

RELECTIONS  
*on social justice*

ASYLUM SEEKERS  
AND REFUGEES IN  
AUSTRALIA

ANGLICARE  
SOCIAL ACTION AND RESEARCH CENTRE  
2002

**ANGLICARE**  
TASMANIA



REFLECTIONS ON SOCIAL JUSTICE  
ASYLUM SEEKERS AND REFUGEES IN AUSTRALIA

Anglicare Social Action and Research Centre 2002  
Published by Anglicare Tasmania Inc, October 2002

© This work is copyright. Apart from any use permitted under the copyright Act 1968, no part of this publication may be reproduced without the written permission of the author and publisher.

For further information contact:  
The Social Action and Research Centre  
Anglicare Tasmania  
GPO Box 1620  
Hobart 7001

Tel: 6234 3510  
Fax: 6231 6480

# CONTENTS

<b>Welcome</b>	2
<b>The SARC Fellows</b>	3
<b>Tampering with Asylum</b> Fr Frank Brennan	7
<b>Let History Judge</b> Pierre Slicer	37
<b>An Unlikely Model</b> Margaret Reynolds	39
<b>Warm and Cold Welcomes</b> Alison Alexander	43
<b>Allies</b> Tony Richardson	47
<b>Neighbours</b> Jim Young	51

## Welcome to Reflections on Social Justice

This is the first edition of what we hope will become an annual collection of essays by the Fellows of Anglicare's Social Action and Research Centre.

The SARC Fellows are a group of eight eminent Tasmanians who have shown a public commitment to the good of their community or the state. This commitment might have been expressed through public debate, literature, artworks or direct advocacy.

In establishing the SARC Fellows we hope to explore dialogues about social justice in new and accessible ways and *Reflections on Social Justice* will be a key medium for this exploration.

This year we have asked the Fellows to reflect on the issue of refugees and asylum seekers. We, like so many Tasmanians, have been distressed and angered by the Federal Government's treatment of people seeking asylum in Australia. While the core work of SARC focuses on the needs of disadvantaged Tasmanians, the workers at the Centre have become heavily involved in the the voluntary community group Tasmanians for Refugees. Anglicare supports this group by providing space for volunteers and assisting with administration of its finances.

This year's *Reflections on Social Justice* begins with the text of the Anglicare Social Justice Lecture delivered by Fr Frank Brennan, titled Tampering with Asylum: Recent Developments in the Treatment of Asylum Seekers. The articles from the SARC Fellows reflect their diverse backgrounds and provide insights into the issues from legal, ethical, historical, religious and human rights perspectives.

We thank the Fellows for their generous contributions to this publication and their ongoing work for a more socially just society.

## The SARC Fellows

**ALISON ALEXANDER** was born in Hobart in 1949 and attended St Michael's Collegiate School and the University of Tasmania. After working as a teacher she became a historian, and has written twelve commissioned histories of Tasmanian institutions ranging from Glenorchy and the Electrolytic Zinc Company to Clarence District Football Club. She has also written three biographies of Australian women, has a doctorate in Tasmanian history, and has done some work in the History Department of the University. Alison is married with three children.

**MICHAEL FIELD** grew up on Tasmania's North-West coast and worked as a teacher before being elected to Parliament in 1976. Michael went on to become leader of the ALP in 1988 and led the party to Government in 1989. As Premier during the Labor-Green Accord he created a plan to deal with a fiscal crisis which has been acknowledged Australia-wide as a template for debt management. Michael now works as a consultant on organisational change and is Chair of the Innovation Board and Multiversity Digital. He lives on the Tasman Peninsula with wife Jan and occasionally dons a wetsuit and snorkel to catch abalone for their dinner.

**PATRICK HALL** is a designer/maker who specialises in furniture and small product design. He emigrated from the United Kingdom to Tasmania as a child and completed a degree in Fine Art at the University of Tasmania. Patrick established Phish Design in 1988. Pieces of his commissioned public art can be found in the Hobart Mall, at the entrance to the Beaumaris Zoo and at other sites around Tasmania. He has exhibited in the United States, Japan and around Australia and his work is held in Sydney's Power House Museum, the Tasmanian Museum and Art Gallery.

**MARGARET SCOTT** was born in Bristol and studied English at Cambridge University. She worked in a false eyelash factory, taught in two schools and in 1959 emigrated to Tasmania with her first husband and their young son. She taught in the English Department at the University of Tasmania for 24 years and retired in 1989 to become a full-time writer. She has produced books of poetry, short stories, essays, fiction and non-fiction as well as appearing on television in World Series Debates and Good News Week. Margaret lives on the Tasman Peninsula.

**PIERRE SLICER** is a Judge in the Supreme Court of Tasmania. He was born in Sydney and educated in Hobart at St Virgil's College and the University of Tasmania. He has been involved in a range of community organisations, including the Aboriginal Legal Service (Tasmania), the Salamanca Theatre Company, Amnesty International and St Vincent de Paul Industries. His other interests include rafting, climbing and bushwalking. Pierre spent a brief period "in the clink" during the Franklin River campaign and is the only sitting Supreme Court Judge to claim this honour. Pierre is presently chairperson of the United Nations Human Rights Committee, Tasmania.

**MARGARET REYNOLDS** retired from the Australian Parliament in June 1999 after serving 16 years as a Senator for Queensland. During that period she served as Minister for Local Government and Minister assisting the Prime Minister on the Status of Women in the Labor Government. Margaret is now the National President of the United Nations Association of Australia and lectures in the School of Political Science and International Studies at the University of Queensland. Margaret presently lives in Launceston with husband Henry.

**TONY RICHARDSON** was born in Britain within the sound of his Dad's mill hooter. He thought it was a nice sound but after working in that industry around the world the hooter became less appealing. He became a clergyman, set up a craft/farming community, working as a public servant and then became a Visiting Fellow at The Australian National University. It was here that he discovered he'd turned into a consultant. He consults to organizations that involve Everybody as they improve their whole system. (Unless they make mill hooters). He lives in Tasmania, works all over the place, loves to catch fish and paint pictures.

**JIM YOUNG** was born in New Zealand, served in the army in Korea and worked as a journalist for eight years. After university in Christchurch, he lived in Canada for 14 years, first teaching psychology at a Quebec university and studying theology. He was ordained in the Anglican Church in Quebec and served as priest in charge of remote parishes in that province, flying a small plane on skis and floats. Jim, his wife Jean, and their six children came to Australia in 1971 and to Tasmania in 1980. He completed a PhD in psychology at the University of Tasmania and was Director of the Psychology Clinic at the university before retiring in 1993. He and Jean have now reached the pinnacle of their careers as pensioners living in New Town.

**FATHER FRANK BRENNAN SJ AO**, a Jesuit priest and lawyer, is an Adjunct Fellow at the Australian National University in the Research School of Social Sciences, Honorary Visiting Fellow in Law at the University of New South Wales, the Director of Uniya, the Jesuit Social Justice Centre in Sydney, and a member of the Council of the Constitutional Centenary Foundation. He has written extensively on Aboriginal Land Rights and is the author of a number of books, including *One Land One Nation, Sharing the Country* and *Land Rights Queensland Style*, and is the co-author of *Finding Common Ground* and *Reconciling Our Differences*. His books on civil liberties are *Too Much Order With Too Little Law* and *Legislating Liberty*.

His academic qualifications are: BA LLB(Hons) Qld BD(Hons) MCD LLM Melb DUniv QUT

In 1996, he completed two years of studies and field trips in the Philippines, Cambodia, Uganda and the United States where he was a Fulbright Scholar at Georgetown University and the first Visiting Fellow at the Australia and New Zealand Studies Center. His current interests and commitments include Aboriginal rights, refugee rights, the bill of rights and constitutional reform, intercultural and inter-religious perspectives on human rights in East Asia. In 1996, he and Pat Dodson shared the inaugural ACFOA Human Rights Award. In 1997, he was Rapporteur at the Australian Reconciliation Convention. During his involvement in the Wik debate, the National Trust named him a Living National Treasure and Paul Keating christened him a meddling priest.

# Tampering with Asylum:

RECENT DEVELOPMENTS IN THE TREATMENT  
OF ASYLUM SEEKERS IN AUSTRALIA

*Abraham said, "Remember, my child, that all the good things fell to you while you were alive, and all the bad to Lazarus; now he has his consolation here and it is you who are in agony. But that is not all: there is a great chasm fixed between us; no one from our side who wants to reach you can cross it, and none may pass from your side to us." (Lk 16:26)*

Anglicare Tasmania Social Justice Lecture 2002

University of Tasmania

24 October 2002

Fr FRANK BRENNAN sj

**JUST** ten days ago, I returned to Australia, having circumnavigated the globe in three weeks looking at the treatment of asylum seekers in the United States and Europe. In those parts of the world there are huge caseloads of persons seeking asylum onshore and each country has porous borders requiring sensitive international co-operation. Whether it be in Washington, London, Brussels or Berlin, asylum seekers and those wrestling with striking the right balance between border protection and asylum have all heard of Tampa and Woomera. Even in the jail outside Berlin where persons are held in detention awaiting deportation, the young man who had been there one year had seen the Woomera protests on television and was sickened by the inhumane realisation that children are regularly held in detention in Australia, Minister Ruddock having recently admitted that one child now aged 12 had spent more than five years in detention before the family was granted a visa according to law.

I am pleased to be back in Tasmania to deliver the Anglicare Lecture for the second time. Some of you will recall that in 1996 I addressed the topic “Are we window dressers or reconcilers?” The Howard government had just been elected and the electoral post-mortems were all but concluded. On that occasion, I said:

Now that Mr Howard’s new band of ministers have found their way around the corridors of the Executive Wing of Parliament House in Canberra, everyone has time to review the situation. The Coalition was out of government for thirteen years, never having sat on the ministerial leather of the new Parliament House opened in 1988. That bicentenary was a critical year in the nation’s view of itself, as will be 2000, the year of the Sydney Olympics. In 1988, policies of Aboriginal self-determination and multiculturalism were proposed by government as constitutive parts of the national identity. The Coalition, then in Opposition, was not so sure. For example, as the first item of business in the new Parliament House in 1988, the Hawke Government proposed a motion acknowledging the place of Aborigines and Torres Strait Islanders in the life of the nation. The federal Coalition would not support any acknowledgment of the entitlement of Aborigines to self-determination unless the entitlement was qualified to be “in common with all other Australians”.

Mr Howard was elected in 1996 promising a more comfortable life for the average Australian. Two of the most senior journalists of the Canberra Press Gallery have recently concluded a series of exclusive interviews with the parliamentary leaders. Having interviewed John Howard and Kim Beazley, Niki Savva and Laura Tingle of *The Age* reported on 7 September 1996 that “The ALP’s official post-mortem concluded that perceptions that it had been captured by vocal special interest lobbies – including Aborigines, migrants, environmentalists – had cost it dearly.” Having interviewed John Howard a couple of weeks earlier, they reported, “The Prime Minister seems to be distancing himself from moderate Aboriginal leaders partly because he sees them as being too close to the former Government.” They asked, “Does that give Mr Beazley a special responsibility to come to their defence?” Beazley tried to turn the blame back on the Prime Minister saying, “I think that if John Howard said that, that is tawdry.” He went on, “One of the things we learned when we were in office was to be for all Australians, not just for some of them. Mr Howard has to learn that lesson too, and that includes if they happen to be Aboriginal Australian or non-English speaking migrant Australian.”

The tone of both interviews revealed that both leaders had learned a new lesson. Electoral

appeal was to be gained with a message of mainstreaming and integration, policies designed for all Australians – distancing one's party from any special pleading by or for Aborigines or migrants. For example, neither Beazley nor Howard will be demonstrably taking on the special responsibility we saw shouldered by Paul Keating in his Redfern Address to Aborigines in December 1992.

Pauline Hansen's brazen declaration that she would not be representing Aborigines and Torres Strait Islanders in her electorate struck a resonant racist chord in the electorate. Letters to government about her constantly run in her favour. She is on to something and she knows it. No doubt some voters are outright racists and they allow their racism to inform their voting pattern. But many decent Australians are unconvinced of the need for special programs, policies or laws for minority groups whether they be different, disadvantaged or indigenous. For them the ideal non-discriminatory society is the one which is colour blind. As far as they are concerned, government should disregard race or ethnicity in all dealings with citizens. And citizens should remain as free as possible to associate or not associate with whoever they may wish. Though regretting high Aboriginal unemployment, they would preserve to themselves the liberty not to employ Aborigines in their workplace because of stereotypical views held and shared about Aboriginal work practices. Aborigines like everyone else, in their view, will just have to adapt and pick themselves up by their own boot straps. For these voters, affirmative action programs are suspect vote buying ploys rather than necessary means for correcting past discrimination and disadvantage.

Some voters realise that past disadvantage has an ongoing adverse impact on some of their fellow citizens. They are happy enough to endorse government programs designed to level the playing field so that each citizen will in the near future have equal access to scarce resources like work and education. They are prepared to consider redirecting their vote to a party committed to all persons having equal opportunity to participate in the benefits of society. Like the other groups of voters already mentioned, they view their fellow citizens primarily, perhaps exclusively, as individuals seeking their slice of the cake distributed by government. They are happy to help those in need provided those in need first help themselves. Each person is viewed as a citizen with the full rights of individual citizenship. Formal equality before the law is to be guaranteed. Individuals are not viewed as part of a self-identifying group wanting to maintain its identity and freedom within the society.

Those espousing multiculturalism and Aboriginal self-determination see the ideal non-discriminatory society as something much more. They claim that members of racial and cultural groups see the world differently, and that these different world views should be accommodated by the state as far as possible. From their perspective, according to M. Cathleen Kaveny, “a society that has transcended discrimination will not only exhibit numerical diversity, but will honour and reflect a number of diverse cultural perspectives in shaping its common life. Moreover, a discrimination-free society would recognise and value the strengths and insights minority groups can offer in ameliorating broader social ills.” This collectivist view of society is at odds with John Howard’s commitment to the individual’s citizenship entitlements.

Having been scarred by the Asian immigration debate, Prime Minister Howard is understandably sensitive to criticisms alleging discrimination on the grounds of race. But Coalition policies aimed at revoking special group rights for Aborigines and ethnic minorities will be subjected to the strictest scrutiny. Ministers trying to divert such scrutiny may be tempted to introduce the rhetoric of “racism” to stop discussion and to silence criticism.

Our parliamentary and church leaders must lead the nation – in reconciliation, justice and recognition. As Wenten Rubuntja, then Chairman of the Central Land Council said in 1988, “We have to work out a way of sharing this country.” As a nation, we cannot do it without Aborigines and Torres Strait Islanders. We have to do this together. Only by sharing the burdens of history and budgets fairly and according individuals and groups their place and entitlements will this country be for all of us. It is time for both sides of politics to settle the deficit of history rather than risking a blow out of trust and reconciliation, to take stock of the nation’s ethnic diversity rather than looking only to the opinion polls and the comfort zone of middle Australia. Participation, representation and government have to be for all of us so that we may proudly show ourselves to the world in 2000 at the Sydney Olympics.

The Olympics have come and gone – on the other side of September 11. Mr Howard is very firmly ensconced in the Lodge. Native title is bedded down with further High Court decisions and complex legislation which has the benefit of bearing the Howard name. As a nation, we are still challenged by the place of “the other”, though the focus has moved from Aborigines to asylum seekers. Recently at Sydney airport, I met a young Palestinian asylum seeker who had been held in detention at Woomera for many months. I then had the privilege of introducing him to Geoff Clark, the Chairman of ATSIC. Mr Clark observed, “We have the

same minister.” Mr Ruddock is Minister for Immigration, Multicultural and Indigenous Affairs – in other words he is Minister for everyone who is OTHER. Mr Clark went on to describe a recent conversation with the minister when he opined that any laws for detention of asylum seekers should be made retrospective because, and pointing at me, “They’re all boat people. They’ve been doing for 200 years and now they think they own the place.” How should we a nation of boat people be treating decently those who now come by boat? That is the question to which I will confine myself in this lecture.

Having been a Fulbright Scholar at the Georgetown Law Centre for a semester in 1995-6, I was delighted to return there after my term as Director of the Jesuit Refugee Service in the newly emerging nation of East Timor, now working back in Australia trying to come to terms with our own government’s novel approaches to refugee law and policy. During my last time in Washington in 1995 I was privileged to spend much time witnessing the operation of the Supreme Court, pondering whether Australia needed a constitutional bill of rights. I thought we could get by well enough without one provided our government and parliament remained in tune with best practice in the international community. I wrote a book *Legislating Liberty* (University of Queensland Press, 1998) saying just that. Now given our government’s treatment of refugees and asylum seekers, especially children in detention, I am not so sure.

On 26 August 2001, the Norwegian container ship *Tampa* was refused permission to land at any Australian port to discharge the 433 asylum seekers rescued on the high seas at the request of the Australian authorities. Those 433 persons were then transported by navy ships to mendicant islands in the Pacific where their claims to refugee status might be processed. Last week, the immigration minister Philip Ruddock went to Geneva to proclaim the decency, efficiency, affordability and workability of this policy to the international community at the UNHCR Excom. The boats may have stopped coming for the moment<sup>1</sup>, but this does not necessarily mean that the Australian policy meets any of these descriptors. Other countries should beware, despite the proud claims made by Mr Ruddock.

## **Contemporary Problems with Protecting Borders**

Refugee flows respond more to the push factors in the countries of persecution than to the pull factors in the countries of reception. Since the end of the Cold War, we have come to expect that there will be more conflicts in the world, producing refugees. When the balance of power was maintained between two power blocs, parties to a conflict and those fleeing the conflict would often be under the control of one of the major power blocs. Refugees were more readily grouped as “them” or “us” depending on which power bloc they were fleeing. All of them are now to be closely scrutinised. We now expect that there will be more inter-ethnic and inter-religious conflict in more fragile nation states. We also expect there will be more failing states unable to offer human rights protection to their citizens.

Since 9-11, we also expect that there will be greater difficulty both in determining whether persons without valid travel documentation are a security risk and in moving some of these persons back to their home countries. For example, at the moment and for the foreseeable future, it is impossible for any government to move Iraqis anywhere else in the world unless they already have residential rights in some third country.<sup>2</sup>

One of the aspects of globalisation is that money and people are more mobile. Australia may be the end of the earth, but it is no longer inaccessible. Unauthorised movement from the third world to the first world, from insecurity to security, from persecution to protection is to be expected. Entrepreneurs, including criminal syndicates, are willing to cash in on the market for assisted passage.

Since 1989, we have had 259 boats turn up on our shores constituting the most recent wave of asylum seekers wanting access to Australia without a visa. 213 of those boats have come during the prime ministership of John Howard. 102 of them came (mostly from Indonesia) after our intervention in the East Timor conflict and when the Indonesian presidency was in transition and some disarray. I have no doubt that some persons in authority in Indonesia thought they would test the waters of Australia’s superior morality by allowing or encouraging a few more boats to make the journey. As Indonesia is a lightly governed country with endemic corruption, it is unlikely that any Australian government could negotiate any agreement which would stop “people smuggling” completely. It is now a year

since the Tampa affair and the Australian response to it, and no more boats having come in that time. The Australian Federal Police has told the Senate that “there are currently 2,100 people in transit from various countries now in Indonesia who may be seeking to enter Australia”.<sup>3</sup> These last 13 years, 13,475 unauthorised arrivals have come by boat – on average, 1,000 a year. But from 1999 until 2001, that number had quadrupled.<sup>4</sup>

At any one time there are said to be up to 20 million refugees and other persons of concern to UNHCR. There are about 37,000 off-shore asylum seekers who are on the books having indicated a desire to come to Australia. Australia takes up to 12,000 off-shore refugees or other humanitarian applicants a year. To some extent, our government seeks a migration outcome in choosing these successful applicants. It is misleading to claim that they are the ones who happen to be at the head of a queue of persons ranked according to greatest need. They are the lucky ones in a lottery where some connection with Australia or greater compatibility with Australia usually counts for something.<sup>5</sup>

The sovereignty of the nation state is morally justifiable only if the nation state discharges its primary obligation to protect the human rights and uphold the dignity of its citizens. Non-interference in the affairs of other States is morally justifiable only if the international community makes provision for the protection of the human rights of those persons who are persecuted by their own state either because the state authorities single out members of their group for persecution or because the authorities selectively fail to protect members of such groups from persecution by other non-state actors.

Since 1951, such protection has been best accorded by countries signing up to the Convention on refugees. Australia is a signatory – Indonesia is not. Papua New Guinea which one year later still detains 338 of the asylum seekers subject to the Pacific solution is a signatory, Nauru which still detains 1157 is not. Under the convention, Australia is not to force back those who rightly invoke our protection obligations. And we are not to punish them for having the temerity to turn up without a visa. This defect is the equivalent of not having a parking permit when you have entered the carpark while fleeing a forest fire. To equate bona fide asylum seekers with queue jumpers is to equate the bona fide forest fire victim with the carpark cheat who simply wants to avoid the permit fee while jumping the queue.

Much of our present Australian government rhetoric is posited on the presumption that all boat people, even those who are refugees, are engaged in secondary movement for non-persecutory reasons. They are all assumed to be persons seeking a migration outcome, trying to jump the queue. That is also the underlying assumption in the legislation and policy directions. We now treat them as criminals until they can prove that they are refugees, locking them up as a deterrent, locking them up in the desert and sending a message to their countrymen. Australia is not alone in trying to limit secondary movements. Just last month, UNHCR's chief Ruud Lubbers told the European Union Justice and Home Affairs Council:<sup>6</sup>

A major concern today is the issue of secondary movements of refugees and asylum seekers. I am convinced that the international community needs new agreements to deal with cross-cutting issues such as this. These new agreements would supplement the Convention and form part of multilateral frameworks for protecting refugees and achieving durable solutions, primarily in regions of origin.

I hope it is not too late for the Australian government to heed Mr Lubbers, caution: "The current trend towards more unilateralism is adding to the confusion, and needs to be reversed. It can be." Let's bear in mind two statistics when we consider Australia's treatment of the latest round of boat people. Over the last three years, ASIO, the government's security organisation, had checked 5,986 unauthorised arrivals to assess whether or not they constituted a direct or indirect threat to Australia and found that not one of those persons constituted such a threat. Of the 8,965 Afghan and Iraqi applicants for refugee status these last three financial years, 82% of them (7,330) were found to be refugees by the primary decision maker. So even before we get to any appeals process, it is clear that the overwhelming proportion of those turning up by boat have been refugees. Those who have suffered most as a result of Australia's unilateral action have overwhelmingly been found to be refugees and no security threat at all.

Even those countries which are not net migration countries have to do their part in assisting refugees providing them with safe haven until it is safe for them to be repatriated. In the long term the options for a refugee are repatriation to their home country when it is safe to return, integration into the nation state to which they fled seeking asylum or resettlement in a third country. With modern travel habits and ease of communication, the line becomes

blurred between an asylum seeker's secondary movement from a country of first asylum and an asylum seeker's ongoing journey seeking a place of secure asylum for self and family dependents. Our government and our parliament thinks this blurred line can be straightened by precise legislation which would be interpreted by public servants and tribunal members spared any review by the courts.

Being an island continent nation, Australia does not share land boundaries with any other nation and we enjoy the splendour of our isolation. That isolation also feeds our fear of the other. The politics of fear has become a hallmark of Australian politics this last decade, and fear of the foreigner has always been part of the Australian story. The fear is compounded by the "other" religion – Islam. It is also compounded by cultures which are so "other" such as those of Afghanistan and Iraq.

If democracy is about honouring the will of the people and protecting the rights and dignity of all, it is essential that political leaders respond responsibly to people's fears rather than feeding those fears and that they resolve people's fears with policies which are faithful to the values of the people and to the integrity of the social institutions. Because of the electoral fervour and the talk back radio lather about the issue, we Australians have not taken sufficient stock of the damage and cost being inflicted by the present policy. Our policy presumes that we can isolate Australia from these population flows which affect the rest of the world. We think we can stop or control the flow by sending a harsh message. We should rather manage the flow by keeping step with other first world countries and by maintaining a principled commitment to human rights.

### **Distinctive Domestic Australian Political Issues**

Because I am a strong critic of the Australian government policy and the present Australian law, let me have the minister speak for himself in articulating the problem which confronts him and the government. Recently he gave a long personal interview on national television in *Australian Story* and said:<sup>7</sup>

"I have compassion for everyone, but I can't help everyone. Compassion is felt according to a

hierarchy of need. I mean, if you think about the way in which we deliver medical services in a hospital situation you have an emergency unit and a range of accidents – train crash. What do you do? You bring people in and the attention has to be given to those who are immediately in danger of losing their lives, and then you move on to the others as you can.

“Long before I became minister, I’d spent a lot of time in refugee situations. And the difficulty is that most people in Australia who are thinking about these issues only ever see those who have been free enough to travel and who have come to Australia and who want to tell their story. The difficulty is that most people are never having to weigh that up, look in the eyes of those people who have no prospect of engaging a people smuggler, no money to be able to be trafficked. And where I sit, you have to at times see those faces, hear those stories.

“I’ve probably only got four genuine asylum seekers in detention right now, maybe 20 amongst visitor overstayers who are saying they’re now asylum seekers. The balance – and we’re talking about 550 who have been found not to be refugees – are being held for removal or held while they explore legal appeals. My view is very simple. The vast majority of those people can go home.”

Many of the domestic political pressures in Australia mirror those which exist in other western countries at this time. Just as the US Congress overreacted with the overreach of the 1996 immigration reforms, so too our Parliament overreacted with its raft of measures following the Tampa crisis on the high seas. Just as it will be some time, especially following 9-11, before the US amends its oppressive 1996 provisions, so it will be some time before sensible legislative reform occurs in Australia – unless there be significant wins in the court requiring further legislative amendment running the gauntlet of the Senate which the government does not control.

There are some distinctive facts about our present generation of political leaders which we should bear in mind. I will be simplistic for the purposes of brevity:

- Our present Prime Minister lost the leadership of his party not long after a bruising public debate about immigration and race issues in 1988. He was castigated by those he views as intellectual elites and now he has been endorsed with a popular policy.
- The “One Nation” Party which came to prominence at the time Mr Howard was elected

Prime Minister in 1996 agitated a refugee policy very similar to that which has now been adopted by the Australian government.

- The other minor parties in the Senate, the Democrats and the Greens, have previously supported more restricted immigration on environmental grounds, creating a suspicion amongst some conservatives that their trumpeting the refugee and immigration cause since Tampa is for short term political advantage.
- The Opposition Labor Party instituted the mandatory detention policy when it was in government and the ministers who implemented the policy came from the Left of the party.
- During the 1996 election campaign, the Opposition Labor Party failed to articulate a comprehensive, coherent and alternative policy. The Labor Party is yet to formulate an alternative policy. And on the first anniversary of the Tampa crisis, Labor's spokeswoman on migration, Julia Gillard, limply told Parliament:<sup>8</sup>

“In the face of this increasing and visible problem, the Howard government did very little at all, even though it had to have known from intelligence reports that the forthcoming wave of boat people was eminently foreseeable. Known and identifiable factors relating to the likelihood of boat arrivals included: a closing of borders in European countries; the consolidation of Taliban rule in Afghanistan from 1995- 96 onwards; continuing oppression in Iraq; easier and cheaper travel and advances in worldwide communications technology facilitating travel and the knowledge of destinations; and the growth of people-smuggling with people smugglers promoting Australia as a next best destination to Europe. All of these things were well known, and yet the Howard government seemed caught—stunned—when all these identifiable and knowable factors translated into unauthorised arrivals. In the face of these unauthorised arrivals, the Howard government did nothing except maintain Labor's policy of mandatory detention.”

## **Contemporary Problems with the present Australian Balance between border protection and protection of refugees within our territory**

Let me walk you through some of the abuses and costs created by our present policy.

### **1. Conduct on the High Seas**

Like most Australians I want to believe Rear Admiral Smith's recent rebuttal of the claim that the RAN could be guilty "of deliberately turning their backs on people in peril". I hope he is still right when he says, "The Royal Australian Navy is a highly professional service which places the highest importance on the safety of life at sea and, whenever we are able, we will always respond to those in distress."

But how do we reconcile these noble sentiments with what we are asking our able seamen to do? Here is an extract from the log of the HMAS Adelaide tabled in the Senate on 21 February 2002:<sup>9</sup>

6 October:

1813 (AEST 2113) First warning given to master of vessel.

7 October:

0153 (AEST 0453) Second warning issued.

0216 Boarding party ordered by Commanding Officer to prepare to board SIEV<sup>10</sup> 4 when vessel enters Christmas Island Contiguous Zone.

0258 Adelaide made close pass down SIEV<sup>4</sup> starboard side.

0335 Adelaide directed by CJTF to conduct a positive and assertive boarding .

0402 Warning 5.56 mm (cannon) shots fired 50 feet in front of vessel.

0405 Warning 5.56 mm shots fired 75 feet in front of SIEV<sup>4</sup>.

0409 Warning 556 mm shots fired 50-100 feet in front of SIEV 4.

0414 Boarding party advised by CO that if 50 cal machine gun warning shots do not stop vessel, boarding party is to aggressively board SIEV 4.

0418-0420 23 rounds of 50 cal (20 rounds of automatic fire) fired in front of SIEV 4.

0430 Close quarters manoeuvring by Adelaide, SIEV passed close astern to Adelaide

port quarter and reduced speed/took way off momentarily.

- 0432 Boarding party issued final warning (to SIEV) indicating that if they did not allow boarding party to board, Adelaide would not let them enter Australian waters.
- 0442 Boarding party effected a conducted non-compliant boarding of SIEV4.
- 0445 Boarding party in control of SIEV 4.

If a boat – even a leaking, overloaded wooden boat – enters our territorial waters with a human cargo credibly claiming to be asylum seekers, that boat should in future be escorted to the new \$219 million detention centre being purpose built on Christmas Island. If the passengers come without valid travel documents, we should keep them there until their identities are established and a prompt determination is made whether or not they are a health or security risk. If they were a security risk or of questionable identity, ongoing detention in this isolated place would be warranted.

## 2. Detention Centres

At enormous cost, we are maintaining reception and processing centres at Curtin, Port Hedland, Woomera and now Baxter on the Australian mainland. Curtin will soon close. Every fairminded person including the government's own Immigration Detention Advisory Group thinks that Woomera should have closed long ago. There are only 110 detainees now in that facility. It is a hell-hole, dehumanising for the detainees and the workers alike. But it is our twenty-first century Port Arthur. Its deterrent value to government is enormous. It is the jewel in the crown of desert detention. There is no other policy reason for keeping it open. There is no sensible financial reason for keeping it open. It is far removed from state services such as Children's services and police. It is too isolated a place for public servants and tribunals comfortably and efficiently to process claims for refugee status. DIMIA sees an ongoing use for Woomera because this ensures that "we have a network of centres in order to best manage the diversity of the detainee caseload. Retaining the Woomera IRPC also makes possible the operation of the alternative housing project for women and children in the Woomera township."<sup>11</sup> But let's face it: Woomera's main purpose now is to emit a double signal to would-be asylum seekers and to fear-filled voters. Dispersing the 110 Woomera

detainees to other places would deprive government a precious transmitter. With the opening of the new Baxter detention facility, the government now has more than 2,000 beds available in other detention facilities and yet, given that no boats have reached the Australian mainland for more than a year, there are only 550 in detention on mainland Australia.

### **3. Processing of Claims**

The government justifies detention in part because it helps with the processing of claims. Detention in an accessible place and in a more work friendly environment might help with processing. The detention regime contributes to and helps to disguise the uneven performance of our decision makers especially when it comes to the Iraqis and Afghans who have been applying for protection this last year.

During the last financial year (1 July 2001 – 30 June 2002), the Refugee Review Tribunal (RRT) set aside 62% of all Afghan decisions appealed and 87% of all Iraqi decisions appealed. This means that Afghan asylum seekers got it right 62% of the time when they claimed that the departmental decision makers got it wrong. And the public servants got it wrong 87% of the times that the Iraqi applicants claim to have been mistakenly assessed. Meanwhile the RRT set aside only 7.9% of decisions appealed by members of other ethnic groups. Even more disturbing than these comparisons is the statistic that in the last financial year, the RRT finalised 855 detention cases of which 377 were set aside. This is a 44% set aside rate in detention cases.

The government and the parliament have been anxious to get the decision making process away from court supervision. We could all breathe more easily with the cost effectiveness of removing the courts from supervision of the correctness of these decisions if we could be more convinced of the professionalism and independence of the primary decision makers and of the competence and security of the RRT members. The Minister and one of his in-house lawyers have taken public pot shots at the judges but when 18.2% of RRT decisions appealed to the Federal Court have been set aside this last financial year, there are good grounds for concern when the Parliament (following a Senate gag and a bypassing of the usual Senate committee processes) attempts to limit judicial review of RRT decisions. Jus-

tice McHugh, hardly an expansionist High Court judge, has recently told the Australian Bar Association Conference:<sup>12</sup>

Even if 30 percent of applicants have commenced proceedings “as a means of prolonging their stay in Australia”, it seems a small price for a just and prosperous country to pay for maintaining the rule of law.

The frustration of the Executive as the result of applicants abusing the judicial review system is understandable. But Parliament and the Executive should never forget the statement of Sir William Wade, the doyen of administrative lawyers, that “to exempt a public authority from the jurisdiction of the courts of law is, to that extent, to grant dictatorial power”.

Even the government senators on the Legal and Constitutional Legislation Committee who considered the repercussions of a wide ranging privative clause back in 1998 conceded the problem in their conclusion:<sup>13</sup>

“The committee is concerned that in determining matters as critical as those of refugee appeals, where a wrong decision could have exceptionally grave consequences for the applicant, it is of the highest importance that every effort is made to ensure the highest quality of decision making. Equally, the committee is concerned that passage of the privative clause must not act to obscure real problems in the refugee determination process.”

#### **4. The Temporary Protection Visa**

Those who get through the back door are eligible only for a temporary protection visa (TPV) which denies them the right to be reunited with their families and denies them the right to travel out of Australia and to return. The result is that wives and children have no option but to get on the next boat and come knocking at the back door. Some of them have husbands and fathers lawfully residing in the Australian community. The TPV holder is offered only three years protection in the first instance.

Many of those Iraqi women and children found to be refugees in Nauru have husbands and fathers who are already lawfully resident in Australia with a temporary protection visa. Though the restrictions on the TPV might deter some people from taking the perilous boat trip to Australia, others aware that family reunion is not permitted and knowing that each

onshore determination means one less place in the offshore program will be attracted to coming illegally. TPV holders who are refused the right to travel and return to Australia have restricted work opportunities and less capacity to assess the security situation elsewhere. These disincentives combined with the denial of the fundamental right to be reunited with family have adverse effects disproportionate to the desired deterrent effect. TPV holders should have the same capacity and services available to them to allow them to be integrated into the Australian community and to participate in Australian life while they are here. The denial of the right to travel cannot be reconciled with Article 28 of the Refugee Convention which provides:

The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require.

Minister Ruddock claims the government is not in breach because a departing TPV holder has then exhausted that visa and is free to apply for a new visa should they wish to return. Of course, they would not be issued with any new visa.

### **5. Constitutional Problems with Judicially Unreviewable Migration Detention**

The word games about deterrence and migration detention have become complex. Ten years ago, the High Court of Australia said migration detention without a court order or court supervision was permissible only if it were necessary for health, security, visa processing or removal. Otherwise it would be punitive and a deterrent, unconstitutional and unlawful unless subject to an exercise of judicial power. If the government has its way, Iraqis and Palestinians who have been rejected, who have no third country in which they have residence rights, and who cannot return home are to be held in open-ended, judicially unreviewable detention for years. In the case of the Iraqis, their detention at our hands will be extended interminably should the US (with some Australian assistance) decide to bomb their country.

Consider the Palestinian case of Akram Al Masri who was released from detention by order of the Federal Court granting *babeas corpus*.<sup>14</sup> On 15 August 2002. He arrived on Ashmore Reef in July 2001. In Woomera he was processed and rejected. He formally applied to be

returned home. He packed his bags expecting to leave in February. On 18 February a public servant told him that he could not be moved anywhere. He went berserk understandably and smashed his right hand through a plate glass door, being hospitalised for weeks. With other Palestinians in the same situation he then wrote to Minister Ruddock in February, March, May and July 2002 asking to be returned home or at least released from punitive detention.

Justice Merkel had the opportunity to observe the unhelpfulness of some of the public political language used in these situations. He said:<sup>15</sup>

“The Refugees Convention is a part of conventional international law that has been given legislative effect in Australia: see ss 36 and 65 of the Act. It has always been fundamental to the operation of the Refugees Convention that many applicants for refugee status will, of necessity, have left their countries of nationality unlawfully and therefore, of necessity, will have entered the country in which they seek asylum unlawfully. Jews seeking refuge from war-torn Europe, Tutsis seeking refuge from Rwanda, Kurds seeking refuge from Iraq, Hazaras seeking refuge from the Taliban in Afghanistan and many others, may also be called “unlawful non-citizens” in the countries in which they seek asylum. Such a description, however, conceals, rather than reveals, their *lawful* entitlement under conventional international law since the early 1950’s (which has been enacted into Australian law) to claim refugee status as persons who are “unlawfully” in the country in which the asylum application is made.”

Within three weeks of the Federal Court’s order to release Al Masri from immigration detention, in part following the reasoning of the US Supreme Court in *Zadvydas*, the Australian government was able to return to court with the assurance that all three Palestinians from the Gaza Strip who had been held in immigration detention could now be returned home safely. In the previous seven months there had been no chance. Within a week, they were back home with their families, highlighting the need for the keenest judicial supervision of open ended immigration detention. Now that we have the advantage of clarity about the illegality and unconstitutionality of long term, open ended, judicially unreviewable detention of rejectees who happen to have entered Australia in the past without a visa and who happen to be nationals of countries unable to receive back their nationals from Australia, it is time that strict time limits were imposed on detention after which ongoing detention would be permitted only by order of the courts.

## 6. Arbitrary Detention

The government has expressed strong criticism of Justice Bhagwati's UN report of "Human Rights and Immigration Detention in Australia" which concludes that<sup>16</sup>

From a human rights point of view, the detention of children in the context of immigration procedures is certainly contrary to international standards

Mr Ruddock has published his "Detailed Rebuttals" to the Report of the UN Human Rights Commissioner's Envoy into Human Rights and Immigration Detention. I agree with him that "The length of the period of detention should not be considered in the abstract but must be considered alongside the reasons for detention (that is to ensure that unlawful non-citizens are available for processing, to allow identity, security and health checks to be made and to ensure availability for removal if they are not owed protection)."<sup>17</sup>

But in relation to those three Palestinians who had been held at Woomera for an extra seven months, it is very misleading to continue telling the public that "Detainees who have failed to engage Australia's protection obligations can bring their detention to an end by choosing to leave Australia and by cooperating in removal arrangements." The Palestinians had been very co-operative and were desperate to leave Australia given that the government was not prepared to permit them and their families residence rather than detention. The minister's statement is equally misleading in relation to the increasing number of Iraqis who cannot return home. Their ongoing detention on the eve of war to which we will be party is not "reasonably capable of being seen as necessary for the purposes of deportation" (*Lim's case*).

Following Justice Merkel's decision in *Al Masri* on 15 August 2002, there should be an immediate review of all Palestinians in detention. Immediate release (by ministerial order or consent order of the Federal Magistrates' Court) should follow for any Palestinian who:

- is not a health or security risk
- has exhausted all appeals
- has formally requested removal
- does not have residence rights in any third country

Iraqis in a similar situation should also be released. It is not sufficient that on the eve of threatened war the Australian Government can effect the removal of voluntary returnees only as far as the Iraqi border.

Despite Mr Ruddock's "detailed rebuttals" of the UN report, there is an increasing percentage of detainees who have been rejected and cannot be moved, this being no fault of theirs. Furthermore, the detention of some applicants has been lengthened by the government's decision to appeal to the full Federal Court decisions which have been favourable to asylum seekers.

It was no part of Bhagwati's brief to determine whether the Australian regime amounted to arbitrary detention. That was decided back in 1997 when the UN Human Rights Committee (of which he was a member) ruled on a complaint by a Cambodian detainee ("Mr A") under the first optional protocol of the International Covenant on Civil and Political Rights. In those days there was still a 273 day limit on detention and in that case there was no problem about the applicant being able to return to his home country should he have so wished. The decision was disregarded by Australian politicians on the basis that it was simply the opinion of an international committee

Last year, the Court of Appeal in the United Kingdom quoted the UN's decision on the mandatory nature of the Australian detention regime and went on to state its unanimously held belief "that most right thinking people would find it objectionable that such persons should be detained for a period of any significant length of time while their applications are considered, unless there is risk of their absconding or committing other misbehaviour."<sup>18</sup>

The government is right to reject alternatives which would permit detention of unaccompanied adults and mandate the release of family groups with children. Such a policy would only encourage parents to put children to sea on these dangerous voyages. Consistent with the High Court's decision in the *Lim* Case ten years ago, detention of all persons, including children, should be restricted to migration purposes and should take place in locations which are well suited to the purpose of detention, especially the efficient processing of visa applications. Deterrence in the desert is the big lie in the government's policy, causing the minister to trip up on the use of the word "deterrence".

## **7. Detention of Children: inadequate care and protection**

Detention of children in the desert, far removed from regular State children's services and in a political hothouse where there is no agreement between State and Federal governments for the delivery of children's services is a recipe for institutionalised child abuse.

On 3 June 2002, Mr Ruddock told me:

“The Department is working to conclude appropriate protocols with State child welfare authorities. The aim of these Memoranda of Understanding (MOU) is to provide the framework for collaborative and cooperative relationships between DIMIA and the State authorities and to clarify the roles and responsibilities of the agencies to ensure that the best interests of all children in detention are met. A Memorandum of Understanding (MOU) was signed last year between my Department and the South Australian Department of Human Services (DHS) relating to child protection notifications and child welfare issues pertaining to children in immigration detention in South Australia.”

But then on 9 August 2002, the Premier of South Australia, Mr Rann, in a ministerial statement to Parliament said:

It is important to note that state child protection workers are only allowed into the Centre with the permission of the Commonwealth and cannot legally enforce their recommendations under South Australia's Child Protection Act as would be possible in other cases concerning children who are not on Commonwealth land.

... there is a need for a protocol to protect and remove children from dangerous situations within the compound to protect children seeing traumatic incidents or being harmed in such incidents.

The following recommendations are made: That the centres develop a protocol by which children are protected and removed from situations of danger and upset within the compound. All of the children in such centres need to be protected from viewing traumatic incidents and the risk of being physically harmed during such incidents. The duty of care to children needs to be effectively managed.

On 15 August 2002, the Attorney General, speaking for Mr Ruddock in his absence, said: “The Department has a strong and cooperative relationship with the South Australian

Department of Human Services and works closely with officials to ensure that the best interests of the children are met.” Citizens like myself are left to think that there is no possible co-ordinated government response to child protection while one government remains committed to a punitive desert regime without a workable MOU and protocol being in place. The result must be damage to children. Meanwhile Mr Ruddock says that the relevant MOU and protocol with the South Australian government had been in place for some time. It just doesn’t work, according to those who have to administer it, and according to their own political masters.

Let me give one example of the incapacity of the Canberra bureaucracy to deal credibly with reports of child abuse and neglect in detention, given their need to pursue a hot political agenda. I communicated information about injuries to children at Woomera to the Minister and to the Department on 4 April 2002. Some of this information, including the claim that a seven year old boy was hit with baton and tear gas, was then published in the *Canberra Times* on 18 April 2002. Within six hours, DIMIA had publicly refuted the claim saying, “This department has no record of injuries to a 7-year-old sustained during the disturbance at Woomera detention facility on Good Friday. . . . If Father Brennan has information or evidence of mistreatment of detainees he should report it to the appropriate authorities for investigation.” I had seen the bruises with my own eyes. I had heard reports of tear gas hitting children even from the ACM manager at Woomera. I lodged a complaint about the department’s spin doctoring. It took the department more than three months to conduct the inquiry. They can do you in in six hours but it takes them over three months to admit their mistakes. The Acting Secretary of the Department explained that their public misinformation occurred because “a number of communication problems in the Department allowed the matter to escalate to the stage where Mr Foster. . . posted inaccurate information”. According to the departmental inquiry, this escalation took place over four days. And yet the public rebuttal was issued within six hours of the publication of my remarks – hardly any time at all for communication problems or escalation to impede the single-minded objective of denying injury to children. Mr Ruddock’s own chief of staff had referred the matter to the South Australian Family and Youth Services on 29 April 2002, once a new search of medical records revealed there was a problem. The mother of the boy still has received no

report on her complaint. The cursory and dilatory nature of the Department's inquiry invokes no public confidence that there will be no recurrence of cover-ups or neglect of credible claims of injury to children in detention in remote places where they are being used as a means to an end. In this instance, the Commonwealth Department was guilty of a negligent or wilful cover-up regarding the investigation of child abuse in detention centres. If children are to be held in detention with their parents, they should be held in facilities where there is ready access to State Children's Services and the policy parameters of their detention should be sufficiently humane to win the support of both the Federal and State governments, regardless of which party is in power. It is obscene that defenceless children be used as political footballs by political spin-doctors.

Once asylum seekers are found to be refugees, they should have the same rights as all other refugees regardless of whether they arrived by plane or boat, with or without a visa. In particular, they should have the same rights of international travel and of family reunion. By denying these rights to some, we encourage women and children to risk hazardous voyages and we demean those refugees living in our community wanting to get on with their lives without remaining disconnected from their families. Family reunion is not a "convention plus" outcome as the Minister likes to describe it; it is a basic human right. We have 60,000 overstayers a year who arrived with visas. Most of them are far more able to escape detection in the community than the handful of unauthorised boat arrivals each year. Once again this discrimination is only for the purpose of deterrence, wreaking too much devastation in the uncertain lives of those who now have every entitlement to be living in our midst.

The obscene cost to one child of the Australian government policy was highlighted by the Minister's answer to two questions in the Parliament on 19 August 2002:<sup>19</sup>

- (1) What is the longest recorded period that any detained adult female asylum seeker has had to wait in detention whilst her application for asylum to Australia was being processed?

Answer: The longest recorded period that any adult female asylum seeker has had to wait from the time of detention, through the application process, review and judicial review stages, until all protection visa processing was completed, was 5.4 years (1998 days). The original protection visa application was processed by my Department within 4 weeks from

time of lodgement to primary decision. The individual then unsuccessfully challenged that decision at the RRT. A family member of the individual subsequently applied for a protection visa and, following an unsuccessful review application, pursued litigation over the RRT decision to affirm the Department's finding that he was not owed refugee protection. This litigation was finally resolved in the family member's favour. Immigration detention ceased 29 days after litigation was completed.

- (2) What is the longest recorded period that any detained minor asylum seeker has had to wait in detention whilst his or her application for asylum to Australia was being processed, and what is the age of this minor now?

Answer: The longest recorded period for any minor asylum seeker in detention was 1998 days. This minor would now be 12 years old, is the child of the above female and was included in the same application. Immigration detention ceased 29 days after the family member's litigation was completed.

From the age of 7 until 12 this child languished in detention before finally being granted a visa and released into the freedom of the Australian community.

## 8. The Pacific Solution

I will not delay long on the Pacific Solution which is the last step in a morally bankrupt policy. Such detention is contrary to the constitutions of PNG and Nauru.

For example, the PNG Constitution provides:

### 42. Liberty of the person.

- (1) No person shall be deprived of his personal liberty except—
- (a) in consequence of his unfitness to plead to a criminal charge; or
  - (b) in the execution of the sentence or order of a court in respect of an offence of which he has been found guilty, or in the execution of the order of a court of record punishing him for contempt of itself or another court or tribunal; or
  - (c) by reason of his failure to comply with the order of a court made to secure the fulfilment of an obligation (other than a contractual obligation) imposed upon him by law; or
  - (d) upon reasonable suspicion of his having committed, or being about to commit, an

- offence; or
  - (e) for the purpose of bringing him before a court in execution of the order of a court; or
  - (f) for the purpose of preventing the introduction or spread of a disease or suspected disease, whether of humans, animals or plants, or for normal purposes of quarantine; or
  - (g) for the purpose of preventing the unlawful entry of a person into Papua New Guinea, or for the purpose of effecting the expulsion, extradition or other lawful removal of a person from Papua New Guinea, or the taking of proceedings for any of those purposes; or
  - (h) in the case of a person who is, or is reasonably suspected of being of unsound mind, or addicted to drugs or alcohol, or a vagrant, for the purposes of—
    - (i) his care or treatment or the protection of the community, under an order of a court; or
    - (ii) taking prompt legal proceedings to obtain an order of a court of a type referred to in Subparagraph (i);
    - (i) in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare under the order of a court or with the consent of his guardian.
- (2) A person who is arrested or detained—
- (a) shall be informed promptly, in a language that he understands, of the reasons for his arrest or detention and of any charge against him; and
  - (b) shall be permitted whenever practicable to communicate without delay and in private with a member of his family or a personal friend, and with a lawyer of his choice (including the Public Solicitor if he is entitled to legal aid); and
  - (c) shall be given adequate opportunity to give instructions to a lawyer of his choice in the place in which he is detained, and shall be informed immediately on his arrest or detention of his rights under this subsection.
- (3) A person who is arrested or detained—
- (a) for the purpose of being brought before a court in the execution of an order of a court; or
  - (b) upon reasonable suspicion of his having committed, or being about to commit, an offence, shall, unless he is released, be brought without delay before a court or a judicial officer and, in a case referred to in paragraph (b), shall not be further held

in custody in connexion with the offence except by order of a court or judicial officer.

- (4) The necessity or desirability of interrogating the person concerned or other persons, or any administrative requirement or convenience, is not a good ground for failing to comply with Subsection (3), but exigencies of travel which in the circumstances are reasonable may, without derogating any other protection available to the person concerned, be such a ground.
- (5) Where complaint is made to the National Court or a Judge that a person is unlawfully or unreasonably detained—
  - (a) the National Court or a Judge shall inquire into the complaint and order the person concerned to be brought before it or him; and
  - (b) unless the Court or Judge is satisfied that the detention is lawful, and in the case of a person being detained on remand pending his trial does not constitute an unreasonable detention having regard, in particular, to its length, the Court or a Judge shall order his release either unconditionally or subject to such conditions as the Court or Judge thinks fit.
- (6) A person arrested or detained for an offence (other than treason or wilful murder as defined by an Act of the Parliament) is entitled to bail at all times from arrest or detention to acquittal or conviction unless the interests of justice otherwise require.
- (7) Where a person to whom Subsection (6) applies is refused bail—
  - (a) the court or person refusing bail shall, on request by the person concerned or his representative, state in writing the reason for the refusal; and
  - (b) the person or his representative may apply to the Supreme Court or the National Court in a summary manner for his release.
- (8) Subject to any other law, nothing in this section applies in respect of any reasonable act of the parent or guardian of a child, or a person into whose care a child has been committed, in the course of the education, discipline or upbringing of the child.
- (9) Subject to any Constitutional Law or Act of the Parliament, nothing in this section applies in respect of a person who is in custody under the law of another country—
  - (a) while in transit through the country; or
  - (b) as permitted by or under an Act of the Parliament made for the purposes of Section 206 (visiting forces).

The minister's first defence is to claim that the facilities in those places are not detention centres despite his own legislation speaking of "the detention of the person in a country in respect of which a declaration is in force (s. 198D(3)(c)). And the government's bills digest speaks of the removal of persons "to a place such as a 'Pacific Solution' detention facility on Nauru or Papua New Guinea". Even Senator George Brandis and Mr John Hodges in the Senate Select Committee on a Certain Maritime Incident have referred to the "detention centres" in those places and the "detainees" kept therein. In his evidence on 1 May 2002, Mr Hodges said, "Nauru is by far the worst of the detention centres." Mr Ruddock's next defence is to claim that it is not for the Australian government to tell other governments how to interpret their constitutions.

### **Towards more just, workable and decent policies**

The European Union is now trying to formulate common standards and a unified approach to the processing of asylum applications. In Europe, they do not have the luxury of going it alone because "Methods that deter access to a national territory merely shift the burden from one country to another."<sup>20</sup> It is very unneighbourly behaviour. Everywhere, governments of first world countries are under pressure from the asylum seekers and their electors as they strive to find the balance between the protection of borders and the protection of the asylum seekers who, like the poor, are with us always. But this is why it is so important that we Australians address our own fears rationally and ensure that we act decently. Compared with the European and US numbers, ours is a small nut to crack. Is that any reason for us to use a large sledge hammer which would inflict untold damage if used in other places? The Australian policy can be posited only on one of two options. Either we want to be so indecent that no other country will dare to imitate us and so we will maintain the advantage that asylum seekers will want to try anywhere but here. Or we want to lead other countries to a new lowest common denominator in indecency losing the short term comparative "border protection" advantage but being seen to be world leaders in greater stringency towards asylum seekers, triggering another round of competitive tightening or at the very least leaving bona fide asylum seekers more vulnerable in the non-existent queues.

I commend our government for its stated objective: “to resettle some 12,000 persons each year who are in greatest need and to prioritise those who are in need of assistance – those who are at risk if they remain where they are and have no other means of escape other than resettlement to a third country.”<sup>21</sup> Some of those persons in greatest need have come to Australia by boat without a visa and we have treated them appallingly. There is no reason why the government objective cannot be achieved together with the objective of treating asylum seekers within our territory firmly but decently. The immorality and inequity in world burden sharing resulting from our present “slam the back door” policy is highlighted by a simple thought experiment. Imagine that every country signed the Refugee Convention and then adopted the Australian policy. No refugee would be able to flee from their country of persecution without first joining the mythical queue in their country of persecution to apply for a protection visa. If anyone dared to flee persecution, they would immediately be held in detention (probably for a year or so) awaiting a determination of their claim. All refugees in the world would be condemned to remain subject to persecution or to proceed straight to open-ended, judicially unreviewable detention. The purpose of the Refugee Convention would be completely thwarted. The myopic argument runs that we Australians are entitled to design a sledge hammer to crack this small nut because other countries have not (yet) adopted our policies and because we are prepared to take 12,000 applicants through the front door provided they stay in the queue back in the country of persecution or first asylum.

If seeking to implement a Christian Response to refugees and asylum seekers on our doorstep, we might contemplate the present Australian version of the parable of Dives and Lazarus: (Lk 16:19-26 with a contemporary Australian gloss)

There was once a rich man, who dressed in purple and the finest linen, and feasted in great magnificence every day. At his gate covered with sores, lay a poor man named Lazarus, who would have been glad to satisfy his hunger with the scraps from the rich man’s table. Even the dogs used to come and lick his sores. One day the poor man died and was carried away by the angels to be with Abraham. The rich man also died and was buried, and in Hades, where he was in torment, he looked up; and there, far away was Abraham with Lazarus beside him. “Abraham, my father,” he called out, “take pity on me! Send Lazarus to dip the tip of his finger in water to cool my tongue, for I am in agony in this fire. And remember that I overlooked Lazarus at my door

only because there were many other people on the other side of the world who were in even greater need. I wanted to dispense charity and justice in an orderly way, not rewarding queue jumpers like Lazarus who is now with you.” But Abraham said, “Remember, my child, that all the good things fell to you while you were alive, and all the bad to Lazarus; now he has his consolation here and it is you who are in agony. But that is not all: there is a great chasm fixed between us; no one from our side who wants to reach you can cross it, and none may pass from your side to us.”

If detention is to remain a cornerstone of Australian border protection and front door immigration entry, there is a need for alternative arrangements to render the present detention policy more humane and effective. Given the modesty of the problem confronting Australia, we would do well to ensure compliance with the standards set by other countries receiving far more asylum seekers across porous borders than we ever have. I propose three simple questions: Given that Australia has the advantage of geographic isolation, I ask my government, why don't we try to be just a little more decent rather than less decent than other countries with the same living standards when it comes to our treatment of those who arrive (whether with or without a visa) invoking our protection obligations? Or if that is judged too naïve, how about we aim to be just as decent as those who receive ten times more asylum seekers than we do? Or if that is too much to ask (given the fear driven mandate of the recent election), how about we limit our indecency to our treatment of adults, ensuring that never again are kids put in the line of batons and tear gas in the name of border protection, as they were at Woomera this last Easter? It is in the interests of the refugees of the world that we address the problems of secondary movement and 9-11 heeding the warning of Mr Lubbers that we “build an effective system of international burden sharing, where governments are discouraged from taking unilateral and punitive action, and where refugees are able to rely on adequate protection and assistance within their regions of origin. For to take punitive action is to shoot oneself in the foot. It is not effective, and it only worsens the climate between North and South.”<sup>22</sup>

## Notes

- <sup>1</sup> Since Tampa, 1,400 boat people have been redirected to islands subject to the Pacific solution or kept on Christmas Island which is excised from the Australian migration zone. 592 persons have been turned around and sent back to Indonesia. Only one person has been detected coming unauthorised by boat since January this year.
- <sup>2</sup> However in Australia, DIMIA continues to claim that it, in co-operation with Jordan, it could transport a willing Iraqi returnee to the border.
- <sup>3</sup> Australian Federal Police, Submission Inquiry Into The Migration Legislation Amendment (Further Border Protection Measures) Bill 2002
- <sup>4</sup> Despite the media impression, it is interesting to note that there have been more unauthorised arrivals by plane than by boat in seven of the last ten years. But in the last four financial years, boat and air arrivals respectively have been 921&2091, 4175&1695, 4137&1508, and 3648&1193.
- <sup>5</sup> DIMIA says that a significant number of places are taken up by persons with no connection to Australia.
- <sup>6</sup> Statement by the High Commissioner, 13 September 2002, Copenhagen, Denmark
- <sup>7</sup> "The Gatekeeper", Australian Story, ABC Television. 16 September 2002
- <sup>8</sup> Hansard, P5408, 26 August 2002
- <sup>9</sup> Senate Select Committee on a Certain Maritime Incident, quoted in the submission of Mr Tony Kevin, 4 March 2002
- <sup>10</sup> SIEV = suspected illegal entry vessel
- <sup>11</sup> Letter from P. Godwin, DIMIA, to author, 7 August 2002
- <sup>12</sup> M. McHugh, "Tensions Between the Executive and the Judiciary", Australian Bar Association Conference, Paris, 10 July 2002, p7
- <sup>13</sup> #1.76, Consideration of the Migration Legislation Amendment (Judicial Review) Bill 1998
- <sup>14</sup> Akram Ouda Mohammad Al Masri v Minister For Immigration And Multicultural And Indigenous Affairs
- <sup>15</sup> #61
- <sup>16</sup> Report of Justice P. N. Bhagwati, Regional Advisor for Asia and the Pacific of the United Nations High Commissioner for Human Rights, Mission to Australia 24 May to 2 June 2002, "Human Rights and Immigration Detention in Australia", para. 52, p.16 & para 60, p.19
- <sup>17</sup> Detailed Rebuttals by Australian Government to the Report of the UN Human Rights Commissioner's Envoy into Human Rights and Immigration Detention  
[http://www.minister.immi.gov.au/media/responses/unreport\\_310702.htm](http://www.minister.immi.gov.au/media/responses/unreport_310702.htm), 31 July 2002

<sup>18</sup> [2001] EWCA Civ 151, #67

<sup>19</sup> Question on Notice, Hansard, 19 August 2002, P4858

<sup>20</sup> P. Baneke, Asylum in Europe, Developments in 2001, European Council on Refugees and Exiles, 9 June 2002

<sup>21</sup> P. Ruddock, Second reading Speech, Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, 1 July 2002

<sup>22</sup> Statement by R Lubbers to the European Union Justice and Home Affairs Council, Copenhagen, 13 September 2002.

# Let History be The Judge

PIERRE SLICER QC

**HISTORY** will be the ultimate judge of Australian policy in its treatment of refugees. It will, irrespective of its verdict, consider three ironies. A foundation member of the United Nations committed to a universal declaration of human rights will have rejected international examination because of a claim of national sovereignty. A signatory to an international convention on refugees will have rejected those who have fled the tyranny of countries into which we have placed or promised our soldiers to overthrow that tyranny. A country based on the rule of law will have disparaged its Courts for permitting persons with treaty status to bring their grievances, real or claimed, for adjudication before a constitutional tribunal.

There is a tension, unmatched in my lifetime, between the Executive and Judicial arms of Government. Recent political attacks, especially on the Federal and High Courts, show the depths of that tension. The attacks are justified, according to some political observers, because the Courts are attempting to be adventurist or to supplant Parliament. It is said that judges ought resign and stand for Parliament if they wish to determine policy. The controversy is far deeper. Judges, not being elected, ought not determine policy. Their duties include the defence of two fundamental principles, namely access to Judicial institutions and the right to procedural fairness. Those principles define who we are or seek to be. We, as a people, are entitled to discard those principles and form our society according to Executive whim or political expediency but would be lessened in the process. If we should do so, it ought be by plebiscite, not stealth. The principles form part of our values, that marvellous Australian ethos of natural justice.

In the case of refugees, the Executive and Parliament are attempting to restrict access to review, believing the court process to be expensive and slow. Hence, the enactments prohibiting Judicial review, the Pacific solution and the attempt by regulation to exclude islands from

the migration zone. The United States removes suspected terrorists to Guantanamo Bay for the same reason, the military base not being part of the territory of the United States. Pragmatic France has built its main holding station near the Channel Tunnel, hoping, no doubt, that detainees will escape to perfidious Albion.

In upholding the rights of access and procedural fairness, the Courts are doing no more than we have asked of them. It is the outcome of procedural fairness which is not liked. Yet that outcome is the product of a treaty voluntarily made by an Australian Government. The treaty might be legitimately renounced yet Government, unwilling to do so, vents its displeasure on lawyers who, and institutions which, attempt to uphold that treaty, and give effect to general statements of their Parliament. Is that an act of adventurism? Two Chief Justices of the High Court, appointed by opposing political parties, think not. In *Mabo*, Justice Brennan said:

“The common law does not necessarily conform with international law, but international law is a legitimate and important influence on the development of the common law, especially when international law declares the existence of universal human rights.”

More recently, Chief Justice Gleeson has stated:

“In resolving ambiguity in a statute, courts favour a constitution which accords with Australia’s obligations under a treaty, on the basis that parliament intends to legislate in accordance with, rather than contrary to, its international obligations.”

Are Courts presumptuous in assuming Parliaments to be honest? Are they supplanting the role of parliament by making decisions which assume that Parliaments are dishonest, but which accept political expediency?

Let history judge. But even if not one person was found to be a genuine refugee (and the majority are found to be genuine) a process which requires the mandatory incarceration of children for years on end lessens us, not them.

History, I believe, will find in favour of the Judicial system and the rule of law, not temporary agents of political expediency.

# Australia's Mandatory Detention of Asylum Seekers ... An Unlikely Model for Europe

MARGARET REYNOLDS

**MANY** Europeans would have been puzzled by reports of the Australian Government's tough arbitrary detention policies which have incarcerated a few thousand asylum seekers in desert or Pacific Island camps.

Australia has enjoyed a reputation for democratic tradition and egalitarian social policy. As a nation it has played a constructive role in developing human rights standards through the United Nations and as a middle power has been well respected for its reasoned approach to humanitarian aid and conflict resolution. Certainly questions have been raised about Australia's dispossession of Aboriginal peoples and there have been some lingering doubts about the remnants of the White Australia Policy abandoned in the 1960s. But the vibrant multicultural nation which recently hosted the Olympic Games seemed to project a confident and tolerant society at ease with its diversity.

Behind this seemingly successful facade lies historic paranoia fed by Australia's isolation. For ten years now both major political parties have presided over the mandatory detention of asylum seekers. While the nation welcomed World War Two refugees and successive waves of immigration from around the world, since the early 1990s there has developed a hardening of government policy and community disquiet.

Migrant hostels in the cities have been replaced by prison like detention centres in the desert.

Recent arrivals who used to be free to live in the Australian community are now held in secure compounds for months at a time. Government employees no longer care for refugees as a subsidiary of an American private prisons company has the contract. Families from war torn regions of the world are now housed behind razor wire and bars, guarded by people

with more experience of prison culture than an understanding of traumatised asylum seekers.

While this policy has been in place for some time the extremism of its practice was highlighted in August 2001 when an international distress call from a sinking vessel in the Indian Ocean south of Indonesia was relayed to the Australian Maritime Safety Authority. The nearest ship, Norwegian MV Tampa was asked to assist and in doing so was responding to the Safety of Life at Sea Convention (1954).

The captain took several hundred survivors aboard and advised that he intended landing them in Australian territory on Christmas Island, a well known destination of many asylum seekers.

However as the ship approached the island, there were extraordinary events that have impacted severely on Australia's international reputation.

Firstly, a phone call directed the Captain not to land the survivors even though it was obvious his vessel was ill prepared to cater for so many people.

Secondly the Australian military boarded MV Tampa to ensure it was not proceeding to Christmas Island.

Subsequently the military brought in supplies but were there to prevent the asylum seekers landing on Australian soil.

This unprecedented breach of international law has led to a major upheaval in Australia's domestic politics and has left many European countries deeply concerned about the dangerous precedent set by an affluent developed nation avoiding its international responsibilities.

Within Australia the community is deeply divided with more than half accepting the Governments rhetoric about the risk that "illegals" present. The combination of the fear of terrorism in a pre election climate combined with gross distortion of the situation by government successfully led to their re election. However many believe that the failure of the Opposition party to challenge the misleading 'border protection' campaign was equally at

fault.

Twelve months on little has been resolved. Both political parties retain their unwavering support for mandatory detention and border protection. Seven separate pieces of legislation have formalised government action by “removing” certain islands from Australia “for the purposes of immigration”. The rights of asylum seekers to appeal to Australian courts for review of administrative decision making have been curtailed by act of parliament, a decision much criticised by the legal fraternity and currently being formally argued before the High Court of Australia.

Many members of the Australian community have rallied to try to make life more bearable for detainees. At least a hundred new organisations and advocacy groups have responded to the shame of being Australian by working to reform the law and highlight the inhumane conditions of detention. Thousands have “adopted” individuals or families and write letters and send gifts. One individual, hearing that detained children thought there were no flowers in Australia, emailed her friends to send flowers to Woomera. Within days hundred of bunches of flowers were arriving at the desert camp. This story had a poignant sequel as shortly after young people converged on the site in solidarity with the detainees and found their new friends eager to return the friendship by throwing flowers over the razor wire!

There have been hunger strikes, lip sewing and attempted suicide by desperate detainees. Protest rallies outside remote desert camps have temporarily freed a number of people.

Meetings and marches, exhibitions, performances and film making all designed to highlight Australia’s gross breaches of human rights have been held with increasing frequency in the last six months. Within the political system there have been enquiries and investigations by the Human Rights and Equal Opportunity Commission and the Commonwealth Ombudsman, as well as questions, speeches and allegations in the Parliament.

The media has continually investigated the culture of fear and despair within detention camps. Professional groups representing doctors, psychiatrists, nurses, lawyers and teachers have publicly identified the failure of government to meet its duty of care. Church and human rights groups have approached the United Nations and have presented their con-

cerns to the senior officers within the Office of the High Commissioner for Human Rights and the United Nations High Commission for Refugees.

Mary Robinson sent a Special Envoy Justice Bhagawati to investigate conditions in Australian detention camps. Both he and the Rapporteur on Arbitrary Detention have been shocked by the situation of asylum seekers in Australia.

There have been calls for a Royal Commission of Enquiry and for an end to the culture of violence within detention camps.

Europeans of course have their own concerns about the numbers of migrants who cross borders with such relative ease. The comparison with Australia is stark. Australia has compromised its good name and wasted vast resources on a “solution” for a few thousand vulnerable people the majority of whom can eventually prove their refugee status. To add insult to injury the Australian Immigration Minister now boasts he is intent on advising European countries to adopt his tough strategies.

Fortunately much of this posturing will fail because so many Europeans can understand what it is like to be dispossessed by war and conflict.

Australia is indeed a lucky country having not faced war in its homeland since it invaded Aboriginal land more than two hundred years ago. Recent events suggest that as a nation we do not value our good fortune by being willing to share our well being with others.

There is no doubt Australia is an unlikely model for Europe...in fact we would be better placed to adopt the more humane approach to refugees offered by the Europeans.

*This article was originally requested by the United Nations Association of Denmark for publication in association with their United Nations Day Conference, The Global Role of Europe being held in Copenhagen on October 24th, 2002.*

## Warm and Cold Welcomes

ALISON ALEXANDER

**EDITH PECL** arrived in Australia on a migrant ship, just after the Second World War. During the trip she enjoyed a romance with a Czech migrant, Bert, but on arrival they were sent to a camp near Maitland where men and women were segregated. Bert suggested getting married, but Edith said they should first find out how it was done, so on their day off they went to Maitland to enquire.

They were sent to see the mayor, who lived nearby in Singleton. He asked for their papers, and after a long wait they were ushered into the courtroom, where the mayor asked Bert to repeat various phrases after him. Edith realised that this was the marriage ceremony, but was too surprised and embarrassed to say anything. The wedding went ahead, the mayor brushing over the fact that they did not have a ring. As they left Bert said, 'I think we need a drink', so they went to the local pub and bought a bottle of champagne (left over from the American 'invasion', since rural pubs in Australia did not usually run to such beverages in the 1940s). While they were drinking it, in came the mayor; he was pleased to see them and introduced them to the bar, and everyone sang, 'For they are jolly good fellows'.

Most migrants asked about their experiences in Australia after the Second World War tell similar stories, good-humoured if slightly nostalgic. Viltis Kruzas arrived in 1947, and her first sight of Australia, the empty, wild Western Australian coast was rather daunting, but she was reassured when she stepped ashore and a woman handed her a bag of cakes. Overall she found 'everything so bright compared with the bleakness of Europe'.

Hermine Rainow called herself 'Mrs Cosmopolitan'. Her father was Austrian, her mother was Hungarian, she was born in Romania and married a Bulgarian, and the family spoke German – Hermine herself spoke four languages fluently, though not English. In the war she worked as a translator and newsreader in Vienna. In 1952 she and her husband

migrated to Australia, and her husband found a job in the steelworks in Wollongong. They bought a block of land and lived there with their three children in a small caravan. It was cold, it rained almost incessantly for two months, there was no electricity or running water except what fell from the sky, and they were short of money because the steelworkers were on strike. Worst of all, recalled Hermine, was the feeling of utter isolation and numbing loneliness. She was pregnant again, and felt wretched and worn out.

One day, when they felt ‘at rock bottom of our misery’, a neighbour, Betty, invited two of their children to play with her daughter. Betty became their guardian angel, taking them into her warm kitchen, providing scones and sausage rolls, teaching Hermine English, drying the baby’s nappies round her stove, caring for the children while Hermine gave birth to the next baby. Gradually life improved. The Rainows extended the caravan with a tent, then built a small chalet; their English improved; the older children started school; Hermine’s husband went into business, and she became the secretary of the local Good Neighbour Council, and then a journalist with her own ‘migrant column’ in the local paper. This was the first weekly migrant column in Australia, and Hermine was proud to run it.

Many migrants who arrived in Australia in the 1940s and 1950s could not speak English, and found Australia alien and sometimes unfriendly. They often arrived with little, and had to start from scratch. But, like the people quoted above, they generally found Australians welcoming, especially churches and community groups such as the Good Neighbour Council. Some children were ashamed of their parents speaking foreign languages in public, fearing the response of ‘Bloody New Australians’, but on the whole their stories are positive, or rueful rather than bitter. In a shop, the request for ‘Tuzen aks, plis’ – the spelling of a migrant himself – was met with ‘Why do you want so many?’ rather than abuse, and this is typical of migrants’ recorded experiences. It wasn’t perfect, but it wasn’t too bad. Most of the criticism there was came from English migrants – but that’s another story.

In about 1957 a brother and sister from Yugoslavia moved into the house beside us, in Rosetta in Hobart, and my parents felt they should welcome the newcomers. The sister, Anna, never did speak much English, but I can remember slightly awkward outings when Mum took her on family walks to pick blackberries. Owing to the language gap, conversa-

tion was limited to Mum saying ‘Cow’ and Anna saying the word in Serbian, but we were trying to be friendly, and Anna liked the blackberries. Her brother John spoke more English, and Dad often asked him over for a beer. I can still see them sitting on the verandah, Dad trying to initiate John into the Australian way of life. It was assumed that this was what New Australians wanted, but still, it was a friendly gesture. My memory is that ‘New Australians’ were treated not exactly as equals, but as younger brothers and sisters – in the family but a bit junior, and any negative comments were frowned on, as not very kind. You had to encourage the newcomers to make the most of their opportunities.

In 1947, just after the Second World War, Australia was more British as it ever had been, or ever would be. Over 90% of the population had been born in Australia, almost all of British inheritance, and the rest were overwhelmingly of British birth. The original inhabitants, the Aborigines, were by now a small percentage mostly found in the country, and there were a few people of German and Italian background, but Australians were virtually all of British inheritance. Not only this but because of Australia’s geographical position there was very little influence from anyone else, except America through films – and this was another predominantly Anglo-Saxon country.

Yet these people were on the whole welcoming to the migrants. There was some hostility, but overall it was surprisingly small compared with the general attitude of acceptance or positive welcome. Coming from such an isolated background, Australians could have been expected to be much more hostile to migrants, as there were real differences between them. Anglo-Saxon Britons were mostly Protestant and fair-skinned; Europeans were mostly Catholic and were generally darker, and many actually looked different. Some were Greek Orthodox, a different brand of Christianity, and some were Muslim. But they fitted in, more or less, and over the years became accepted as part of the community. It took a while, but from the 1970s onwards their contribution to Australia has been praised and welcomed, and today all comment about it is entirely enthusiastic – the food, the culture, the new ideas, the new talents and so on. Compared with similar population movements on the world stage, the introduction of two million migrants to Australia in the decades after the Second World War was a positive story.

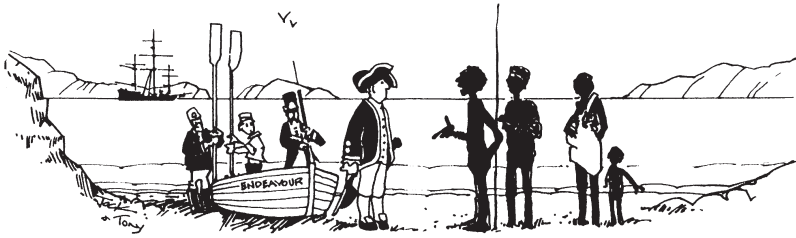
It's a different tale in 2002, yet now you might think that Australians would be more welcoming. Instead of the insularity of the 1950s, Australians are far more cosmopolitan. We eat foreign food, enjoy foreign films, speak more foreign languages, far more of us have travelled to foreign countries, and we appreciate that a British inheritance does not make us automatically superior to everyone else. You can argue that the Afghan and Iraqi refugees of the 2000s are less different from ordinary Australians than were the Greeks, Poles and Turks of the 1950s. The concept of the global village, unheard of in the 1950s, is now commonplace, and at least grudgingly accepted by most people, welcomed by some.

As an ordinary citizen, it's hard to comprehend the government's hostility to these refugees, who are fleeing the same sorts of injustice and hardship that the 1950s migrants were. The Australian ideal that many of us were brought up with – being welcoming and warm to everyone – seems to be betrayed. I find it hard to believe that John Howard and Philip Ruddock are products of the same Australia in which I grew up. I fear that it's not these refugees who might destroy the traditional Australian way of life, but our politicians.

*Information about 1950s migrants was collected when I was writing A Wealth of Women The extraordinary experiences of ordinary Australian women from 1788 to today (Sydney, Duffy and Snellgrove, 2001) for the Office of the Status of Women.*

# Allies

TONY RICHARDSON



SORRY . WE'RE NOT TAKING ILLEGALS...

ABOUT 30 years ago, a social scientist called Solomon Asch did an experiment. I've only heard about it in the last few years but its results have made me stop dead in my tracks. He drew four lines of slightly different lengths on a white-board and one, the exact length of one of the lines, on a flash-card. He then invited six people to sit in a line in front of the whiteboard, glimpse the flashcard and then say which line on the whiteboard was closest. This was done without discussion. Unknown to the others the first three people to speak were stooges, part of the experiment. Their answer was, brief, assured and consistent, but wrongly they picked the second longest line. He repeated this experiment many times and found over 80% of people who followed this performance pointed to the same wrong line.

Horrified he then changed the rules. The stooges were uncertain, there was some discussion, they picked wrong lines but not the same one. 100% of the people who followed pointed to the right line.

Here's Asch's conclusion. Most of us when in a group need time to have discussion and find an ally before we can "give accurate testimony to our reality". Safe space.

A tragic aspect of the Tampa event was the lack of discussion. Within our two main political parties it was shut down. Only our most respected Tasmanian spoke out. It was as if the men in suits had pointed to a line and the easy thing was to follow. And wasn't it about 80% that backed Howard? Even now a broad community discussion has hardly begun and here the tragedy deepens. We've learned a new language, 'un-Australian', 'queue jumpers', 'illegals', 'children overboard', 'would you want someone like that as your neighbour?' and maybe 'potential terrorists'. Language is how we access thought. So, until there is another language, even within ourselves, we'll follow the suits to the line we know is wrong. We – Australia – now need discussion, debate, poetry, music, drama, theatre, everything that creates language. And that language will help us to see how 'un-Australian' we've really become.

The horror of the new language is what it does to the listener. The psychology of war lies within a name. 'Nazi', 'Vietcong', 'slope', 'communist', 'enemy', 'terrorist'. The fixing of a label shuts out our human compassion and then any sense that the labelled is a human at all. Once we hear they're a 'queue jumper' our eyes become fixed on the wrong line. The words drowns out any voice inside that wants to ask a question. Their faces, skin, sweat, accents, clothes, customs, smell and even the pleading eyes of a child all become that of 'the enemy'.

Sadly this is all natural. We humans are more alike than different, prefer to cooperate than fight, but as part of our hard-wiring, we notice what's different before we notice what's the same. This hard wiring is intrinsic, it's archetypal. It's part of our tribal past that has looked after us for centuries. But we must now mature past it, we must create a new sort of inclusion and community. To do this is counterintuitive and we'll need leadership which understands how difficult this is. A new quality of safe space.

But most of our political leaders have not provided this. Instead they've traded for the 80% and have done so by tapping into the delicate and finite store-house of our social good. They have weakened our social fibre. We've experienced leadership of our dark side, not our enlightened side. While some call it strong or admire its political finesse, in reality it's been cheap, opportunistic and socially crippling. It will take a new leadership, new beliefs, new

language and a period of time before we heal.

Is Tasmania well placed to contribute to this healing? Can we be a welcoming community? I wonder.

I believe that at one level we are already doing this and there is a body of people who work to ensure that migrants and refugees are welcomed and resourced. But I'd question that the broader Tasmanian community is ready. There's no way Tasmanians can welcome difference from outside while we are brutal with the differences we experience inside.

Tasmania is in a protracted state of undeclared civil war which has tapped into our social good, sometimes to the point of exhaustion. It's best we accept this and that all Tasmanians are victims within it. It's a civil war that the most senior leaders in our State support and perpetuate. They may mean to do this, they may not. But they do. As in the refugee issue, people are belittled for their situation and are labelled. We are asked to see them as a public enemy. The laws of the State here, as with the laws of the Commonwealth towards refugees, are uniquely manipulated and warped, benchmarks set through public discussion are broken without it. And all this is to give advantage to one group against others. As with the refugee issue international norms and standards are broken, denied or ignored. Every Tasmanian is stuck within this status quo. For some, it drives pride and hope from their lives.

While people in Dover who question the future of their forests have their houses robbed, or the shopkeeper in Sandfly late at night is bullied until she removes an anti-Southwood sign, or the ornithologist in Mt Arthur is told by a senior forester who has just clear-felled the site of an endangered bird "But birds can fly can't they?", or forest codes are flouted with impunity, or parents have to fight to stop toxic poisons being dropped from aeroplanes into where their children play, or quieter Tasmanians mourn daily the loss of their landscape, then one view and one need dominates. And while people who hold another view are labelled 'eco-terrorists', 'cultural fascists' and 'the usual suspects' by those to whom we've entrusted our leadership, many Tasmanians hear the language of war and rally with them against 'the enemy'. So, discussion is off limits, political correctness finds new and more brutal forms, rights are one sided and 80%, afraid and ashamed, slump their shoulders and shuffle sadly towards the line they know to be wrong,

Unfortunately, it's not as simple as this. Consider timber contractors who, based on promises and expectations that many doubt can be sustained, have loans and responsibilities that terrify. They also are victims within this system. As are older foresters, whose pride was timber extraction without damage, and younger foresters who feel compromised and who like many of our public servants fear for their careers if they point to the right line. All of these people have the right to be angry. The only winners in a civil war are those who manipulate the strings. Most of these do so while quietly amassing the means to live well afterwards.

But all is not lost. In another divisive issue Tasmania has experienced and then exhibited leadership and the political courage followed. Gay law reform rose above anger, cruelty and ignorance. It came from the people, from the depth of their courage, and now we are justly proud of our leadership position in that issue. We've turned from the worst to the best, our present political leaders know and endorse this. Given courage and leadership Tasmania can do this again. The political process will follow.

And when we do we'll create our unique brand of discussion, generosity and acceptance of difference. We'll know our tensions deeply and those we cannot resolve we'll learn to live with. We'll create elegant not simple solutions, in which all of us can give accurate testimony to all of our realities. We'll applaud those with the courage to point to the right line when our courage would point to another. This is what democracy means and we can lead the world in it.

Then every Tasmanian can feel pride and none will feel shame. We will belong to our islands more than they will belong to us and we'll not abuse them for our dumb glory but be custodians of their magnificence. We'll practice real resource security. We'll truly be an intelligent island. Reality will replace spin. The World will thank us for this and all of us will win. Then and only then we'll have earned the right to find, share and make good the unique spirit of our islands.

As allies within our community, we can then become allied beyond it.

An Open Welcoming Community.

# Neighbours

JIM YOUNG

A man was on his way from Jerusalem down to Jericho when he fell in with robbers, who stripped him, beat him, and went off leaving him half dead.

It so happened that a priest was going down by the same road; but when he saw him, he went past on the other side. So, too, a Levite came to the place, and when he saw him went past on the other side.

But a Samaritan who was making the journey came upon him and when he saw him was moved to pity. He went up and bandaged his wounds, bathing them with oil and wine.

Then he lifted him on to his own beast, brought him to an inn and looked after him there. Next day he produced two silver pieces and gave them to the innkeeper, and said: "Look after him; and if you spend any more, I will repay you on my way back." [Luke 10:30-35 NEB]

**LOVE** that story! Good on the Good Samaritan! Better than the stuck up priest and the stuffy old Levite! I'll bet he was an Australian, didn't mind getting his hands dirty, didn't want to know too much about the bloke he was helping, just got on and did it! Good on him!

There can be few Biblical passages better known and more widely accepted, both within the Christian community and beyond, than the Parable of the Good Samaritan. Indeed the word 'Samaritan' is far more widely used and understood in its figurative sense as someone of unsolicited goodwill than in its literal sense as a resident of Samaria. I believe the reason for the widespread affection for this tale is that it resonates with qualities to which almost all of us would aspire – at least in our better moments. We would all like to be recognised as unselfish, caring, generous to a fault and unfettered by prejudices we see and hear among those around us.

The Good Samaritan is remarkable for what he didn't do as much as for what he did. He didn't (unlike those who had passed by on the other side) consider whether the wounded traveler was worthy of his help; he didn't make any inquiries about the man's motive for traveling in bandit-ridden hills on his own; he didn't check whether the man was about legal or illegal business; he didn't bother to check whether the man could pay his own way, had proper papers, or had assets that could be accessed later.

But the Samaritan's failure to make all those conditions and 'prudent' inquiries led directly to what he did do: recognising someone seriously up the creek without the paddles, he immediately dipped into what he had himself for some way to meet the bloke's need. As any neighbour worth his salt would do.

A refugee was on his way from Afghanistan down to Australia when he fell in with people-smugglers, who stripped him of everything he had, cheated him, and sent him off half starved across the Timor Sea in a leaky boat. It so happened that a RAN frigate was patrolling in that area; but when they saw him, they fired a shot across his bows and told him to go back where he came from. So too a politician heard about the man, and when he learnt of it, he arranged to have him put in a prison somewhere out of sight. But a Norwegian freighter which was making the journey came upon him and when they saw him they were moved to pity . . .

I find the ending of that story too painful to recount. The parallel to the parable stops there. I wish it were otherwise. I wish I could continue . . .

. . . and took him on board and fed him. They took him to Christmas Island where he was welcomed with the generosity the Island's name implies. The next day he was taken, in an Australian aircraft, to a home in Tasmania, was given clothing and accommodation and care and whatever else it took. And the Australians of good will said: "Look after him, and if it costs any more – well, we'll find it somewhere."

Wait a minute! Who is this refugee from Afghanistan anyhow? How do we know he isn't a robber himself? Or worse, a terrorist? How come he had enough money for the people-smugglers to steal? What was his reason for running away in the first place? And why hasn't he got papers to prove what he says? It all sounds pretty sus! Anyhow, what made him think

he should get to Australia ahead of anyone else?

Yes, the parable in the Bible moves me profoundly and I am happy to endorse the actions of the Good Samaritan. It is what I like to think I, like any right-thinking Australian, would have done had I been on the Jericho road.

But just keep it in the Bible will you. It's when it gets loose it gets dangerous, and God knows where it might lead.