

The ethics of asylum and refugees

DR TIM SOUTPHOMMASANE

Welcome to our symposium on the ethics of asylum and refugees. It's a pleasure to have you all here today for what I hope will be a day of dialogue, discussion, deliberation – and I'm sure some debate along the way as well.

Few of us would dispute that the issue of asylum seekers and refugees divides Australians so dramatically. Few issues raise passions in the same way. The contours of public debate will be familiar to you all.

On the one hand, many Australians regard asylum seekers, especially those who arrive in Australian territory on boats, with suspicion and hostility. Many regard boatpeople as merely illegal immigrants, or as queue-jumpers. Those who travel here on boats, often by paying so-called people smugglers, are economic migrants who are undeserving of our generosity. When they arrive in Australia and have their claims for asylum recognised, the effects of punishing those who are in the so-called queue waiting for resettlement. The response should be to take a hardline approach to stopping the arrival of boats, by offering suitable deterrents – for example, sending them back or diverting them somewhere other than Australia.

On the other hand, are those Australians who regard such a response as little more than an expression of racism or xenophobia. Asylum seekers who arrive on boats do so because they often have no choice but to do so. Whether or not they have the economic wherewithal to make such a journey should not detract from the fact that they are fleeing from homelands where they face grave physical danger or persecution. While there should be an orderly way of processing claims, to suggest there is a queue, much like there is at a bus stop, ignores the fact that in many countries of strife and conflict there is simply no queue that asylum seekers can join.

It is against this background that much of our debate on refugees and asylum seekers takes place. I think most of us,

regardless of where we might stand in the debate, would agree that there are a number of defining characteristics about public attitudes.

First, any hostility that Australians have towards asylum seekers seems to be directed in particular at the spontaneous arrival of asylum seekers on boats. The same level of concern doesn't appear to exist with respect to asylum seekers who arrive by air, even though the overwhelming majority of those who seek refugee status arrive in Australia that way. In addition, the Australian public doesn't seem to be exercised in the same way if governments put in place programs to resettle refugees from offshore. One recent study by Andrew Markus at Monash University, for example, found that two thirds of people had a positive attitude to refugees whose cases had been assessed by our authorities overseas. Yet opinion polls regularly show that almost two thirds of Australians support a tougher policy towards unauthorised boat arrivals.

The second characteristic of public opinion worth noting is that it is not always proportionate. By this, I mean that public opinion in the area of asylum and refugees can be rather susceptible to exaggeration or to myth. For example, popular concerns about invasions by boats or flotillas would suggest a much higher number of asylum seekers that arrive via sea than is actually the case. Similarly, the debate about population and asylum seekers in the lead up to last year's election reflects the sense amongst many Australians that a large proportion of our migrant intake is composed of refugees, when in fact refugees make up only a small fraction.

If we move from public attitudes to the political environment, I think people on both sides of the debate can also agree on a few

defining characteristics about the current state of affairs. Of most significance is the breakdown of a bipartisan consensus on a humanitarian approach to refugees. It was once the case that neither side of politics would seek to make political mileage from asylum seekers or boatpeople.

Arguably, this consensus broke down with the introduction of mandatory detention in 1992. Since the Tampa incident of 2001, we have seen asylum seeker policy subject to a much more nakedly political contest. To the point now that both major political parties, rightly or wrongly, feel that any retreat from a hardline stance on unauthorised boat arrivals will result in savage electoral punishment.

If this is the background, what might be some of the ethical or moral concerns that are involved? In our discussions today, I hope that we may be able to address a number of ethical dimensions. What I'm about to offer is by no means an exhaustive catalogue, but perhaps it may be helpful in offering some context on what we will be discussing. I think it might be valuable for us to bear some of the following sets of questions in mind throughout the day.

Let me start at the most general level. If we adopt something of an ethical lens, one way of looking at the division that exists today is to say that it might reflect different ways of responding to human suffering.

Those who adopt a sympathetic stance towards asylum seekers would argue that any instance of human suffering calls upon us to exercise some measure of empathy – to walk in someone else's shoes.

Those who favour a more hardline stance would dispute this. Let me illustrate this with an example from last week's SBS program *Go Back To Where You Came From* (which I will assume most of you will have watched or at least be familiar with). At one point, one of the participants protested that the exercise elicited his empathy without consent.

CONTENTS

1	The ethics of asylum and refugees Dr Tim Soutphommasane
3	What do we really want from our politicians? Julian Burnside AO QC
6	Keynote speech Senator Kate Lundy
8	Appealing to our better angels John Menadue AO
9	Building durable solutions through regional cooperation Arja Keski-Nummi
12	ALP goes to water as boats threaten sovereignty Greg Sheridan
13	Duties to refugees in a system of states Professor William Maley
14	Uncertain welcome: paradoxes of Australian refugee and asylum policy Professor Stephen Castles

This was something echoed, for example, in the criticism directed at the program by commentators such as Paul Sheehan in the *Sydney Morning Herald* who wrote that the show involved “an empathy forced march”.

To what extent should passions and emotions feature in our moral reasoning on asylum? Is it helpful to walk in someone else's shoes? Or is it better to take a more sober approach to our reasoning?

Are we to agree, for example, with David Hume that sympathy should ultimately be the foundation of morals? And that reason should be the slave of the passions? Or was Adam Smith more correct in saying that we should strive to adopt the perspective of the impartial spectator with some measure of detachment? (For those interested, by the way, on my position on this, I've written on it for my Saturday column in the *Weekend Australian*.)

There are as well questions concerning how ideals and reality should come together on the matter of asylum. In philosophical terms, this concerns the role of ideal theory. To what extent should we scrutinise existing practices, particularly those widely supported or deeply entrenched, from the vantage point of a perfect ideal? Does this actually do harm in deflecting attention from what may actually be feasible here and now in the real world?

These were some concerns raised by Robert Manne, speaking about the choice between morality and politics on asylum.

The asylum seeker issue now poses an acute dilemma for the friends of asylum seekers. Most argue that as both mandatory detention, and even more so the Pacific Solution, are immoral, the Gillard Government should abolish mandatory detention and should not contemplate the establishment of an offshore processing centre on East Timor or anywhere else. This position is morally right but altogether unrealistic from the political point of view.

It is unrealistic, in Manne's view, because Australian public opinion is consistently troubled by the spontaneous arrival of asylum seekers on boats. Moreover, Manne argues that it would be dangerous even to put a morally superior policy into practice because public hostility might harden even further against asylum seekers and leave the way open to a strengthening of populist hysteria.

Those are just two very general sets of ethical questions raised by asylum seekers and refugees. But more specifically, let me just outline four or so areas of concern that we may touch on today.

First, asylum seekers do raise questions about the ethics of membership. In a globalised world, what precisely is the nature of Australia's ethical obligations to asylum seekers? Are they grounded in human rights and international legal norms? And if so, how might we reconcile them with the traditional value of national sovereignty?

Second, there are questions about policy. As we all know, the government is still trying to finalise its so-called Malaysian Solution. But in what ways can the offshore processing of asylum seekers be justified? If we are to adopt a regional framework for protecting refugees, what is the most sound way of going about it? Is there a strong basis for arguing that Australia should expand its intake of refugees?

Third, there are questions about settlement and integration of refugees once they arrive in Australia. What effects do asylum policies, such as mandatory detention, have on the prospects of refugees integrating into Australian society? Should we be concerned about the impact that a polarised public debate might have on how Australians view refugees and on how refugees view Australia? Certainly some would argue that there are important spillover effects of a divisive and bitter public debate.

Which leads me finally to the last set of questions which really go to the heart of the morality of our public life and our ethical practice as citizens. If, in a democracy characterised by pluralism, we must negotiate our differences, what does the state of our public debate on asylum seekers and refugees say about our capacity to deliberate?

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What do we really want from our politicians?

JULIAN BURNSIDE AO QC

When I volunteered this topic I thought I wasn't going to be able to make it here because I am in a long running commercial case in Melbourne. It was probably a silly topic to choose since I know nothing about politics and, if it's possible to be less interested, I guess I am less interested. From the time I became involved in asylum seeker issues, it struck me forcefully that it was an ethical issue not a political issue and it was depressing to see it become so much of a political issue, with the ethics being completely buried in a snow storm of dishonesty.

There is an interesting question that Bill Maley touched on: "How do you approach answering the ethical question of the appropriate treatment of asylum seekers?" Plainly enough, we cannot take all the refugees in the world. That was one of the earlier, relatively uninformed, ways of responding to those of us who were arguing for more humane treatment of asylum seekers. Probably the best guidance comes from 'the Golden Rule'. It turns up in almost every religion and almost every framework of moral philosophy. We know it from the New Testament in the form: "Do unto others as you would have done unto you" – but it appears in all the Abrahamic religions and in many Eastern religions and in most philosophies. And of course it's captured in Immanuel Kant's impenetrable language as the Categorical Imperative.

It is easy to see why it is so universal: it is a great illustration of the generalised rule of reciprocity. You would hope that if you treat people well you would be treated equally well by them when it comes your turn. In a similar vein, I think, the problem of dealing with asylum seekers in Australia has been discussed as an example of the ethics of proximity. There is something compelling about the idea that while we may owe some generalised obligations, in a diluted form, to refugees across the world who never cross our borders, those who do cross our borders stand in a different position, even though they may be no more deserving than the millions in refugee camps.

The ethics of proximity can also be traced to a self-evident, and pretty fundamental moral principle, also from the New Testament, which is 'love thy neighbour'. For those of you who have law degrees,

you will remember that 'love thy neighbour' was used by Lord Atkins as the foundation of the modern law of negligence: my neighbour is the person who is likely to be affected by my careless conduct and I have to shape my conduct so as not to cause foreseeable harm to my neighbour. In this doctrine, my neighbour may be someone who lives in another country or someone I've never met. The ethics of proximity would say that the people who come to Australia by whatever means and ask for asylum are our neighbours, because they are at our mercy, and we are bound to them by an ethical obligation which is much more immediate than the ethical obligation we have to those who are still in refugee camps overseas. Once you have a personal involvement with someone's problems, their problems are more morally compelling.

I guess this is an example of empathy, very interestingly illustrated in last week's SBS mini-series *Go Back to Where You Came From*. The people who took part in that interesting social experiment had, it seems, never managed to put a personal face to the people who come to Australia asking for our help. I must confess to having gone through a similar transformation myself, from a position of ignorance and indifference to a position of commitment, in relation to Australia's treatment of asylum seekers.

Very soon after the Tampa litigation I was asked to do a lot of pro bono refugee work. One of the earliest cases I did was for a family who fled Iran. They were members of a small pre-Christian group, which was regarded by the dominant religion in Iran as unclean, and all the consequences that followed from that fact shaped their fate. They had fled Iran in very difficult

circumstances and ended up in Woomera. There they were: mother, father and two daughters (aged seven and ten at the relevant time). The ten year old daughter deteriorated seriously over the next twelve to eighteen months in Woomera. She came to the attention of a psychiatrist in Adelaide who went and spoke to the family and interviewed the child. He delivered the most devastating psychiatric report I had ever read. He said that this child had effectively given up on life, that she was at extreme risk and that, for her safety, it was essential the family be moved to a metropolitan detention centre so that she could get daily clinical help. That was ignored.

So two months later he wrote another report, even more trenchant, which ended with the chilling observation that the whole family had already suffered in Woomera beyond the human capacity to endure. The report urged that the family had to be moved to a metropolitan centre so that the ten year old could get daily clinical help. After another five- or six-week delay, the family was eventually moved from Woomera to Maribyrnong in the western suburbs of Melbourne. They arrived in late April 2002. Although the reason for their move was that the ten year old needed daily clinical help, for the first two or three weeks at Maribyrnong no one came to see her. It was as if they hadn't even arrived.

On a Sunday night, in May of 2002 (a day I will never forget) while her mother, her father and her sister were in the meals area having their dinner, the ten year old took a bed sheet and hanged herself. But because she was only ten, she didn't know how to tie the knot properly and she was still choking when the family came back from dinner. They took her down. But then she reached for a bottle of shampoo because she had seen adults try to kill themselves by swallowing shampoo in Woomera. They got that off her easily enough and she was taken to the nearby general hospital and placed in the intensive care unit. She was accompanied by her mother but also by two guards so that she remained in immigration detention, even though she was in hospital.

Kon Karapanagiotidis, from the Asylum Seeker Resource Centre, had been looking after their visa application and heard what had happened. He went to the hospital at about 9:30 on the Sunday night. He said hello to the guards. He is a regular visitor to Maribyrnong on legal business. He said he wanted to speak to the mother to see how the child was and if he could do anything to help. The guards said, "No, you're not allowed to see them because lawyers' visiting hours are nine to five." They sent him away. He rang me at home and told me what had happened. To this day I have trouble believing that we could have been so carelessly indifferent in our treatment of people – that a little girl could be driven to try and kill herself, and could then turn someone away who only wanted to offer some simple human help.

That case did leave a mark on me. I got to know the family and I watched their progress over the next couple of years. There were times when the unfamiliar role of being a political activist, public speaker and pro bono counsel to a lot of asylum seekers was tiring. But I just had to bring to mind the image of a ten year old girl hanging herself, alone in a room in a detention centre in Melbourne, to be refocused on the task.

Not everyone is attracted by this sort of argument. In the SBS program, *Go Back To Where You Came From*, Darren protested because he was being forced "against his will" to be empathetic. I guess it takes a certain toughness to adopt that position. But if we look at the thing in a consequentialist way, there are also some pretty good arguments for treating asylum seekers better.

First of all, the Pacific Solution, the Malaysia Solution if it comes off, the use of Christmas Island as it is, are probably the most expensive ways of dealing with unauthorised arrivals imaginable. It costs an arm and a leg to hold people in remote places for the lengthy time they are kept. Nauru was costing us something like \$1,600 per person per day for the duration of their detention. All up it costs us about one billion dollars a year to mistreat people this way. If, on the other hand, you had initial detention for health and security checks, limited to say one month, subject to extension in particular cases if good cause is shown, it would cost a tiny fraction of what it currently costs.

The other thing is – and this perhaps gets some support from the Hugo Report – the one thing that distinguishes boat arrivals from all other arrivals, whether by air or the offshore resettlement program, is that these are people who have had sufficient

initiative and courage to undertake what is in any view a dangerous trip to safety. Any self-selecting group of people who have courage and initiative to take the risk are probably going to benefit our community.

There is a third consideration, and I am sorry to go back to economic rationalism, but it seems to be the only argument that carries any weight these days. Our policy of indefinite detention leads to long term psychiatric problems as well as being incredibly expensive in the short term. The long term problems are that if you put innocent people into prison-like conditions, and you can't tell them how long they will be there, they eventually break and, when they break, they will either start harming themselves or they will start damaging their jail. All this is utterly predictable; we have seen it before. The psychiatrists tell us it will happen; they just can't tell us where and when but they do tell us its going to happen. And when it does happen, our response is to criticise those people because they "can't behave themselves appropriately in detention". I think the PM said that yesterday.

It strikes me as a remarkable response to the inevitable psychiatric harm we inflict. The psychiatric harm we are now causing will eventually expose the Commonwealth to massive damages claims. We are seeing that right now: from the Howard years, we are now seeing a legacy group of cases of people who have been harmed in detention. They are receiving six- or seven-figure sums to compensate them for the government's failure to treat them properly.

Let me offer one single illustration of this. One man who was accepted within two weeks of his arrival in Australia as being a victim of torture was, for the next five years, not regarded as needing any psychiatric help. The Department knew that he was particularly frightened of being kept in small rooms. This was recorded in their notes because he had been locked in small rooms by the Iraqi regime where he had been electrocuted and tortured in other ways. Whenever he became depressed he would start harming himself, typically by breaking glass and cutting himself, or by throwing himself on the razor wire. When he behaved in that way they put him in solitary confinement in a small room. The most powerful medical treatment he received in the first five years was Panadol. Refugee advocates repeatedly made submissions to the department saying he needed psychiatric help. Even the other detainees were saying he needed psychiatric help.

But the prison operators who run the detention centres refused, because there

was a quota that they had agreed with the Glenside Hospital in Adelaide concerning how many people from detention could be put into the mental facility at any one time. They had reached the quota, so nobody else needed psychiatric help. Eventually a judge of the Federal Court ordered that he be given psychiatric help as an inpatient at Glenside. On admission he was given a physical examination. This revealed that he had 10 metres of scar tissue on his body from his repeated self harm attempts. Psychiatrists acting for the government agree that he will never in his life work again.

This is a legacy issue that is going to cost Australia a lot of money, and it is going to happen again. We are starting it all over again. Why politicians don't understand that, I cannot say.

The facts are that asylum seekers are not illegal; they don't break the law by coming to Australia the way they do, and there is no queue in the places they are fleeing from. In response to these facts we get an almost unanimous political voice that says we must "send a strong message" in order to deter refugees – 'illegals', as they are still tagged – from coming here. If you tell the public at large that we have got to "stop illegal queue jumpers from swamping our borders", that's going to sell pretty well. If, on the other hand, the politicians were to say, "We are going to mistreat innocent people in order to stop others from asking for our help", that might not be so politically palatable.

We can test this. I always fantasised about the possibility of approaching John Howard and saying,

Look, I will guarantee you that you will never get another unauthorised arrival in Australia, if you will just let me do one thing. All you have to do is let me take one child out of the detention centre and I will publicly execute her. That will send the message.

I don't think he would have gone with that.

So the fall back position is,

Well, I will just take a couple of kids from detention centres and publicly torture them, just for a few days, and then I'll guarantee no more asylum seekers will come to Australia asking for help.

I don't think they would go with that either.

So where is the ethical shift that makes it all right to hold hundreds of children in immigration detention, in circumstances which drive them to self harm and attempt to kill themselves, which causes psychiatric damage of an utterly predictable sort? Why is it all right to lock up innocent adults and

drive them to self harm or drive them to breaking point in order to send a message to other people? This instrumentalises innocent people in order to achieve a different objective. It ignores the golden rule and is absolutely morally bankrupt.

There has been a shift in recent times. Perhaps it is because some members of the community have met a few refugees and realise they're not bad people, they don't look like criminals –they look like damaged, frightened people. Perhaps some have heard these people talking and can see that they haven't broken any laws. So maybe this "sending a message" thing isn't so good any more. The shift is to attack people smugglers: the idea that we have got to "break this people smugglers' business model". That doesn't sound so bad because even Kevin Rudd said the people smugglers were the vilest things on earth.

Not all people smugglers can be put in the same moral category. Not all of them are necessarily morally reprehensible. Take Oskar Schindler. We've read the book, we've seen the movie, and we thought Oskar Schindler was a good guy: he was a people smuggler and he did it for profit, but he saved people. Dietrich Bonhoeffer: he was a people smuggler too. And Captain Schroeder, the captain of the MS Saint Louis, which left Hamburg in May of 1939, with 900 Jewish refugees on board: he hawked them all around the world, broke the law, did whatever he could, acted corruptly, did it for profit, couldn't manage to get them accepted in any country. Eventually he had to take them back to Antwerp, where they disembarked. More than half of those people died in concentration camps. Gustav Schroeder was a people smuggler, but then and now people reckon he was doing pretty good work. And those who enjoyed *The Sound of Music* in the 1960s, may like to remember that the von Trapp family were refugees and the nuns were people smugglers.

The moral opprobrium directed at people smugglers is not only misconceived; it conceals a deeper purpose. Although most people smugglers may be mercenary and callous, they provide a service which is essential for people who are fleeing the Taliban's ethnic cleansing or who are fleeing Iraq or Iran or genocide in Sri Lanka. They use people smugglers because it's the only way they can get to safety. So, dreadful people they might be, but they are providing a vital service for which people are willing to pay if they're able to. Let us be clear about it: people smugglers are the

last line of escape. It is no good thing to cut off a person's last line of escape.

We had an Afghan Hazara living in our place for about five years, and he told us a story about his people smuggler. His people smuggler was a Pashtun, the Hazaras' natural enemy. His people smuggler had a set tariff: "This much gets you to Australia, more gets you to Europe, more again gets you to America." But for Hazaras, he offered half price. Now he can't have been all bad. That shows some sort of empathy, which shown for an enemy is admirable.

The shift in rhetoric to an attack on people smugglers simply disguises the true message, which is: "If we can break the people smugglers' business model, we won't have any more unauthorised arrivals." That's the reality of it, and I suspect that's the purpose of it. But the true ethical question is being obscured by picking on an easy target, people smugglers. So, that leads me to ask, what is it that we really want from our politicians?

I discovered in the Tampa case what it's like when the ethical rubber hits the political road. It's a very ugly event. It reminded me of Woody Allen who once said, "The lion may lie down with the lamb ... but the lamb won't get much sleep."

The Tampa case was an interesting thing. The Tampa case is the only case I've ever done where I have received death threats. I thought it was an interesting reflection of the state of ethics in Australia: that a lawyer, who acts for nothing for people who are self-evidently powerless, should get death threats for his troubles. It worried me then and it worries me now. And picking up on the language of border protection, it's a little known piece of history that the first decision of Justice North in Tampa went our way, but no one remembers because it was handed down in Melbourne at 2.15 AEST on the 11th of September, 2001. In the next morning's newspapers, you had to go to page 38 to know what had happened in the Tampa case. The interesting thing is that the appeal, in the full Federal Court, which took place, I think, two days later, was the first time when the Commonwealth floated the idea that the people rescued by the Tampa might have included some terrorists – that was the first I'd heard of anything that sounded like border protection. It had no factual foundation at all, but it seemed to play pretty well in the post 9/11 environment.

So what do we want from our politicians on ethical questions like this? I made myself unpopular at the 2020 Summit by suggesting that there ought to be sanctions

against politicians who, in their capacity as politicians, mislead or deceive the public. The response was interesting: it was applauded by the public, was treated with scepticism by the press, and was completely ignored by the politicians, who neither wanted to embrace it nor wanted to argue that they should be allowed to keep misleading and deceiving us. Asking for honesty in politicians is more than I am willing to do today, but I think that what we really want from politicians is sincerity. Maybe sincerity and honesty run together, but sincerity would be good. I would like to see politicians declare their true ethical position on questions like, "How should asylum seekers be treated?"

If that were done, you might find that Pauline Hanson distinguished herself as more honest than Tony Abbott, because Pauline Hanson called a spade a spade, whereas Tony Abbott, with the benefit of training in a Catholic seminary, somehow manages to maintain the cognitive dissonance of his Christian training on the one hand and, on the other hand, his rhetoric about sending a message and breaking the people smugglers' business model by treating refugees harshly to make sure that other people don't ask for our help.

I think politicians should come clean. It would have been nice for John Howard, before the 2001 election, to say, "We are brutalising innocent people by locking them up for years on end because we want people to stop asking for our help." Now, if he had done that, you could applaud him for his candour. He would have lost votes. But when politicians need to disguise or dissimulate about their ethical position, and fudge the facts in order to make their conduct look as though it might be ethically acceptable, then I think we've got a problem, and it's a problem that might be solved if only they would act sincerely.

Until then, they will keep on pandering to the worst of our nature and by degrees our national image will be degraded and our national mythology will begin to look increasingly like self-delusion. ■

Julian Burnside AO QC is one of Australia's best known lawyers. He was the Counsel assisting the Australian Broadcasting Authority in the 'Cash for Comment' inquiry and acted against the Australian Government over the Tampa affair. Burnside is a noted patron of the arts and human rights and refugee advocate and is one of the most powerful public opponents of the mandatory detention of asylum seekers in Australia.

Keynote speech

SENATOR KATE LUNDY

Let me begin by acknowledging the traditional custodians of this land on which we meet today, the Gadigal people. I pay my respects to their elders, past and present, and I thank them for their continuing contributions to the community. Simon Longstaff, Executive Director of the St James Ethics Centre. Distinguished guests, ladies and gentlemen.

By any measure of demography, Australia's population has grown and transformed considerably. Since 1945 seven million people have migrated to Australia, including 700,000 humanitarian entrants. In less than a lifetime, post-war migration has transformed the face of our nation and propelled Australia forward.

Today, contemporary Australia embodies the success of this ambitious program – over a quarter of our population were born overseas and migrated to our shores. What is remarkable about this change is not the number of people who have chosen to come here. Rather, what is astounding is how quietly and how peacefully millions have settled into our communities. Australia has experienced a seismic population boom, but no upheaval.

Over the decades, year in and year out, Australia's migration program, in conjunction with our settlement services, has worked to build the Australia of today. We have never been a nation born from a single ethnic origin and, while we speak one language, our boundaries were not drawn to reflect a single linguistic group.

While Australians identify with more than 270 ancestries and speak more than 260 languages, we share a commitment to a common future through a citizenship framework that provides full membership to Australia and a collective identity expressed through shared values.

What I would like to reflect on today is the concept of membership and what it means to become Australian. How belonging transcends a piece of paper and how the end point of the migration journey should be when someone feels they belong wholly as a member of the community and by extension the country.

In announcing the Government's new multicultural policy, Minister Bowen

reflected that what made the Australian model of multiculturalism unique was a commitment to citizenship.

Approximately 68 percent of Australia's migrants take up citizenship. This is 20 percentage points higher than the OECD average, slightly lower than Canada's 75 percent rate but well above the 48 percent rate for the United States. For migrants that have been in Australia for more than 10 years the figure climbs to 80 percent.

As the Minister articulated, Australian migrants are not invited as guest workers; they are invited to become part of our nation and to participate fully. When new migrants come here, we recognise that it marks the beginning of our shared future as Australians and combined fortunes.

Mostly our migration program is framed in economic terms – imagined as skills lists calibrated to the needs of industry or a population level required to sustain our economy – but this scope is too narrow and ignores what it is that has made our migration program work.

Arguably, Australia has been able to harness the industry and talents that migrants bring more effectively than any other country around the globe.

The spectacular success of Australia's migration program lies in the nexus between multiculturalism and settlement services. As a nation we have sustained social cohesion through a commitment to membership. This is unique. In Australia what we offer is more than a job or safety – we offer a sense of belonging.

Settlement in Australia is more than relocating; it's about being a part of a shared sense of nationhood. The story of settlement in Australia is a tribute to the generosity of our national character and, by extension, the fulfilment of our country's

democratic promise. It is this ethos that has enabled us to sustain our commitment to resettle Humanitarian entrants and assist thousands of refugees to integrate in the community, many of whom have experienced torture, fled atrocities and languished for decades in camps.

Humanitarian entrants are the highest priority for government-funded settlement services because of their special needs and circumstances. This assistance is provided through our settlement services which promote social cohesion and propel our prosperity.

Settlement programs and services that support eligible new arrivals most in need include the Adult Migrant English Program (AMEP), Humanitarian Settlement Strategy (HSS), Complex Case Support (CSS) and Settlement Grants Program (SGP).

Our brand of multiculturalism is underpinned by these practical programs which have built and sustained participation in our community. The success of these programs in assisting new arrivals to launch their new lives in Australia was borne out in a recent study which measured the contributions of Humanitarian entrants.

The Hugo report, *Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants*, affirmed that Humanitarian entrants make a distinctive and significant contribution to Australian society and the economy. The report found Humanitarian entrants:

- displayed stronger entrepreneurial qualities compared with other migrant groups, with a higher than average proportion engaging in small and medium business enterprises;
- filled labour shortages in low skill and low paid occupations;
- were upwardly mobile between generations – with second generation Humanitarian entrants having, on average, higher levels of post-secondary school qualifications than the Australian-born population;
- provided an important demographic dividend.

It also found that refugees have greater propensity to volunteer, both formally and informally, not only helping their own communities but the broader Australian community also.

Recognising the hardships Humanitarian entrants overcome, the Hugo report confirmed that refugees display remarkable resilience rebuilding their lives and contributing to Australian society.

In embracing new refugees, we have reaped dividends with many making contributions to Australia and our way of life.

The Hugo report speaks to the value of resettlement – but what can we learn about the settlement needs of Humanitarian entrants?

Another study recently released by the Department of Immigration and Citizenship is the settlement outcomes of new arrivals report (SONA). Commissioned in June 2009, it evaluated settlement services and, more broadly, experience of new arrivals. The main focus of research was on Humanitarian entrants, using Family and Skilled visa holders as benchmarks.

Just more than 20,000 Humanitarian, Family and Skilled migrants were invited to participate in the study and more than 8,500 Humanitarian entrants and migrants responded from 12-60 months' experience of living in Australia.

Interestingly, what it showed was that, while from the Department's vantage point settlement was measured as something that could be quantified, success was measured through English milestones: capacity to access services, employment or social participation.

However for Humanitarian entrants, the report confirmed that settlement was more personal and did not fit neatly into their survey measures. For new refugees settlement was measured emotionally – success was measured in terms of feelings of self-confidence, how in control of their life they felt, or how accepted they felt. Humanitarian entrants who felt happy about themselves, who were confident

about making life choices and who were treated well by their local community – felt they were settling.

This is not to say the respective measures of success are mutually exclusive. Gaining employment is critical to feeling self-confident; language skills are critical to feeling connected; and social participation is critical to feeling accepted.

The report underscored how settlement for a new arrival is intimately personal and instinctively emotional. Success is belonging and feeling part of your community. Success is not just about having a job in Australia ... it is about being Australian.

The report also examined Humanitarian entrants views on citizenship. According to the report, only 207 respondents were not intending to become citizens and almost all Humanitarian entrants, more than 99 percent, were intending to take up citizenship.

A majority of all settlers, irrespective of stream, are comfortable about living in Australia. Indeed less than two percent indicated that they did not feel comfortable.

More than 70 percent of Humanitarian entrants are confident or very confident about making choices about their life in Australia.

Of the 8,500 respondents, fewer than 200 indicated that they were not treated well by their community. When asked what happened, the most common answers were about isolated experiences of abuse by individuals or being subjected to discrimination at an interpersonal level. The other common explanation was that they were not involved, or the local community was not aware of them.

If part of settlement is to help create sense of belonging, we are tracking well – and we are continually improving.

We have made some substantial improvements to settlement services – including moving to a strength-based ethos, enhancing case management support and moving to competency based requirements.

We have been working with the sector and with a range of councils – including SCOA, RRAC, AMAC and FECCA.

More could still be done. One of the challenges is how does Government create an inclusive and welcoming settlement experience – what policies work to generate belonging?

Conclusion

The genius of Australian multiculturalism has its roots in the citizenship model which is supported by a sustained investment in the infrastructure of settlement.

By creating the tools to participate, settlement has enabled us to maximise the human dividend provided by migration – namely the skills and labour.

It has provided opportunities for migrants and refugees to begin a new life – to gain jobs and language skills.

Multiculturalism has been part of our settlement story. In the context of unifying values and a citizenship framework, multiculturalism has enabled an acceptance of difference.

When difference is only seen as a deficit – when we allow discrimination and expect assimilation – we deny the capacity to belong.

Membership means acceptance – not blindly or without regard to our laws or core values, but acceptance that diversity adds strength.

Migrants have helped to build Australia and now, whether you are a first or second generation Australian, indigenous, or newly arrived, we are all the people of Australia. ■

Senator the Hon Kate Lundy is Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural affairs. She was first elected to the Senate for the Australian Capital Territory in 1996.

Appealing to our better angels

JOHN MENADUE AO

In an appeal to Secessionists in his first inaugural address, Abraham Lincoln appealed to 'the better angels of our nature'. Today we lack the bipartisan leadership on refugees that would appeal to our better angels. I have yet to hear Julia Gillard make an informed case for generosity towards refugees who are amongst the most vulnerable people in the world. She competes with Tony Abbott to show how tough she can be. Tony Abbott in his opportunism appeals to our darker angels. The Holy Family was indeed lucky when it fled as refugees to Egypt that the Pharaoh did not have a policy to 'stop the donkeys'.

To some, the plight of refugees is a political opportunity. A senior Liberal Party official, as reported by WikiLeaks, told the US Embassy in November 2009 that the issue of asylum seekers was fantastic for the Opposition and "the more boats that come the better" (Sydney Morning Herald, 10/12/2010).

If Ben Chifley and Malcolm Fraser had appealed only to our darker angels we would never have taken large numbers of Jewish and Indochinese refugees.

Fear of the foreigner, the outsider and the person who is different is as old as human history. It is the personal struggle of each one of us: the struggle between our generosity and our fear.

The Jewish people know almost better than anyone what exclusion and exile means. The Torah repeats the exhortation more than 36 times, "Remember the stranger, for you were strangers in Egypt". This is many more times than any of the other biblical laws, including the Sabbath and dietary laws. The references to ethical treatment of the 'stranger' and the 'outsider' are explicit in the Torah more than any other laws. There is a whole body of rabbinical law derived from this much repeated exhortation and command which spells out the proper and humane treatment of 'the stranger'. Indeed, the whole festival of Passover revolves around celebrating freedom from slavery and so remembering, in fact reenacting, what it is like to be a stranger in a strange land.

I recall two recent stories of our better angels and our generosity and welcoming the stranger.

- Last month, a Larrakia woman led a welcome to country ceremony in

Darwin's detention centre. It was scarcely mentioned in the media, but how beautiful it was.

- Hieu van Le, the Lieutenant-Governor of South Australia, in an address in Old Parliament House in Canberra this month recalled his coming into Darwin Harbour as a boat person in 1977.

A tinnie with two blokes with shorts and singlet, sunhat on, with zinc cream on their noses, fishing rods primed and sticking in the air, and with the first beers of the day in their hands came close. They waved to us and steered their boat very close to ours and one of them raised his stubby as if proposing a toast. "Goodbye mate", he shouted, "Welcome to Australia".

We now look back with pride on what we have achieved in welcoming strangers. The society that migrants, refugees and older Australians have formed together is our greatest national achievement.

Since WWII, Australia has settled more than 700,000 refugees from war-torn countries and societies wracked with violence and persecution. Settlement in Australia has not been trouble-free. It is always work in progress. But it has been a great success story of which we can be proud.

Refugees, by definition, are risk takers and highly motivated. They have abandoned almost everything for an opportunity in a free and prosperous country.

Some well-known refugees have contributed to this success story – Judy Cassab, Anh Do, Mirka Mora, Wolfgang Sievers, Henry Szeps, Ilsa and John Konrads, Tuong Quang Luu, Les Murray, Sir Gustav Nossal, Sir Peter Abeles, Frank

Lowy, Harry Seidler, Bishop Vincent Van Nguyen.

But more important than those well-known names are the hundreds of thousands of refugee families who have quietly gone about building their communities, acquiring skills, getting a job and educating their children. Early days are difficult for refugees. They come with little or no financial resources, their skills are probably not recognised and they will usually have language difficulties. These early difficulties are reflected in higher levels of unemployment and concentration in lowly paid jobs, often jobs that others do not want.

But their situation steadily and rapidly improves. Professor Graeme Hugo, ARC Australian Professorial Fellow, in his study *Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants* of May 2011, describes their contribution.

- Refugees are younger and have higher fertility levels than the Australian population as a whole (Hugo, p.xxii).
- "They are more likely than other groups to spend their entire life and raise their families in Australia" (Hugo p.xxii). Their uptake of citizenship is extremely high. A study prepared for OECD by the Department of Immigration and Citizenship (October 2010) reveals that the naturalisation rate by birthplace for all foreign born is 80%. For significant refugee groups it is much higher – Croatia 97%, Poland 96% and Vietnam 97%. For New Zealand it is 45%, for the United Kingdom 71% and the United States 70% (p.24).
- "Refugee-humanitarian settlers are increasingly settling in regional Australia" (Hugo p.xxii).
- "Humanitarian settlers place a high store on education for their children." 48% of second generation people who are Australian born have post-school qualifications. For the total refugee-humanitarian groups, the percentage is much high at 59%, with some refugee groups showing remarkably high levels of post-school qualifications, e.g. Estonia 65%, Latvia 65%, Slovakia 65%, Sri Lanka 61% (Hugo p.140).

Building durable solutions through regional cooperation

ARJA KESKI-NUMMI

Opening remarks

Philosophers from the Enlightenment onwards have held that critical thinking and rational discourse will lead to better laws and better understanding of reality than dogma; that the purpose of public discourse is to gain a better understanding of reality.

I have sadly come to the conclusion that there is no such thing as a rational discussion on refugees and asylum issues in Australia. I have seen people use the same numbers to spin their own diametrically opposed realities.

I have watched with dismay the way language has been manipulated to create a new reality with regard to the Malaysian agreement – based very little on facts or considered reflection.

Although it seems difficult in the current climate to have a rational values based discussion on these matters, it is not impossible.

OUR CULTURAL THREADS

I recently read the 1979 Cabinet papers on unauthorised boat arrivals and it seems to me a cultural thread runs through our public discourse on this matter: it is a fear that the Australian people will not and cannot accept such spontaneous movements.

But 30 years on, despite the ‘fears’ expressed then, there is today little comment and attention paid to the large Indo-Chinese communities who are now part of the fabric of our rich Australian identity. Indeed, if there is commentary it is about how much they have contributed to Australia – from market gardeners to the Lieutenant-Governor of South Australia.

I only wish that public commentators and leaders would appeal to that other part of our great Australian ethos – a fair go - and not to our basest fears of the ‘other’.

These comments are by way of an introduction to what I am going to talk about today: building durable solutions through regional cooperation.

Building durable solutions through regional cooperation

Many will see it as wishful thinking – but I have long held that the only way to tackle what is in essence a transnational issue is through multilateral and bilateral actions and agreements.

Having, over many decades, worked with and engaged my counterparts in the region I do not underestimate just how difficult and long term the issues I am going to talk about today are.

I come to this from the perspective that we must start developing a comprehensive and durable protection system in the region:

- that strengthens protection systems along the ‘migration pathway’; and,
- which makes sure displaced people have access to safe and secure shelter, health and livelihood opportunities pending durable solutions.

And not with the mantra of stopping ‘people smugglers’.

As Cabinet back in 1979 noted, when considering the recent arrival of boats in Darwin Harbour, this “should certainly not be seen as a one off problem”.

WE HAVE DONE IT BEFORE

In this region we have seen what can be achieved when there is cooperation and a willingness to share the burden, play to each other’s strengths and work on practical measures in support of achieving durable solutions.

The Comprehensive Plan of Action for Indo Chinese Refugees (CPA) is a model on how complementary measures addressing asylum, resettlement and repatriation can promote regional cooperation in response to a refugee situation. At the time, however, it was not without its critics.

- “Humanitarian settlers are more likely to demonstrate entrepreneurial and risk-taking attributes ... and have a higher incidence of owning their own businesses than other migrant groups” (Hugo p.xxiv).
- “The second generation of [humanitarian settlers] have a much higher level of labour force engagement than the first generation and in many cases, the level is higher than for second generation Australians” (Hugo p.xxiii).

Not surprisingly, refugees in their early years are ‘takers’ of Australian generosity. But year by year they become great contributors. They pay back many fold the generosity they initially receive. They contribute to Australia out of proportion to their number. It is a great success story for all Australians. But success cannot be taken for granted. Political leadership, community understanding and progress to ensure equal opportunity, like English language training, are essential.

In spite of Government timidity, coalition opportunism and media failure, we can draw comfort from the very successful refugee programs of the past. We can do it again. If our political leaders won’t encourage the better angels of our nature, and we all have those better angels, then other leaders in Australia in business, the trade unions, community and religious groups, need to be heard. Why are they so silent? ■

John Menadue AO is Board Director of the public interest think tank, the Centre for Policy Development. He is a former Australian Ambassador to Japan and was Private Secretary to Gough Whitlam. Menadue was General Manager of News Limited and Chief Executive Officer of Qantas. He has served as a Director of Telstra and NSW State Rail Authority and as Chairman of the Australia Japan Foundation, the NSW Health Council, the SA Generational Health Review and NewMatilda.com, an independent weekly online newsletter (Founding Chair). In October 1999, Menadue published his autobiography, *Things you learn along the way*. The themes in this paper were presented by John Menadue at St James Ethics Centre Symposium, *The Ethics of Asylum and Refugees*, 30 June 2011.

BUT TOO OFTEN WE ARE FAIR WEATHER FRIENDS

But we lost our chance then to build an enduring and sustainable protection framework when countries like Australia formally closed the resettlement programs under the CPA in 1996 and the international community departed:

- leaving several thousand refugees in limbo in the region;
- not able to be resettled or repatriated; and,
- where local integration was a very difficult hurdle for many countries in the region to cross.

I think we seriously jeopardised it again when, after pushing to create a new regional mechanism, the Bali Process, once the 'boats stopped' we did not actively engage at the ministerial level for some five years until, once again, we perceived that we – Australia - had 'a problem'.

But movements into the region had not stopped.

BUT PEOPLE MOVEMENTS HAVE NOT STOPPED

Throughout this period new refugee flows have continued into the region and countries such as Malaysia, Thailand and Indonesia have continued to host these new asylum populations.

There are no accurate or meaningful statistics available of movements into the region but what we do know is that:

- In Malaysia there are some 80,000 people of concern to UNHCR and that there is estimated to be some 600,000 illegal migrants in Malaysia, mainly Indonesians and Filipinos but also comprising an unknown number of Burmese, Sri Lankans and Afghans;
- In Thailand, there are close to 180,000 Burmese in the camps along the Thai Burma border and an unknown number of "illegal immigrants", mainly Burmese, but also comprising other groups such as Sri Lankans;
- In Indonesia, there are more than 17,000 people of concern to UNHCR in Jakarta and an unknown number of people who may be in Indonesia illegally;
- In Bangladesh, there are some 26,000 Burmese Rohingya registered with UNHCR and a further 100,000 thought to be living illegally in the country.

BUILDING A NEW REGIONAL ARCHITECTURE

Since 1996 the regional architecture on cooperation has also matured.

A significant development in the region has been the decision by ASEAN to develop a Human Rights Instrument. ASEAN members acknowledge that Human Rights in the region is sometimes found wanting. In noting the decision to develop a Human Rights Instrument for the community, the Chair of the Working Group said:

Many kinds of human rights violations take place in Southeast Asia and a regional mechanism can help address this problem. First, the mechanism will ensure that ASEAN member states all adhere to international human rights standards. Second, the mechanism provides a common platform where ASEAN member states, being socio-politically different from each other, can articulate their human rights related concerns. Lastly, with a human rights mechanism, the region can cooperate to address violations and collectively show its stand on human rights related issues.

The development and adoption by ASEAN of its *Political and Human Security Blueprint* in 2009 has opened a new chapter for the community.

In 2002 a new regional mechanism, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, was also established.

From a process initially focused on enforcement and criminalisation of people smuggling and trafficking activities, it has progressively shifted to also recognising the humanitarian dimensions of people smuggling and population flows.

In the last two Ministerial meetings (2009 and 2011) the language of protection has been introduced into the official communiqués. The strong endorsement at the last Ministerial meeting (in March 2011) to a regional cooperation framework provides the essential platform from which to start building a regional cooperation and protection framework. It has, for instance, outlined a set of five core principles in the development of such a framework, including:

1. Addressing trafficking and people smuggling;
2. That asylum seekers have access to consistent and (if at all possible) harmonised processes;

3. That durable solutions for refugees must be found;

4. That people found not to be refugees be returned, preferably voluntarily, but that they must be treated with dignity and returns should be sustainable; and,

5. That people smuggling activities be targeted.

It endorsed and encouraged the development of practical arrangements that reflected the principles of burden sharing and collective responsibility that could include:

- building capacity in the region to deal with population flows; and,
- developing as appropriate bilateral or sub regional arrangements.

And asked that, as these arrangements are rolled out, the experiences are shared across all interested countries, which could assist the region in developing ways:

1. to harmonise processes for dealing with irregular flows in the region;
2. to put in place measures to enhance the collection of information necessary to establish a claim for protection;
3. to be able to properly identify people of concern; and,
4. to have mechanisms that support return and reintegration arrangements.

MAKING USE OF THE BUILDING BLOCKS - WHAT CAN BE DONE?

These are the building blocks on which a new dialogue and a new approach to protection in the region can be built.

We need to assist in making the Bali Process not a 'convenient tool' when it suits us but to support it to mature into an enduring regional mechanism, sitting alongside ASEAN processes and civil society in strengthening protection mechanisms in the region.

But it must be backed up with concrete actions, particularly by Australia, often viewed as a fair weather friend in the region, quick to ask but slow to give.

If done well, Australia could assist in the development of a new and enduring protection framework, sharing the burden on asylum and supporting states to build practical and responsive systems to support asylum seekers in the region. It could for instance lead to common asylum policies and practices in the region

and ultimately to a Regional Protection Instrument not dissimilar to other regional instruments as those that have been developed in Latin America and Africa.

Both UNHCR, in its discussion paper on Regional Cooperation, and Oxfam, in its recently published report *Asylum Seekers: The Way Forward*, have mapped out the key elements of a regional framework. These include:

- effective screening systems;
- protection sensitive reception arrangements;
- durable solutions – resettlement, alternative migration pathways and repatriation; and,
- targeted development assistance.

Such arrangements, they argue, would need to be underpinned by a set of underlying principles not dissimilar to those endorsed by Bali ministers outlining appropriate safeguards, being consistent with international humanitarian treaty instruments and guarantees that people are treated with dignity.

A crucial element to the success of a regional framework is that countries who commit to action are not left to manage the burden of managing and maintaining irregular migrants under these arrangements for prolonged periods.

A regional framework will only work when there is a full recognition that each actor in such a process plays a critical role in its success. For example:

- international agencies, UNHCR and IOM, could specifically:
 - > develop mechanisms for early registration, screening and assessment of asylum claims;
 - > have in place appropriate counselling and welfare support services while peoples' claims are being assessed.
- local and international NGOs, as partners with UNHCR and IOM and using their networks, could run appropriate health, education and employment services as well as assist in the provision of housing and access to other support networks;
- regional governments could assist in creating the conditions for people to remain within their borders while their asylum claims are considered without the threat of expulsion by:
 - > allowing legal stay within their

territories'; and,

> giving access to work with specific conditions.

- the Australian Government can assist by:

> more strategically targeting its humanitarian development assistance programs to benefit local and asylum populations alike – eg access to housing, livelihoods, education;

> together with UNHCR it could support the development of state or regional based asylum process – these could be:

- through partnering arrangements;
- secondments between countries, developing a common protection training and mentoring program for the region;
- support in establishing asylum processing infrastructures;
- or, alternatively, it could be to work with NGOs, lawyers and other civil society institutions in assessing asylum claims; or even,

▪ establishing an independent expert body to undertake that work; and,

▪ the options are many.

- Commitment to resettlement and alternative migration pathways, such as in-country programs where appropriate, as well as encouraging other resettlement countries to accept refugees under these arrangements.

We have that chance now to develop sensible and realistic policies and should embrace it. But there are big 'ifs'.

Malaysia agreement

Finally, I cannot finish without mentioning at least in passing the Malaysian agreement – because that seems to be seen as the only game in town.

I am probably out of step with most people on this matter – but I come at it from the perspective that it is not a solution on its own. It needs to be seen in the broader regional framework that I have been talking about. Viewed from that perspective it is just one of many ways to start the process of building a durable protection system in the region. In this way the protection dividends for all asylum seekers in the region can be significant. Malaysia as a transit country is a key player in delivering a long term solution - Nauru is not. It is in

all our interests to work with Malaysia in developing sensible, practical and robust asylum policies in the region.

Indeed UNHCR, in its recently released *Global Report* noted that while there are problems, they also say “constructive dialogue with national authorities has resulted in an improvement of the situation”. They go on to note that they have had constructive consultations on alternatives to detention and, I know from the work that the International Detention Coalition have been doing there, it would appear to me that Malaysia is far more willing to consider alternatives than we in Australia seem to be.

Our commitment to burden sharing – a long held principle of successive governments over many decades – means that an increase in our resettlement program from Malaysia is entirely appropriate. There is no so-called swap.

If we can achieve this, we can dare to hope that, just like ASEAN is developing a regional Human Rights Instrument, we can look forward in the future to a Regional Protection Instrument.

But this does not emerge out of thin air – it requires us to play our part in building confidences, demonstrating our commitment that we are there for the long haul. Accepting there will be detours as we work towards a sustainable and enduring regional framework.

Thank you. ■

Arja Keski-Nummi is Former First Assistant Secretary of the Refugee, Humanitarian and International Division, Department of Immigration and Citizenship. She is one of the authors of the recently released report by the Centre or Policy Development; *A New Approach: Breaking the Stalemate on Refugees and Asylum Seekers*. This is a copy of her presentation at St James Ethics Centre Symposium, *The Ethics of Asylum and Refugees*, 30 June 2011.

ALP goes to water as boats threaten sovereignty

GREG SHERIDAN

THE Gillard government has made a spectacular mess of policy towards illegal immigrants and is now in danger of forfeiting a key element of Australian national sovereignty.

The key to the boatpeople phenomenon is to realise that it is not about refugees. It is instead a determined illegal immigration. Piece by piece, the illegal immigrant industry is bending back the Gillard government, breaking its will and breaking its policies.

It was the Rudd government that changed policy decisively in August 2008. It closed the offshore processing centre in Nauru and abolished temporary protection visas.

As a result, people smuggling to Australia got back into business big time. In the two and a half years since the government changed policy, nearly 11,000 boatpeople have arrived. Last year, asylum applications to Australia increased by 76 percent. Among industrialised countries overall there was a decline. In 2009, while the global number of applications was static, they increased in Australia by 30 percent. With the end of the monsoon season, there have been some six boats this month alone, carrying more than 330 people in total.

The government deals with this matter in a consistently dishonest fashion, giving up morsels of information only under pressure. Here are some facts. In the year to August 2010, some 45 percent of illegal immigrant boatpeople had spent more than three months outside their country of origin. Of this 45 percent, some 88 percent had spent more than a year outside their country of origin.

In other words, they were not fleeing directly from persecution. Many Afghans who have come to Australia have never lived in Afghanistan, or at least not for a very long time. Life in Australia is infinitely preferable to Pakistan, but deciding to migrate to Australia is not the same as being a refugee.

The vast majority of the world's refugees

will never achieve permanent resettlement in a foreign country. Nor does the refugee convention envisage that they should. Rather, they should be protected as near to home as possible until they can safely return.

Everything the government tells you about this matter is likely to be a wrinkle on the facts, a spin, an angle, and it is likely to contain much less than meets the eye.

For example, Julia Gillard went to the election promising to turn back the boats and set up a regional refugee processing centre in East Timor. There is little prospect of that centre ever coming into existence and no prospect of it ever having an effect on the illegal immigrant trade.

Recently, Immigration Minister Chris Bowen trumpeted an agreement with Afghanistan that would allow failed asylum applicants to be returned. The problem was the Afghan government thought it meant no such thing.

So, how many failed Afghan asylum seekers have been returned against their will since 2007? Absolutely none. How many Afghans have gone back voluntarily? The answer is five.

More than 80 percent of illegal immigrants arriving by boat come with no documents, yet nearly all need documents to get to the country they take the boat from. This naturally makes security checks extremely difficult. It also underlines what everyone in the field knows already, that the entire process of granting someone refugee status is almost completely subjective and easily scammed. There is a whole industry based on learning the right answers to questions Australian officials ask. In the first nine months of last year, more than 40 percent of Afghans were rejected as refugees in their primary assessment

but after all appeals were exhausted, 96 percent were accepted. Yet in the same period, some 9,577 Afghans applied offshore to come to Australia as refugees and only 951 were accepted and given visas.

What is happening on Christmas Island exactly parallels what has happened in Europe in the past couple of decades. A determined illegal immigration presented itself as an asylum issue and gradually beat back the will of European governments to enforce control of their borders. This determined illegal immigration often used extravagant protest and even self-harm techniques to engage European compassion.

And it worked, just as it is working on Christmas Island. Bowen fatuously declaims that no one engaging in riots and breakouts will benefit from their actions.

Exactly the reverse is true. The government has effectively surrendered its policy and moved hundreds of people to mainland Australia. The Age newspaper obediently called for the end of mandatory detention.

Here are three other lies from the Government. It says mandatory detention is not meant as a deterrent. Yet when, in April last year, it suspended asylum applications by Sri Lankans and Afghans, it was precisely to achieve a deterrent effect. Since the Government now will not send any Afghans home, this is the only deterrent. The illegal immigrants know this and are whittling it away.

Second, Bowen, who recites clichés like a metronome, keeps talking about “an international solution for an international problem”, by which he means the Bali process. But we have had cooperation, often expensively bought, on this issue from our neighbours for many years.

What changed is that Australia put the ultimate prize of permanent immigration

Duties to refugees in a system of states

PROFESSOR WILLIAM MALEY

to this country back on the table for people smugglers to sell. It is an Australian problem and the only solution is in Australia's hands: no permanent resettlement in Australia for those who arrive illegally.

Finally, Bowen actually slanders the Howard government for its compassion. John Howard stopped the boats with his Nauru processing centre because illegal immigrants came to believe that going to Nauru would not get them to Australia. Once the trade in boats stopped, Howard then generously let the remaining people on Nauru come here. That is not remotely like Christmas Island where everyone knows if they get there, they get to stay in Australia.

Once the government caves in on mandatory detention, as it surely will soon enough (if by no other means than speeding the process up), the numbers coming to Australia illegally will increase by the thousands.

With chain family migration this will be tens of thousands of people self-selecting to come here, not being selected by our program (which I have always argued should be bigger).

That is a catastrophic loss of Australian sovereignty and a comprehensive failure by the Gillard Government. ■

Greg Sheridan is Foreign Editor of *The Australian*. He is one of the most influential foreign affairs commentators in Australia. A veteran of more than 30 years in the field, he has written five books and is a frequent commentator on Australian and international radio and television. This article was published in *The Australian*, March 2011.

The ethics of refugees: some approaches

- Defining ethical behaviour: consequentialist and utilitarian approaches
- Defining ethical behaviour: Kantian approaches
- Duties towards refugees: approaches based on considerations of human dignity
- Duties towards refugees: approaches based on rights

The states system and the ethics of refugees

- Gouldner and generalised norms of reciprocity
- Goodin and the idea of 'assigned responsibility' as justification for nationality
- The emergence of the Westphalian order of 'sovereign states'
- Forms of sovereignty: Domestic, Vattelien, International legal, Interdependence
- Refugees as symptoms of systemic failure

Forms of duty to refugees in a system of states

- Legal responsibilities, voluntarily assumed: the 1951 Convention and protection
- *Pacta sunt servanda* and good faith implementation of commitments
- Other legal responsibilities: non-refoulement as *jus cogens* (Larry May)
- Responsibilities owed by those *benefiting* from an order to its victims

Evading responsibilities: the problem of resettlement programs

- The 'justice' of queues versus the reality of lotteries
- Whom does resettlement assist? The problems of sponsorship and disability
- Can acts of charity be an excuse for evading responsibilities?

Evading responsibilities: the trading of asylum seekers and refugees

- Deterrence strategies and 'vicarious dirty hands': the *need* for maltreatment
- Refugee trading as a threat to the protection regime
- Domestic politics and ethical impulses
- The importance of good faith implementation of voluntary obligations ■

Professor William Maley, AM FASSA, is Director of the Asia-Pacific College of Diplomacy at The Australian National University. He specialises in the politics of modern Afghanistan, and in the challenges of managing political transition in severely disrupted states. Professor Maley is also Chair, Refugee Council of Australia (RCOA), Member, Foreign Affairs Council and Consultant, United Nations' Development Program This is a copy of his presentation notes from St James Ethics Centre Symposium, *The Ethics of Asylum and Refugees*, 30 June 2011.

The University of Sydney

Uncertain welcome: paradoxes of Australian refugee and asylum policy

Stephen Castles
University of Sydney
Department of Sociology and Social Policy

3. Australia has signed the UN Refugee Convention – but does everything possible to prevent asylum seekers entering the territory to make a claim

Asylum seekers (thousands)

THE END

Thank you for your attention

Professor Stephen Castles is Associate Director of the International Migration Institute and holds a Research Chair in Sociology at the University of Sydney. Previously he was Director of the Refugee Studies Centre at Oxford University. Professor Castles is a sociologist and political economist and currently works on international migration dynamics, global governance, migration and development and regional migration in Africa, Asia and Europe. He helped establish and coordinate the UNESCO-MOST Asia Pacific Migration Research Network. Professor Castles has been an advisor to the Australian and British Governments and has worked for the ILO, the IOM, the European Union and other international bodies. He has authored a large number of publications including *The Age of Migration: International Population Movements in the Modern World* (with Mark Miller), Palgrave MacMillan, United Kingdom, 2009, *Citizenship and Migration: Globalization and the Politics of Belonging* (with Alastair Davidson), Palgrave Macmillan, United Kingdom, 2000 and *Ethnicity and Globalization: From Migrant Worker to Transnational Citizen*, Sage, United Kingdom, 2000.

1. Human displacement is growing – but rich countries are shutting their doors

2010: 43.7 m people displaced worldwide

- 15.4 refugees
- 27.5 m internally displaced persons (IDPs)
- 0.8 m asylum seekers

Four out of five refugees stay in poor countries

- Pakistan: 1.9m; Iran 1.1m; Syria, 1m

The 'refugee burden' of rich countries:

- Germany: 600,000; USA: 284,000; UK: 234,000; Australia ?
- For comparison: Chad: 0.4m

4. Australia's ambivalence: refugees are resettled but asylum seekers are excluded

Refugees: 700,000 since 1945:

- Post-war DPs part of Australia's population strategy
- Fraser Govt. admitted Indo-Chinese
- Today: 6000 refugees resettled per year with UNHCR
- Humanitarian program of 14,000 a year

Asylum: numbers very small compared with Europe

- Harder to control borders
- Fear of invasion
- Competition between parties on who can seem toughest

Global forced migration by category (millions)

5. Populism, lack of principles and incompetence

- Howard's 'Pacific Solution':
 - violated HR principles, costly, most refugees admitted in the end
- Compulsory detention (ALP and Coalition):
 - Imprisonment without trial or crime violates HR principles
- Gillard's East Timor escapade:
 - Incompetence and lack of principle
- The 'Malaysian Solution'
 - Violates international Conventions
 - Denies rights to vulnerable people

2. Violence and forced migration are integral parts of the global order

1950s-60s: anti-colonial struggles: African solidarity

1970s-80s: Cold War Proxy struggles and big power interventions: e.g. Vietnam, Afghanistan

1990s: End of Cold War, economic globalisation

- neo-liberal policies: greater inequality, structural adjustment, global production chains
- Struggles on formation of new states
- Ethnic cleansing, violence against civilians, displacement as weapons of war

6. Deprivation of HOPE

DADAAB (Kenya) - the world's biggest refugee camp complex with 350,000 people - is full

- 44,000 Somalis have arrived this year
- Lack of water, accommodation, food, medical facilities
- No work, no perspectives, no hope

'Queue jumpers' –what queue?

- 7.2 m people have been in exile for 5 years or more (not counting Palestinians)
- Rich countries resettle 80,000 a year; Australia: 6000
- It would take 90 years to resettle all – if there were no more refugees

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