

WORLD'S WORST OR WORLD'S BEST PRACTICE? EUROPEAN REACTIONS TO AUSTRALIA'S REFUGEE POLICY

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The boat people have stopped coming, but the Government's 'immoral' treatment of these asylum seekers has remained an issue of sustained protest and commentary in Australia. Much of this commentary ignores very real policy questions — including ethical issues — raised by the asylum system. Developments in European countries suggest a convergence towards Australian-style border protection and offshore processing measures. They also suggest a convergence towards Australian-style immigration and refugee policies based on managed movements.

INTRODUCTION

There have been virtually no boat arrivals in Australia since the *Tampa* was turned away in late 2001. Prior to the October 2004 election the Government, led by Prime Minister John Howard, recommitted to its tough border protection measures, including patrolling the seas, excision of territory from the 'migration zone', and offshore processing (known as the Pacific Solution). It also recommitted to mandatory detention of 'unauthorised arrivals', and to providing them with only temporary protection visas if they are recognised as refugees. Neither immigration nor refugee nor asylum policy were areas contested by the major political parties during the election campaign. However Australia's 'immoral' treatment of its boat people has remained an issue of sustained, sometimes impassioned protest and commentary. It has become a key symbolic issue in the so-called identity or cultural wars.

At a 'protest rally for refugees' at the opening of the new parliament on November 15 Mervin Luck (an evictee from the Big Brother television program) informed those gathered that 'the international community is appalled, the United Nations is appalled and millions of Australians are appalled' at Australia's detention of asylum seekers.¹ Julian Burnside, a prominent legal advocate, has

described the treatment of asylum seekers by 'Howard and his senior Ministers' as 'irreconcilable with Christian teaching'.² On October 4 the *Canberra Times* referred to a section of the new professional middle class, recently shorthand as 'doctors' wives'. It editorialised that few of them think that Labor has done anything to remove the 'shameful blot' of its acquiescence on refugee issues, and that Labor failed to campaign on this moral issue because 'it has nothing much in the way of morality to offer'.³ Exasperation that a Government so morally deficient on refugee issues could be so resoundingly re-elected nearly drove well-known social commentator Philip Adams to retreat into a parallel universe,⁴ and Burnside to contemplate emigrating to New Zealand.⁵

There is a very different flavour to the asylum debate in European countries. Between 2000 and 2003 over 300,000 applications for asylum were lodged in the UK. In the media debate in the UK, concern and outrage has been more commonly directed against the government because of its inability to control the asylum 'problem', rather than because of its harsh treatment of asylum seekers. The newspapers, particularly the tabloids, have for years been full of stories about 'bogus' refugees, 'floodgates', cost 'blow-outs', community tensions,

bureaucratic ‘bungles’, policy ‘chaos’ and political ‘crises’.⁶ There is little evidence of Australia being viewed as some sort of pariah state. Rather, Australia is seen, to the approval of the general public and to the dismay of refugee advocates and NGOs, as providing an example to be followed by their own besieged governments.⁷ Australia is also seen by refugee lawyers as setting a new benchmark in ‘action which chips away at the scope of what will be considered state practice for signatory states’.⁸

The moral outrage in Australia has focused on the fact that Australia has taken the toughest line of all Western countries in the face of relatively few asylum seekers. (The highest numbers of boat people who reached Australia during a 12 month period were 4,175 in 1999 to 2000 and 4,137 in 2000 to 2001.) Commentators have also focussed on the fact that such uncompromising action was taken against people from war-torn Middle Eastern countries, most of whom were subsequently determined to be refugees. In the media debate in Australia concern, perhaps understandably, has centred on the needs and rights of these asylum seekers rather than the needs of government. It has also focussed on the bad example — described as world’s worst practice — Australia has set by ratcheting up its border control measures in order to avoid its obligations, under the 1951 UN Convention Relating to the Status of Refugees. The Convention requires signatory states to consider claims made by individuals within their territories that they should not be returned to their country of citizenship because they have a credible fear of persecution.

Australia, however, also provides a model — possibly world’s best practice

— of generosity and inclusiveness to refugees, through its highly developed humanitarian migration and settlement-assistance programs. These have little to do with the 1951 UN Refugee Convention. Australia has a long tradition and acknowledged capacity as a country of immigration. There is genuine interest, beyond the concerns of refugee lawyers and advocates, in Australia’s response to asylum seekers and in its refugee policies.

Developments in the European Union are of interest in the current debate in Australia because the EU is a key player in the determination of global attitudes and approaches to refugees and asylum seekers. The asylum system developed out of Europe. Three quarters of all claims for asylum under the terms of the 1951 UN Refugee Convention are lodged in EU countries. Recent developments in these countries suggest that there may be a convergence towards an ‘end-game’ to the asylum system which has proved so difficult for western nations to manage. The asylum system has been whittled down over ten years of ever tougher border control and ‘deter, detain, deport’ policies. Politicians are now talking about pulling out of the refugee convention and developing processing centres outside the EU. Australia’s Pacific Solution is the obvious prototype. Recent developments in EU countries also suggest a convergence towards a new policy framework of managed movements. This new policy framework resembles Australia’s immigration and offshore refugee resettlement programs.

Previous articles in *People and Place* have looked at the problems with the 1951 refugee convention and the range of practical and policy issues confronting governments with its implementation 50 years on.⁹ This article looks at why the

trade-off of a tough attitude towards asylum seekers in favour of a compassionate approach towards resettlement quotas might be good public policy, and seen in this light in Europe, as well as being politically expedient.

THE INTERNATIONAL REFUGEE SITUATION

Refugee statistics and situations are often quoted and described. But beyond simplistic exhortations to wealthy Western countries to be 'more generous' to asylum seekers in the light of the greater refugee burden born by poor countries, there has been little examination of the ethics of the current situation.¹⁰

According to the United Nations High Commissioner for Refugees (UNHCR)¹¹ at the beginning of 2004 there were 9.7 million refugees within a total global population 'of concern' (including 4.4 million 'internally displaced' people) of 17 million, most of them created by civil unrest. In 2003, 463,170 asylum seekers lodged 'first instance' applications for refugee status under the terms of the 1951 Refugee Convention in 36 'mostly industrialised' countries. Of these, 365,220 were lodged in Europe. The numbers are down from previous years. (In 1992, 892,150 asylum claims were lodged, 701,980 in Europe; in 1999 569,390 claims were lodged, 481,510 in Europe.) Numbers are down because some conflicts have ceased and because tougher entry controls have made it more difficult for asylum seekers to get into Western countries.

In 2003, a total of 56,000 people (down from about 100,000 a year before September 11, 2001) were resettled under the UNHCR's refugee resettlement program. The aim of the resettlement program is to find places, 'durable solutions', for refugees and humanitarian cases who cannot return home and who

cannot remain in their country of first asylum, for various reasons. People selected for resettlement find places through quotas proffered mostly by the traditional countries of immigration. In 2003 the USA took 28,000, Canada 11,000 and Australia 12,000. Few refugees or people 'of concern' have been resettled in European countries under managed programs.

The public policy dilemmas

The essence of the problem is that the refugee system needs modernising. In effect there are two systems running in parallel. The burden of refugees is unequally born, and assistance to refugees is unequally distributed and poorly targeted. Only a fraction of the UNHCR's 'people of concern' are asylum seekers who move from their first country of asylum to lodge claims in Western countries. However developing measures to deal with — and discourage — these spontaneous arrivals has been what has constituted refugee policy in the countries that make up the EU.

The bulk of the world's refugees come from poor countries and are in equally poor neighbouring countries. Only half of them are receiving assistance via the UNHCR. There are insufficient resources to help displaced populations return home and create conditions that make civil wars less likely. The annual budget of the UNHCR, composed of donations, mainly from governments, is about US\$ 1 billion. Some refugee situations are protracted. The negative consequences of the 'warehousing' of refugees — leaving them in camps for years on end, without education or income-generating opportunities — has become an issue.

The amount spent by Western countries on processing and supporting their half a million asylum seekers each year is unknown but has been estimated at about

US\$ 12 billion.¹² Spending in the UK alone has reached £2 billion (US\$ 3.7 billion) a year. Recognition rates in EU countries have declined as numbers have increased, from 50 per cent in 1983 to five to 10 per cent in 2003. A further 20 per cent are accorded some sort of temporary humanitarian status.

The bulk of the world's displaced people return home as soon as the civil war or political crisis that drove them out is over. They are prompted to return 'voluntarily' often before conditions are totally stable because the poverty, disease or risk of violence is greater in the refugee camps or shanty towns than it is at home. People who lodge claims for asylum in Western countries come from the same displaced populations. Most of them however do not go back, regardless of whether or not they are recognised as refugees or whether the conflict or source of persecution has or has not been resolved.

People from the poorest refugee producing countries — Angola, Rwanda, Ethiopia/Eritrea, Sudan — have not figured significantly in the asylum statistics of wealthy countries. Regions that produce the asylum-seekers who make it to the West include: Eastern Europe (Yugoslavia FR, Bosnia and Herzegovina, Romania); the Middle East (Turkey, Iraq, Iran, Afghanistan); and Asia (China, India, Pakistan, Sri Lanka). Asylum seekers from these regions who lodge claims in Western countries comprise the relatively well-off, or those who can raise significant amounts of money, rather than those most in need.¹³ Women and children are over-represented in refugee camps and are also the most vulnerable people there. They are under-represented as asylum seekers.¹⁴

The weight of asylum seeker numbers (over five million have registered in the EU since 1990) has led to the closing of borders. The 1951 Convention obliges

states not to 'refoule' refugees but it doesn't require them to admit anyone. Current asylum policies require people to enter illegally, often paying smugglers thousands of dollars.¹⁵ People smuggling has led to ever tougher border protection and deterrence measures. What the asylum system offers, however — legal residence in a politically stable and wealthy Western country — is such an overwhelming advantage that people risk their lives. Recent British research has estimated that up to 4,000 asylum seekers drown at sea each year. More than half of these drown in the Mediterranean, trying to get into Europe illegally.¹⁶

If protection for refugees is the policy goal, the asylum system that is based on the 1951 refugee convention, as presently offered by Western states, has become part of the problem, rather than part of the solution.

THE WESTERN EUROPEAN COUNTRIES OF ASYLUM AND 'ORGANISED HYPOCRISY'

Western European countries have different migration traditions and cultures from Australia's. Whereas Australia has a long tradition of managed migration, they have long traditions of political asylum. In the case of the UK, providing political asylum is tied up with the very notion of the state's development as a liberal democracy. At the end of World War 2, generous provision of political asylum was built into the German constitution. But until recently, the countries of Western Europe have not recognised themselves as countries of immigration.

Electoral backlash in recent years against large inflows of asylum seekers has, however, meant that controlling inflows of asylum seekers has become a political imperative. Asylum seeking and immigration (the two notions have fused

in the public mind and debate in European countries) and bringing asylum-seeker numbers down have become top order concerns of governments.¹⁷ The resulting stresses have resulted in asylum policies that are now described as 'organised hypocrisy'.

Governments reaffirm their commitment to the principles of the refugee convention, and the EU collectively has re-committed to its 'comprehensive and humane' application.¹⁸ Meanwhile, at the country level, the same governments introduce ever tougher measures aimed at keeping people from getting into their territories in order to access its provisions. They also introduce ever tougher measures aimed at making their own countries less attractive places for asylum seekers, economically and socially, than each other's.

The UK has in recent years been the recipient of large numbers of asylum claims (103,080 in 2002), and its legislation over the last decade provides an example of the progressive toughening of policies. A 1993 Asylum and Immigration Appeals Act introduced 'accelerated procedures' for 'manifestly unfounded' asylum claims and removed rights of appeal. Refusals rose to 75 per cent. The 1996 and 1999 Asylum and Immigration Acts limited welfare benefits for asylum seekers appealing against negative decisions, withdrew benefits from asylum seekers who lodge claims 'in country' rather than at the port of entry, introduced a voucher system in lieu of cash welfare benefits, introduced a dispersal system of accommodation away from the major metropolitan (London) area, increased carrier sanctions, increased detention places to assist removals, and expanded 'whitelists' of 'safe countries' to which asylum seekers could be returned. A 2004 Asylum and Immigration (for example, Treatment of Claimants) Act has

withdrawn welfare benefits from failed asylum seekers who refuse to leave, imposed criminal sanctions (two years imprisonment) on asylum seekers who destroy their passports and travel documents, and restricted access to judicial appeal.

Jeff Crisp has described the inability of industrial states to address the asylum situation effectively as 'socially and politically corrosive', with governments 'locked in an unseemly competition to talk tough on asylum, to scapegoat the asylum seeker and to mollify the more rabid sections of the media'.¹⁹ The harshest pieces of legislation are introduced when governments are perceived as having lost control of their borders. Tim Hatton and Jeffrey Williamson, in a recent economic analysis of asylum policy in Western Europe, have argued that if steps had been taken in the UK to stop asylum seeker inflows when the numbers were much lower, there would have been no need for the current draconian and punitive measures.²⁰

The measures taken by the UK and other governments under their asylum policies in recent years have offended refugee advocates.²¹ They contravene the spirit of the refugee convention, if not the letter of international law. The UK's Refugee Council, in a briefing on the UK Government's 'new vision of refugee protection', acknowledges that the current asylum system 'is not working effectively', but asserts that its problems arise from 'inconsistent' and 'mean spirited' application of the 1951 Refugee Convention. It describes the UK's offshore processing proposals as 'unprincipled', 'legally problematic' and 'unworkable'.²² However refugee advocates in countries like the UK have been no more successful in influencing government than they have in Australia.

The conviction that clearly underlies current asylum policy in Western Europe is that failure to curtail opportunities for asylum seekers will lead to larger 'illegal' inflows, which the majority of electors will no longer tolerate.

Removals

The organised hypocrisy of asylum policies is well illustrated in the area of removals. As the tabloid press points out, while about seven out of ten asylum seekers are rejected in the UK, only one in ten are recorded as leaving. As it also points out, the credibility of asylum policies is dented — and spending vast amounts on processing claims is pointless — if people deemed not to need protection do not leave the country. In the UK, the Blair Labour Government has pledged a 'relentless focus' on increasing the number of removals. Last year the Government did not get near its stated goal of 30,000 removals, although a record number (13,005) was achieved.

Expecting large numbers of failed asylum seekers to leave voluntarily is not realistic. In the words of Matthew Gibney: '[I]t is doubtful that individuals who have gone to great effort to circumvent the modern state's sophisticated (and at times severe) battery of immigration controls; who have often risked their lives in unsafe travel; and/or who have paid traffickers thousands (if not tens of thousands) of dollars will simply leave their destination countries once all forms of legal appeal have been exhausted'.²³

Removing people involuntarily is fraught — legally, politically, financially and morally. Circumstances in the destination country may not be completely safe. Identities have to be confirmed and travel documents obtained. Agreements and protocols may need to be negotiated

with authorities in transit and destination countries. Forced removals on any sort of grand scale would entail chartered aircraft, physical restraints, security guards and a level of indignity and brutality unlikely in a liberal democracy.

Australia's overall immigration compliance arrangements are possibly the most effective of any country.²⁴ It has tight visa controls and enforcement of visa provisions as well as mandatory detention of unauthorised arrivals but, despite these measures, it has ended up with more failed asylum seekers than might be expected. Of approximately 81,000 failed protection visa applicants over the last 10 years:

- 30,000 have departed
- 18,000 are lawfully in Australia on 'various visas'
- 13,000 have been granted permanent visas and then Australian citizenship; and
- 16,000 remain in Australia unlawfully.²⁵

These figures help to explain the Australian Government's *Tampa* and post-*Tampa* initiatives. Despite representing 'world's best practice' in compliance, Australia also struggles to manage once undocumented asylum seekers get here.

The integrity of the current international asylum system is based on an often lengthy assessment of the level of persecution an individual may be subjected to in his or her home country. This assessment is undertaken while the individual and possibly their family are living within the country of application and becoming part of the community — or are being held in detention. The integrity of the system also relies on sending back those people eventually deemed to be at insufficient risk of persecution, possibly into situations of political instability or poverty, and

probably into situations of relative lack of opportunity. For all of the reasons outlined above the system raises policy questions.

COMPARISONS WITH AUSTRALIA

The hypocrisy of government rhetoric in the UK, whereby tough asylum policies are supposedly aimed against 'bogus' asylum seekers and 'abusers of the system', not against 'genuine refugees', has become transparent. Australia's message about its boat people, while confronting, is arguably more honest. The rhetoric employed by government in Australia is not that its asylum seekers are 'bogus' and therefore undeserving but rather that they are 'queue jumpers' and therefore less deserving. While the number of boat people turned away by Australia is insignificant in the global scheme of things, Australia's response thus represents, perhaps, a more direct challenge to the asylum system.

Australia has been able to be more honest in its rejection of asylum seekers because the asylum system is not the focus of its refugee policy. Australia runs a sizeable annual refugee and humanitarian resettlement program, managed offshore, to which asylum seekers are a side-issue or a distraction. If boat people and other onshore asylum seekers are found to be refugees within Australia they take places from people in refugee camps in greater need of resettlement. If they are not found to be refugees, they create problems and divert resources by having to be processed, possibly detained, and eventually, either removed or given a resident visa. At the international level, the goal of Australian refugee policy is to support the future development of the UNHCR's resettlement program as an alternative to the asylum system with its spontaneous arrivals.

Australia's official rhetoric on refugee

policy is complemented and given conviction through its rhetoric on migration policy, honed over 60 years of managed annual programs. Successive governments have proclaimed that 'good migration is a key to our success' and that 'you can't have good immigration policy if you cannot manage your borders'.²⁶

In 2003-04 Australia's humanitarian program was set at 12,000 places. In 2004-05 it is set at 13,000 places, 6,000 of which are reserved for refugees. Following tighter compliance measures, few onshore claims were received in 2003. The bulk of the program is managed offshore. Regional priorities are Africa and the Middle East. Selection criteria are based on people's need for the protection afforded by resettlement in Australia, and the strength of their Australian connections. Factors that have to be considered by officials processing applications for refugee places include:

- whether the applicant is mandated as a refugee and referred to Australia for resettlement by the UNHCR
- whether the applicant has some form of 'alternative' or informal protection from persecution or refoulement
- whether the applicant's country of asylum is likely to offer resettlement or long-term temporary residence to the applicant.

In the UK in 2003 49,405 primary, 'first instance' applications representing 60,045 asylum seekers were lodged within the country: the lowest number in five years. The number of appeals against unfavourable decisions heard in 2003 was 81,725. The number of cases decided was 68,245. Of these, 56,445 were refused. The total number of people who were accorded permanent visas or 'grants of settlement' in 2003 in the UK was 11,340. Of these, 4,055 were refugees and 7,285 were humanitarian entrants given 'exceptional

leave to remain'. The number of failed asylum seekers who left the country was 13,005 (17,895 with dependants): a record high.²⁷

It is easy to see why the resettlement option represented by Australia has appeal for European governments looking for policy alternatives that are manageable and morally acceptable. UK Prime Minister Tony Blair in a speech on 27 April 2004 acknowledged that immigration was on top of the public agenda because of 'real, not imagined abuses of the system that lead to a sense of genuine unfairness'. He argued that 'the UN Convention on Refugees, first introduced in 1951, at a time when the cold war and lack of cheap air travel made long-range migration far more difficult than it has become today, has started to show its age'. He claimed that 'now is the time to make the argument for controlled migration', arguing that people in the UK 'will accept migration that is controlled and selective', but that they 'will not accept abuse or absurdity and why should they?'²⁸ UK Conservative Party leader Michael Howard on 22 September set out plans for 'an Australian-style points-based system', arguing that 'immigration needs to be controlled and it needs to be fair'.²⁹ Shadow Home Secretary David Davis on 7 July released a migration package described as 'mostly modelled on recent Australian practice and designed to combat abuse within the system'. He confirmed the Conservative Party's commitment to a system of offshore processing, and argued that managed migration policies were so important that the government should make them a priority.³⁰

CONCLUSION

Recent developments in the asylum countries of Western Europe, as suggested earlier, indicate that a turning point may

have been reached: governments will do whatever it takes to prevent asylum seeker numbers returning to previous levels. In April 2004 Tony Blair described the UK Government as having arrived at a 'crunch point' with the asylum system.³¹ The Conservative Party, in a speech by Michael Howard on 22 November, has included in its election platform withdrawal from the 1951 Refugee Convention.³² The UK, Germany and Italy, and the European Commission, are exploring a 'Mediterranean Solution' under which unauthorised arrivals would be processed offshore in a northern African country. Italy, in early October, returned about two thousand boat people who had arrived on the island of Lampedusa to Libya, with scant regard for asylum claims.

Recent developments also suggest a convergence among Western European countries towards managed movements, like Australia's immigration and refugee resettlement programs. The political salience of the asylum issue and the rise of right-wing anti-immigration parties in the EU have made re-thinking refugee policies a political imperative. Managed movements are being seen as an alternative to a system based on 'spontaneous' arrivals. National interest, political expedience, and fear of further voter backlash are clearly driving Western European governments down this path. It can, however, be argued that it is a preferable path to follow. More refugees and people in situations of humanitarian need can be assisted more effectively through programs of managed entry.

Australia has shown that a sizeable inflow of asylum seekers (albeit not as great as into most European countries) can be stopped, while the country (at least technically) remains within international treaty obligations. It also shows that sizeable intakes of refugee

and humanitarian settlers will be supported by the broader community so long as they are part of a system of managed immigration that is seen to be in the national interest.

The lesson from Australia for Western Europe is that public opinion can be generous to refugees, providing their entry is seen to be managed by the government. The lesson is also that the open-ended obligations and spontaneous arrivals of the asylum system may not be compatible with morally sound refugee policy.

It is easy to criticize the current asylum practices of any State. However expressions of moral outrage that do not acknowledge the complexity of the refugee situation, the political constraints and needs of governments, and the very questionable ethics of the current asylum system, risk being little more than moral posturing.

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