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Editorial

Migration, mental health, and human rights

Guest Editors' Introduction

The three themes of this special issue of the *International Journal of Law and Psychiatry*—migration, mental health, and human rights—draw together matters that are intuitively linked. The capacity to migrate and experiences of migration are powerfully affected by the economic, social, and political circumstances of the migrant, specifically, by the extent to which the migrant's human rights are capable of realization. Moreover, the stress of migration has potentially grave mental health implications. These are all the more serious for those traveling under conditions of physical, economic, or legal fragility, with minimal or negligible effective human rights protection, as so many do today. Migration, human rights, and mental health: these three areas of inquiry seem to feed into each other in a circular fashion.

From another vantage point, however, the title to this issue represents an awkward amalgam—an interdisciplinary Geryon.¹ The term migration seems sodden with materiality and spiked with immediacy; it marks terrain peopled by those seeking shelter or a place in a queue and the harried few dedicated to helping them. Mental health strikes perhaps a more cerebral, hushed, languorous tone; it is the domain of the analyst and the analysand. Human rights sounds a third note: at times, focused and insistent, bearing an armory of treaties; at other times, pitched almost fantastically high, with world-sweeping aspirations.

In this issue, you will encounter triads of many sorts. There are points of coalescence, where law and psychiatry seem to run together through the three-issue areas—migration, mental health and human rights—as naturally as a river through a canyon. Consider, for instance, the situation of the asylum-seeker applying for refugee status. Here, the human rights situation and mental health prognosis of the applicant bear directly upon their capacity to migrate. Consider too the predicament of the terrorist suspect undergoing interrogation, facing extradition, while medical personnel monitor his or her “progress”. Law and psychiatry work alongside each other at such points.

Many points of divergence or opposition arise also in this volume; moments when law and psychiatry seem implacably disconnected. Indeed, the propensity for discord and misunderstanding

¹ In Greek mythology, Geryon was the three-bodied winged monster from whom Hercules had to take a herd of cattle on the Island of Erythia, as the 10th of the 12 labours assigned to him by King Eurystheus. See Apollodorus, *THE LIBRARY* (James George Frazer trans., 1921).

between these disciplines seems great in matters of migration. With a little too much law and not enough psychiatry, the worthy applicant seeking asylum may be wrongfully denied refugee status: the article by Zachary Steel, Naomi Frommer, and Derrick Silove gives disturbing examples of legal misunderstanding in dealing with clinically traumatized asylum-seekers. With a little too much psychiatry and not enough human rights law, Ben Saul cautions, the person incarcerated or stopped at a border upon suspicion of having terrorism-related information may be administered “truth drugs” in the name of public safety.

The articles in this volume enter these law–psychiatry intersections from a number of different directions. Some articles in this volume emphasize the practical significance of encounters between law and psychiatry for those operating under particular domestic legal regimes regulating migration. The three articles in the first section of this volume—“The Mental Health Impacts of Migration: The Law and its Effects”—fall under this rubric. For those confronting refugee determination processes in host countries such as Australia and Canada, for instance, collaboration between lawyers and psychiatrists may be vital to achieving the outcome that they seek—an entitlement to enter the “host” country and so to gain respite from “home” country turmoil or peril.

The article by Steel, Frommer, and Silove mounts a compelling argument for more effective law-psychiatry collaboration in the refugee determination context. It does so through a thoughtful retelling of case studies involving asylum-seekers whose psychiatric symptoms were liable to be misunderstood by decision-makers considering their legal case for admission. In light of these observations, Steel, Frommer, and Silove contend that “decision-makers should be prepared to use their investigative powers in cases where asylum seekers present with reports of substantive traumatic histories”. Moreover, they argue that appropriate access to and careful use of psychological evidence and psychiatric advice should be assured in the course of such investigations.

Just as Steel, Frommer, and Silove highlight the dangers of regulatory inattention to the psychological effects of trauma, so too asylum-seekers’ passage through the labyrinthine holding patterns of contemporary migration regulation may itself have devastating psychiatric impacts. Terry Hutchinson and Fiona Martin argue forcibly along these lines, contending that the mental health of asylum-seeker children is further imperiled by the legal and physical conditions in which they find themselves within Australia, one refugee-receiving country. These conditions, they contend, represent serious infractions of the Convention on the Rights of the Child.

Charles Watters and David Ingleby’s article further elaborates the regulatory and professional contexts in which asylum-seeker and refugee-claims are handled, with particular attention to such claimants’ mental health. Their comparative study of mental health services for refugees and asylum seekers in four European Union member states leads them to propose a set of minimum standards for administering to the mental health care needs of asylum seekers and “irregular” or undocumented migrants. These recommendations are premised on their detailed evaluation of selected professional practices dedicated to restoring and strengthening the mental health of those subject to the strain of migration, with a view to the identification and potential dissemination of successful innovations in this area.

In the second section of this issue, titled “Movement and Stasis: Re-reading Refugee and Migration Laws”, Mary Crock’s article draws attention to the broader normative factors that condition refugee-recipient nations such as Australia towards the regulatory paranoia made apparent in Hutchinson and Martin’s account. Focusing, in particular, on the allocation and administration of discretionary power in the migration law context, Crock argues for a recuperation of the deliberative potential and flexibility of discretion, informed by the rich panoply of democratic theory. Crock thus draws into the foreground of

legal inquiry the sort of generalized dispositions and thought processes with which psychiatrists are more commonly concerned, highlighting their significance in shaping legal outcomes.

In a parallel inquiry, François Crépeau and Estibalitz Jimenez interrogate the regulatory conception of “foreigners” with which the Canadian legal system has become infused since the September 11 terrorist attacks. They contend that a pervasive suspicion of foreigners—arising particularly from a now routine tendency to link foreignness with terrorist-related danger—is fuelling a worrying trend towards eroding the legal rights of those deemed foreign within the Canadian legal system. This is particularly so, they suggest, of those seeking to migrate to Canada. Drawing attention to alarming incursions and associations made by Canadian antiterrorist laws, Crépeau and Jimenez contrast the acquiescence with which these measures have been greeted with ongoing public insistence that the rights of an accused person must be upheld by the criminal justice system. They urge that similar demands be made of the contemporary legal treatment of foreigners “accused” only by adverse association or institutionalized bias.

Alongside the Crock article, Crépeau and Jimenez’s polemic highlights the significance, to the human rights, mental and physical health, and migratory capacity of legal subjects, of certain attitudinal casts or psychosocial patterns in which legal institutions seem to become set from time to time. They stress the importance of disrupting these patterns, challenging their unquestioned status and scrutinizing their effects. Such disruption could potentially arise, their accounts imply, from interdisciplinary interjection along a law–psychiatry axis.

Fleur Johns’ article probes one such psycho-social pattern discernible in the international law relating to refugees: namely, the tendency to cast refugee law in a therapeutic, curative role in relation to the presumed abnormality of a transient, shifting populace. By approaching migration as some form of madness requiring rational cure through legal means, Johns argues that international law relating to refugees is as much a producer of instincts associating foreigners with pathology as it is an apparent therapy for these instincts.

Taking up the theme of remediation, the two articles in the final section of this volume, “Rights and Remedies: The Convention Against Torture”, focus upon one avenue through which the law seeks to safeguard the mental health and physical wellbeing of those under threat: the international legal prohibition on torture. Their analysis suggests that migration need not always be traumatic. At times, it may permit escape from conditions that may be judged even worse than those greeting asylum-seekers in the unwelcoming landscape sketched by Hutchinson and Martin. Seeking to inch further open the exit/entry door for those seeking asylum, Jane McAdam considers the Convention Against Torture as a complementary scheme to international refugee law. The Convention Against Torture, McAdam explains, has some potential to protect people from being returned to a place where there are substantial grounds for believing that they would be in danger of being subjected to torture. Reviewing European, Canadian, U.S., and Australian records of affording (or denying) migrants and asylum-seekers protection against torture beyond their respective refugee programs, McAdam highlights the potential merits and demerits of asylum-seekers’ reliance upon the Convention Against Torture.

Following McAdam’s salutary assessment of the Convention Against Torture from asylum-seekers’ perspective, Ben Saul seeks, in the final article in this volume, to fortify this and related international legal prohibitions upon torture, resisting their apparent slackening amid antiterrorist zeal. Saul takes particular issue with a proposal made by a leading U.S. academic for the judicial issuance of “torture warrants” in circumstances where the disclosure of certain information is judged crucial to the preservation of human life: the so-called “ticking bomb” scenario. Saul considers the legal, ethical and

practical implications of such a strategy—including for the medical profession, who could thereby be enlisted in the administration of legalised torture, concluding that any benefits that such warrants might arguably yield are outweighed by the risks that such measures would pose. Institutionalised sacrifice of the mental and physical wellbeing of persons (often immigrants) rightfully or wrongfully suspected of holding terrorism-related information is, Saul contends, unjustified and, moreover, potentially devastating to pivotal institutions of democracy.

Read as a whole, the volume does not speak well of migration determination processes in States lauded for liberal temper and democratic construction. Almost without exception, the authors maintain that these States—and their professional constituents—are failing those seeking refuge from adversity. If the articles in this volume strike a common chord of disquiet, their refrains are nonetheless extraordinarily varied. The questions that they raise are many and knotty. What is the relationship between the defensive and invigorative objects of migration law? How do these, in turn, relate to the goals and techniques of psychiatry? What entitlements should human rights law entail for someone who is moving between polities and how might these entitlements be assured? What roles do the professional languages of law, psychiatry, rights, and health play in the exercise of decision-making power and what role should they play? To what extent should particular approaches to the movement of peoples be legitimated or delegitimated and how might they come to be so? These are questions not lightly dispensed with. They are, in this time of confusion, fear, and ennui, worthy of the attentions they are given by both the writers and the readers of this volume: each of us at once, in some sense, a migrant and a decision-maker.

This special edition of the *International Journal of Law and Psychiatry* had its genesis in a number of papers delivered at the Migration, Mental Health, and Human Rights Symposium organised by Mary Crock of the University of Sydney's Faculty of Law. This Symposium comprised part of the 28th International Congress on Law and Mental Health held in Sydney during October 2003. As such, it represents the common commitment of the University of Sydney Faculty of Law and the International Academy of Law and Mental Health to cross-disciplinary inquiry and to engagement by the legal and psychiatric professions with the experiences and concerns of the many millions on the move around the world.² As Guest Editors, we are grateful to all who participated in the Symposium and to the organizers of the 28th International Congress on Law and Mental Health for making this publication possible. Particular thanks in this regard are due to Andreas Thanos, Cathy Preston-Thomas, Jessie Hohmann, Azadeh Dastiyari, and Carol Elliott. Thereafter, Damien Freeman, who joined us in authoring this introduction, worked tirelessly to prepare the manuscript for publication. We are fortunate, also, to have enjoyed the support and patience of Professor David Weisstub, Editor-in-Chief of the *International Journal of Law and Psychiatry*, and Professor Terry Carney, of its Editorial Advisory Board, as well as the administrative staff and research associates of this Journal.

² The International Organization for Migration numbers the world's migrant population at approximately 175 million in 2000, citing United Nations Population Division estimates. See International Organisation for Migration, *WORLD MIGRATION 2003: MANAGING MIGRATION—CHALLENGES AND RESPONSES FOR PEOPLE ON THE MOVE*, at 4, 304 (2004), available at <http://www.iom.int> (10 June 2004). UNHCR reported 9.7 million as the global number of refugees at the end of 2003, excluding a further 4 million Palestinian refugees responsibility for which no longer fell within the UNCHR's mandate. UNHCR gave 17.1 million as the number of persons "of concern to UNHCR" at the end of 2003, that category being comprised of refugees, internally displaced persons, asylum-seekers, and refugees and internally displaced persons who have been returned to the place from which they fled or were displaced. See United Nations High Commissioner for Refugees (Geneva) Population Data Unit/PGDS Division of Operational Support, *2003 GLOBAL REFUGEE TRENDS: OVERVIEW OF REFUGEE POPULATIONS, NEW ARRIVALS, DURABLE SOLUTIONS, ASYLUM-SEEKERS AND OTHER PERSONS OF CONCERN TO UNCHR*, at 2 (2004), at <http://www.unhcr.ch/statistics> (15 June 2004).

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