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Reviews

Book Review

Foreign national prisoners: law and practice

by Laura Dubinsky

Publisher: Legal Action Group (2012)

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(paperback)

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Foreign national prisoners: law and practice is a comprehensive guide to immigration law, those aspects of prison law that impact foreign national prisoners, and other legal rules relevant to foreign nationals in prison, detention or otherwise attracting the attention of the immigration authorities.

Written by barrister and immigration and prison law specialist Laura Dubinsky, with contributions from Hamish Arnott and Alasdair MacKenzie, the book seeks to provide a detailed analysis and critique of case law from domestic courts and those of the European Union and European Court of Human Rights. Published by the Legal Action Group, the book (unsurprisingly) follows a polemical narrative, taking the side of the prisoner/detainee. This does not in any way detract from a thoroughgoing coverage of the subject. *Foreign National Prisoners* is the first work of its kind, attempting, as it does, to cover as broad a range of topics as the name implies. As such, it is a welcome addition to the bookshelf of the legal practitioner and prison professional alike. It is also an invaluable complement to Creighton and Arnott's *Prisoners: law and practice* — so often seen in the hands of lawyers attending prison adjudications.

Fifty years ago, a book on the subject of foreign national prisoners would have been a thin volume

indeed, as High Court judge Sir Nicholas Blake points out in his foreword. As he says, 'Such a survey would primarily be concerned with the distinction between aliens and British subjects and the broad exercise of prerogative powers available in respect of the former class.' In practice, this meant that the Home Secretary could do pretty much as he pleased. Today, the position is very much more complex and with constant and ever-controversial public debate in progress. Demands for curbs on immigration and fears of foreign criminals compete with the rights of those who wish to claim asylum, or those who have established family ties or, for that matter, those who were born and bred here and whose right to stay has been threatened.

Reading *Foreign National Prisoners* as a non-lawyer, one gets the impression of a deeply researched and splendidly well organised exposition of the subject. The first part, comprising over half the total pagination of around 900 pages, is concerned with deportation. UK legislation is covered in detail, including the 1971 Immigration Act, 2007 UK Borders Act and the 2009 Borders, Citizenship and Immigration Act. The first part also covers EU and EEA rules such as the Citizens Directive and the EEA regulations 2006. The section then goes on to consider the impact of the European Convention of Human Rights (enshrined in English law in the form of the 1998 Human Rights Act). The section concludes with a consideration of the appeals process in deportation cases.

Part Two — *Prison Law* — starts with a useful summary of the prison system, legislation, policy and sentencing practice before

considering the position of foreign nationals in prison. The section continues with a look at temporary and early release, early removal and repatriation. A final chapter in this section considers the position of foreign national prisoners in relation to mental health legislation.

Part Three gives a thorough account of immigration detention, related statutory powers, common law principles and detention policy. The effects of Convention articles are covered in some depth, particularly in relation to children of detainees. A further chapter considers places of detention and how they are used.

The final part looks at remedies available to detainees and foreign national prisoners and includes coverage of claims for damages.

Overall, this book is a valuable source of reference for any lawyers with a need to provide a degree of expertise in this area. It is, however, equally useful to prison managers and those working with foreign national prisoners in prisons and other places of detention.

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Book Review

Racial criminalisation of migrants in the 21st century

Edited by Salvatore Palidda

Publisher: Ashgate (2011)

ISBN: 978-1-4094-0749-2

(hardback)

Price: £70.00 (hardback)

This collection has been drawn together by Salvatore Palidda, Professor of Sociology at the Faculty of Education in the University of

Genoa, Italy. It explores the intersection of migration and criminal law, drawing upon research from a range of countries including Italy, UK, France, Spain, Belgium, Germany and USA.

In the opening chapters Palidda sets out key features of the context including the fact that foreign nationals are imprisoned at a higher rate than domestic nationals. In Europe, this ranges from two or three times higher in UK, France, Germany, Spain and Scandinavia; to seven or eight times higher in Italy, Netherlands, Switzerland and Portugal — and twelve times higher in Greece. Palidda argues that this rate of imprisonment is disproportionate to any difference in crime rates and is deeply embedded in the history of these countries, dating back over the last two centuries.

Rather than being about crime, Palidda argues that the criminalisation of migration is 'a most elementary mechanism of social control, emerging as being useful, if not indispensable, to the solidity and/or realignment of political cohesion' (p.1). In other words, migrant groups are relatively weak and therefore a convenient group to scapegoat and target through media, politics, state and non-state institutions and everyday behaviours as a means of generating support and consensus. From this perspective, migrants have become the new 'undeserving' and 'dangerous classes', against whom the majority can draw together to protect themselves. This analysis is rooted in critical or radical criminology which is particularly concerned with power and inequality. As with much

of the most challenging new critical criminology, it not only addresses criminal justice system but also other forms of formal and informal control and also highlights the often unreported behaviours and values of the powerful.

The book goes on to explore in detail the operation of migration controls and criminal justice in a number of Western liberal democracies. With some depressing consistency, these chapters identify a pattern repeated across nations at a macro and micro-level. A particular feature of this pattern is a public discourse based upon uncertainty, risk and fear, and a confluence of interests concerned with the exercise and generation of power, and the everyday impact of differential practices. To the extent that these practices are replicated across a range of nations, this is presented as one of the dark sides of globalization.

The theme of globalization is, indeed, central to this book. While the movement of people across nations is a key characteristic of globalization, this book asserts that a set of defensive and discriminatory policies and practices regarding migration is its corollary. Globalization is not a comprehensive and consistent set of beliefs, behaviours and actions but instead comprises a number of loose trends which vary across space and time. In each country, global trends will be mediated through local cultures and individual interpretations and choices. In this way it is more realistic to talk about 'glocal', a mix of global and local. This is drawn out in the case studies of individual countries, but is also central to a

particularly fascinating chapter by Alessandro Dal Lago, based at Genoa University, who explores the historical and philosophical underpinning of concerns about migration.

Dal Lago challenges Samuel Huntington's analysis of a 'clash of civilisations'¹, which asserted that history is characterised by power struggles between different belief systems or national states. Dal Lago's thesis is that rather than being fixed, rigid and impermeable, cultures are organic. From this position, Dal Lago argues that concerns about migration are not rooted in fears about differences between cultures and clashes between different beliefs, but instead because they present an alternative idea of hybridization and threaten the very idea that nationhood and identity are intertwined and certain. Migration is a threat because it brings change, adaptation and integration rather than because it brings conflict and discord. It is in challenging old certainties rooted in place and time that migration brings to life the realities of a changing globalized world.

This book is to be applauded for exploring migration from a novel perspective, drawing together both the global and the local. It is in examining these intersections that the book brings new insights whilst also highlighting some of the deeply concerning issues of power and inequality that exist in the worlds richest nations.

Dr Jamie Bennett is Governor of *HMP Grendon and Springhill*.

1. Huntington, S. (1996) *The clash of civilisations and the remaking of world order* New York: Simon & Schuster.