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# BOOK REVIEW

## CALCULATED KINDNESS: REFUGEES AND AMERICA'S HALF-OPEN DOOR, 1945 TO THE PRESENT

BY GIL LOESCHER\* AND JOHN A. SCANLAN.\*\* NEW YORK: THE FREE PRESS,  
1986. Pp. xviii, 346. \$22.50.

*Reviewed by* ARTHUR C. HELTON, ESQ.\*\*\*

In their introduction to *Calculated Kindness*, Messrs. Loescher and Scanlan initially posit the theoretical framework for their examination of the history of United States refugee policy as a conflict between immigration restrictionists and humanists. Near the end of the introduction, however, they reveal the basic proposition of their book—that foreign policy considerations have been the principal animating force behind United States refugee policy since World War II.

There follows a well-written and detailed discussion of the establishment of the ideological framework for United States refugee policy at the conclusion of World War II and the inception of the cold war between the Soviet Union and the United States. This includes a fascinating discussion about the relationship of the International Rescue Committee, particularly under the leadership of Leo Cherne, with the Central Intelligence Agency (CIA) in the waging of a campaign of psychological cold warfare by publicizing the stories of Communist defectors and promoting the escape of such refugees.<sup>1</sup> Treated also are the circumstances surrounding the flights of Hungarians and Cubans in the 1950's and 1960's who fled their homelands and sought refuge in the United States, as well as the activities of the CIA in promoting and exploiting those flights for propaganda purposes. The later flights of Czechoslovakians in 1968, Soviet Jews in the early '70's, and Chileans in 1973, are also examined. The receptivity accorded and support marshalled to assist the Czechoslovakian and Soviet Jewish

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1. G. LOESCHER & J. SCANLAN, *CALCULATED KINDNESS: REFUGEES AND AMERICA'S HALF-OPEN DOOR, 1945 TO THE PRESENT* 37-38 (1986).

exiles stand in marked contrast to the grudging welcome given to those Chileans who fled the successful coup d'etat that ousted the democratically elected but avowedly Marxist Chilean government.<sup>2</sup>

The discussion takes an interesting turn in addressing the aftermath of the Vietnam war and the perceived responsibility to provide refuge ultimately to 800,000 Indochinese from Vietnam, Laos, and Cambodia. Humanitarianism in this instance can perhaps be equated with a kind of collective notion of national guilt.<sup>3</sup>

Messrs. Loescher and Scanlan present a wealth of detail to support their basic premise respecting the primal force of foreign policy in refugee policy. They also seek to provide lessons to contemporary policy-makers:

Advocacy on behalf of refugees from particular countries has depended to a large extent on the formation of broad coalitions which represent humanitarian and political concerns. The success of such advocacy has depended on the formation of symbiotic relationships between governmental and private groups who have worked hand in hand to influence refugee admissions decisions.<sup>4</sup>

This coalition-building principle is discussed specifically by the authors in connection with the work of a citizens' commission respecting Indochinese refugees:

The history of the Indochinese migration to the United States provides but one example of the frequent symbiosis that obtains between humanitarian and political motives. When those motives are linked, concern over the fate of hundreds of thousands of people who are starving, or fearful of persecution on political grounds, or both, goes hand in hand with concerns over regional stability, overburdened countries of first asylum, and the positive political gains to be made by presenting a negative image of Communist rule. Where no linkage exists, however, humanitarian motives have been almost always overwhelmed by political calculation.<sup>5</sup>

Policy makers might do well to heed such lessons.

While they make a persuasive case that foreign policy consideration is the force behind United States refugee policy, Messrs. Loescher and Scanlan are loath to exclude humanitarianism as a consideration:

This is not to say that all special admissions since 1945 have been directly related to the cold war. Periodic "thaws," more localized foreign policy concerns, and genuine humanitarian motives contributed to a number of atypical immigration decisions, including the permanent admission of over 1,000 Ugandans in 1973 and the temporary stays of deportation granted Nicaraguans in 1978-1979 and Iranians in 1979-81.<sup>6</sup>

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2. *Id.* at 85-110.

3. *Id.* at 102-19.

4. *Id.* at 135.

5. *Id.* at 213.

6. *Id.*

The term "humanitarian" is used rather casually in the refugee field. A little precision may be instructive, and the fundamental principles of the International Committee of the Red Cross—humanity, impartiality and neutrality—provide a good starting point for analysis.<sup>7</sup>

Humanity is a principle of peace, because peace is the primary result when the principle of humanity is observed. Devotion to the suffering of others—to prevent or to reduce it—requires abstaining from inflicting suffering. Impartiality is the principle of assistance without discrimination. It asserts the equality of all human beings in distress. Neutrality requires the absence of hostility toward the needy. It is essential for effective humanitarian action.<sup>8</sup>

These basic principles are confirmed in refugee laws, which apply to persons who leave their home countries and seek haven from persecution. The principles of neutrality and humanity are found in the nonpartisan concept of "refugee" as defined in article 1 of the 1951 Convention Relating to the Status of Refugees.<sup>9</sup> Such individuals are outside of their country of origin; are unable or unwilling to avail themselves of the protection of that government, or to return home; such an ability or unwillingness is attributable to a well-founded fear of being persecuted; and the persecution feared is based on race, religion, or nationality, membership in a particular social group of political opinion.<sup>10</sup> This international standard has been incorporated into our domestic law under the Refugee Act of 1980.<sup>11</sup>

The principle of impartiality is embodied by the Office of the United Nations High Commissioner for Refugees and reflects its mandate to provide protection to refugees on a nondiscriminatory basis. These principles have evolved from efforts to maintain principles of civilized behavior in the face of conflict and persecution. When United States refugee policy, at least as depicted by Messrs. Loescher and Scanlan, is measured against them, it is questionable whether humanitarian considerations ever played any significant role in its design and implementation. Even the examples given by the authors—Uganda, Nicaragua, and Iran—could plausibly be explained in terms of solicitude to a close ally such as the United Kingdom in its dealings with the government of Idi Amin, and a convenient opportunity to show disapprobation for the new regimes created after the fall of the Somoza regime in Nicaragua and the Shah's regime in Iran. In

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7. See Hay, *International Committee of the Red Cross*, 31 AM. U.L. REV. 811, 816 (1982).

8. *Id.*

9. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, art. 1.

10. *Id.* at 1A.

11. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980).

any event, the main theme of *Calculated Kindness* is indisputable—ideology is the historical driving force behind United States refugee policy. This point is clearly illustrated in the current arrangements that have been made for the admission of refugees from abroad, and recent practice respecting the granting and denial of political asylum.

To be eligible for admission in the overseas refugee program, individuals ordinarily must have left their home country and fled to a third country other than the United States.<sup>12</sup> In the annual consultation required between the President and Congress under the Refugee Act,<sup>13</sup> only 4,000 of 70,000 visas will be available for the admission of refugees from Latin America in fiscal year 1987. Of those 4,000, only Cuban former political prisoners will be eligible for consideration. Salvadorans, Guatemalans and even Nicaraguans are simply ineligible for admission in the overseas admissions process.<sup>14</sup>

The Refugee Act permits foreign policy to be considered in connection with fixing worldwide admissions ceilings in the consultation process established by the Act.<sup>15</sup> Such considerations, however, would be incompatible with the overriding purpose of the Refugee Act—to excise ideological bias from the refugee standard—if utilized in connection with the adjudication of individual cases.<sup>16</sup> But the distribution of available refugee admissions, and designations within regions such as Latin America, illustrates the ideological allocation of refuge in United States policy. The vast majority of the available visas will go to those who have fled from Communist-dominated regimes, a practice recognized in law prior to enactment of the Refugee Act.<sup>17</sup>

Furthermore, recent asylum determinations provide another illustration of the continuing role of ideology in the asylum adjudication process. In fiscal year 1986, asylum grants in cases were relatively low for many who fled authoritarian regimes, including Salvadorans (5%), Guatemalans (2%), and Haitians (1%). Yet they were relatively high for those who fled totalitarian regimes, including Nicaraguans (27%), Poles (50%), Ethiopians (46%), Russians (77%), and Chinese (64%).<sup>18</sup> This ideological distortion has been traditional since the enactment of the Refugee Act despite the promulgation of a nondiscriminatory eligibility standard.<sup>19</sup>

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12. 8 U.S.C. § 1101(a)(42)(A) (1982).

13. 8 U.S.C. § 1157 (1982).

14. See 51 Fed. Reg. 39,637 (1986).

15. 8 U.S.C. § 1157(e)(6) (1982).

16. See generally Helton, *Political Asylum Under the 1980 Refugee Act: An Unfulfilled Promise*, 17 U. MICH. J.L. REF. 243 (1984).

17. *Id.* at 245.

18. Statistical records of the Immigration and Naturalization Service, available from the reviewer.

19. Helton, *supra* note 16, at 253-54.

If there is any weakness in the recounting of the history of United States refugee policy in *Calculated Kindness*, it is that portion that deals with policy and practice after 1980. This may be due to the fact that much documentation relating to this period has yet to become readily available in the public domain. During the 1980's, economic recession, the arrival of 125,000 Cuban (and a much smaller number of Haitian) boat people, and the perceived need for immigration reform inspired an increasingly restrictive approach toward immigration. Beyond foreign policy, domestic immigration policy considerations came to impact heavily, particularly in the asylum area, with the initiation of deterrence measures designed to stem the flow of undocumented persons into the United States.

The theory behind the new deterrent measures is that people would either be intercepted before they got to the shores of the United States and precluded from applying for asylum, as in the case of the Haitian interdiction program which has resulted in the interception in international waters and return of over 7,000 Haitians to Haiti on U.S. Coast Guard vessels which patrol in the windward passage,<sup>20</sup> or mistreated through incarceration in jail-like conditions, a situation that currently affects well over 1,000 asylum seekers in the United States.<sup>21</sup> Such detention is designed to encourage people to give up their claims and return to territories where they may face persecution, or to discourage others from coming to seek refuge in the United States and encourage them to remain in situations where they risk persecution.<sup>22</sup> These deterrent measures are wholly incompatible with the offer of refuge made in the Refugee Act, particularly the establishment of the right to apply for asylum in the United States.<sup>23</sup> Refugees are penalized for applying for asylum through frequently prolonged imprisonment under onerous conditions.

Perhaps the authors of *Calculated Kindness* could have attempted more of an analysis to assist policy-makers and maybe even made specific recommendations for change. As it stands now, the book ends rather abruptly—an understandable outcome since the story itself has no foreseeable conclusion. In any event, this is an easy-to-read history which provides useful insights into the genesis of current United States refugee policy. It fills a gap in the literature and provides a useful context for advocates and policy-makers alike. It should be required reading for those who are seriously interested in change and reform in the refugee field.

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20. *Id.* at 254-56. See also unpublished Coast Guard statistics available in reviewer's files.

21. Helton, *The Legality of Detaining Refugees in the United States*, 14 N.Y.U. REV. L. & SOC. CHANGE 353, 363-64 (1986).

22. *Id.* at 359.

23. *Id.* at 373-76.

