is not simple and many English–speaking Australians would sometimes need help to do so. For NESB Australians

unfamiliar with even the nature of such statements, there is a risk, in the absence of detailed explanations, of unwitting perjury and its subsequent penalty.

When they were asked, only 23% (n=40) of respondents replied that they had made statutory declarations.[30] However, this is unlikely to be a true figure as many other respondents who said they had not made such declarations described their involvement in situations such as sponsoring relatives from Vietnam or applying for Legal Aid where statutory declarations are a requirement. Clearly these Vietnamese had committed themselves to legally binding documents without full knowledge of their actions. Of all the respondents who said they had made a declaration under oath, only three reported not understanding what they were doing or why. When examining the circumstances of two of these respondents, however, it is clear that they were not making statutory declarations at all.

One woman in a solicitor's office was signing a marriage property settlement under duress from both her father–in–law and the interpreter who was present. This document had been drawn up on the husband's instructions with his father's approval and took no care of her or her three children's interests. Contrary to the respondent's instructions, the interpreter told the solicitor that the terms of the document were mutually agreed. The other respondent, a man who was at the time in police custody after being arrested at five o'clock in the morning, was told by police that he must sign the statement of interview although he maintained at the time of the interview that he was not guilty of any offence. He understands, rightly or wrongly, that he was then unable to obtain bail because of his signed statement which he later learned contained admissions of guilt.

The third respondent did make a statutory declaration at the time of applying to sponsor relatives from Vietnam. He had no idea, however, that he was, in the event of his relatives being approved immigrants, making a legal commitment to support those

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30 This term was not understood by most Vietnamese and was followed by a prompt which explained that it involved a written swearing of an oath. Vietnamese community workers assured me that this latter phrase would be well understood.

relatives, including paying in full for any medical expenses, for two years. This young man was a tertiary student living on an Austudy allowance at the time of signing the declaration. He spoke and read English well but was obviously unaware that he should read documents before signing them.

The data suggest that a few of the Vietnamese in this sample are having a number of difficulties when they are required to produce statutory declarations. Even though the percentages are small the figures may be an indication of serious misunderstandings in the wider Vietnamese community given that, because of their status as refugees, the Vietnamese are required to make statutory declarations more often than Australian–born citizens. First, it was clear that some respondents were unaware that they had in fact signed such documents: for instance, those who had applied for legal aid none of whom answered that they had made this declaration on their applications. Second, it is apparent that even when some respondents did know they were making such a declaration they were not always aware of the content or legally binding nature of the documents. Third, there appeared to be confusion over the difference between statutory declarations signed under oath and other documents not carrying the same authority or legal obligations. Finally, there was the vulnerability to coercion which arose when authority figures requested or demanded signatures and the real nature of the legal documents was not known.

Department of Family and Community Services

The Department of Family and Community Services (FACS) is a state welfare agency responsible for a range of support services which include the provision of emergency relief funds, the supervision of juveniles without families and protection of children from violent or sexual abuse. Once again, this kind of public service is quite foreign to the Vietnamese and one they would be unlikely to seek out for assistance.

Although 35% of respondents replied that they had some contact with this department it was usually in response to an explanation of the department's activities or their location in the district which prompted the answer. Even so, many of those interviewed who

were in receipt of benefits or pensions remained unaware that it was FACS who distributed their health and travel concession cards. Of the sixty respondents who reported dealings with FACS, only four (7%) said they had been refused assistance. However, it appears that these respondents were mistaken about the kind of service which is available from this department.

Refugees from Vietnam usually arrive in Australia with little more than the clothes they are wearing and could therefore be expected to have a much greater need for welfare support than either other immigrants or the poorer sections of Australian society. However, the evidence from the data indicate that the kind of services provided by this department are those which are usually sought by the Vietnamese from within their own or other community organisations.[31]

Obtaining a driver's licence

Ownership of cars is not common in Vietnam. Consequently there is little or no regulation of vehicular traffic. Obtaining a licence to drive in Australia, where the driving of motor vehicles is heavily regulated, is therefore a very new and different experience for the recently arrived Vietnamese. In interviews with workers it was often mentioned as an early problem with the refugees that licences to drive were shared amongst family and friends. Understandably, when this practice was detected it caused a degree of friction between the police and the offenders who were ignorant of the individual nature of an Australian driver's licence.

In 1981, however, the Department of Road Transport produced a Vietnamese translation of their driver information booklet. The booklet was withdrawn in 1991 pending a new translation of legislative changes and the completion of an awaited national code of road regulations. Nevertheless, NESB applicants are still able to sit for the written test in their own language. In addition, a number of driving schools employ Vietnamese instructors

[31]For example, associations like the Society of St. Vincent de Paul and the Salvation Army often assist newly arrived refugees by providing them with furniture, household goods and appliances.

to help their clients. These adaptations to existing services by the Department of Road Transport probably account for the high number of respondents who have successfully applied for a driver's licence and the very low 5% (n=7) of respondents who experienced a problem in the process. The kinds of problems encountered by these few respondents were also less to do with the strictly legal aspects of obtaining a licence than with a lack of English language proficiency. English competency was needed to fill out complex forms without help and to communicate with the officers who conducted the driving tests. Three of the respondents in the latter category experienced the officer's behaviour as discriminatory.

The data suggest that most Vietnamese do not experience difficulties in either learning the road traffic regulations in Australia or obtaining a licence to drive. This is probably due to the willingness of the Department of Road Transport not only to provide translations of the legal knowledge which needs to be acquired but also to provide multi–lingual testing and also to the availability of Vietnamese driving instructors. Although the law relating to road traffic regulation is not one of the more complex areas of law governing daily life, this facilitation may still be a model for other government agencies whose administration of the law requires a similar adaptation for all citizens to be equally served.

Family Court

The jurisdiction of the Family Court is responsible for the granting of divorce applications and the hearing and deciding of cases for the 3–5% of divorcing couples who cannot reach mutual agreement over division of property, spouse or child maintenance and issues of custody and access to children of the marriage. The court also provides a counselling service which it is compulsory for separating couples to attend if there are disputes involving children. Divorce was unusual in Vietnam but if marriage breakdown did occur, decisions about property and children were made, as in the vast majority of divorce cases in Australia, within and between the families involved. However, Vietnamese women separated from their husbands are traditionally considered

to be still married and, like widows, expected to remain single and devote the remainder of their lives to their children's and family's welfare.[32]

Female sole parents interviewed in this sample appeared to be conforming with these traditional norms. However, it was pointed out by welfare workers that, as single mothers, these women had already earned a measure of disapproval within the community and to divorce or remarry would be to be invite total ostracism.[33] With limited work and language opportunities, only tenuous links to the Vietnamese community and little connection to the wider Australian society, divorce and re–marriage may well be avoided by women in this situation because it may result in extreme social isolation. It is thus not surprising that only three respondents (2%) reported ever having been to the Family Court. Two were women whose husbands had left them after sponsoring them from Vietnam. One attended the Family Court for a divorce and the other to gain custody of her children. The third respondent was a male who sought an annulment of a separation order after the couple were reconciled. All three respondents experienced no difficulties in their dealings with the court.

The data confirm what has been found in other studies. Marriage breakdown is occurring at an increasing rate in the Vietnamese community but Family Court services are seen as inappropriate and are thus not being used.[34] Some of this marriage breakdown is attributable to the refugee status of the Vietnamese. Poverty, years of separation, anxiety and loneliness, high rates of unemployment in Australia and often the necessity for both partners to work long hours, have placed heavy burdens on marriage

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32 For evidence that this tradition lives on in Australia see Dang and Alcorso's study, op.cit. p. 10

33 Jenny Linden, Interview 20/7/92 and Rosemary Radford, Interview 11/7/92. The women were sole parents for a variety of reasons including widowhood, desertion by their husbands, marriage breakdown and failed de facto relationships. Only widowhood was 'respectable'.

34 See, for example, Danielle Celermajer, Multiculturalism and the Law: Family Law: Issues in the Vietnamese Community, Research Paper 1, Sydney, Australian Law Reform Commission, April 1991, Pittaway, op.cit. and Wilson and Storey, op.cit.

relationships. Years of such forced adaptation, especially if it is endured without extended family supports, is managed by some couples but is too stressful for others.

Nevertheless, there is some evidence in the present study that traditional Vietnamese ideas about the strict sexual division of labour in marriage are changing. When respondents were asked whether they favoured traditional or modern roles within marriage, 73% chose the modern less strict division of labour.[35] In the same vein, and demonstrating a dramatic departure from traditional ways of thinking, 66% of respondents agreed that women who leave their husbands should be supported by the state rather than remain dependent on their husbands and 20% did not know. However, when respondents were asked to decide how marital relationship difficulties should be resolved, by far the majority (76%) thought that the family should intervene to solve such problems and 22% thought that the wife should leave only if this extended process produced no change. In the short term this probably means that traditional sanctions which bolster a strong disapproval of divorce will inhibit first generation Vietnamese from availing themselves of Family Court services.

Summary and Conclusion

The analysis of this section of the research data demonstrates that the Vietnamese in this sample experience varying degrees of difficulty in learning about and dealing with the aspects of their resettlement in Australia which require legal expertise. While age on arrival, length of residence, kinds of experience and knowledge of English will affect how quickly and how well the Vietnamese adapt to the legal system in Australia, it is also true that the 'refugee' factor is more important than it has often thought to be. For example, refugee status was responsible for the insecurity felt by many Vietnamese when they suffered from discrimination, for the poverty which limited their opportunities to choose where they lived, where they worked, the hours they worked and their ability to

35 The question asked respondents to agree, disagree or to say they did not know (1%) with the statement 'It is the wife's job to look after the home and the children and the man's job to get money for the family'.

start a small business. The refugee's lack of documents increased their exposure to western bureaucratic demands especially in their attempts to reunite their families. Fear and isolation also go hand in hand with being a refugee and these factors affected relations with the police and other authority figures. Consequently, educational, language and other services which continue to rely on the 'migrant' model of learning and adaptation will not be adequate for the Vietnamese or any other group of refugees.

The analysis also showed that in a number of life situations which rely on a knowledge of the law and the legal process, some Vietnamese encountered difficulties of access which disadvantaged them under the law. Disadvantage occurred variously as a result of discrimination, of ignorance, of differing or incompatible value systems or other problems directly attributable to the ethnocentrism of Australian legal structures, policies and programs. For example, many of the Vietnamese in this sample were unfamiliar with the complexities of life in western countries such as insurance, particularly for motor vehicles, consumer protection agencies, legal representation, public dispute resolution, public welfare and family law. Throughout the analysis it was clear that there were needs for better provision of information, increased availability of interpreters and extensive 'multicultural' education of legal and government personnel.

These latter findings are similar to those of the ALRC in its 1992 report on multiculturalism and the law. Although the ALRC identified many of the reforms which are needed if NESB migrants are to have at least equality of treatment before the law, there was little emphasis placed in that report on the additional difficulties faced by refugees. Nevertheless, it is clear from the work of the ALRC and the data from the present research that the Vietnamese are in urgent need of information and education about their legal rights and the mechanisms, organisations and government departments in the wider society which will help them defend those rights. The provision of information also needs to be more creative than it has been in the past if it is to be effective. As I elaborate in more detail in the next chapter on sources of mutual misunderstanding, reformed policies and programs must not only take into account the

needs of NESB migrants and the special needs of refugees but also some of the important values, beliefs and practices of different ethnic groups.

CHAPTER 7: SOURCES OF MISUNDERSTANDING AND MANAGING REFORM

Introduction

In the first section of this chapter I address the last question of the present study. This is the articulation of the Vietnamese and Australian beliefs and values which contribute to mutual misunderstandings in relation to the law. The details of this analysis came from Section B of the questionnaire which sought respondents' attitudes to questions about the law in general and about common legal processes. The section also solicited information relating to Vietnamese attitudes to gender roles, filial behaviour, friendship obligations, marriage relationships, family violence, the role of the state in some situations and racial discrimination. It was thought that identifying Vietnamese attitudes to this range of values would do two things. First, it would highlight Vietnamese understandings of the values themselves. Second, variations in responses would identify changes in traditional attitudes which the Vietnamese have experienced since coming to Australia. Where it was appropriate, this data was incorporated into the analysis of legal situations discussed in the previous chapter. It remains now, to select from these situations the occasions where a clash of beliefs and values between the Vietnamese and officers of the Australian legal system led to mutual misunderstandings. Using this data and some case studies I establish what these values are and how conflicts between the two value systems can lead to loss, frustration, ineffective communication, injustice and disadvantage on both sides. In the second section of the chapter I take the research a step further in a discussion of how reform to the law could be better managed. This discussion consists of an elaboration of the concept of a 'triple status' and how it might be applied to some of the

recommendations in the ALRC report on multiculturalism and the law. I conclude with some more general comments and criticisms of this report.

Ideally, the law and the legal system in Australia is expected to reflect the values and attitudes of the whole society. However, it has, in fact, been slow to acknowledge the existence and diversity of cultural norms implicit in the government policy of multiculturalism. It was known in 1975 that many migrants to Australia 'do not enjoy genuine equality under the law ... [or] have access to legal resources required to enforce their rights'.[1] Seventeen years later, when the ALRC published its final report on multiculturalism and the law, it was abundantly clear in their fifty-six recommendations for improving access to the legal system for NESB Australians, that much still needed to change.[2]

As I have argued in previous chapters, where the law in Australia is concerned, misunderstandings can occur for the Vietnamese and other similar NESB citizens at a number of levels which include that of philosophical concepts, the use of legal language, understanding the nature of judicial roles and in the legal process itself. For example, at the philosophical level, Australian law is underpinned by notions of equality for all citizens in the protection of their individual rights to property, to freedom of speech and assembly, to marry and divorce, to enter into contracts and so on. Prior to 1975 in Vietnam, however, where such concepts were relevant, they did not exist in a framework of rights but were understood in a context of traditional social rather than legal arrangements. For instance, property was bought and sold without government regulation or, in rural areas passed down through inheritance to succeeding generations. Marriages were mostly arranged by families, divorce was rare, contracts were very often verbal and there was no question of 'legal' enforcement as such. Freedom of speech and assembly was more a precious national value than a legal right and its denial under

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1 Sackville, op.cit. p. 1

2 ALRC, 1992, op.cit., p.3

colonial regimes and Communist invasion inspired armed resistance until the fall of Saigon in 1975.

At a foundational level, the Vietnamese have very strong values associated with kin relationships. The family and close community are where an often private resolution of interpersonal and other kinds of conflict is sought. The informal, communitarian approach to problem solving often preferred by the Vietnamese, can be contrasted with the more individualistic nature of western approaches which tend to be concerned with the public assertion and defence of rights and freedoms in addition to demands for equality. These latter notions are quite foreign to the Vietnamese and, especially as refugees, they can be expected to understand little of Australia's highly regulated and public system of solving disputes between individual citizens, between individuals and the state, and within families. These three kinds of disputes correspond to divisions of jurisdictions in Australian courts which deal exclusively with either civil, criminal or family law.

Civil law

In Australia, the civil law deals with disputes between individuals where, for instance, one party sues another for damages caused by negligence, to recover debts or for breach of contract. Most Australian citizens are rarely involved in these court procedures, probably because of the prohibitive costs of pursuing such claims. For the vast majority of Vietnamese in Australia though, this kind of dispute resolution is unknown. Unknown too are the legal concepts of a 'duty of care', 'unconscionable conduct' or 'negligence' for example, which underpin a system of awarding monetary compensation for events such as personal injury suffered by victims of crime, work injuries and motor vehicle accidents or economic loss brought about by the fraudulent behaviour of others. These legal concepts are not well understood by any citizen outside the legal profession. However, the existence of various government departments and statutory bodies which provide information, advice, redress and appeal mechanisms to deal with, for instance, consumer fraud or complaints against the police and government departments, is far more

widely known.[3] To access these services though, it is initially necessary to be aware that a remedy is possible and it is evident in the survey data already discussed that in a number of areas many respondents were ignorant of both their legal rights and avenues of redress.

It was also the case in the research findings that some respondents were referred to lawyers and complaint bodies by community workers, police and insurance companies and that it was at this point that mutual misunderstandings arose. This was because the Vietnamese in question had no concept or experience of either the remedies or the complexities of the legal process. For example, a respondent who was referred to a lawyer in order to pursue a damages claim for personal injury as a result of a car accident was certainly informed of the monetary cost of making such a claim and the length of time it might take to pursue the claim. Although there is always an element of risk in suing for such damages, this risk was balanced, for the lawyer, by the amount of money which could be expected to be awarded in damages to the client for her injuries. For the client, one of many refugees in the sample who was imprisoned for years after 1975 and who eventually escaped leaving all her family in Vietnam, this course of action appeared to be a way out of a dilemma. She was at the time unable to work because of her injuries and thus unable to send money to her family in Vietnam. She was living in rented accommodation minimally furnished by a charitable organisation and receiving unemployment benefits as her only income. Although she did not understand the law or the legal process of suing for damages, she was encouraged by her community organisation to trust the lawyer.

Four years later, her case was settled out of court a few hours before it was due to be heard because the lawyers told her that she would not make a "good impression" on the

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[3] For example, the Ombudsman is empowered to investigate complaints about the performance or decisions of any government agency; the Residential Tenancies Tribunal hears and resolves disputes between landlords and tenants; the Department of Public and Consumer Affairs receives and acts upon complaints from consumers as does the Trade Practices Commission, the Commercial Tribunal and the Police Complaints Authority. The Legal Services Commission and community legal centres also provide free legal advice or referral on any matter.

judge who had been appointed to the case. The reduced settlement her lawyers accepted from the insurance company as a result of this last–minute decision not only did not cover her costs but also left her with a debt of more than $60,000. She had no means to pay and was profoundly ashamed of this fact because, like many Vietnamese, she felt dishonoured if she was unable to pay her debts. With the help of Australian community welfare workers and myself, the debt was reduced through negotiations with the lawyer, barrister, specialist doctors and psychiatrists. They discounted their charges by substantial amounts but the client was still unable to pay. She was then urged to take the Australian solution of declaring herself bankrupt. She had never heard of such a thing and even though the process was explained to her sympathetically and in great detail she could only view it, with apologies to the people trying to help her, as a dishonourable course of action. A highly intelligent and educated professional in Vietnam who had been in Australia for more than five years at the time of her accident and a person with good English skills, her eventual solution was to offer her services as an interpreter to her creditors until the debt was cleared.

The story of this woman's case appears to reflect badly on the legal advice she was given in the process of pursuing her claim. It is more likely, however, that mutual misunderstandings were to blame for the unfortunate outcomes for everyone involved. The lawyer was dealing with an educated woman who appeared not to need an interpreter. When the lawyer explained the legal process and associated risks to his client he had no way of knowing that the client did not truly understand, or indeed have any concept of what she was being told. From the Vietnamese client's point of view, her customary deference to both authority and professional expertise and her ignorance of the Australian legal system meant that she did not question, interfere or give her lawyer any instructions. An example of this unquestioning behaviour on the part of the client was when, about two years into the case, the lawyer wanted some payment and told her she would have to borrow the $10,000 necessary for the case to proceed. The client felt "forced" to do so because "I don't know much about the legal system and he knew best". A letter from the lawyer to the bank manager which detailed the expected award for

damages secured the loan. When the loan was made available, a cheque for the amount was sent direct to the lawyer and not seen by the client.

Another very common situation which leads to misunderstandings in the area of civil claims is that of the legal interview. Here, Australian lawyers, who are trained to restrict their questioning of a client to the elucidation of a narrow range of facts, interpret the answers from the Vietnamese client in the same way that they do for all clients. For example, when interviewing a client in relation to an insurance claim for damages resulting from a motor vehicle accident where the requisite forms have already been filled out and signed, the lawyer will check the form and ask any questions necessary for the claim to proceed. The lawyer will not unreasonably assume that the person who is being interviewed is the person who owns the car, had the accident, is aware of all the facts which have to be disclosed and has also signed the form.

To their cost, lawyers, especially those working in community legal centres in areas where there are high concentrations of Vietnamese residents, know that such assumptions can be misleading. One such lawyer says there are four additional considerations which have to be taken into account when interviewing Vietnamese clients.[4] First, Australians need to understand that, in the Vietnamese experience, lawyers are part of a government bureaucracy to which information is never volunteered due to a fear of the consequences. This means that questioning of clients must take nothing for granted. For example, if lawyers are drawing up a motor vehicle accident report form for a Vietnamese client they may well assume that when they ask questions about the relative positions of the cars involved in the accident that there were only two cars. There may have been more than two cars but Vietnamese clients will not provide this information unless they are asked. Second, in a society where families are the usual source of problem solving, the Vietnamese relative with the best English skills will quite naturally deal with the bureaucratic needs of the family. These needs include the filling out and signing of forms

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[4] Graham Carr, Interview, 17/6/94

and attendance at interviews. An uncle who has been in Australia for ten years will therefore take over the task of sorting out the details of a nephew's accident where the nephew has been in Australia for a shorter period or does not speak English as well.

Thirdly, in a society where communitarian values are primary, ownership, of a car or even a licence to drive, for instance, is not viewed as exclusive. There is no concept of the individual nature of Australian law and legal processes. It follows from this conceptual difference that, in the case referred to above, it will not be relevant for the Vietnamese uncle to reveal that his nephew was driving his cousin's car when the accident occurred. Lastly, there is the Vietnamese practice of deferring to authority and social politeness which, in a legal interview, will mean that the Vietnamese client will agree with everything the lawyer says. Lawyers thus need to be aware that the Vietnamese are most reluctant to reply in the negative in such situations because it is "very rude" and that, contrary to lawyers' legal training, closed questions requiring a 'yes or no' answer should be avoided.

Family law

The struggle to make a new start in a foreign country without money, possessions or extended family supports has placed enormous stress on Vietnamese family relationships which, for some husbands, is increasingly being released in violence against their wives. It was clear in the ALRC research report on the issues surrounding family law in the Vietnamese community and in my discussions with community workers, that many Vietnamese marriages are breaking down in Australia.[5] The breakdowns are thought to be a result of the stresses associated with the war, the refugee experience, long enforced periods of separation and resettlement in a foreign country where values associated with the family are fundamentally different. Gender roles traditionally linked to marriage and parenting, initially shaken by the years of war and its aftermath under a punitive

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[5] Celemajer, op.cit. p. 4

government regime, have thus continued to be challenged in a new society of western, liberal, individualistic values.

It also became very clear in the survey interviews that the enduring strength of Vietnamese familial and communitarian values cannot be overestimated. There is a chasm between these values and those of western liberal societies where families are nuclear and within which, particularly at the time of marriage breakdown, family members are considered to be, and treated by the law as, individuals. For example, when Australian couples are in dispute about the division of property at divorce, judges are required, under the *Family Law Act 1975,* to examine individual contributions to the marriage and distribute the property between the parties accordingly. Similarly, in deciding which parent will have custody of the children, the law demands that the welfare of each child be paramount, regardless of the claims made by either parent or any other party. Although the Vietnamese do not in any numbers currently use the services of the Family Court, the scope for mutual misunderstandings between court officials and the Vietnamese is nevertheless significant.

To comprehend how confusion might occur it is necessary to examine in more detail the values attached to members' roles in the Vietnamese family. Of primary importance is the notion or sense of 'collective responsibility'.[6] This responsibility is realised in an acceptance of parental responsibilities far in excess of those expected in western societies. Any misconduct by Vietnamese children is not only the fault of the parents but also dishonours the family name. Even adult children are obedient to their parents until the parents die and beyond the grave it is the life–time duty of the eldest son to keep alive a reverence for parents' memories.[7] This practice of honouring parents is not understood as an overbearing authority held by the older generation in a family but, as was clear at

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6 Tran, 1994, op.cit. p. 11

7 Nguyen Dang Liem, op.cit. p. 47–48. The cult of ancestors remains an important spiritual practice for the Vietnamese and it was unusual for me not to find shrines containing photos of aged parents in homes which were visited for interviews.

many points during interviews, demonstrates rather a deep respect for age, accumulated wisdom and family honour. As My–Van Tran phrases it, the consequence of this collective family responsibility

> is a collective family image in the community. It is for this reason that Vietnamese strive to build a good name for the family. "Tao Duc Cho Con" meaning "to create merit" for the sake of the children is often heard among Vietnamese parents. Similarly, it is the duty of children to maintain the good name of the family in their actions, and also to further build on that good name to pass on to their own next generation. If that is not possible, then at least the children should not soil the name of their forebears.[8]

The duties associated with this filial respect and obedience are not viewed as oppressive by the Vietnamese although they may well be in western societies where children possess rights independently of their parents. Ideally, they are matched by a set of corresponding parental obligations to love, guide, understand and be completely responsible for their children of any age. Further evidence that these reciprocal obligations remain a core value in the Vietnamese community in Australia was the 92% of respondents who thought it was not only important for children to obey their parents without question but also that parents should understand their children's problems as well.

Sex roles within the Vietnamese family can also be too easily described as patriarchal and oppressive of women if they are not well understood. It is true that, in the hierarchical nature of Vietnamese authority relations, wives owe obedience to their husbands, but this is not conceived, by either women or men, as constituting subservience. It is more a matter of spouses having different but equally valued spheres of responsibility for their collective, rather than their mutual, family lives.[9] For example, while in broad terms the

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8 Tran, 1994, op.cit. p. 11

9 According to My–Van Tran and others, women, mothers and wives enjoy a high status in Vietnamese society being dubbed 'noi tuong' which means 'General of the Interior'. Ibid. See also Vu, op.cit. pp. 18–19 and Nguyen van Thang, Interview, 12/3/90. To western feminist ears, this sounds suspiciously like mid–Victorian patriarchy where women were said to be equal but 'different' when in fact they were a long way from enjoying the same rights and freedoms which accrued to men. However, at this point in this research, I can only report how some Vietnamese women understand themselves and their roles.

man is responsible for earning the family income and the woman for caring for the home and children, it was not unusual in Vietnam for women to start and run their own small business quite independently of their husbands.[10] In this generation's living memory too there was no distinction drawn between urban daughters' and sons' access to the highest levels of education.[11] Although marriages continue to be arranged between families, values have changed to the extent that it would now be rare for the young people themselves not to be consulted for their consent or forced into a marriage they did not want.

Parenting roles are also shared within the family with fathers being particularly responsible for overseeing their children's education on a daily basis. Unlike the majority of Australian–born fathers who do not seek or contest custody of their children at the time of divorce, Vietnamese men take their parenting obligations very seriously and are greatly distressed if they are separated from their children. When grandparents retire they too, traditionally, play an active role in the physical, educational and emotional care of young children. Men in western societies are often excluded from these spheres of family life because it is seen, in a derogatory way, as 'women's work' and therefore unworthy of male energy. Perhaps because of the overarching ethic of courtesy and politeness in Vietnamese relations with one another and with the wider society, neither the men nor the women define masculinity in the ways which might be described as a stereotypical western 'macho' style of dominance. On the contrary, when all respondents were asked if gentleness and kindness were equated with weakness in a man, as they commonly are in Australian culture, 76% disagreed and 10% did not know.

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10 This was especially true both during and after the war when husbands and sons were drafted into the armed forces, were absent for months or years, killed, injured or imprisoned. Viviani *et al.* also refer to 'the powerful economic and social role of women' in Southeast Asian societies which 'contrasts directly with Australian stereotypes of Asian patriarchy'. op.cit. p. 40

11 Nguyen van Thang, Interview, 12/3/90

The ideal construction of the Vietnamese family and the values which sustain this formation are thus fundamentally different from the dominant family structure adhering to western liberal, individualistic values in Australia. By itself this difference is enough to produce considerable misunderstandings in relation to family law. For the Vietnamese, the public nature of the court process is already a problem but even if this were to be overcome or adapted to, it is difficult to see how present custody and access arrangements would not be deeply destructive of the parental values and obligations which are at the heart of Vietnamese identity. Although all those involved in administering justice under Australian family law are urged in ALRC recommendations to accommodate the cultural diversity of family formations, the law itself remains applicable to individuals within the family and cannot take into account the collective nature of the Vietnamese family.[12]

These conflicting values would create enough misunderstandings if the Vietnamese were a well settled ethnic group but this is not the case. The Vietnamese family is under considerable stress in Australia due to family separation, culture shock, lack of language, poverty, high rates of unemployment and so on. The demands placed on women through their work outside the home have disturbed the previously clear demarcation of roles in the family and can be particularly threatening for the men. In addition, the women in the paid workforce are coming into contact with western ideas of gender equality in the home and in the workplace. These ideas present a serious challenge to traditional practices. Most Vietnamese women are not troubled by this different understanding of women's roles but it must be said that if their family situation is an unhappy one, some Vietnamese women do now see the opportunity to act where in Vietnam they may have had to suffer in silence.[13]

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12 ALRC, 1992, op.cit. p. 67

13 The Vietnamese Women's Association in NSW was established in 1984 and within two years had identified increasing domestic violence as a major problem facing Vietnamese women. However, it was not until 1991 that they were able to obtain funding for an Indo-Chinese women's refuge. While providing emergency accommodation for 31 women and 39 children in their three years of operation they have also had to turn away 99 women and 151 children. Anh Thu Tran, 'Mimosa House: Indo-Chinese Women's Refuge for Women Escaping Domestic Violence', First National Conference of Vietnamese

In addition, children's exposure to their Australian peers' values at school and University, their consequent better facility with English in contrast to their parents, parents' lack of understanding of the Australian education system and the reduced amount of time they spend with their children as both parents work to establish a home, all pose a further threat to the traditional dependence of Vietnamese children and young people on their parents' guidance and authority. Elderly parents brought to Australia by their children are also thought to suffer from isolation as a result of the difficulty of adapting to the changes taking place in the Vietnamese family in Australia. The changing role of the younger women, the perceived lack of respect for the elderly in Australian society, the necessity for most family members to engage in paid work, the difficulty of learning a new language, crowded living conditions where the elderly may not be able to communicate effectively with their grandchildren and homesickness, all contribute to this isolation.[14]

The multiple and varied stresses on the Vietnamese family are a direct result of their status as refugees and are leading to marriage breakdown on an unprecedented scale in the Vietnamese population in Australia. In this situation, the present structure of family law offers them little in the way of protection or support. However, as the ALRC Report makes clear, there are limits to the usefulness of even reforming legislation where families are concerned. It is far more effective to provide support services for families which keep them out of the family law jurisdiction.[15] The report also draws attention to the fact that this is particularly true for newly arrived migrant and refugee NESB families.[16] In addition, there is an urgent need for an Indochinese women's refuge in each state where women and children can seek respite from violent relationships and where trained

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Women in Australia, op.cit. p. 55. This refuge is the only one of its kind in Australia and South Australia, unlike the eastern states, does not have an association exclusively for Vietnamese women.

14 Trang Thomas and Mark Balnaves, New Land, Last Home: The Vietnamese Elderly and the Family Migration Program, South Carlton, BIPR, 1993, p. 34

15 ALRC, 1992, op.cit. p. 81

16 Ibid., p. 76

Indochinese workers can help families in crisis resolve their difficulties in appropriate ways. The report also acknowledges that there is a need for much more research on the specific nature of support needs in NESB families and suggests that all government policies and programs be both screened and evaluated for their impact on these clients and their families.[17]

Criminal law

It is, however, in the area of criminal law that there is the most opportunity for mutual misunderstandings to arise between the Vietnamese and officers of the legal system in Australia. In the legal criminal process in Australia, suspected law-breakers are apprehended, arrested, charged, prosecuted and either acquitted or convicted in a court of law. If they are found guilty of committing the crime they are then sentenced to spend a specified time in prison, pay a fine or both. Sentences may also be suspended with the person convicted having to fulfil certain conditions to avoid being sent to prison. At each stage in the process, officers of the law, be they police, public prosecutors, magistrates or judges, have discretion to either invoke the full procedural weight of the law or mitigate the process for numbers of reasons. For instance, a person caught shoplifting for the first time may be given an informal warning by the police but, if apprehended again, may be charged. However, prosecution may not follow because of age, illness or other life circumstances of the person which are determined by the police or crown prosecutors to be a moderating factor in the seriousness or culpability of the offence. If the case is heard in court, a magistrate in this case, but a judge in more serious offences, also has discretion to dismiss the case with or without recording a conviction.

A crime is usually defined as an act which is punishable by law and in modern democratic societies the laws relating to such acts have come into being, for the most part, through parliamentary legislation. There are three kinds of criminal offences in Australia — summary, minor indictable and indictable — which describe the degree of seriousness of

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[17] Ibid., pp. 70–76

the crime committed. Cases for persons charged with summary and minor indictable offences are heard and determined by a single magistrate in the Magistrates Court. Most cases involving indictable offences, offences which are more serious and which guarantee the defendant the right to a trial by jury, are heard in the District Court but the very serious offences such as treason and murder are reserved for hearing in the Supreme Court. Both the latter courts are presided over by a single judge. Except for decisions handed down by the High Court of Australia, appeals to a higher court can be made against all judicial decisions.

There are four basic principles of the criminal law which also need to be understood. The first is the presumption of innocence until guilt is proven. This means that the magistrate, judge or jury who is hearing the case must be satisfied beyond a reasonable doubt that the accused is guilty of the alleged offence. If there is any reasonable doubt of the person's guilt she or he must be acquitted. The second principle is the burden of proof. This means that the prosecution must prove the charge rather than the defendant establish his or her innocence. The third, the right to remain silent, means that beyond the giving of some details such as one's correct name and address there is no legal obligation to answer police questions. The last principle, that of double jeopardy, means that a person who has been charged, tried and acquitted cannot be charged again with the same offence.[18]

The criminal justice process in Australia is thus a multi–layered, highly codified and very complex system of laws, legal principles and procedures. The rules governing the system have been developed over many centuries in the context of English and Australian legal history. Although few citizens would understand the procedures in detail, most would be generally aware of their rights to, for instance, a solicitor, bail, trial by jury, appeal and so on. At the very least they will know that at the time of arrest they need a lawyer who will inform them of, and be able to defend, those rights.

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18 The Law Handbook, 2nd ed., Adelaide, Legal Services Commission, 1991, pp. 44–47

Historically, the Vietnamese have no experience of democratic government or, prior to 1975, of legitimate authority exercised through the state. According to Tornquist

> In the Confucianist polity the emperor's absolute power is exercised through the mandarin caste produced by the examinations. Communist regimes exercise totalitarian power through the caste system in the party structure. Both end up being governments of men not laws.[19]

This is not to say that penal codes did not exist historically in Vietnam but that they were modelled on Chinese Confucianist values and principles which reflected the importance of the family hierarchy in the determination of a crime's seriousness and that judgement and punishment were best left to peers rather than courts.[20] Thus killing or planning to kill the elders of another family was a far more serious crime than the same actions directed towards strangers or younger and less important family members.

The ninety–odd years of French colonial administration from the late 1850s until 1954 dismantled the old Confucianist governmental structure and replaced it 'with a network of French residents and administrators'.[21] This included installing the French inquisitorial system of justice and the education, often in France, of Vietnamese nationals as lawyers within it. For the vast majority of the Vietnamese, however, tens of thousands of whom were killed or incarcerated for their opposition to the colonial regime, this was hardly an experience of western democratic practices. The period of nationalist struggle against French colonialism was followed in 1954 by the declaration in the North of the Democratic Republic of Vietnam by Ho Chi Minh and the institution of laws there which were heavily influenced by eastern socialism, particularly those of the USSR. A further twenty years of civil war culminated in the reunification of Vietnam under Communist

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19 Vietnam, Text by David Tornquist, New York, Mallard Press, 1991, p. 153

20 John Quigley, 'Vietnam at the Legal Crossroads Adopts a Penal Code', The American Journal of Comparative Law, Vol. 36, No. 2, Spring 1988, p. 352

21 Colin Mackerras, Robert Cribb and Allan Healy (eds.), Contemporary Vietnam: Perspectives from Australia, Wollongong, University of Wollongong Press, 1988, p. 16

rule where the most serious crimes were those defined as acts of political dissent. 'Justice' was executed administratively by way of arbitrary arrest, imprisonment without trial and the imposition of hard labour or the death penalty.[22]

With this kind of recent history, it is thus not surprising to discover that 72% of respondents in the present research sample, especially those who were part of the defeated regime in South Vietnam, escaped from Vietnam for reasons of political freedom. Desperate for peace and a chance to rebuild their lives, an essential element of this rebuilding is that of establishing their sense of community and family honour 'within a framework of freedom from war, social conflict and political coercion'.[23] Grateful to the Australian community for providing this chance to remake their lives, the Vietnamese who have settled here are anxious to be accepted as hard–working and law–abiding citizens who contribute positively to their new society. However, it is most unlikely that if they do come into contact with the criminal justice system that they will possess more than basic concepts of its functioning.

Within this setting of establishing their place in Australian society, the Vietnamese are thus 'particularly uneasy and hurt' when the media appear to emphasise the crimes committed by a few youths as 'Asian' crime waves. At such times My–Van Tran says, 'Vietnamese as a group feel they are all seen in the same light'.[24] Not wishing therefore to be associated with criminal elements in the Vietnamese population, there is a tendency, in community organisations at least, to repudiate those few Vietnamese who are involved

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22 Vietnam introduced its first indigenous penal code in 1985 which reflects influences from China, France and socialist countries. However, the administrative power to incarcerate citizens without trial for periods of two years initially and then a further three years remains in force. Quigley, op.cit. pp. 351–352

23 Tran, 1994, op.cit. p. 11

24 Ibid. Such accounts of have been a regular feature of media reports since the early 1980s. See, for example, The National Times, November 28 to December 4 1982, The Age, 12 March 1983, The Advertiser, November 9 1991. See also Easteal, op.cit. p. xi for her account of 'sensational media reports about the alleged extent of criminal activity ascribed to Vietnamese youth', White, op.cit. p. 6 and Guerra, op.cit. p. 11 for the way the media stereotype young Vietnamese.

in criminal activity. This reluctance to be involved with any Vietnamese accused of criminal offences is the first of many misunderstandings which can arise between the Vietnamese community as a whole and officers of the Australian system of criminal justice. To understand how this comes about I need first to say something about the nature of Vietnamese community organisations before, once again, examining how this reluctance is connected to the structure of family relationships and the maintenance of family honour.

There is a variety of Vietnamese community organisations now well established in Australia. Some exist to preserve the language and culture of Vietnam, some to provide welfare services to new arrivals and others are centred on members' ethnic or religious affiliations. They meet the needs of different sections of the community and there is some overlap of membership and services among the various groups. Vietnamese workers are also employed in more generalised community welfare services such as, for example, Migrant Resource Centres, Migrant Women Emergency Services, women's shelters or Youth Support Services, but these workers do not have the influence in the community which is accorded to workers employed in the 'official' Vietnamese community organisations.

The structure, sentiments, politics and service priorities of Vietnamese community organisations naturally reflect the dominant values of the founding members who have now been in Australia for up to eighteen years. Drawn from both North and South Vietnamese elites — professionals, high–ranking military personnel and the tertiary educated for instance — these leaders tend to be overwhelmingly male, conservative and, in the Vietnamese way of things, authoritative. Reproducing status hierarchies modelled on their class position in pre–Communist Vietnam, they command a great deal of respect within the community, wield considerable power and are staunch upholders of traditional

Vietnamese customs and values.[25] As a consequence, the elderly are cared for, parents are supported, approved young people are encouraged and children are educated in Vietnamese language and customs in Saturday schools.

If, however, individual Vietnamese do not fit into this conservative cultural norm it will be difficult for them to get help from such an organisation. For example, a woman victim of physical assault will not be able to confide her problem to a Vietnamese community worker let alone be given the information and support she needs.[26] Although Vietnamese workers may feel some sympathy for such a victim of family violence, they also believe that this is a problem to be sorted out by the family and is none of their business. Least of all is it the business of the police. It will thus be up to an Australian woman worker to help the Vietnamese victim of wife battering and even then, social taboos and language barriers may inhibit the victim from being able to act to protect either herself or her children. The single mother is in a similar position, particularly if she is unmarried. To be in such a position is to be thought of as beyond the pale of conventional society. Divorce or remarriage for women is also not sanctioned in traditional Vietnamese culture.

In the same way, young people unattached or detached from their families and who are in trouble with the law will be reluctant to relate their problems to workers who, as more senior and therefore to be obeyed, not only disapprove of their actions in breaking the law but also of their separation from the family. Family, in this case, can be the biological parent(s), older siblings, more distant relatives or even an Australian foster family. The vulnerability to homelessness, drug addiction and crime of unattached or detached youth has been recognised as a problem for some years and Grant-in-Aid workers have been employed by Vietnamese community organisations to reach out to these youth. However, once contacted, if the offending youth do not comply with the

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25 Viviani et al, op.cit. pp. 39–40 describe a similar pattern in the Vietnamese community organisations of the eastern states.

26 Philippa Aston, Interview, 19/3/90

conventions — return to an approved family structure, go back to school or stop associating with 'undesirables' — they will not continue to be helped. This will not be an outright refusal to provide advice or support but a more subtle lack of response. It may be that the workers themselves apply sanctions to services or that they are directed to do so by their superiors.

This pressure on individual Vietnamese to conform to conservative traditional mores as a condition of membership of the group is very real and very powerful. While it originates in a familial and religious orthodoxy, the Vietnamese in Australia have additional reasons for clinging rigorously to tradition. As refugees they did not make the decision to leave their country in the same way as did voluntary migrants and they may well wish to keep their culture alive in case it becomes possible for them to return to Vietnam. This would be especially true where their children are concerned because they see them as being constantly exposed to other significant cultural influences. Vietnamese visibility in the criminal courts dishonours the individual family involved and, because it is a public process, the whole community. Dissociating the organisation from contact with even minor criminal elements and ignoring the existence of all crime in the community is thus one way of saving face.

The strength of the Vietnamese family is also the source of the strict social control which is exerted over not only the young but all members of the society. In Vietnam unrepentant criminals were considered to have breached the code of family honour by continuing in a law–breaking lifestyle. As a result, they were ostracised from their own families and lived marginalised lives in the wider society.[27] What this means for Vietnamese law–breakers in Australia — mostly young men without families and aged between eighteen and thirty years — is that they are adrift in both their own and a foreign culture. Like their Australian counterparts, they may then construct a family of sorts amongst themselves and maintain a system of core Vietnamese values which recognises,

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[27] Ibid.

for example, the hierarchical relationships between elder and younger, the obligations of friendship and the importance of honour. Clinging to a somewhat basic expression of these values which condone revenge and violent physical assault, they can also preserve the familial code of privacy which keeps members silent about their activities and their conflicts outside the 'family' circle.[28]

Reverting or continuing to live in an all too familiar survival mode where the young refugee has perhaps endured the brutalisation of war, the terrors of escape and the worst of fears, these young Vietnamese males relate to the legal process according to their culture and experience.[29] On the one hand this dictates a respect, deference and unquestioning acceptance towards authority figures such as police, lawyers or magistrates and a fear of divulging information, learned under the communist regime, where even the giving of a correct name and address could result in the disappearance of yourself or other family members. On the other hand, in a contradictory way, the Australian legal process holds very little fear for the Vietnamese law–breaker. Even in more serious offences, due process and a prison sentence will be more humane in Australia than that which could be expected in the Vietnam from which they escaped. It is also possible that prison life could be more physically comfortable and secure than life on the streets, in Vietnam or in a transit camp. Thus, in the scheme of things, it may well be that if a Vietnamese is not attached to a stable family, is unemployed, and marginalised in Vietnamese and Australian society, the threat of prison is an acceptable risk to run for other needs to be met.

A further dimension of these contradictions which are specific to the Vietnamese refugee is the young law–breaker's response to police harassment. Although it is experienced as fearful and unpleasant it is not seen as an infringement of rights or as a matter for official

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28 Sergeant Bob Smith, Interview, 19/3/90

29 Philippa Aston, Interview, 19/3/90

complaint.[30] Treated far more violently by the system from which they came, police brutality is not only to be expected but also to be endured. While Australian welfare workers would urge their Vietnamese clients to pursue complaints for harassment or ill–treatment by police, it is very unlikely that they will do so formally. It is also true that the Vietnamese know that they are readily identifiable in the general population and a real fear exists that complaints may bring worse treatment in the future.[31] Although it is necessary to facilitate access to independent police complaint authorities, as the ALRC report has recommended, this research suggests that even if that happens, there will continue to be other factors such as fear of victimisation which hinder Vietnamese use of such services.

From the point of view of the police too, there are real difficulties in their dealings with Vietnamese offenders. The behavioural and language barriers are substantial and there is a constant problem to provide the evidence which will bring a case involving Vietnamese offenders to trial. Faced with a wall of silence from potential witnesses who, with the best will in the world they cannot protect twenty–four hours a day, police must deal with high levels of frustration in this area of their work.[32] The provision of police liaison officers dedicated to working within the Vietnamese community has gone some of the way to building relationships of trust between the police and community groups but this valuable work is easily undone if other police behave poorly.[33]

Another aspect of respondents' attitudes to Vietnamese offenders and how they should be treated in the criminal justice system was revealed in the more general attitudes to crime

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30 These respondents consistently reported incidents of police harassment or ill-treatment where the incidents were viewed as unremarkable.

31 Most interviews with workers revealed that this fear of police harassment was justified. It was also a consistent theme at the police and ethnic youth conference in 1995. See papers given by White, op.cit., Doan, op.cit., Guerra, op.cit. and Bernadette O'Reilly, ' "Nobody Listens": The Experience of Contact between Young People and Police', The First National Summit on Police and Ethnic Youth Relations, op. cit., pp. 2–3

32 Sergeant Bob Smith, Interview, 19/3/90

33 Aston, op.cit. pp. 10–12 and Wilson and Storey, op.cit. pp. 16–17

and criminal justice. For example, while a large majority (87%) of respondents claimed that they had real difficulties understanding what little they knew of the law in Australia, they nevertheless had clear ideas about systems of legal authority. In the case of how law–breakers should be dealt with, most respondents (76%) thought that this authority should rest ultimately with the judiciary, 13% thought the family was better suited to deal with the problem and, surprisingly, 11% thought it should be the police who are in control. Where the family is traditionally said to be the arbiter in less than very serious criminal matters, this distribution of responses suggests a substantial shift or adaptation for the Vietnamese in this sample. In addition, a high proportion of respondents (79%) said that information should be given to the police about known offenders although it is rare that Vietnamese victims or witnesses of crime will be prepared to press charges or testify in court against other Vietnamese.[34]

In its discussion of the criminal justice system, the ALRC report makes the point that the Federal and many of the State police services have appointed ethnic liaison officers 'to promote awareness of access and equity issues within operational policing'. The report also states the need for increasing 'judicial awareness of cultural differences'.[35] Although the ALRC makes no specific recommendations in relation to this training, it does propose that the court's control of its section of the process be extended by way of amendments to the Evidence Act. These amendments would direct the court to be alert to 'cultural' factors in the way witnesses give evidence thus leaving it in the hands of the judge or magistrate to decide if, and precisely what, 'cultural' factors are relevant in any given context.[36]

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[34] Sergeant Bob Smith, Interview, 19/3/90

[35] The use of this kind of language creates a problem of understanding which will be discussed in the final chapter

[36] At recommendation 10.59 the ALRC states 'that those provisions in the Evidence Bill which specify characteristics of the witness to which a court is to have regard in exercising its control over the questioning of a witness, or the admissibility of evidence, should be amended to include cultural background and language of the witness or defendant'. Again, at recommendation 10.62, in relation to witness demeanour in assessments of credibility, the Commission adds that courts "should become aware, *through judicial training and in other ways*, of the desirability of warning the jury to make proper

I can foresee difficulties associated with the implementation of these reforms. These recommendations rely on discretion being properly exercised by law officers who have undergone 'cultural awareness programs' which are carried out in 'consultation and liaison' with each ethnic community.[37] Such liaison means that these programs can thus be expected to reflect dominant attitudes within a particular community which, in the case of the Vietnamese, can be quite harsh. For example, when respondents in this research sample were asked whether they thought criminals in general received appropriate punishment for their crimes, only 25% thought the present rate and length of sentencing was acceptable. Of the remainder, half did not have an opinion and the other half (38%) thought sentences should be much longer and more punitive. When the sentencing fate of Vietnamese criminals was discussed, 33% said that they should be sent back to Vietnam where, as one respondent claimed, "they would get thirty years of hard labour and be taught properly not to do it again".

This kind of thinking, held by about one–third of the sample, represents an ultra–conservative view of punishment also held by some Australians. It is not a view I would endorse or suggest should be taken into account in sentencing options for any offenders. I would argue to the contrary that prison reform in this century has eliminated some of the worst features of prison life and that it would be regressive if consideration of 'cultural norms' undid the gains which have been made so far. This is a dilemma which again raises the delicate question of how we determine which 'cultural norms' will be accommodated within Australian law and which will not. There are two dangers in the decision–making process. The first is that the existing Anglo–Celtic dominance in the law will be reinforced and continue to disadvantage ethnic group minorities. The second is that the importance of cultural differences will remain confined to the superficial

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allowance for the cultural background of the witness in drawing conclusions from demeanour." (emphasis added)

37 ALRC, 1992, op.cit. p. 205

expression of difference characterised in the 'dance, dress, food [and] religion' version of early multiculturalism where systemic structural inequalities were ignored.[38]

When conflicts among cultural norms arose in the case of family law and equality legislation, I argued that past reforms to Australian law in these areas aimed to eliminate discrimination for members of disadvantaged groups. These reforms were also the result of popular movements and, without evidence to the contrary and despite their limitations, they continue to be supported by the majority of Australians. Prison reform, however, is not high on anyone's political agenda and does not attract the same levels of public interest. Nevertheless, it would still appear to be discriminatory if some members of ethnic group minorities were to be treated more harshly than others within the punishment system, just because of a particular group's 'cultural norms'. Equality before the law is dependent on non–discriminatory practices and, on that basis therefore, 'cultural norms' which discriminate against members of any group should not be taken into account in reforms to Australian law.

Another source of difficulty for many respondents was the system of bail in Australia. Once arrested, it was their opinion that suspects should be kept in gaol until they were convicted or acquitted. Respondents often stated too, that there was not enough protection for victims under Australian law. In the 'family honour' or revenge system familiar to the Vietnamese, this fear of the bailed criminal is not unreasonable. On this topic in general, one respondent articulated what was echoed in other ways by many, that "a criminal has forfeited his full human rights and should be treated no better than an animal." While these latter sentiments may be shared by other Australians, they are not acceptable to those who would reform the criminal justice system in the interests of achieving equitable and humane outcomes for all those who are involved in its processes. Nevertheless, becoming aware of how and why these attitudes exist in particular groups

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38 Collins, 1988, op. cit., p. 231

will be an important ingredient in cross–cultural training programs for officers within the legal system.

Summary

I have demonstrated in this discussion of how mutual misunderstandings arise between the Vietnamese and officials of the law and the legal system in Australia that there is a range of communication barriers which currently exist. It is also apparent that the underlying principles and Anglo–Celtic nature of Australian law cannot at present take into account the very different value systems of the Vietnamese, and, I suspect, those of other similarly placed groups who are first generation settlers in Australia. If these groups are to experience even formal equality under Australian law there is a clear and urgent need for 'cultural awareness' education for all those involved in administering the law. Such education must begin with a realisation that 'cultural awareness' needs to include an appreciation of Anglo-Celtic assumptions about the law as much as it does learning about other ethnic groups' beliefs and values.

Education programs must also take into account the different levels at which mutual misunderstandings can arise. It is not enough, for instance, to make sure that interpreters are always available if underlying principles, legal language and philosophical understandings of Australian law cannot be readily translated. In the same way, there is a need for explanations of the roles of legal personnel and of the legal process itself to be clearly understood by clients or participants within the system. I come now to a discussion of how these and other reforms can be better managed.

Managing reform

We have known from research conducted in the mid–1970s that migrants suffer many disadvantages under the law in Australia. Despite a number of government inquiries into the reasons for migrant inequality before the law and the implementation of much reform in response, disadvantage persists in 1995. I have suggested in foregoing chapters that one of the reasons for this persistent disadvantage is the categorisation of 'migrants' as an homogeneous group. To think of first generation settlers in this way is to ignore

important differences among disparate groups of newcomers. It must also lead to policies that are so general that their effectiveness is diminished. In the present study I have proposed an alternative way of understanding the diversity of 'migrants' to Australia. I have called this alternative a 'triple status'. In this section, I expand on how this 'triple status' can be understood and test its usefulness against the recommendations for law reform which are contained in the final report of the ALRC inquiry into 'migrant' disadvantage under the law.

Government inquiries

Since the influx of migrants to Australia in the post–World War II period, a number of Government inquiries and reports have identified the factors which lead to inequality before the law for migrant populations in Australia. Over time, recommendations from these inquiries have been implemented and have resulted in a range of legislative reforms such as the *Racial Discrimination Act 1975* and the establishment of interpreter training courses at tertiary institutions. Notwithstanding these and other improvements designed to minimise inequality under Australian law for disadvantaged migrant groups, the ALRC report on multiculturalism and the law in 1992 found that migrants still suffered from discrimination under the law.

A lack of political will to implement any substantial change within the legal system is, no doubt, part of the problem of this documented, ongoing migrant disadvantage at law. However, I would also argue that disadvantage may persist because recommendations in these and similar reports are necessarily limited by two factors. First, the focus on 'migrants', especially those from non–English speaking backgrounds, leads to an understanding of 'migrants' as a homogenous category which denies the very real differences among the various groups. Second, the meaning of 'multiculturalism' is highly contested by many Australians and as a result there is often confusion about the aims and the outcomes of policy and of legal reforms. Well–meaning reforms are therefore unlikely to address the ethnocentrism of Anglo–Celtic legal structures.

This is not to say that the dominance of Anglo–Celtic understandings within the legal system goes unrecognised in inquiries and reports. Nor do I suggest that there should be different laws for each 'migrant' group. Nevertheless, recommendations which, in the interests of achieving equality in the administration of justice, rely on the exercise of discretion by predominantly Anglo–Celtic officers of the legal system, will continue to be administered from Anglo–Celtic points of view. To counter the inherent bias of this dominance, every inquiry since 1972 has recommended 'cultural awareness' programs for legal personnel and the recruitment of second–generation 'migrant' representatives into the police and public services and the legal profession. However, there is little evidence that these recommendations have been implemented. For example, if the British experience is any indication of what needs to be done to recruit a multiracial police force, then there is a need for long–term commitment to structural change within the police service itself.[39] Such a commitment does not appear to exist in Australia in 1996. More than lip service must also be paid to the training of recruits and the education of police, the legal profession and the judiciary if the dominance of the present ethnocentric legal culture is to be changed.

The concept of a 'triple status'

The present study has identified the kinds of difficulties faced by the Vietnamese in their encounters with the legal system in South Australia. The research findings demonstrated that of all the legal obstacles encountered by them as a group, some come about as a result of being NESB migrants to Australia, some are a result of their status as refugees and still others derive from their Vietnamese origin. I have suggested that these three

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39 Research in Britain reveals why second and even third–generation 'migrants' are not represented in the legal and police services and highlights the kinds of structural change which need to take place if recruitment strategies are to be effective. Where the police are concerned, these include a long–term commitment on the part of the government and police management to seeking out recruits from minority ethnic groups and the modification of recruitment procedures which disadvantage members of these groups. See Simon Holdaway, Recruiting a Multiracial Police Force, London, HMSO, 1991, pp. 171ff and M. King, 'Pursuit of excellence, or how solicitors maintain racial inequality', New Community, Vol. 16, No. 1, October 1989. Current recruitment policies in the police service in South Australia make no such efforts to recruit from ethnic groups. Nor are concessions made to NESB migrant needs for modification to entry or training requirements designed for the white Anglo-Celtic population.

characteristics be referred to as a 'triple status' and that the concept needs to be understood if law reforms, policies and programs are to be effective.

For example, problems created by a lack of fluency in the English language are experienced by all NESB migrants. All refugees too, will be at risk of family fragmentation and vulnerable to suffering from grief, high levels of anxiety and stress–related disorders in the first years of resettlement. These 'refugee' circumstances will influence how well refugees adapt to Australian institutional life, including the legal system.[40] For the Vietnamese, and, I suggest, other similar groups, there are also specific difficulties related to their beliefs, practices and history which cause problems in the process of their adaptation to the legal system. For example, in the case of Vietnamese beliefs, the use of familial approaches to the resolution of personal and social conflict mean that the public nature of Australian law will be problematic. In terms of Vietnamese history, the connection in the past between corrupt legal personnel and an oppressive government, means there may be little incentive for the Vietnamese in Australia to place their trust in the police, the courts or the judiciary. The very specific content of their beliefs, traditional practice and history thus differentiate the Vietnamese from all other migrant and refugee groups. The 'triple status' of the Vietnamese thus needs to be recognised for reform of the law and the legal process to be effective. In the next section I examine some of the ALRC reform recommendations in terms of their applicability to migrants, refugees and the Vietnamese.

Migrants and ALRC reforms

As migrants, the Vietnamese in this research sample would benefit from many of the ALRC's proposed reforms. For example, information and education programs funded by the Commonwealth government and designed to be delivered within community organisations will reach many but not all sections of the population who need it

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[40] There is also recent evidence which suggests that the time frame for adaptation for refugees will have to be extended for some years beyond that expected from voluntary migrants in the past, especially in relation to learning the English language. See Tran and Holton, op.cit. p. 179 and Viviani *et al.*, op.cit. p. 92

(Recommendations 1–5); interpreters will be more widely available at no cost (Recommendations 6–13); Commonwealth legislation will be more closely scrutinised for hidden, unintended, discriminatory aspects and thus have the potential to become a model for state legislation (Recommendation 32); 'culturally' appropriate support services for families may provide respite and suitable counselling for those Vietnamese experiencing family stress or violence although this will depend very much on who decides what is 'culturally appropriate' (Recommendations 14–17).

In criminal law, increased protection of rights for any person detained by police in relation to a federal offence would benefit the Vietnamese (Recommendations 36–39). The recommendation that an offender's 'cultural' background and ignorance of the law could be taken into account at a number of levels in the legal process may also be helpful (Recommendations 29–34).[41] However, these and other criminal law reforms would have to be the subject of state legislation to make a difference to criminal legal procedure in Australian states. In contract and insurance law where the Commonwealth does have jurisdiction, the requirement for all kinds of contracts to be written in clear, simple language, printed in large type and to be available in community languages will enable all NESB citizens to understand more fully the nature of their contractual and other legal obligations (Recommendations 43–46 and 54).

Refugees and ALRC reforms

I have shown, through the research conducted in the early 1980s, that the refugee experience adds a layer of difficulty to the resettlement process in the country of final asylum. However, the ALRC made only passing references to this factor in its report.[42] As the present research and other studies have revealed, adaptation to the new society is likely to take longer for those who arrive in Australia as refugees and to be influenced by

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41 The crucial question here will be how, and by whom, 'culture' is defined.

42 These references were in relation to the need for increased support for refugee families and to the problems of investigating crime in a multicultural society where the report mentions that the fear of police might, in the case of 'migrants or refugees from more repressive regimes', make them reluctant to report incidents of crime. ALRC, 1992, op.cit. pp. 76 and 200.

a multiplicity of factors such as age on arrival, interruption to education, degree of family reunification, scope for language acquisition and employment opportunities. In addition, refugees are also known to suffer from intense fear and anxiety as a result of their experiences prior to and during escape, as well as the social, emotional and economic deprivation suffered in transit camps. They thus arrive in a country of resettlement, which may not be their country of first choice, without the family support, money, possessions or personal resources which migrants customarily need to start a new life. Although recent studies reveal that, since arriving in Australia, many Vietnamese have achieved economic and social self-sufficiency against substantial odds, there are still sub-groups of the population who, even after years of residence, remain vulnerable to continuing disadvantage.[43]

If refugee status is not taken into account in ALRC reforms it means that, in the first instance, education programs for new settlers may be provided before refugees are able to absorb the information. Second, proposed family support services will not understand, or be able to compensate for, the extreme and extended stress which families suffer in the refugee experience. Third, the pattern of refugee arrival also needs to be taken into account in the provision of family support services. In the case of the Vietnamese it needs to be recognised that the fathers or older sons often arrived in Australia first and that sponsorship of families came only after some years. These years of loneliness and isolation took their toll of Vietnamese men and may have led to a new relationship and sometimes co–habitation with another woman, habits of alcohol abuse or excessive gambling.[44] Newly arrived wives can thus face a raft of adjustment problems in addition to those of being in a new country. Their sponsorship by husbands also means that they have not lived in hostels where orientation programs are carried out. In addition, they are

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43 Tran and Holton, op.cit. p. 174 and Viviani et al, op.cit. p. 93

44 See Desmond Cahill, 'Thoughts on Refugee Settlement in Australia', in Nguyen and Cahill, op.cit. pp. 12–13 who reports that alcohol abuse is often an expression of the 'bereavement' stage in the grieving process suffered by refugees.

likely to have less English language capacity and be very dependent on husbands for knowledge about Australian society. Should the Vietnamese family be in need of support, knowledge of the possible isolation of wives will be significant in, for example, the provision of information about protection orders and services for women and children who may be suffering from family violence.

I have shown throughout the present study that English language competence is often crucial to the development of legal skills and this adds another dimension to the importance of taking refugee status into account in the delivery of reforms. Many Vietnamese, for a variety of reasons linked to their refugee experience, do not become proficient in English within the three year period in which free tuition is provided.[45] The three year limitation on the availability of English language classes therefore does not allow for the additional stresses of resettlement for refugees such as the need to work long hours to compensate for lack of personal possessions and financial security.

The Vietnamese and ALRC reforms

It remains to explain how ethnic origin, in this case being Vietnamese, is an important component in the notion of 'triple status'. To be Vietnamese is to possess a history and values which are distinct from those of all other Australians. These unique characteristics are part of Vietnamese concepts of social organisation which include ideas about law and the administration of justice. These concepts also incorporate Vietnamese expectations of governments, of bureaucracies and of families. All of these ideas are substantially different from the dominant Anglo–Celtic concepts which underpin the government, bureaucratic and legal systems operating in Australia. Unless these specific Vietnamese beliefs, practices and history are taken into account, some of the ALRC recommendations will be ineffectual. For example, although the ALRC highlighted the need for much more detailed research into the specific needs of a wide range of migrant and refugee families,

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45 Jupp maintains that this is true for many migrants and that settlement policies have failed in this area. He also states that 'philosophies of cost cutting, low taxation, user pays and limited public provision are not compatible with some aspects of immigrant settlement'. Jupp, 1995, op.cit. pp. 7–9

proposed reforms to family support services were couched in terms of improvements to the 'access and equity' plans of service providers. These recommendations were therefore very general. In its discussion of the submissions received on family law matters, the ALRC was aware of strategies in one Victorian service which had successfully overcome Vietnamese reluctance to be involved in community based mediation and counselling. However, the need, in some instances, for such ethno–specific services was not translated into the final recommendations. It is a small point perhaps, but an important one. As the Celemajer report emphasised, and my experience in the Vietnamese community confirmed, relationships of trust built up with individual workers who will accompany clients to appointments with service providers, is the most effective method for connecting recently arrived Vietnamese experiencing family stress with the services they need.[46] Access and equity plans which relate only to the service provider's responsibilities are therefore unlikely to take this vital factor into account.

Similarly, education programs delivered through Vietnamese community organisations will make it very difficult to reach those who live on the margins of both Vietnamese and Australian society. Single mothers and young men in trouble with the police are two such groups who are most in need of information and knowledge about their rights under the law but, because of attitudes to unmarried mothers, crime and criminals in the wider Vietnamese community, they will not be part of mainstream organisations. Information providers will therefore need to use other strategies to reach them. Once again, using workers who have built up relationships with the members of these marginalised groups will be the most effective mechanism of providing them with information.

Further barriers to reform

The implementation of some ALRC law reform proposals are therefore fraught with difficulty if the category of 'migrants' is the only frame of reference for policy–makers. These difficulties are not confined, however, to considerations of new settlers' status.

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[46]Celemajer, op.cit. p. 37

For example, the proposed cross–cultural awareness training for legal professionals and those involved in administering the legal system, is a necessary and long overdue reform. It is unlikely though to deliver, in the short term, the expected results. This is because, first, there are populations from more than 140 different countries now settled in Australia and it would be impossible for a single officer of the legal system to understand them all in fine detail.[47] Secondly, 'cultural awareness' programs which are developed in consultation with community leaders or organisations are not necessarily representative of the whole range of understandings within a single 'culture'. As I have shown in the case of the Vietnamese, there are good reasons to believe that community leaders will be predominantly male, middle-class and conservative. In addition, it is unlikely that there will be sympathy for criminal justice reform, in this group at least, if conventional community wisdom is to be the yardstick of what counts as Vietnamese values.

A further difficulty lies in the ALRC reference to the need for developing 'cultural sensibilities'. In the recommendations this is translated as a need to promote 'access and equity' plans in the scrutiny of legislation, the formation of policies and the elaboration of programs.[48] Phrased in this way it is not immediately apparent how such plans would be achieved given the multiplicity of ethnic groups in Australia. As bureaucratic 'buzz words' in the 1990s there are two dangers in promoting 'access and equity' as an approach.[49] First, there is a danger that the government reporting which is required to substantiate 'access and equity' plans will make token reference to these provisions without any real understanding of the complexity of any ethnic group's beliefs or

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47 There is a case to be made here for the careful development of 'ethnic experts' within legal institutions who would be responsible for overseeing at least the criminal legal process for offenders from the 'expert's' country or region.

48 The 'Access and Equity Plan' has been part of the Labor government's social justice policies since 1988. Cox in Goodman et al, op.cit. p. 193

49 Cox is also very critical of policies which rely on 'access and equity' provisions. Solutions to barriers of access, he says, can be easily identified but their implementation is frequently 'resisted by significant personnel'. Ensuring equity is even more problematic because of the 'discriminatory attitudes, organisational restrictions, professional limitations and ignorance of particular client groups [which] militate against equitable service delivery'. Ibid., pp. 194–195

practices.[50] The second danger is that, even if such plans are effective in adapting the Anglo-Celtic culture of the law and the legal process to a multicultural society, other considerations such as 'refugee status' will continue to be ignored.

There is also a problem with the amount of police and judicial discretion which is built into the ALRC's recommendations for accommodating 'cultural' diversity in the criminal law. Deciding that there should be no general 'cultural' defence to charges involving criminal liability or ignorance of the law, the ALRC recommends that the cultural background of the accused should be taken into account at other points in the legal process. As I discussed briefly in chapter three, a particular 'cultural background' can be taken into consideration when decisions are made to proceed or not proceed with a prosecution, in the recording of convictions, and again in the sentencing process, but not when determining standards of reasonableness.[51] These recommendations rely heavily on the knowledge of diverse 'cultures' possessed by legal professionals and the goodwill of those officers. Given the levels of frustration the police already experience in bringing a case involving Vietnamese suspects to trial, it is hard to see how knowledge of Vietnamese community attitudes to crime and sentencing would result in improved practices. The ALRC is also aware of the special needs of women and young people within a number of ethnic groups and argues that research is needed to identify areas of particular need. My research confirms this finding but also reveals that, in providing information and support services through Grant-in Aid workers, three groups within the Vietnamese community will be difficult to reach because of their lack of integration in the community. These groups are: victims and perpetrators of family violence, single mothers and young men detached from family networks.

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[50] Jupp notes that the 'process of cementing access and equity approaches within the mainstream has been slow and painful' because service providers are Anglo–Australians with 'no personal knowledge of the migrant experience'. Jupp, 1995, op.cit. p. 5

[51] ALRC, 1992, op.cit. pp. 169–187

By far the most serious barrier to reform of the justice system is the provision of resources to implement the recommendations. The research and training recommended by the ALRC will be very costly and take years to complete. There will also need to be a considerable commitment to the process of reform from not only the Federal and State Governments and legal professionals but also from society in general. In straightened economic times where previously free services such as access to interpreters and language classes are increasingly provided on a 'user–pays' basis, it is difficult to see that such a commitment will be forthcoming when it can be seen as being only of benefit to minority sections of the population.

However, the dismissing of minority concerns within these kinds of economic rationalist policies is problematic in a number of ways. First, it reduces a policy of multiculturalism to empty rhetoric if migrant groups are further disadvantaged in the reduction of services which are intended to grant them equal rights as citizens and facilitate their integration into Australian society. Second, it is not in Australia's long term interest to promote and depend on an immigration policy and then under–utilise the skills and talents which new settlers bring to this country in the form of tertiary qualifications, scholarship, the arts, multilingualism and industriousness. Lastly, the introduction of 'user–pay' services contribute in themselves to the continuing problem of migrant disadvantage in all areas, especially the law. As I have demonstrated throughout this study, resettlement is already difficult for migrants, even more so for refugees and more difficult again for those whose native language is not English. Only the economically privileged have access to 'user–pays' services and policy makers and service providers need to take account of resettlement difficulties in all their complexity for policies and programs to be effective.

CHAPTER 8: CONCLUSION

It remains, in this final chapter, to highlight the key findings of the present research, draw together the themes and arguments of the thesis and indicate the areas for further research. The overall aim of this study has been to explore the interaction between the Vietnamese and the legal system in South Australia and identify any barriers which inhibit their access to equality and justice under Australian law. Themes pursued within this aim have focused on the difficulty of achieving equality for Vietnamese first generation settlers and any other similarly placed groups. These themes included seeking a greater understanding of three things: first, persistent 'migrant' disadvantage in a society which claims that all citizens are equal before the law; second, the relationship between 'multiculturalism' as government policy and this persistent 'migrant' disadvantage; and third, the nature of legal equality.

I have argued throughout the thesis that inequality for 'migrants' persists because of the dominance, in Anglo–Celtic societies such as Australia, of liberal ideas of equality. These ideas are foundational to the social, economic and political organisation of such societies and are therefore reflected in multicultural policies and legal systems. The liberal model of equality, however, is restricted to a narrow and formal equality of opportunity and treatment which is problematic. First, equality of opportunity cannot reach into areas of prior disadvantage and equality of treatment either cannot, or does not, take into account important differences among individuals and groups. Nor does this model of equality, in Australia, embrace an idea of substantive equality which would include a concern with equality of outcomes. I have argued, therefore, that these liberal notions of equality must fail to deliver even formal equality before the law for all citizens and that social, and in particular legal, reform will be limited to marginal changes which do not alter the *status quo*.

The thesis has therefore proposed that where the Vietnamese and other similar groups are concerned, equality for these groups will be advanced another step if a 'triple status' is applied to first generation settlers in Australian law and policy, in place of the now non–disaggregated category of 'migrant'. In the following sections I elaborate on this proposal of a 'triple status' and how it would serve not only as a tool for the implementation of legal reform but also as a conceptual challenge to the narrowness of the liberal model of equality. Initially though, I draw attention to the key findings of the research.

Key findings of the research

The most important finding in the survey data was that overt and covert racial discrimination against the Vietnamese is alive and well in Australia in the 1990s. Although the survey respondents themselves did not always identify some behaviours as discriminatory, they nevertheless suffered discrimination, in addition to the discrimination they did report, when landlords exploited their ignorance of rental laws, when they were made to feel inferior in their dealings with government departments, when police were rude, uncooperative or worse, when neighbours made their lives miserable and when the media stereotyped young Vietnamese men as potentially dangerous criminals. It is difficult to know how to do more than has already been done to deal with discrimination, whether it be on the basis of race or any other category which functions to reduce or negate the equality of respect and opportunity due to individuals in a liberal–democratic society. Racial discrimination has been unlawful in Australia since 1975 but it is well known that legislation, of itself, does not change people's attitudes. Racial discrimination is also notoriously difficult to prove, especially when it is indirect. The existence of anti–discrimination legislation does at least , however, raise the public consciousness about the kinds of behaviour which are unacceptable and gives us hope that, in time, attitudes might change.

In other areas of the law, a number of other barriers were also found to exist between the Vietnamese in this sample and their access to the legal process. However, analysis of the

survey data suggests that the majority of these Vietnamese did not experience insoluble problems when they came into contact with the legal system. When legal difficulties did arise though, I have argued that the Vietnamese did not have the same access to the law or the legal system as other Australians. In the main, this was because they were largely ignorant of many of their legal rights in Australia and the range of services which provide legal redress against exploitation, unfair treatment and illegal behaviour. A strong case can therefore be made for the funding and development of education programs which provide information to newcomers about their rights and responsibilities under the law in Australia. The starting point of such programs would need to be an acknowledgment of both the diversity of needs among and within ethnic groups, and the Anglo–centrism of the law, the legal system and service providers. There is also an urgent need for the implementation of ALRC recommendations for reform, particularly in relation to criminal law at the State level, and the cross–cultural training of legal professionals. These reforms are not radical and only go some of the way to reducing the worst of the injustices visited upon disadvantaged members of ethnic minority groups. This leads to another key finding of the research which is that more than two decades of law and policy reform have not substantially affected the dominance of Anglo–Celtic understandings and interpretations of how justice is to be administered and achieved.

Anglo–Celtic dominance

The terms of reference for the ALRC inquiry included a requirement for the Commission to examine the underlying principles of family, criminal and contract law and determine if these laws took 'adequate account of the cultural diversity present in the Australian community'.[1] In its final report in 1992, the Commission found that the law often does not take 'cultural diversity' into account and it frequently refers to the Anglo–Celtic dominance and ethnocentrism of Australian law as responsible for this failure. Consequently, many of its recommendations are concerned with the need for legislation

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[1] ALRC, 1992, op.cit. p. xxii

and the legal process to take account of this diversity in the administration of the justice system. Notwithstanding these concerns, an ethnocentric pattern of decision–making can be discerned in the ALRC's own discussion of its findings which must also contribute to the difficulty of achieving the necessary reforms.

Although the Commission was consistently critical of ethnocentrism in the legal system and was aware of how this kind of dominance can discriminate against many groups, it still made recommendations which fell short of proposing any substantial change to the *status quo* . This reluctance to promote a re–thinking of legal concepts can be seen in the way the Commission developed its recommendations on 'reasonableness' for example. However, its unquestioning acceptance of multiculturalism as it was defined by the Hawke government in the *National Agenda for a Multicultural Australia* was an initially limiting factor in how far the Commission could go in its final recommendations. As I argued in chapters two and three, the model for equality in multicultural policy, in legislation and in the legal process, is dependent on liberal–democratic principles which do not take account of all the important differences among individuals or groups.

It was not just on the question of how multiculturalism was to be understood that the Commission pursued an ethnocentric course in its inquiry. In a distinctly Anglo–legal way it also drew boundaries around its subject matter and its method of inquiry. This was evidenced in its adoption of 'universal' principles which, on the Commission's own admission, contained competing rights which had to be balanced one against the other.[2] The relevance of differences among conflicting social and legal norms were also decided upon in much the same way as relevant facts are culled in a court of law, and the basic principles which guided the inquiry were indistinguishable from the liberal principles which inform legislative equality. Finally, the Commission was committed to making only adjustments to the law where the law was found to be discriminatory and, even

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[2] Ibid., pp. 12–13

then, only if the adjustments maintained 'the integrity of the underlying legal principles'.[3] This criticism of the ALRC report is not to suggest that its inquiry or its recommendations were unworthy, less than thorough or unsympathetic to the inequality suffered by 'migrants' under and within the law. On the contrary, the Commission's findings were critical to identifying the many instances where the dominance of Anglo–Celtic ideals discriminates against newcomers from other countries or different cultures. What this criticism does demonstrate, however, is the inherent limitations of legal reform in a liberal–democratic society. 'Marginal adjustments' are all we can expect to gain when government inquiries are confined within a liberal framework.

'Migrants'

The next most significant finding of the research is the realisation that newcomers to Australia should not be thought of as simply 'migrants'. In itself, this is not a totally new idea; many scholars have for years been calling for the disaggregation of statistics concerned with immigrant populations. However, the problem is wider than a question of how statistics are presented and more one of how the category of thought 'migrants' permeates everyday conceptions of Australian identity. In law, in policy, in service provision and in research, the term 'migrant' includes immigrants from non–English and English–speaking backgrounds alike and, in the process, describes them as non–Australian. As it does this, a cultural superiority is manifested which relegates the 'migrant' to 'other' than Australian. This 'otherness' can then result in a second–class citizenship where the requirements for full participation in society are hidden in elitist norms of Anglo–Celtic dominance and privilege.

However, the idea that first generation settlers possess instead a 'triple status' is a new way of understanding how to accommodate the needs of disparate groups and a new tool for identifying not only the differences among immigrants from different countries or regions but also a range of other differences. The recognition of these other differences,

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[3] Ibid., pp. 13–14

for instance, refugee status and ethnic origin, can then lead to a fuller understanding of how best to provide services for each group's settlement and adaptation needs. The questions raised in the use of 'triple status' also help to challenge the narrowness of the liberal model of equality. This process of interrogation can then create a space for the expansion of ideas about equality which have the capacity to be more inclusive and substantive at the same time. The idea of a 'triple status' is thus a useful tool in three ways: first, in the formulation of law and policy; second, in the implementation of reform; and third, in the evaluation of supporting programs. I will discuss each of these uses in turn.

'Triple status' as a tool

Formulating law and policy

When legislation is drafted at the government level the proposed bill is scrutinised by a committee before it is tabled in the parliament. This review of draft legislation is intended, among other things, to locate faulty wording which may discriminate against particular citizens and groups or in other ways have unintended consequences. The ALRC inquiry recommended that such scrutiny of bills be expanded to include 'the extent to which a bill adheres to access and equity aims and objectives'.[4] I have noted in the previous chapter the difficulties which surround the employment of terms such as 'access and equity' and argued that the term smacks of political rhetoric, is much too general if it is to take account of the differing needs of dissimilar ethnic groups, is not well understood at any level and is not implemented effectively. It would be far more useful if the idea of a 'triple status' was used as a scrutineering tool for locating discriminatory aspects of legislation instead of 'access and equity'.

For example, the draft of the *Law Reform (Multiculturalism) Bill 1992*, included in the ALRC final report, is carefully worded, 'culturally sensitive' and takes issues of access

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[4] Ibid., pp. 75–76

and equity seriously. If or when it is introduced into the Commonwealth parliament it will contain amendments to principal Acts which affect family, criminal and contract legislation. The amendments will increase the law's protection of citizens' rights in the Federal jurisdiction, especially those whose first language is not English. Committee scrutiny of this Bill would rightly determine that the amendments advance the cause of social justice for migrants to Australia and be unaware that refugees and particular ethnic groups may be disadvantaged by some provisions.

For instance, amended wording to a section of the *Crimes Act 1914* gives federal police discretion to decide, on reasonable grounds, if arrested persons have a grasp of English adequate for understanding their rights. Scrutiny of this amendment, under the present rules of securing protection for 'migrants', would not ask the questions demanded by an alternative criterion of 'triple status'. As a result, a refugee's terror of being arrested and the consequent fear which might temporarily suspend an ability to speak or understand English, will not be taken into account. Nor will the scrutiny reveal the way the Vietnamese may be disadvantaged because of their practice of smiling and agreeing with strangers and those in authority, without necessarily understanding what is being said. There is no guarantee, however, that using 'triple status' as a scrutineering tool will always reveal all the potential disadvantages of new legislation. Nevertheless, it may alert the scrutineers to additional questions which need to be considered.

Government policy–making is not subject to the same process of scrutiny but the concept of 'triple status' would be useful for assessing programs which are designed and funded to address 'migrant' disadvantage under Australian law. For example, the ALRC report suggests that family support programs are more effective 'in the longer term than changing the law'.[5] The ALRC also recommends that such programs should take into account the diversity of family arrangements in a multicultural Australia. In its discussion of family support measures, the ALRC refers to the additional settlement problems faced

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5 Ibid., p. 69

by refugees and the collectivist ethos of some ethnic groups. The discussion contrasts this 'collectivism' with the individual nature of family law in Australia and recognises that the different values may create difficulties. In adopting this approach, the ALRC appears to be applying the idea of 'triple status' to the question of how family services should be provided.

However, the one recommendation — number fourteen — which follows this discussion, is concerned only with the demonstration, within the policy or program, that 'access and equity' principles have been followed.[6] How such principles are formulated in the context of family services is not explained. Again, if the idea of 'triple status' was inserted as the criterion by which 'access and equity' were to be judged, it is more likely that important, specific issues of service delivery would be addressed. Where refugees are concerned, the stresses associated with the refugee experience and the consequences of the fragmentation of families would be better understood. In the case of the Vietnamese, specific issues might include their reluctance to discuss problems outside the family, their unfamiliarity with a range of welfare services which use trained social workers, marriage counsellors or mediators and how all these services may intersect with the need for legal advice.[7]

In the formulation of family law programs therefore, services might be structured quite differently if 'triple status' were the measure for establishing 'access and equity'. Resources could be put into the training and support of Vietnamese–speaking outreach workers rather than government offices for instance, or working hours could be made more flexible to accommodate the need to visit Vietnamese families at night or on weekends. Such arrangements would take into account the long hours often worked by

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6 Recommendation 14 reads as follows: 'Access and equity aims and objectives should be amended to include the need to take into account the diversity of family forms and functions. Government departments and agencies would then be required to demonstrate in annual reports and in program performance statements how they have ensured that this diversity is reflected in their programs.'

7 Other ethnic groups, Muslims from Africa or Europe for instance, would have a different list of specific issues in this area and each list would need to be taken into account.

refugees and preserve the 'privacy' associated with maintaining Vietnamese family honour.

Implementing reform

Most reforms directed at addressing 'migrant' disadvantage under the law have been implemented within the last two decades. They include the introduction of the telephone interpreter service, the provision of court interpreters in criminal cases and professional interpreter training. Funding has been provided for Grant–in–Aid workers in community organisations and the establishment of migrant resource centres. Pamphlets dealing with legal issues have also been produced in community languages and widely distributed to government offices and ethnic community organisations. These services are targeted to the NESB migrant population and are helpful for migrants who are aware that they have a problem, who know where to go to get information and who have a discrete problem to solve. Such services will not necessarily be geared to understand the needs of refugees or those of all ethnic groups. However, existing services and new programs could be made more effective using the idea of a 'triple status' as the starting point for service delivery.

An important theme in the ALRC report is the emphasis placed on the provision to migrants of information and education about the law and the legal process in Australia. Improved communication is central to its recommendations for effective community legal education programs which take into account 'any special needs of people of non–English speaking backgrounds'. The 'special needs' proviso in this recommendation may be effective in targeting refugees and the specific beliefs and practices of each ethnic group but there is a risk, in the way the recommendation is phrased, that 'non–English' language will be seen as the special need.[8] If 'triple status' were used as the criterion instead, the risk of minimising the 'special needs' would be less likely.

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[8] Ibid., p. 34. The recommendation in full reads as follows: 'As part of the Government's social justice and access and equity policies federal departments should have effective community education strategies in relation to legal issues and related services within their portfolios. They should be required to develop and report on education and information programs necessary to make proposed legislation effective, taking

For example, the development of a legal education program for the Vietnamese would consider them first as NESB migrants and provide the program in their own language. Next, program developers would take account of what is known about refugee settlement patterns and needs. This knowledge would alert the planners to the importance of timing and of the program content. Finally, Vietnamese history, beliefs and practices would be considered and this would require, for instance, the explanation of western legal concepts in addition to the information about the law. For other ethnic groups, specific needs arising from their ethnicity might require different considerations but their uniqueness would be acknowledged and accommodated. The use of 'triple status' as a criterion thus provides a focus for the implementation of reforms which the 'special needs' criterion may not.

Evaluating support programs

In the same way, the 'triple status' criterion can be used to evaluate legal services programs. Where, previously, a service for NESB migrants would be judged successful on the number and variety of clients it had helped, a criterion of 'triple status' would allow more and different questions to be asked. If we were to evaluate the effectiveness of legal interpreting services for example, the demand for those services in a range of languages may satisfy the 'NESB migrant' standard for 'access and equity' justification. However, if we then ask the refugee question, there is a more subtle inquiry into the legal needs of these groups. For example, on what occasions did members of refugee groups need an interpreter? How often were they required and for whom were they required — what age and sex were they in which situations? On the other hand, if refugee groups did not use the service, there is an opportunity to ask why not? Do they know about it? Importantly, where the service charges its clients, can they afford it? Refugees are usually poor in the early years of resettlement and 'user–pays' services discriminate against them.

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into account access and equity principles. They should also undertake a similar program in relation to existing laws to take account of any special needs of people of non–English speaking backgrounds.'

Finally, we can ask the 'ethnic group' question. In the case of the Vietnamese, the service would need to be aware of age and gender barriers to communication between client and interpreter and the possibility that past regional hostilities may be activated. There are also a range of differences between ethnic Vietnamese and Chinese Vietnamese which could make interpreting difficult or unsatisfactory for both parties. The notion of 'triple status' thus yields more specific and detailed information about the effectiveness of a service for 'NESB migrants' and helps to guide the development of refinements to a service whereas issues of 'access and equity' are much more difficult to determine. In addition, such detailed information may well point to areas for further research into the unmet needs of particular ethnic groups.

Further research

This research has been exploratory and cannot be generalised to the wider Vietnamese population. There is nevertheless a wealth of information in the data which could serve as a starting point for further research. The presence and extent of racial discrimination for example, needs to be more fully documented, especially in the case of unlawful and illegal behaviour by the police. There is also a need for more detailed research into the reasons why service providers remain determinedly ethnocentric and resist efforts to make their services more appropriate to clients in a multicultural society. If or when cross–cultural training is instituted for legal professionals, there is a case to be made for monitoring and evaluating that training to try to ensure the bureaucratic resistance of the past does not become legal resistance in the future.

Where further research with the Vietnamese is concerned, a number of authors are tracking their employment patterns and their social mobility but there are clear indications for research into their physical and mental health especially, if studies in the United States are any example, into the effects of post–traumatic stress syndrome. Issues surrounding family violence need to be further explored in an effort to find culturally appropriate ways of protecting women and children from abuse as well as providing help for the perpetrator. More information is also needed about the social isolation and

marginalisation of Vietnamese single mothers and young people detached from family and community networks. Profiles of educational achievement for first and second generation Vietnamese children are necessary as well. There is a stereotype of 'Asian' academic excellence in the media which does not reflect the struggle of the majority of Vietnamese young people to manage two languages and two sets of 'cultural' expectations as they progress through the Australian education system.

Research into ethnic group disadvantage in Australian society needs, therefore, to be sustained. Australia has been and is an immigrant society in which there will continue to be first generation settlers in years to come. What is true of the Vietnamese today will be true of any refugees from war and totalitarianism who come to Australia to remake their lives in the future. For all their shortcomings, Australia's settlement and multicultural policies compare well with those of other countries but there is still room for improvement if we are to live up to our stated ideals of equality and 'a fair go' for all. Australian law has been criticised as discriminating against many groups in our society: women, the young, the socio–economically deprived and NESB migrants. Perhaps a raised consciousness of systematic injustice suffered by members of these disadvantaged groups will be the outcome of proposed education programs. Perhaps that awareness will result in the 'evolutionary change' desired by the ALRC in the matter of how 'reasonableness' is to be understood. Meanwhile, it is not enough to espouse a principle of equality for all citizens before the law if it is manifestly not true. There have been enough inquiries and subsequent recommendations in the past two decades for at least a start to be made on addressing, in a substantial fashion, the inequality suffered by all disadvantaged groups in Australian society, not least of whom are some of the Vietnamese who so generously took part in this research.

APPENDIX A
QUESTIONNAIRE

STUDY OF THE CULTURAL/STRUCTURAL BARRIERS BETWEEN THE VIETNAMESE AND THE LEGAL SYSTEM
QUESTIONNAIRE

CUỘC THĂM DÒ VỀ NHỮNG TRỞ NGẠI VĂN HÓA/TỔ CHỨC GIỮA NGƯỜI VIỆT NAM VÀ CƠ CẤU LUẬT PHÁP

TẬP CÂU HỎI

Purposes of the study:
To identify the problems and issues facing Vietnamese in relation to the legal system
To identify the extent and need for change to the legal system to achieve access to, and equity within, the legal process.

Mục đích của cuộc thăm dò này là :
1. để nhận định những khó khăn, khúc mắc của người Việt liên quan đến cơ cấu luật pháp.
2. để nhận định kẽ hở và sự cần thiết cho việc thay đổi cơ cấu luật pháp để giúp cho mọi diễn tiến của luật pháp được trôi chảy và công bằng.

This survey is confidential. Information received will be used only for research purposes. No names, addresses or identifying mark will be attached to this questionnaire.

PART A

Date of Interview_____

Bản thăm dò này được hoàn toàn giữ kín. Mọi chi tiết của cuộc thăm dò này chỉ được dùng cho mục đích nghiên cứu mà thôi. Tên, địa chỉ và những dấu vết riêng sẽ không được đề cập trong tập câu hỏi này.

PHẦN A

Ngày ----------

1. What is your date of birth? _____

1. Ngày và năm sanh của bạn_____

2. Sex
Male
Female

2. Phái
[ ] Nam
[ ] Nữ

3. Do you consider yourself Vietnamese or Chinese Vietnamese?

Bạn là người Việt hay người Việt gốc Hoa ?

[ ] Việt
[ ] Việt gốc Hoa

4. What is your religion?_____

Bạn thuộc tôn giáo nào ?

5. Where in Vietnam were you born? _____*(place)*

Nơi sanh của bạn _____

6. Whereabouts is.....in Vietnam

Nơi sanh đó thuộc miền

[ ] Bắc [ ] thành thị
[ ] thôn quê

[ ] Trung [ ] thành thị
[ ] thôn quê

[ ] Nam [ ] thành thị
[ ] thôn quê

7. Did you ever have to move from .....*(place)* at any time before you left Vietnam?

Bạn có phải dời chỗ sanh trưởng trước khi rời Việt Nam ?

[ ] Có
[ ] Không

8. Why did you have to move?

Tại sao bạn phải dời chỗ ở ?

9. When did you leave Vietnam? Date:.....

Bạn rời Việt Nam khi nào ? Ngày _____

10. How did you leave?

Bạn rời Việt Nam bằng cách nào ?

11. Were you alone when you left?

Bạn rời Việt Nam một mình?

12. Who was with you?

Ai rời Việt Nam chung với bạn ?

13. Who in your family stayed in Vietnam?

Ai trong gia đình bạn còn ở lại Việt Nam ?

14. Were any members of your family in another country?

Bạn có thân nhân ở một quốc gia nào khác không?

15. In which country were they living?

Họ đang sống ở quốc gia nào?

16. What was the most important reason for leaving

Nguyên nhân nào thúc đẩy bạn rời Việt Nam ?

17. Were there other reasons as well?
(list in order of importance)

Có phải vì những lý do khác không?

18. Were you in camp(s) before coming to Australia?

Có phải bạn ở trại tỵ nạn trước khi đến Úc không?

19. Which camp(s) were you in? _____

Bạn ở trại tỵ nạn nào?

.....

20. How long were you there?

Bạn ở trại tỵ nạn bao lâu?

21 What was it like?

Nó ra sao ?

.....

22. Was Australia your first choice of country to live in?

Có phải Úc là quốc gia đầu tiên bạn chọn để định cư không?

23. Which country would you have preferred?

Quốc gia nào bạn thích để định cư?

24. Why?

Tại sao?

.....

25. Why did you come to Australia in the end?

Tại sao cuối cùng bạn đi Úc ?

26. How did you feel about that at the time?

Lúc đó bạn cảm thấy thế nào ?

27. When did you arrive in Australia? Date:.....

Bạn đến Úc ngày nào_____

28. Under which program did you come to Australia?

Bạn đến Úc theo diện nào ?

29. Did you need to apply for Refugee status?

Bạn có xin đến Úc qua diện tỵ nạn không?

30. Did you understand this process?

Bạn có hiểu những diễn tiến trong việc bảo lãnh không ?

31. Were there any problems?

Bạn có gặp khó khăn gì không ?

32. What were they?

Khó khăn ấy là gì ?

33. Was this explained to you in your own language?

Nó có được trình bày bằng ngôn ngữ của ban không ?

34. Did you get Refugee status?

Bạn có được chấp thuận như tỵ nạn chính trị ?

35. Do you know why not?

Bạn có biết tai sao không ?

36. How old were you when you first arrived in Australia? _____

Bạn đến Úc lúc bạn bao nhiêu tuổi ?_____

37. Did you have any relatives or friends already in Australia when you first arrived?

Bạn có thân nhân hay bạn bè đã ở Úc trước khi bạn đến ?

38. Who did you live with when you first arrived?

Khi đến Úc bạn ở đâu trước tiên ?

39. How long did you stay there?

Bạn ở đó bao lâu ?

40. Where have you lived since coming to Australia?

Từ khi đến Úc bạn đã ở đâu ?

41. How long have you been in your present accommodation?

Bạn đã ở tại địa chỉ này bao lâu ?

42. What was your marital status when you arrived?

Tình trạng gia đình của bạn khi đến Úc ?

43. What is your marital status now?

Tình trạng gia đình của bạn hiện nay ?

44. Do you have any children?

Bạn có con cái gì không ?

45. How many children do you have?

Age Sex WhereBorn

Bạn có mấy đứa con ?	Tuổi	Phái	Sinh tại
1.			
2.			
3.			
4.			

46. Did you study English in Vietnam,
Camp,
Australia

Bạn có học Anh ngữ không ?

tại Việt Nam

tại trại tỵ nạn

tại Úc

47. Was this amount of study this enough for you?

CÓ ĐỦ ĐIỀU KIỆN ĐỂ HỌC Ở ÚC CHÂU KHÔNG?

48. How would you rate your ability to speak English now?

Việc nói tiếng Anh của bạn bây giờ như thế nào?

49. How would you rate your ability to read English now?

Việc đọc tiếng Anh của bạn bây giờ như thế nào ?

50. What level of schooling did you reach before leaving Vietnam?

Trình độ học vấn của bạn trước khi rời Việt Nam ?

51. Have you been to school in Australia?

Bạn có đi học ở Úc ?

52. For how long?

Bạn học bao lâu ? _____tháng/năm

53. At what level?

Trình độ nào ?

54. What was your occupation in Vietnam before 1975?

Nghề nghiệp của bạn ở Việt Nam trước 1975 ?

55. What was your occupation in Vietnam after 1975?

Nghề nghiệp của bạn ở Việt Nam sau 1975 ?

56. What is your occupation now?

Nghề nghiệp của bạn hiện tại ?

57. What is your main source of income now?

Lợi tức hiện giờ của bạn thuộc loại gì ?

PART B

I am now going to ask you some different kinds of questions. There are no right or wrong answers. I just want to know your opinion.

PHẦN B

Bây giờ tôi sẽ đề cập đến một số câu hỏi khác. Ở đây sẽ không có câu trả lời đúng hoặc sai. Tôi chỉ muốn biết ý kiến của bạn mà thôi.

58.

One person says "The things of the present are best. Things of the past are forgotten and nobody can tell what the future holds."
A second person says "The practices and customs of our fathers and grandfathers are best. The modern age is not good."
A third person says "The future is what is important. That is what we must prepare for."
Which of these three people is most like you?

The first
The second
The third
Parts of all

Một người cho rằng " Những gì trong hiện tại là đáng kể nhất. Quá khứ thì bị lãng quên và không ai có thể bác trước được tương lai hứa hẹn những gì". Người thứ hai cho rằng " Lối sống và tập quán của cha ông chúng ta là đáng giá nhất. Lối sống hiện tại chẳng có gì đáng nói". Người thứ ba cho rằng " Tương lai mới là cái đáng đề cập tới. Nó chính là những cái mà chúng ta cần phải sẵn sàng ngay từ bây giờ". Ai trong ba người này bạn cho là hợp lý nhất ?

[ ] người thứ 1
[ ] người thứ 2
[ ] người thứ ba
[ ] không hoàn toàn hợp lý cả ba/cả ba hoàn toàn hợp lý

59

One day three Vietnamese friends were talking.
The first one said "If people from our community break the law in another country it is the job of the police to put them in gaol straight away and keep them there so that they cannot do any more harm."
The second one said "That may be the best thing sometimes but how can we be sure that the person in gaol is the real criminal. It is better for a judge to decide."
The third one then said "You may be right but this brings great shame on us. Surely it is better for the family to correct what is wrong.
Which one is most like you?

The first
The second
The third

Một ngày kia 3 người đang chuyện trò qua lại. Một người mới nói," Nếu có ai trong cộng đồng chúng ta vi phạm luật lệ ở một nước khác, thì đó là việc của cảnh sát đưa họ vào tù ngay lập tức và giữ ở đó để họ không thể quấy phá gì được". Người thứ hai mới nói" Đó có thể đôi khi là phương cách tốt đẹp nhất nhưng chúng ta làm thế nào để biết người đó đã can tội có tính cách hình sự. Tốt hơn hết là để việc ấy cho thẩm phán quyết định". Người thứ ba nói" Như vậy cũng có thể đúng nhưng nó là một điều nhục nhã vô cùng cho chúng ta. Muốn được hiệu qua hơn ta nên dành việc này cho gia đình của đương sự để phân xử phải trái". Ai trong ba người này có ý nghĩ tương tự như bạn ?

[ ] người thứ 1
[ ] người thứ 2
[ ] người thứ 3

60.

Some people from our community were talking while they were on the way to a meeting.
One said "If some people in Australia behave badly towards us we must accept what happens to us and not talk about it even if we think their behaviour is wrong."
Another one replied "You are right, acceptance is our way. But if we think that behaviour is wrong we should ask someone who knows to help us do something about it."
Someone else said "I think acceptance gets us into a lot of trouble. It would be better if we complained to the police or the government when we think something is not right."
Which person do you most agree with?

The first
The second
The third

Một nhóm người trong cộng đồng đang trên đường đi họp. Một người cất tiếng nói" Nếu có ai đó đối xử thậm tệ với chúng ta thì chúng ta nên chấp nhận sự kiện đó và miễn đề cập đến ngay cả chúng ta nghĩ việc ấy là sai trái". Người thứ hai tiếp" Bạn nói đúng, chấp nhận là đường lối của chúng ta. Nhưng nếu chúng ta nghĩ rằng đối xử như vậy là sai, thì nên nhờ một người khác giúp đỡ cho chúng ta bằng cách nầy hoặc cách khác". Người thứ ba lại thêm " Tôi nghĩ chấp nhận sẽ đưa đến nhiều tai hại khó lường. Tốt hơn là chúng ta nên trình báo cho cảnh sát hoặc cơ quan chính quyền khi một sự việc mà chúng ta nghĩ là không đúng". Trường hợp nào mà bạn đồng ý nhất?

[ ] người thứ 1
[ ] người thứ 2
[ ] người thứ 3

61.

One person says "When we are buying something big like a car or a house and the person selling it to us promises to do something, the promise should not have to be written down. A person's word is enough."
Another one says "This is true but we cannot always trust people to be honest. We should make sure, when it is important like this, that promises are written down."
Which person do you think is correct?

The first
The second

Một người nói rằng" Khi chúng ta mua một vật lớn như xe hơi hoặc nhà, người bán hứa sẽ thực hiện một điều gì đó, thì lời hứa ấy sẽ không cần phải được viết bằng giấy trắng mực đen. Chỉ cần lời nói là đủ". Người thứ hai nói" Như vậy cũng đúng nhưng chúng ta không hẳn là luôn luôn tin vào lời của họ. Chúng ta cần biết chắc chắn đối với một sự việc quan trọng, thì phải được viết xuống rõ ràng". Ai trong ba người này mà bạn nghĩ là đúng?

[ ] người thứ 1
[ ] người thứ 2

Now I am going to read you some things which people have told me and ask you for your opinion. Remember, there are no right or wrong answer

Bây giờ tôi sẽ đọc cho bạn vài sự kiện mà theo đó bạn có thể cho tôi biết ý kiến của bạn. Nên nhớ là sẽ không có câu trả lời nào đúng hoặc sai ở đây.

62. It is wrong for the government to give young people money.
Do you

Agree
Disagree
Don't know

Việc mà chính phủ cấp tiền cho giới trẻ là sai lầm. Nó tạo cho họ quá nhiều tự do. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

63. If a man is gentle and kind he is weak. Not like a man. Do you ...Agree
...Disagree
Don't know

Một người trai hiền lành và tử tế là một người yếu ớt. Không phải là con trai. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

64. It is the wife's job to look after the home and the children and the man's job to get money for the family. Do you

Agree
Disagree
Don't know

Việc coi nhà và giữ con là việc của phụ nữ và việc đi làm kiếm tiền là việc của đàn ông con trai. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

65. The police or the courts should not interfere with serious family problems.
Do you agree
Disagree
Don't know

Luật pháp không nên can thiệp vào những vấn đề riêng của gia đình. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

66. Judges are too soft on criminals. They should make criminals stay in gaol for much longer. Do you
Agree
Disagree
Don't know

Thẩm phán quá mềm yếu đối với tội nhân. Họ nên xử cho tội nhân ở trong tù lâu hơn. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

67. If Vietnamese people commit serious crimes should be sent back to Vietnam. Do you
Agree
Disagree
Don't know

Nếu tội nhân phạm tội thuộc loại đại hình thì họ phải được trả về Việt Nam. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

68. Wives should not get money from the government if they leave their husbands. Do you
Agree
Disagree
Don't know

Người vợ không nên nhận tiền trợ cấp của chính phủ nếu bỏ chồng. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

69. A serious insult to your honour should not be forgotten.
Do you
Agree
Disagree
Don't know

Một việc làm tổn thương đến danh dự cá nhân thì không nên bỏ qua. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

70. You can forgive once, maybe twice but the third time you must do something about it. Do you

Agree
Disagree
Don't know

Bạn có thể bỏ qua lần đầu, có thể lần thứ hai nhưng lần thứ ba thì không. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

71. You should always help a friend in trouble even if it means trouble for you. Do you

Agree
Disagree
Don't know

Bạn thường giúp một người bạn khi gặp khó khăn ngay cả việc đó gây rắc rối cho bạn. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

72. There are too many laws in Australia for Vietnamese to understand. Do you

Agree
Disagree
Don't know

Ở Úc này có quá nhiều luật làm cho người tỵ nạn không hiểu. Bạn

[ ] đồng ý
[ ] không đồng ý
[ ] không có ý kiến

73. Two people were talking.
The first one said "A wife should respect and obey her husband at all times and accept whatever he does."
The other one said "That is true but a husband should also respect his wife and not hurt her in any way."
Which person do you most agree with?

The first
The second

Hai người đang đối thoại với nhau. Người thứ nhất nói" Làm vợ thì phải tôn trọng và nghe lời chồng luôn luôn và phải chấp nhận điều người chồng làm". Người thứ hai nói" Đúng vậy nhưng người chồng cũng phải tôn trọng và không được đánh vợ trong bất cứ việc gì". Ai trong hai người này mà bạn ưng ý ?

[ ] người thứ 1
[ ] người thứ 2

74. One day three Vietnamese friends were talking.
The first friend said "If a wife does not obey her husband he has a duty to punish her in any way he thinks is right."
The second friend said "Yes, it is his duty but it is wrong to harm her. If she will not obey, the family should talk to her."
The third friend said "It is wrong for husbands to harm their wives. If he cannot understand this after talking to him about it, she should leave him."
Which friend is most like you?

The first
The second
The third

Một ngày kia 3 người đang nói chuyện. Người thứ nhất mới nói" Nếu người vợ không nghe lời chồng, thì người chồng có bổn phận trừng trị người vợ khi mà người chồng cho là đúng". Người thứ hai nói" Đúng, đó là bổn phận nhưng không được đánh đập vợ. Nếu vợ không nghe lời chồng, người trong gia đình nên bầy giải cho vợ biết". Người thứ ba nói" Việc đánh đập vợ như vậy là sai. Nếu đã nói mà chồng không hiểu, thì vợ sẽ phải bỏ chồng". Ai trong số ba người này mà bạn cho là đúng ?

[ ] người thứ 1
[ ] người thứ 2
[ ] người thứ 3

75.

Two parents were talking together about their family.
One said "It is not the place for children to question their parent's decisions. Parents are wiser and children must obey them."
The other one said "This is true but parents should try and understand their children's problems as well."
Which parent do you think is correct?

The first
The second

Hai người đang nói chuyện về vấn đề gia đình . Người thứ nhất nói" Đây không phải là chỗ để con cái thắc mắc về quyết định của cha mẹ. Cha mẹ luôn thông suốt hơn và con cái phải nghe lời cha mẹ". Người thứ hai nói" Như thế cũng đúng nhưng cha mẹ cũng nên thực tâm để hiểu vấn đề của con cái". Ai là người bạn cho là đúng ở đây ?

[ ] người thứ 1
[ ] người thứ 2

76.

Some Vietnamese friends were talking in a restaurant.
One said "If we know of people from our community who commit crimes and the police have not caught them it is up to us to make sure the person is punished."
The second one said "I agree but this may cause greater harm. It is better that we help the police."
The third friend said "Yes I think we should help the police but that may bring us even greater harm. It is best not to say anything."
Which friend is most like you?

The first
The second
The third

Một nhóm người nói chuyện trong một nhà hàng. Người thứ nhất nói" Nếu cảnh sát không bắt được tội nhân và chúng ta biết được họ là ai, chúng ta phải chắc chắn là họ bị trừng phạt." Người thứ hai nói " Tôi đồng ý, nhưng vấn đề này có thể gây nên sự thiệt hại lớn hơn. Tốt nhất là chúng ta hãy giúp đỡ cảnh sát". Người bạn thứ ba nói " Đúng vậy, tôi nghĩ là chúng ta phải giúp đỡ cảnh sát nhưng có lẽ sẽ mang lại cho chúng ta nhiều thiệt hại hơn. Tốt nhất là đừng nói gì cả." Theo bạn người nào là đúng nhất?

[ ] người thứ 1
[ ] người thứ 2
[ ] người thứ 3

77.

Some people say that "In a new country if people break the law without knowing and it is not a serious crime, they should be only warned the first time"
Others say that "You should not let people go free if they have done something wrong even if they didn't know it was against the law
Which opinion do you agree with the most?

The first
The second

Một vài người cho rằng " Trong một quốc gia mới đến nếu người ta phạm luật trong trường hợp không nghiêm trọng và họ không biết luật, họ chỉ nên bị cảnh cáo lần đầu mà thôi."
Nhưng người khác bảo rằng:" Bạn không nên để họ đi nếu họ làm những điều không đúng ngay cả nếu họ không biết điều đó là phạm luật".
Bạn đồng ý với ý kiến nào nhất?

[ ] Thứ nhất
[ ] Thứ hai.

PART C

I am now going to ask you about some common experiences which people have with the legal system.

Bây giờ tôi xin hỏi bạn về một vài sự việc xảy ra thường ngày liên quan đến cơ cấu luật pháp.

Number 1

78. a **Have you ever rented a house or a flat?** Yes / No

Số 1.
Bạn đã có bao giờ mướn nhà chưa ?

b. Have you ever had any trouble with your landlord? Yes / No

Bạn có bao giờ gặp trở ngại với chủ nhà ?

[ ] có
[ ] không

c. Can you tell me what it was about?

Bạn có thể cho tôi biết đó là gì ?

d. What did you do?

Rồi bạn làm gì ?

e. Did you think you were treated fairly by ..... Yes / No

Bạn nghĩ là bạn được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes / No

Bạn có thể làm được gì không ?

[ ] có
[ ] không

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có cần đến thông dịch trong sự kiện ấy không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về công việc ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 2

79. a. **Have you ever tried to buy a house?** Yes
No

Số 2.
Bạn có bao giờ mua nhà chưa ?

b. Have you ever had any trouble with buying a house? Yes
No

Bạn có gặp trở ngại khi mua nhà không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhớ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 3

80. a. **Have you ever bought a car?** Yes
No

Số 3.
Bạn có bao giờ mua xe chưa ?

b.. Have you ever had any trouble with buying a car? Yes
No

Bạn có gặp khó khăn khi mua xe không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhớ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 4

81.a Have you ever tried to borrow money from a bank or finance company? Yes
No

Số 4.

Bạn có bao giờ mượn tiền ngân hàng hoặc cơ quan về tài chánh chưa ?

b. Have you ever had any trouble with borrowing money from a bank or finance company? Yes
No

Bạn có gặp trở ngại về việc mượn tiền đối với các cơ quan này không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 5

82. a **Have you ever tried to set up a business in Australia?** Yes
No

Số 5.

Bạn có bao giờ tạo dựng một doanh nghiệp ở Úc chưa ?

b. Have you ever had any trouble with going into business? Yes
No

Bạn có gặp trở ngại trong việc tạo dựng đó không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 6

83.bHave you ever had any trouble with your neighbours? Yes
No

Số 6.
Bạn có gặp trở ngại với người lối xóm không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. Did you tell the police? How?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 7

84.b Have you ever been badly or unfairly treated in any way?
(prompt: not got a job, been called names, had things thrown at you) Yes
No

Số 7.
Bạn có bao giờ bị đối xử thậm tệ hoặc bất công không ?

c. Can you tell me what happened?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 8

85. a **Have you ever been hurt or injured at work?** Yes
No

Số 8.
Bạn có bao giờ bị thương tích hoặc bị tai nạn trong khi làm việc không ?

b. Have you ever had any trouble with an injury at work? Yes
No

Bạn có gặp trở ngại trong vấn đề này không ?

c. Can you tell me what happened?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 9

86.a **Have you got a driver's licence?** Yes / No

Số 9.

Bạn có bằng lái xe chứ ?

b. Have you ever had any trouble with getting a driver's licence? Yes / No

Bạn có gặp trở ngại trong việc xin bằng lái không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes / No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes / No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes / No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes / No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 10

87.a **Have you ever been involved in a car accident?** Yes
No

Số 10.
Bạn có bao giờ liên can đến vấn đề tai nạn xe cô không ?

b. Did you ever have any trouble with a car accident? Yes
No

Bạn có gặp trở ngại trong vấn đề này không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 11

88. b **Have you ever had anything anything stolen from you or your home?** Yes
No

Số 11.
Bạn hoặc nhà bạn có bao giờ bị mất cắp không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. Did you tell the police? How?

Bạn có báo cho Cảnh Sát không ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 12

89.b **Have you ever been hit or injured by another person?** Yes
No

Số 12.
Bạn có bao giờ bị người khác đánh đập hoặc gây thương tích cho bạn không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. Did you tell the police? How?

Bạn có báo cho Cảnh Sát không ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 13

90.b **Have you ever had any other contact with the police?** Yes
(eg. speeding, traffic, charged with a criminal offence) No

Số 13.
Bạn có báo cho Cảnh Sát bất cứ việc gì khác không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 14

91.a **Have you ever seen a lawyer for any reason?** Yes
No

Số 14.
Bạn có đi gặp luật sư vì bất cứ việc gì không ?

b. Can you tell me why you went to a lawyer?

c. How did you find the lawyer?

d. Were you satisfied with the service you got from the lawyer Yes
No

Bạn có hài lòng với công việc mà luật sư đã giúp bạn không ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 15

92. a **Have you, for any reason, ever been in an Australian court?** Yes / No

Số 15.
Bạn có bao giờ bị ra tòa ở Úc này vì bất cứ lý do gì không ?

b. Which court did you go to?

Magistrates court?	Yes / No
Supreme court	Yes / No
Family court	Yes / No

Tòa thuộc loại nào ? Tòa hình sự
Tòa thường thẩm
Tòa gia đình

c. Can you tell me why you had to go to court?

Bạn có thể cho biết tại sao ban phải hầu tòa ?

d. Did you understand what was happening? Yes / No

Bạn có hiểu những diễn tiến xảy ra tại tòa không ?

What didn't you understand?

Những gì bạn không hiểu ?

e. Did you think you were treated fairly by ..... Yes / No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes / No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes / No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp ban thông dịch ?

k. Were you satisfied with their performance? Yes / No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 16

93. b **Have you ever had to make a statutory declaration?** Yes
(or swear an oath) No

Số 16.
Bạn có bao giờ làm giấy cam kết không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. Did you understand why you had to do this?

Bạn có hiểu tại sao phải làm giấy này không ?

e. Did you think you were treated fairly in this process? Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhớ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 17

94. c **Have you ever made a will?** Yes
No

Số 17.
Bạn có bao giờ thực hiện việc trao/nhận thừa kế không ?

d. Can you tell me how you went about it?

Xin bạn cho biết bạn đã làm gì ?

e. Were you satisfied with the service you got? Yes
No

Bạn có hài lòng với việc bạn đã thực hiện trong việc này không ?

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 17

95. a **Have you ever sponsored a relative from Vietnam?** Yes
No

Số 18.
Bạn đã có bảo lãnh thân nhân của ban từ Việt Nam chứ ?

b. Were there any problems with your application?

Bạn có gặp trở ngại trong việc bảo lãnh này không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 19

96. a **Have you ever had any contact with the Dept. of Social Security?**
Yes
No

Số 19.
Bạn đã có bao giờ đi lại với Bộ An Sinh Xã Hội không ?

b. Have you ever had any trouble with the Dept. of Social Security?
Yes
No

Bạn có bất cứ trở ngại gì với Bộ này không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 20

97. a **Have you ever had any contact with Dept. of Family and Community Services?** Yes / No

Số 20.
Bạn có bao giờ đi lại với Cơ Quan Phục Vụ Gia Đình và Cộng Đồng (Family and Community Services) không ?

b. Have you ever had any trouble with Dept. of Family and Community Services? Yes / No

Bạn có khó khăn gì với cơ quan này không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes / No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes / No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes / No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes / No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 21

98. a **Have you ever had any contact with the Dept of Immigration?** Yes / No

Số 21.

Bạn có bao giờ liên hệ với Bộ Di Trú không ?

b. Have you ever had any trouble with the Dept of Immigration? Yes / No

Bạn có gặp trở ngại gì với Bộ này không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. What did you do?

Bạn đã làm gì ?

e. Did you think you were treated fairly by ..... Yes / No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes / No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes / No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes / No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Number 22

99. b **Have you ever had any other contact with the legal system?**
Yes
No

Số 22.
Bạn có bất cứ liên hệ gì với vấn đề luật pháp ở đây không ?

c. Can you tell me what it was about?

Bạn có thể cho tôi biết vấn đề như thế nào không ?

d. *()if appropriate)* Did you tell the police? How?

(nếu có) Bạn có liên hệ với Cảnh Sát không ?

e. Did you think you were treated fairly by ..... Yes
No

Bạn nghĩ là bạn đã được đối xử hợp lý bởi _____

f. Why not?

Tại sao không ?

g. Were you able to do anything about it? Yes
No

Bạn có thể làm được gì không ?

h. What did you do?

Bạn đã làm gì ?

i. Did you use an interpreter during this incident? Yes
No

Bạn có nhờ đến thông dịch viên không ?

j. Who interpreted for you?

Ai đã giúp bạn thông dịch ?

k. Were you satisfied with their performance? Yes
No

Bạn có hài lòng về việc làm ấy không ?

l. *(if qualified)* Who paid for the interpreter?

Nếu là thông dịch viên, bạn có biết ai trả tiền cho họ ?

Finally, I would like to ask you:

100. From your experience, what do you find difficult to understand about the law in Australia?

Cuối cùng tôi xin hỏi bạn:

Với kinh nghiệm của bạn, bạn có khó khăn gì về việc thông hiểu luật pháp ở Úc?

101. .If you could change some things about the law, what would you change?

Nếu bạn có thể thay đổi luật lệ, nhưng gì bạn muốn thay đổi ?

102. How would you find a lawyer if you needed one?

Nếu bạn cần một luật sư, bạn phải làm sao ?

APPENDIX B
LETTER OF INTRODUCTION

Vietnamese Community in Australia / S.A. Chapter
Cộng Đồng Người Việt Tự Do Úc Châu / Nam Úc

9 PORT ROAD, WOODVILLE PARK, S.A. 5011
L ADDRESS: PO BOX 236, WOODVILLE S.A. 5011

TELPHONE: (08) 268 8925
(08) 268 4862
Fax No : (08) 268 4862

Quý vị thân mến,

Thư này nhằm giới thiệu bà Jenny Burley đến quý vị. Bà đang làm một cuộc nghiên cứu trong Cộng Đồng Người Việt của chúng ta. Bà Jenny cũng đã và đang làm việc thiện nguyện về phúc lợi cho Cộng Đồng mỗi tuần một ngày trong suốt năm vừa qua.

Bà hiện đang làm việc tại đại học Flinders và thực hiện một cuộc nghiên cứu về vấn đề trở ngại văn hóa giữa người Việt và hệ thống luật pháp tại Nam Úc. Để nghiên cứu về vấn đề này bà cần phải phỏng vấn nhiều người Việt Nam, đàn ông, đàn bà, và người trẻ tuổi. Bà sẽ đề cập đến một số câu hỏi chẳng hạn như: Quý vị sống tại Úc bao lâu? Quý vị ổn định cuộc sống như thế nào? Và một câu hỏi khác về luật pháp tại Úc.

Điều này rất có lợi cho Cộng Đồng Người Việt chúng ta nếu quý vị có thể giúp bà thực hiện những điều cần phải làm. Từ đó đồng hướng chúng ta có thể có được các chi tiết rõ ràng hơn về hệ thống luật pháp tại Úc. Chúng ta hy vọng rằng cuộc nghiên cứu này sẽ giúp cho Cộng Đồng chúng ta có được quyền lợi một cách đúng mức về luật pháp. Khi bà Jenny thu nhặt các chi tiết này, bà sẽ đệ trình lên trường đại học của bà. Bà cũng sẽ đồng thời gởi quý vị sơ lược về bài tường trình của bà đến chúng ta.

Một điều cần phải lưu ý ở đây là bất cứ điều gì quý vị nói với bà Jenny trong cuộc phỏng vấn sẽ được giữ kín tuyệt đối. Tên của quý vị chắc chắn sẽ không được dùng trong bản tường trình của bà.

Xin quý vị hãy vui lòng cho bà tên, địa chỉ, số điện thoại của quý vị , để theo đó bà có thể liên lạc với quý vị và để xin một cuộc hẹn cho cuộc phỏng vấn.

Cuộc phỏng vấn sẽ kéo dài khoảng 1 giờ cho mọi người và bà Jenny sẽ có một thông dịch viên để giúp bà nếu cần.

Tôi xin được giới thiệu cuộc nghiên cứu này đến quý vị.

Nam Úc , ngày 1 tháng 2 năm 1992
chủ tịch

Nguyen Ngoc Tan

English Translation of Letter of Introduction

Dear Friend

This letter is to introduce you to Jenny Burley who is doing a survey in the Vietnamese Community. Jenny has been working as a welfare volunteer in our community, one day a week for the past year. She works at Flinders University and is doing a study about how the Vietnamese people are understanding the legal system in Australia.

For this study she needs to interview many Vietnamese people, men, women and young people. She will be asking questions about how long each person has been in Australia, how they are settling in and some other questions about the law in Australia.

It would be very good for the Vietnamese community if you could meet with Jenny and help her to understand what needs to be done so that our people can get better information about the legal system in Australia.

When Jenny has collected all the information she will be writing a thesis for her University about what she has learned from us. We hope the study will help our community to gain legal rights more effectively. She will also give copies of her report to us.

It is very important to understand that anything you tell Jenny in an interview will be completely confidential. No real names will ever be used in her thesis or report.

Please give her your name, address and telephone number so that she can ring you to make and appointment for an interview.

The interview will take about one hour with each person and Jenny will have an interpreter with her to help.

I recommend this survey to you.

Yours sincerely

Nguyen Ngoc Tan
Director

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Sergeant Bob Smith, 19/3/90

Vivian Hope, 12/3/90

Peter Pham Nguyen, 2/4/90

Nguyen van Thang, 12/3/90

Sr. Marie Nien, 30/5/90

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