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Asylum-seekers as Pariahs in the Australian State

Security Against the Few

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Abstract

During the last decade measures of overt and covert surveillance, information sharing and deterrence of the illegal movement of people has increased within and between states. Border security has come to dominate international relations, and increasingly to deflect the needs of asylum-seekers who search for a state that will offer them substantive protection under the Refugee Convention. Measures of internal and external deterrence diminish the reality of protection to genuine refugees as some of the most vulnerable individuals in the world today. Australia, as a country of relative geographic isolation, has not experienced the large-scale influxes of asylum-seekers seen in many parts of the world. Notwithstanding this, the Australian Government has in recent years implemented harsh policy and administrative measures directed at asylum-seekers with a substantial measure of public support. In August 2001, an incident involving 433 asylum-seekers was branded in popular discourse an 'asylum crisis'. This incident involved a Norwegian freighter, the Tampa, which picked up survivors from a sinking boat who were making their way to Australian waters in order seek protection under the Refugee Convention. The Tampa was repelled by Australian security forces from disembarking the people they had picked up in distress on Australian soil. In this article, I explore the Tampa incident against the backdrop of refugee policy development from 1999. I argue that rather than responding to a crisis, the Australian government has generated the perception of a crisis in the Australian community. Implications of the Australian response to asylum-seekers are significant not only in the Asia/Pacific region, but further afield, as policy responses toward asylum-seekers by receiving states have converged in the recent past.

Keywords: asylum, Australia, media

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Introduction: the contemporary politics of asylum

The year 2001 marked the 50th anniversary of the United Nations Refugee Convention (hereafter the Refugee Convention), which most directly articulates the grounds of protection that should be offered to those fleeing persecution. The majority of countries in the world do have substantive obligations to people who claim to be refugees, as signatories to the Refugee Convention and its Protocol of 1967. In the fifty-year period since the establishment of the Refugee Convention, the idea of (some) rights being universal, thereby applicable to all of humanity rather than the members of a particular state, has been given political efficacy through the vehicle of human rights. Rights, such as those embodied in the Universal Declaration of Human Rights of 1948, privilege no particular concept of human life, of cultural traits, beliefs or practices. We see that the consolidation of human rights has gathered momentum in the later half of the twentieth century through the proliferation of human rights institutions and the efficacy of the idea that protecting such rights is of intrinsic value across and between cultures and nations. The central pillars of human rights, including the Refugee Convention, continue to be important instruments for ensuring the protection of people in vulnerable, life threatening circumstances. Yet at the same time, the persecution of individuals and groups has continued in various waves of violence in locations around the world, testing the practical efficacy of the universal norms embodied in human rights law. The grounds for persecution of particular individuals or groups continue to relate to those characteristics which differentiate people; such as race, religion, nationality, gender and particular political affiliations. Yet we expect these very distinctions to be irrelevant, or at least suspended, when obligations to substantive human rights are tested such as by the arrival of asylum-seekers asking for protection under the Refugee Convention in a signatory state.

Notwithstanding the penetration of human rights as valued principles during the late twentieth century, geopolitical shifts in the balance of political order from the early 1990s have resulted in an increase in localized conflicts, leading to humanitarian crises in many parts of the world. The dissolution of the Soviet Union ruptured the Cold War stand-off which had maintained a modicum of international stability with the political polarization of the world around the camps of two superpowers, the Soviet Union and the United States of America. The effects of decolonization in Africa and Asia also continued to be felt into the 1990s with regional and local conflict in the African continent and in many parts of Asia. Most recently the 'war on terror' in the aftermath of the bombing of the World Trade Centre in New York and the Pentagon in Washington on 11 September 2001, has contributed to forced migration and the spectre of an enlarged Middle East conflict should the United States led invasion of Iraq eventuate.

Paradoxically, it is the countries which themselves safeguard democratic principles, uphold the rule of law, and are the most vocal defenders of human rights around the globe which have felt the need to increase mechanisms of immigration control over the last decade. Western democracies which have in the past benefited from immigration, whether through guest worker programmes, or other planned immigration intakes, are increasingly concerned to guard their borders from the movement of people including those claiming protection under the Refugee Convention, through various forms of internal and external deterrence. The movement of 'unauthorized arrivals' – those without a visa or other travel permit – has as a result become increasingly clandestine, with people smugglers profiting from the trade in human cargo. The most recent

statistics available from the UNHCR point to a decline in asylum applications in most parts of the world (UNHCR 2002). In the second quarter of 2002, for instance, in the 20 European countries surveyed, applications fell by eight per cent. Of course such a decline can be an indication of the cessation of conflict and other refugee producing phenomena. However, at a time in history when we know that 'push factors' which generate forced migration are not in decline, the drop in asylum applications, particularly in Western countries, indicates tougher border enforcement and other administrative techniques to deter asylum arrivals. The same trend is evident in Australia, as I will outline later.

The 1951 Refugee Convention promises non-refoulement; that those with genuine fears of persecution will not be returned to the source of their persecution. With this promise, receiver societies also bear the consequence (burden), of providing for the needs of such new arrivals. It would follow that addressing the 'root causes' of flight would be in the long-term interest of receiver societies, ensuring that the numbers of unanticipated arrivals claiming protection are reduced. However, through the 1990s we have seen efforts on the part of Western states directed at deterring such 'irregular' arrivals and measures aimed at their removal, rather than initiatives seeking the resolution of refugee causing conflict and violence. Monetary aid to economically developing countries has been in decline in many countries of the West, and what development assistance is given is often in the form of 'tied aid', focusing on particular projects with an economic or other benefit to the donor country. Certainly diplomatic, development and democratic institution building efforts in, and with refugee generating states continue to take place. Measures aimed at deterring the arrival of asylum-seekers though, have become a priority for states of the West, with an infusion of significant resources to fund internal and external measures to detect, detain, deport and in other ways discourage 'irregular' or 'illegal' arrivals, or 'aliens', including those with protection claims.

Before elaborating on the case of the Australian responses to asylum migration since 1999, I shall briefly outline a case for the obligation to protect; an argument which begins with the assumption that borders must be porous enough for individuals to be able to claim protection in the first place.

Normative reasoning and the obligation to protect

The response to those who have fled their homes and seek protection elsewhere requires careful and detailed differentiation, highlighting the needs and the rights of the resident as well as the newcomer. It is this tension between the 'needs of strangers' and the needs of citizens which both state and non-state actors reflect in their arguments for admission or expulsion (rejection) of asylum-seekers. Michael Ignatieff (1984) reminds us that understanding human needs and their fulfilment is a process open to politicization and manipulation, as it is a process based upon a presumption that someone knows the needs of another, or indeed that we truly understand our own needs. Ignatieff asks: 'when is it right to speak for the needs of strangers? Politics is not only the art of representing the needs of strangers; it is also the perilous business of speaking on behalf of needs which strangers have had no chance to articulate on their own' (*ibid*.: 12).

The obligations that hold specifically for those seeking protection require a state to properly consider a protection application, ensuring that an impartial arbiter assess every claim for protection on its merits. A state which has acceded to international

human rights conventions, has 'special' obligations towards an individual who may be a refugee, no matter her or his mode of entry. Such 'special' obligations pertain to the protection which a refugee requires while the origin of her or his persecution continues and moreover, are obligations which do not extend to immigrants generally.

In practice, the application and validity of the Refugee Convention has been increasingly challenged as the movement of refugees has increased in scale and complexity in the post-Cold War era (Hathaway 1997). The provisions of international law, including the Refugee Convention as well as the UN Convention on Human Rights, indicate a contradiction in that the right to leave is provided with no complementary right to admission anywhere else. This contradiction has, particularly since the mid-1980s when refugee numbers began to grow significantly, resulted in the prevalence of 'statelessness' and the phenomenon of 'refugees in orbit' as states have increased administrative measures aimed at deterring all irregular arrivals.

While according to international law, embodied in the Refugee Convention, a person is a refugee at the point at which she or he meets the definition of refugee, the problem many individuals face in seeking the protection of a state other than their own, is living through the period that lapses between the events which transformed a person into a refugee, and substantive protection which affirms refugee status, thereby granting such things as residency rights, the right to work, to education, to language training and to health care. To be sure, it is true that when a person arrives in a state 'illegally' or without prior authorization, the process of formal legal recognition can be hazardous, lengthy as well as costly. This in no way diminishes the obligation to protection of the receiving state however. If this obligation is indeed taken seriously, it is not dispensed until such time as an individual is found not to be a refugee, rather than the reverse, where a person is assumed as non genuine for a variety of contingent reasons, prior to a proper assessment of a protection claim, including mode of arrival.

There are perhaps two major factors within receiver states which limit the commitment to substantive refugee protection. The first is what I term the 'overload' factor in relation to public perceptions regarding numbers of immigrants, perceptions in which refugees and asylum-seekers are most often included as a general category of newcomer or foreigner. That is, politicians and decision makers may perceive that the public perception of immigration numbers are exceeding local tolerance, with the possibility of a voter backlash. Second, and often resulting from the first factor, a link may subsequently be made between refugee protection and the national resources required to achieve such ends.

Before exploring the most recent developments in Australia's response to asylum-seekers, and in particular, 'boat people' who arrive without authorization such as a valid visa, I will outline some historical features of Australia's refugee system.

A brief history of refugee migration to Australia

Newcomers are not a rarity in Australia, rather the norm. Australia has a highly refined set of administrative filtering and management measures, tuned to differentiate between categories of newcomers. Though Australia received refugees from various conflicts in Europe during the nineteenth century, it was not until 1945 that a specific refugee policy was adopted (Castles 1996: 259) and the first Minister of Immigration, Arthur Caldwell was nominated. Since then, the emphasis in Australia has been placed particularly on

administrative control over the processes by which people are selected for migration to Australia, and on the entitlements and services they receive upon arrival. Previously, the focus of immigration policy had been on helping British immigrants and discouraging 'alien Europeans', resulting in at least a partial exclusion of non European immigrants (Freeman and Jupp 1992: 131). After 1945, economic expansion was accompanied by similarly rapid population growth. The slogan, 'populate or perish', embodied the arguments utilized to win over a sceptical Australian citizenry to the view that selective immigration would benefit the country, particularly in the economic sphere. A large-scale immigration programme was accompanied by a policy of assimilation, considered necessary to the maintenance of homogeneity, as well as responding to popular local fears (Castles 1996). From the early 1970s, multicultural policies emerged, premised on the view that cultural differences ought to be able to coexist in a society, while the political integration of newcomers would foster peace and stability.

Today, Australia continues to operate its immigration policy under a yearly quota system, whereby the government sets a numerical target for the various categories of immigrants who are to be considered for entry in the following year. Apart from separate quotas for skilled workers, business migration, and a family reunion quota, yearly quotas have, over the past decade, consistently set aside around 12,000 places for the humanitarian intake, which comprises various categories of refugees, or people in refugee-like situations.[1] The humanitarian programme has remained largely quarantined from controversy and had bi-partisan support. Asylum-seeker arrivals have been tied to the yearly immigration and humanitarian quota since 1996/7, shortly after the Conservative Howard Government came to power, setting an artificial cap for the number of asylum-seekers able to be accommodated in the programme in any given year.[2] The number of such 'unauthorized arrivals' is thereby pegged to the humanitarian programme (people selected off-shore), with the result that when the number of asylum-seekers successful in their applications exceed the quota set aside, the corresponding numbers are taken off humanitarian places offered for that year.[3]

It has been the response to boat people and unauthorized air arrivals since 1989, which has generated some considerable disquiet (though largely outside Australia) regarding Australia's standards of refugee protection under international obligations. Though the present day approach to boat arrivals and other asylum-seekers can be traced to this earlier period, there are also significant points of departure in the policy and treatment of asylum-seekers since August 2001. I turn now to an analysis of the asylum debate in Australia in the period leading up to the Tampa crisis of August 2001. I focus in particular on the administrative and policy developments in 'managing' asylum-seekers which have generated the highest level of public disquiet and political intervention by

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1 The Humanitarian Programme consists of three main categories: Refugee, Special Humanitarian and Special Assistance. In addition, in 1989, a new category; Women at Risk, was added to the refugee component for women who were deemed to be in particularly vulnerable situations. Between July 1989 and June 1997, 2,222 Women at Risk visas were issued (1997: 14). The establishment of the Women at Risk category came after considered and lengthy advocacy by Australian NGOs.

2 This numerical link, while officially not having an absolute ceiling, is nevertheless at least a potential psychological barrier to processing officers, aware that a certain absorption level has been preset.

3 The Australian Government has not given any clear indications how it would proceed should the number of spontaneous arrivals exceed the total humanitarian quota.

the Australian Government: detention, the human consequences for those detained, and the introduction of a temporary protection visa (TPV). My aim is to show the way in which the management and treatment of asylum-seekers from 1999 on, together with the way the issue was portrayed and debated in the public sphere, generated the conditions which enabled the Tampa incident and the political developments which followed, to occur with overwhelming public support.

Detention: a uniquely Australian approach

In the lead up to the Tampa crisis, perhaps the most divisive issue regarding asylum-seekers in Australia has been the policy of mandatory and non-reviewable detention of people who arrive without documentation. Cambodian boat people arrived in Australia from 1989 to 1992, fleeing the Pol Pot dictatorship, were the first group of unauthorized arrivals subject to detention in Australia. The response to boat arrivals from November 1989, marks a toughening in the approach to boat arrivals and other 'illegal' arrivals to Australia. The most recent significant 'wave' of boat arrivals began in 1999. All but the first wave of boat arrivals, during the 1970s, have been subject to mandatory and non-reviewable detention. Though the numbers of boat arrivals in Australia were not significant until 1999, as indicated in the Table, the public perception of inundation, or flooding, has fostered antipathy toward asylum-seekers. This perception of inundation and being unfairly overburdened, has been fostered by successive governments, both Labor and Liberal, failing to communicate the dissonance between perception and reality. No doubt, the mass media has also played a significant role in generating public unease over asylum-seekers; communicating about the issue of asylum arrivals with a vigour and urgency out of step with the impact of asylum-seekers on Australian society.

The bi-partisan support of mandatory detention continues to have a significant bearing on the public acceptance of this policy. Through the 1990s, the practice of mandatory and non-reviewable detention of boat arrivals continued. During this period, detention centres in the large urban centres of Sydney and Melbourne increasingly housed air arrivals who were not in possession of travel documents and had been able to engage Australia's protection obligations. Those who arrive at Australia's sea or airports and seek asylum are not automatically given information about the Australian determination process. In detention centres, new arrivals are initially kept apart (incommunicado) from other detainees as part of a pre-screening process. During this period, which can extend to several weeks, access to a lawyer is not guaranteed.

The Australian Government maintains that the detention regime is necessary for the maintenance of immigration control: that is, to 'uphold the universal visa requirement and to guard against unauthorized arrivals undermining the immigration program' (Mediansky 1998: 126). However, there has also been an acknowledgement by the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA), as well as by individual politicians, that the practice of mandatory detention, is used as a deterrence to others who may arrive in this manner. This approach is contrary to the UNHCR recommendations on the justified application of detention on asylum-seekers.[4]

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4 The UNHCR guidelines on the detention of asylum-seekers begin by stating that detention is inherently undesirable, particularly in the case of vulnerable groups, such as single women and children, unaccompanied minors and those with special medical of psychological needs. The guidelines assert that as a general principle the detention of asylum-seekers should only be entered

Non-citizens in Australia without authorization

Year	Plane arrivals	Boat arrivals	Over-stayers
2000/01	1,508	4,141	53,000
1999/00	1,695	4,175	53,000
1998/99	2,106	920	53,143
1997/98	1,550	157	51,000
1996/97	1,350	365	45,100
1995/96	663	589	–
1994/95	485	1,071	–
1993/94	–	194	–
1992/93	2,448*	194	81,164
1991/92		78	–
1990/91		158	–
1989/90		224	–
Total	11,805	13,489	n/a

Source: DIMIA Factsheet 74.

Note: * Total arrivals by air: 1989-93.

In 1997 the Howard Government opened the running of Australia's immigration detention centres to public tendering. The tender was won by Australasian Correctional Management (ACM), a subsidiary of the American Wackenhut Corporation, better known for developing privately run prisons in the US (MacCallum 2002: 28). As well as being responsible for security within detention centres, ACM is responsible for the delivery of social services, such as the accommodation, education, recreational, catering, health care, welfare and counselling to detainees as well as the infrastructure maintenance of the centres. Officers of DIMIA monitor the performance of ACM and the government retains ultimate responsibility for detention.[5] One of the problems that has come to light from the privatization of detention management, is the ability of the government to withhold information from the public on the grounds of commercial confidentiality agreements (Crock and Saul 2002: 82). The result of this policy is limited public scrutiny of detention practices and accountability procedures of the treatment of detainees. While access to the detention facilities in the urban centres of Sydney, Melbourne and Perth is possible, though limited, for journalists and members of the public, while access to the remote centres of South Australia and Western Australia is generally closed to the public, with journalists only being admitted on formal tours.

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into in exceptional circumstances. The guidelines invoke Article 31 of the Refugee Convention, which asks contracting states not to apply restrictions to the movement of refugees and not to punish them on account of illegal entry.

5 As set out in the Immigration Detention Standards which are part of the contractual agreement with ACM.

The attention given to the detention issue by the Australian media has oscillated from periods of near silence, to periods of daily scrutiny across media outlets. The detention of Cambodians in the early 1990s, received consistent media attention for a limited period, which became part of the pressure resulting in the Senate inquiries of 1992 and 1994 (Kingston 1993: 8-14). The period from 1999 however, has been characterized by renewed and heightened media focus on the detention of asylum-seekers. Some of this is due to the increase in numbers of boat arrivals. But this alone is insufficient to explain the renewed interest in the detention issue, which had largely been an issue of relatively minor public and political interest. During 1999 new detention facilities were opened at the disused rocket base at Woomera and at the Curtin air base in the remote Kimberley town of Derby,[6] as the existing detention centres could not accommodate the boat arrivals during that year.

The Table indicates that though the number of boat arrivals did increase quite dramatically in 1999 and 2000 compared to earlier periods, the number of unauthorized or 'illegal' arrivals seeking to invoke Australia's protection obligations remained small considering the number of annual asylum applicants to arrive in the member states of the EU, to Canada and to the US.

Stories of riots and protests within detention centres and actions of self harm, including hunger strikes, the sewing-together of lips and suicide attempts, became almost daily news items through 2000 and 2001. Television footage during August 2000, depicted ACM staff, assisted by police from South Australia in full riot gear, with helmets, batons and shields, quelling a protest consisting of around eighty detainees at the Woomera detention centre. Ultimately water cannon was used to quell the riot (Mares 2001: 35). Other accounts began to filter from detention centres of ACM officers using excessive force and in some cases beating detainees. Video footage from the Villawood detention centre showed detainees being assaulted and subsequently denied medical attention for their injuries (*Sydney Morning Herald*, 2 August 2001: 3).

In June 2001 The Australian Catholic Social Justice Council (ACSJC) characterized the treatment in detention centres as torture:

> At certain stages in their processing, asylum-seekers in detention are not allowed contact with their families ... Unlike those convicted of a criminal offence, asylum-seekers do not know for how long they will be detained. In some immigration detention centres observations and musters involve waking asylum-seekers at night or shining torches on them while they are sleeping (Australian Associated Press 26 June 2001).

During the same period the World Council of Churches (WCC) indicated it was 'deeply troubled' about Australia's detention practices, particularly in light of the small numbers of unauthorized arrivals coming to Australia compared to other regions of the world (Reuters 6 July 2001). Despite considerable public criticism of the mandatory detention system by human rights groups in Australia and internationally, the policy has retained the support of the majority of Australians. A survey on Channel 9's Sunday

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6 Plans are now underway for a permanent immigration detention facility to be built in Darwin and on Christmas Island.

programme,[7] for instance indicated 78 per cent of Australians did not think asylum-seekers were harshly dealt with (1 July 2001).

Re-traumatizing refugees

As by now well documented side-effect of Australia's detention policy is the psychological trauma detention causes: a phenomenon which is exacerbated when detention is prolonged, and for an indefinite period. Research conducted on the impact of detention on asylum-seekers indicates that detention has the potential to re-traumatise people from a refugee background, many of whom experienced torture and trauma in their country of origin (Silove *et al*. 1993; Silove and Steel 1998). In these cases detention, particularly where its duration is not defined, leaves individuals susceptible to re-traumatizations. Torture and trauma counselling services have been reluctant to provide services to asylum-seekers in detention due to the retraumatizing experience as a result of being detained for indefinite periods.

A growing concern among human rights groups in Australia, especially in relation to the 'on-shore' arrivals, is the impact of government policy on the general well-being and mental health of detainees. Even for those living in the community, extreme anxiety is linked to delays in processing applications, poverty resulting from lack of entitlements such as work permits, racial discrimination and conflict with immigration officials, fears of being sent home and separation from family (Silove and Steel 1998: 10-11).[8]

The most recent experiences of the self harm of asylum-seekers in detention, and the continuing concern over the physical and psychological development of children in detention, has refocused health professionals on their particular responsibility in relation to these individuals (Silove *et al*. 2000: 608-9). By August 2001, the Australian Medical Association (AMA) had become involved in the detention issue, with the Federal President, Dr Karen Phelps, speaking out against the health effects of detention (ABC Radio National, 13 August 2001). It must be borne in mind that though many members of the medical profession involved with detainees have had significant concerns about the health of detainees in the past, are sworn to a confidentiality agreement by DIMIA.

The rationale for detention

The Australian state regularly and unapologetically utilizes the idea of deterrence as justification for the continued practice of mandatory and non-reviewable detention of asylum-seekers in Australia. Since the early 1990s this has been a bipartisan approach of the two major political parties in Australia, the Liberal/National coalition and the Labor Party.

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7 A weekly current affairs programme which reviews the week's social and political developments.

8 The report surveyed a group of Tamil asylum-seekers in detention at the Maribyrnong Detention Centre in Melbourne. Seventy two per cent of these detainees reported having been tortured in their country of origin. The report poses the question of whether detention worsens the psychological symptoms of traumatized asylum-seekers. On six measures, including; depression, suicidal ideation, post traumatic stress symptoms, anxiety, panic attack symptoms and physical symptoms, detainees were two to three times more likely to experience such adverse effects of detention compared to asylum-seekers and resettlement refugees living in the community (Silove and Steel 1998: 30).

Detention is a policy decision and a strategic and administrative practice which is unambiguously about containment, separation and punishment, the latter being consistently denied in the case of the treatment of asylum-seekers. Practised on individuals deemed 'anti-social', or as having breached a social code or law, detention reaffirms the security of the rest. Moreover, the association between detention and punishment, even in the case of asylum-seekers, is not an arbitrary nor ambiguous association (Caloz-Tschopp 1997: 166). While the nexus between security and punishment is often hidden in official accounts of detention practice and the rationale for such practices by governments, it becomes more visible through the testimony of those detained, requiring independent scrutiny of the media and non-state actors.

Most Western states have implemented a raft of deterrence measures over the last decade, with the aim of keeping at bay those who may seek to invoke protection obligations. Such measures include, carrier sanctions, special visa requirements on nationals from refugee producing states, the placement of additional immigration officers at overseas ports, 'burden shifting' arrangements with other states, and the interdiction of refugees at frontiers as well as in international waters, ensuring they cannot enter Western states and claim protection (Hathaway 1997). The Australian state, however, remains unique among Western countries, in the vigour with which it utilizes detention as a deterrence measure. Australia has also struck a regional agreement with Indonesia, overseen by the IOM, whereby Indonesian authorities, often police, intercept and detain 'irregular' migrants bound for Australia. The Australian Government shares the cost of caring for the detainees in Indonesia with the International Organization for Migration (IOM) until such time as they can be voluntarily repatriated, or resettled in a safe country. The majority of people detained in Indonesia who have been intercepted on their way to Australia are Afghani and Iraqi.

As undocumented arrivals are not felons, the detention of these individuals beyond a reasonable time for health and security checks, has some significant tensions for a democracy. The willingness to detain asylum-seekers for long periods is symptomatic of a defensive political system. However, the use of moral arguments premised on human rights principles to encourage alternative detention policies, have largely been dismissed by the Australian Government and in public discourse, at least until the asylum-seeker issue reached a critical mass of public interest through June and July of 2001. At this time the Australian media began to take a sustained interest in the issue of detention, especially over the treatment of children in detention.

As I have already noted, the issue of boat people has received a level of media attention out of keeping with the numbers of such arrivals and the impact they have on Australian society. This trend has escalated in recent years as the application of detention policy on such 'illegal' arrivals has become increasingly harsh. Unlike earlier periods, the media coverage of the detention issue from 1999, regularly highlighted the human suffering of detention.

Creating 'second-class' asylum-seekers with the Temporary Protection Visa

One of the most significant changes in recent years to the status of individuals found to be genuine refugees, is the introduction in October 1999, of a Temporary Protection Visa (TPV, Visa Subclass 785). This change focuses on the documentary validity of entry to Australia as the determinant of the visa an individual may be granted once she or he has been found to be a refugee. The TPV grants a three-year temporary status,

during which time no family reunion or access to other significant resettlement programmes is available. A TPV means an individual has no automatic right of return upon leaving Australia and no eligibility for Medicare.[9] On the other hand, those persons who arrive in Australia with valid travel documents and subsequently apply for refugee status, face an often arduous task in proving the legitimacy of their claims. That is, the bona fides of asylum-seekers living in the community as individuals who have escaped some form of persecution are called into question even before the particulars of their situation can be investigated, as they were in a safe enough position to avail themselves of travel documents from their government authorities and be able to purchase an air ticket to Australia.[10]

Two new categories of TPV were introduced to Australian law as a result of a raft of legislative changes under the Migration Amendment Bill 2001, which followed closely after the Tampa incident of August 2001, and only weeks before the federal election of November 2001. I will discuss the 'Tampa incident' and the ensuing Migration Amendment Bill shortly. But first, the earlier introduction of the TPV in 1999, met with stiff opposition from NGO advocates, many of whom interpreted this measure as an erosion of Australia's commitment to its protection obligations and another indication of the development of a 'two-class' refugee system, where asylum-seekers are stigmatized as 'queue jumpers', fraudulent and criminal by elements of the media and by prominent politicians. The RCOA, in a position paper on the TPV, argues that this new visa class is being used as a form of punishment for those who have circumvented Australian immigration control by their unauthorized entry and to act as a deterrent to future arrivals. It lists the preclusion of family reunion as perhaps the most harmful limitation on TPV holders. In addition, the RCOA argues that Australia is acting in a manner contrary to its obligations under the Refugee Convention, which provides that contracting states shall 'not impose penalties, on account of their illegal entry' (Article 31), (RCOA, Position on Temporary Protection Visas, November 1999).

The policy and practice of mandatory detention has been contested in a relatively narrow public debate, at least until the period leading up to the Tampa crisis, of August 2001. As I will detail later, the Tampa crisis was in essence a relatively minor incident, involving the presence in Australian waters of a boatload of some 460 asylum-seekers. However this boatload of asylum-seekers and the Norwegian freighter, Tampa which sought to rescue them at sea, became a lightning rod for major changes to Australian migration law and to the processing of asylum claims. This one incident also solidified public opinion firmly against asylum-seekers. There was nothing singular or conspicuous about the Tampa boatload of asylum-seekers. Rather, the political and subsequently legislative responses of the Australian Government to this particular boatload of asylum-seekers has become the caesura in the Australian public sphere and in the politics of asylum (MacCallum 2002; Rundle 2001). Coming as it did only a few weeks before the 11 September attacks on the World Trade Centre in New York, the

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9 More recent amendments to the TPV stopped any access to permanent residency status.

10 If successful in their claim, however, such entrants are granted permanent residency through a Visa Subclass 866, and have access to full social security benefits, to work permission and to 510 hours of English language training.

Tampa crisis marks a departure from more measured and considered policy development in earlier periods of Australian political life.[11]

The detail of developments in the Australian handling of asylum claims, particularly since 1999, allow us to now consider the developments in the politics of asylum around the Tampa issue. Perhaps the developments leading up to Tampa allow some explanation of the inflammatory nature of this incident and the subsequent ramifications.

Generating fear from one boatload of asylum-seekers: Tampa and beyond

Events in late August 2001, have witnessed the most dramatic escalation of the 'politics of asylum', and the ensuing treatment which those who seek protection in Australia face. On 18 August, the Sydney Morning Herald carried a headline; 'PM calls for tighter law on asylum seekers'. The article begins: 'The Prime Minister yesterday declared war on illegal immigrants, saying Australia must 'redouble our efforts' to make it less attractive for them to come here'. On 26 August, a small boat, carrying 433 asylum-seekers which had embarked from Indonesia, was in distress and appeared to be on the verge of sinking some 140 km north of Christmas Island, which is part of Australian territory. A Norwegian commercial container ship, the MV Tampa, rescued the asylum-seekers and, after initially seeking to return them to Indonesia, attempted to take them to Christmas Island.

The captain of the Tampa, Arne Rinnan, was refused access to Australian waters and threatened with fines and the impounding of his ship. A stand-off ensued with the Indonesian, Norwegian and Australian Governments negotiating on the question of responsibility for the asylum-seekers, while the asylum-seekers themselves were falling ill as a result of their journey and the conditions on the deck of the Tampa where they were being temporarily housed. The Australian Prime Minister, was interviewed by the national broadcaster, the ABC, on the evening of 27 August 2001. In response to a series of questions on Australia's response to the Tampa issue he stated:

> We are a decent, compassionate, humanitarian country, but we also have an absolute right to decide who comes to this country ... It is an appalling human tragedy that people wander the world in search of a home. I understand that, but no country can surrender the right to decide who comes here and how they come here. We have an open, non-discriminatory immigration policy and obviously there are people who seek to exploit the generosity of Australia and what we are trying to do, as we have done at all points is (sic)strike a balance between our decency and our generosity, but also making certain that if people come here on the basis of being refugees they are compared with all other people who

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[11] The nexus between illegal boat arrivals and security has been a recurring theme utilized in a bi-partisan fashion to support detention policy, and most recently utilized by the Howard Government to gain popular support for the actions and legislative changes surrounding the Tampa crisis. Yet, notably in late august 2002, ASIO, the Australian Security and Intelligence Service, announced that of the 6,000 asylum-seekers to have arrived in Australia in the last three years, none has been found to have posed any security risk to Australia (ABC Lateline, 22 August 2001).

> are seeking to come here on the basis of being refugees (ABC 7.30 Report, 27 August 2001).

Captain Rinnan broke the deadlock, insisting that the safety of his passengers should be prioritized. As the Tampa made for Christmas Island, Australian Special Air Services (SAS) troops were ordered to board the ship and take over control. Eventually, after multilateral negotiation, including the involvement of the UNHCR, the Australian Government came up with what became known as the 'Pacific solution'. Prime Minister Howard insisted that the Tampa asylum-seekers would not be allowed to lodge protection applications in Australia. After hasty negotiations with neighbouring Pacific Island nations, the Tampa asylum-seekers, and all subsequent boat arrivals who have been intercepted by the Australian Navy, have been sent on to processing centres in the neighbouring Pacific states of Naru and Manus Island of Papua New Guinea. The Tampa incident is estimated to have cost the Australian government US$120 million, and the 'Pacific solution' is still proving to be a drain on Australia's financial resources, as Australia covers the cost of detention as well as 'friendship' payments to the nations which are hosting the asylum-seekers who were 'pushed off' Australian territory and processed in these neighbouring Pacific states.

By mid September, the Government had placed before the Australian Parliament a raft of legislative measures; passed with minor amendments before the federal election of 10 November 2001. The Migration Amendment Bill 2001, facilitates stricter border control and further restricts the rights of asylum-seekers. The effect of the bill is to excise from the Australian Migration Zone the following of Australia's territory: Christmas Island, Ashmore Reef, Cartier Reef and Cocos Island. The consequence is that boat arrivals landing their craft on these islands will not be considered in Australian territory for the purpose of lodging a protection application. Further, the Border Protection Bill 2001, authorizes the removal of any vessel from Australian territorial water if it is deemed that the intention of the people aboard is to enter Australia unlawfully. Indeed, section 7A of the Act confirms the power of the government and its administration to act outside of any legislative authority (Crock and Saul 2002: 39). As part of this package of amendments, the Judicial Review Bill, which was first introduced to the Senate in December 1998 was passed. This mechanism restricts access to Federal and High Court judicial review of administrative decisions under the Migration Act 1958, such as the decisions of the Refugee Review Tribunal.[12]

Over a year has now passed since the Tampa crisis, and the effects of the political reaction to this one boatload of asylum-seekers remain prominent in the Australian public sphere. The diplomatic stand-off which ensued and the raft of legislative changes which were passed through the Australian Parliament as a direct result of the Tampa crisis, are indeed disproportionate to the dilemma which 433 asylum-seekers wishing to seek protection in Australia could be expected to generate. However, the Tampa crisis, coming as it did just two weeks before the terrorist bombing of the World Trade Centre in New York, and the Pentagon in Washington, has consolidated public opinion in Australia firmly in support of the Government actions. Public opinion polls reflected a

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12 This mechanism is known as a privative clause. On 4 February 2003, the High Court of Australia upheld the Tampa laws while affirming the 'right of any person from appealing against a decision of a public servant when they had made a "jurisdictional error" – for example, and error of law of bias' (Tampa law loses its punch after ruling, *Sydney Morning Herald*, 5 February 2003).

ten-point surge in support of the Government in the weeks leading up to the federal election of 10 November 2001, at the time that the Pacific solution was being carried out (*The Australian*, 11-12 May 2002: 24-5).[13] A vocal minority within Australia rejects the Government's approach to asylum-seekers; the long-term detention of those who arrived before Tampa and the warehousing of the Tampa asylum-seekers as part of the 'Pacific solution', while the majority of Australians support the Government's actions. National security and the maintenance of a control system of immigration – symbolized by an immigration queue – are the threads which bind the Howard Government's administrative and legislative direction to public opinion.

I will briefly recount some points leading to the sea rescue of the Tampa becoming an international incident and the subsequent action taken by the Australian Government. As I have outlined earlier, public reaction to the detention of asylum-seekers, and in particular the treatment of children in detention had gathered significant momentum through 2000 and early 2001, indicating the beginning of a swing away from support for Government policy.

Night after night, an ashen Philip Ruddock, the Immigration Minister, had been appearing on television in these weeks leading up to the Tampa incident, to explain mass breakouts, suicides, nervous breakdowns, the presence of a catatonic boy and mass hunger strikes at the country's detention centres, including Villawood and Curtin.

Howard was calling on the Senate to pass legislation to limit even further the access of asylum-seekers to the courts. The annual boat season was under way and to prepare for their arrival, Ruddock had announced new detention centres at HMAS Coonawara in Darwin, the army camp at Singleton in NSW and at the El Alamein camp near Port Augusta in South Australia. Christmas Island was bursting: there would be 1,000 asylum-seekers there once those on the deck of the Tampa landed.

At some point after 09.40 on the night of 26/27 August someone made the decision that the Tampa was to be turned back to Indonesia by threatening the master with the full weight of the Migration Act. The Tampa was not to be thanked for rescuing the human cargo on the Palapa 1 but accused of facilitating their illegal voyage. Australia was taking the view that the Tampa was not on a search and rescue mission but conducting a people smuggling operation (*Sydney Morning Herald*, 20-21 October 2001: 40).

In the weeks following the Tampa crisis, the asylum debate was kept on the front page of national newspapers and the key item in television and radio broadcasts with another asylum-seeker incident: the 'children overboard' affair. The government claimed that children had been thrown overboard by their parents from boats making their way to Australian waters in early September 2001, in an attempt to intimidate the Australian government:

> The Government reported that children wearing lifejackets were thrown into the sea after the vessel was stopped by HMAS Adelaide off Christmas Island yesterday.

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[13] Captain Arne Rinnan has received 13 awards around the world for his actions in resulting the asylum-seekers, including an Australian human rights award, The Sailor's Prize for 2001, Captain of the Year by the British shipping newspaper and awarded the King of Norway's Medal of Honour, 1st Class.

> Adults, also in lifejackets, jumped overboard in what Mr Ruddock described as 'disturbing ... planned and premeditated' action with the 'intention of putting us under duress'.
>
> The incident keeps the border control issue on centre stage, after last week's forcible removal of people from HMAS Manoora onto Nauru (*Sydney Morning Herald*, 8 October 2001: 1).

The Prime Minister, John Howard, the Immigration Minister, Philip Ruddock, and the Defence Minister, Peter Reith, made much of the children overboard incident, particularly articulating repeatedly the bad moral character of people who threw their children into the sea as a form of intimidation. On the influential talkback radio show of host, Alan Jones, on 7 October, Prime Minister Howard said: 'Quite frankly, Alan, I don't want in this country people who are prepared, if those reports are true, to throw their own children overboard. And that kind of emotional blackmail is very distressing' (Radio 2UE). Defence photographs were released, showing figures with life jackets floating in the ocean, though identifying information was removed from the photographs:

> For weeks the Government has maintained that children were thrown into the sea near Christmas Island on 7 October in an attempt to blackmail authorities into bringing them to the Australian mainland.
>
> It has made extensive political capital during the election campaign of assertions that its tough border protection policy was designed to keep out people who were so undesirable that they would deliberately put children at risk (*Sydney Morning Herald*, 9 November 2001: 1).

And on the morning of the Federal Election, the asylum-seeker issue remained on the front page of all the country's major newspapers:

> Stories can be too good to be true. The tale of the Iraqi children thrown into the ocean off Christmas Island a couple of days after John Howard called the election was one such story. It always seemed too good to be true. Demonizing boat people was nothing new. Church leaders claim it had been under way almost since the 1998 election.
>
> The Howard Government has linked them with terrorists, tarred them with the Taliban brush, christened them 'illegals' and denounced them as abusers of the Australian court system. It was only another detail in this grim portrait to say they were the sort of people who would put their children's lives at risk to blackmail Australia into giving them asylum (*Sydney Morning Herald*, 10-11 November 2001: 27).

The Howard Government won the 2001 election with an enlarged majority. A Senate inquiry into the children overboard incident after the election, took evidence from senior defence personnel and senior public servants. The inquiry findings indicate that indeed children were not thrown overboard; that the photographs the government released on the eve of the election, claiming that asylum-seekers were seeking to blackmail the government, were instead saving their lives as the vessel they were on was sinking. Rather than the asylum-seekers behaving reprehensibly in putting their children's lives

at risk, the evidence of the Senate inquiry has revealed a trail of obfuscation and at best a careful 'management' of the information at hand at the most senior levels of the defence force, the public service and of ministerial advisers (Weller 2002).

Though the political handling of the Tampa incident and the resulting 'push off' policies which have been confirmed by legislation passed as part of the Migration Amendment Bill 2001, are clearly a new development in Australia's management of asylum-seekers, the language of border protection, of 'queue-jumpers' and 'illegal aliens', is not altogether a new development.[14] Rather, in this, as in other approaches to 'on-shore' arrivals, a bi-partisan approach is evident in the Australian political system, as I have outlined earlier. Gerry Hand, the Minister for Immigration in the early 1990s in the Hawke Labor Government made regular public pronouncements about 'illegals' and 'queue jumpers', utilizing derogatory labels as part of the legitimization of tougher legislative and administrative approaches:

> In its zeal to protect the 'integrity' of our borders, the Federal Government has constructed one of the tightest and toughest immigration systems in the world. This system imposes a heavy burden on unauthorized boat arrivals ... The system is strict and unyielding – deliberately so, to discourage further illegal boat entries ... In almost identical language, the Immigration Department's deputy secretary, Mr Wayne Gibbons, and the head of the Department's protection and international division, Mr Ian Simington, refer to the threat facing Australian's northern borders as population movements in Asia gather momentum.
>
> Implicit in the comments is the fear that any loss of 'control' of the immigration programme will not only lead to administrative chaos, but will also shake public confidence in immigration itself. This, above all, appears to be the driving force behind the government's tough stand on boat arrivals (*Sydney Morning Herald*, 30 November 1992).

While a continuity is evident in contemporary government earlier approaches to asylum-seekers with earlier periods, especially where they arrive without authorization, the developments that resulted from the Tampa crisis indicate a marked escalation in the politics of fear and the nexus between immigration and security. Certainly such general fears are not unique to Australia. The extent to which legislative and administrative developments in Australia in relation to the protection of asylum-seekers may be mirrored by other Western countries is doubtful. The Australian Immigration Minister visited Europe and Africa in August of 2002, admitting that the asylum-seekers who were; 'unable to pierce Australia's tough border protection system would inevitably look to Europe for alternative sanctuary' (*Sydney Morning Herald*, 24-25 August 2002).

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14 From February 2002, evidence of the Senate inquiry into the 'Children overboard' affair emerged which indicated that senior Government officials, including advisors to the Prime Minister, knew a few days after the official photographs released by the Royal Australian Navy, depicting the incident were released in September, that they depicted a rescue rather than the result of children being thrown in the water. On 19 February 2002, the Prime Minister admitted that Peter Reith, the Defence Minister, told him three days before the election that there were doubts about the photos that were released of children thrown overboard (*Sydney Morning Herald*, 20 February 2002: 1).

Conclusion

Concerns over security are by no means new phenomenon in the logic which drives state responses to those seeking protection. However, heavy-handed responses to asylum-seekers, or to those who have been 'ethnically profiled' as a terrorist risk, engender a degree of unease alongside the moral conviction of those who argue for a sanctity of territorial borders to the entry of people, while encouraging deregulation in global trade and the movement of money. Public opinion toward refugees and asylum-seekers in various local settings, shifts constantly and must be engaged and re-engaged with every new incursion on the rights of refugees and those seeking protection in order to ensure the continued efficacy of international human rights mechanisms and law. The issues around the entry of asylum-seekers, particularly where they enter a country without authorization are not straightforward, requiring a balance between needs and aspirations at the local level and the fulfilment of obligations which are held between states at the international level. Moreover, responses need to be nuanced and flexible to changing local and international conditions.

The 'security state' remains central in driving the political and social construction of refugees and in particular of asylum-seekers as 'irregular' arrivals. This picture re-emerges powerfully with the example of the Australian response to asylum-seekers which I have outlined in this paper. Irregular (illegal) arrivals are perceived as a threat to the cohesion of the nation, while also providing a focus for resentment, readily exploited by politicians searching for simplistic ways of communicating about complex social and political problems to their constituents. For those countries, such as Australia, who accept a certain number of Refugee Convention status persons for resettlement, the emergence of a 'two-class' system is possible, and indeed has emerged in the last few years in the Australian case, with the introduction of the Temporary Protection Visa (TPV). Those arriving spontaneously are more readily cast into a pot of 'non-authentic' or 'fraudulent' claimants, as 'queue jumpers'; or, in the security heightened environment of the last eighteen months, as 'criminals' or 'terrorists'. However, even those countries who do not set aside resettlement places, such as the majority of EU member states, have also continued along a path of erecting increasingly harsh obstacles to those seeking protection.

The issue of people smuggling and the illegal status of arrivals, has caused enormous tension, particularly as this form of entry is perceived as a security threat, no matter the voracity of someone's cause for such entry: the strength of a protection claim is immediately negated by the illegality of their entry. In addition, refugee entry causes local anxiety due to the perceived change it causes in the receiver society culturally, and in terms of the resources needed to administer the claims of such entrants. However, despite the high levels of public anxiety (largely generated by the state itself through media networks), the state has not lost control of immigration in the 1990s, and the categorization of 'crisis' with regard to illegal entry in particular is much exaggerated (Zolberg 1999). Numerous scholars, across various disciplines, remind us of the continuity between past and present population movements (Bade 2000; Joppke 1998 and Hollifield 2000). Such continuity indicates that though the movement of people across borders has occurred in different 'waves' and for different reasons, some instigated from the source country, some from the country of destination, nevertheless, the last decade has not witnessed what could be termed a crisis in the numbers of people moving, or attempting to move to Western states across borders for temporary or permanent resettlement. Rather, it has been the response to, and interpretation of

newcomer arrivals by particular states that amounts to a crisis. This is particularly so in light of the demographic deficit which many Western states are now experiencing with only an increase in immigration numbers able to forestall a rapid population decline.

The continuation of a system which extends political, social and economic rights only to members of a particular territory, is a system which can be maintained only through increasingly defensive measures, including communicative modes which constantly reinforce a fear of strangers. As this article has argued through an analysis of the developments in the Australian case, Western states face a dilemma in relation to how best to respond to 'irregular' immigrants: setting in place legal and administrative measures to restrict the entry and the duration of stay of such arrivals, while at the same time being seen to be maintaining a 'fair' and open system in relation to obligations at the national and international level. Certainly, Australia may not prove to be the yardstick for how Western states respond to those who arrive without authorization and subsequently seek protection. However, the response of a state such as Australia which has benefited from earlier waves of immigration and which until recent years, was regularly invoked as a model of successful multicultural integration of newcomers, cannot be overlooked. Moreover, the treatment of asylum-seekers cannot easily be distanced from the treatment from other marginalized and voiceless groups.

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