

## MIDDLE EASTERN REFUGEES IN 'FORTRESS' AUSTRALIA

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This chapter focuses on the experience of refugees of Muslim and Arabic background, both in terms of current Federal Government immigration policy and in relation to the public perceptions that such policies have created. The Australian Government's introduction of 'deterrence' measures, such as temporary protection visas and off shore mandatory detention of asylum seekers in Pacific island nations, and its deliberate linking of its treatment of refugees to border protection and security threats, will be examined in the first half of the chapter. It will argue that this episode in Australia's long history of settling humanitarian entrants has undermined its reputation in the region, raised serious questions about its commitment to multiculturalism, and increased the sense of exclusion and denigration among members of Arabic and Muslim communities. This sense of anxiety about the direction of Australia's refugee policies targeted at Middle Eastern asylum seekers has been exacerbated by its willingness to join the US-led invasion of Iraq on what now appears to be false pretences.

The treatment of asylum seekers in contemporary Australia is not divorced from an historical context, nor is it detached from an increasingly nervous international environment. In fact, one of the most striking features of the international refugee regime over the last twenty-five years is the development of alternative forms of protection to those set out in the 1951 Refugee Convention. While these alternative forms provide protection against *refoulement*, they typically confer fewer rights than those granted to asylum seekers who gain Convention status.<sup>1</sup> Worse still, policies of deterrence have become a 'priority' for Western nations since the early 1980s with strict measures introduced for detecting, detaining, deporting and discouraging 'irregular' asylum-seekers.<sup>2</sup> Such punitive measures need popular support before being

adopted. The popular support, in turn, is contingent on a negative representation of those asylum seekers who will be affected by the new regime.

The 1951 Refugee Convention, which as much as possible is supposed to regulate and standardise the treatment of asylum seekers and refugees, has 'always been at the mercy of political and economic considerations'.<sup>3</sup> In the case of the Australian Government's recent treatment of asylum seekers, political considerations seem to be the key factor dictating policy direction. In fact, the negative representations of asylum seekers from Middle Eastern countries which reached a climax during the so-called '*Tampa*' and 'children overboard' incidents, occurred shortly before the November 2001 election. Both events were influential in securing the Coalition's re-election. The first incident<sup>4</sup> involved a Norwegian freighter, the *Tampa*, which rescued 433 Afghan asylum seekers found in a sinking Indonesian ferry off the coast of Christmas Island in the Indian Ocean to the far north-west of Australia. Although the Island is Australian territory, it was then deemed to be outside the Australian 'migration zone'. On 27 August 2001, the *Tampa* crew, in response to the wishes of the asylum seekers and in line with maritime conventions, attempted to take them to Australian waters. However, the Australian Government refused the vessel entry into its maritime zone. Despite this refusal, the *Tampa* reached Australian waters on 29 August but was prevented from proceeding any further by the Australian Navy. The Government, maintaining its vow to ensure that the asylum seekers 'never set foot on Australian soil,' did not allow the asylum seekers to move from this sea-bound position until six days later when New Zealand, Nauru and Papua New Guinea agreed to process them.<sup>5</sup> Following this incident, the Australian Government made substantial legislative changes to its migration zone making it more difficult for future asylum seekers to enter Australian waters. It also cemented its processing arrangements with Pacific island nations resulting in what has become known as the 'Pacific Solution'.<sup>6</sup>

#### **Fault Lines: Australia's Record on Asylum Seeker Policies**

In 1954 Australia was one of the first countries to ratify the 1951 Refugee Convention. In 1973 it acceded to the 1967 Protocol thus committing itself to the principle of *non-refoulement*, that is, agreeing not to return asylum seekers to persecution. However unlike Canada, for example, Australia has not incorporated these international instruments into domestic law (the *Migration Act*), and thus it is not legally bound to

provide protection.<sup>7</sup> Historically, it has been argued that there are clear factors that dominated Australia's thinking and actions.<sup>8</sup> On the surface these factors relate primarily to the fact that Australia wishes to adhere to the 1951 UN Convention and its 1967 Protocol in order to project a 'co-operative image' to the world community. More importantly, and during a period of economic expansion, Australia's active role in settling refugees can be seen as part of a broader migration policy that found in refugees young, active, educated migrants who would constitute a useful addition to the workforce. This is often referred to as the capitalist state imperative.<sup>9</sup>

Changes announced in July 2004 by Immigration Minister Amanda Vanstone encouraging temporary protection visa (TPV) holders to apply for general migration visas are reminiscent of the capitalist state imperatives used by the Australian Government to exclude certain groups of refugees — often the old and the sick — from entering Australia in the past. Thus, one of the underlying motivations for previous Australian Governments accepting large numbers of refugees from Europe following the Second World War was the opportunity to increase the Australian population and workforce in a time of full employment and when traditional sources of migrants from Britain were insufficient to meet the growing demand for labour.<sup>10</sup> Until the 1970s the White Australia Policy still operated to effectively exclude refugees of colour, although prior to 1977, refugees were admitted under the same migration category as other migrants. The policy of selecting and admitting refugees under the same category as migrants, combined with the White Australia Policy, ensured only the healthy, young and educated with 'certain racial features' were selected for migration to Australia.<sup>11</sup> (See Chapters 4 and 5 for more detailed discussions on Arab and Muslim migration to Australia). The Howard Government's policies seem designed to exclude those TPV holders who do not meet the stringent standard migration criteria created to screen out those unlikely to be employable from gaining permanent residence in Australia.

The White Australia Policy was finally abolished in 1973 when the Whitlam Government announced that future immigration policy would not distinguish between migrants on the basis of race, colour or nationality,<sup>12</sup> a topic reviewed, from its ideological inception to its cessation by, Batrouney in Chapter 4. It was not until 1977 when the Fraser Government articulated a coherent refugee policy that asylum seekers could be admitted to Australia for humanitarian reasons irrespective of race, health, skills or their employability.<sup>13</sup> This

distinguishing of refugees from other immigrants coincided with the arrival of 'boat people' fleeing the war in Vietnam.

From the 1970s, Australia experienced periods of high national unemployment and general immigration was reduced with a greater emphasis placed on family re-union, humanitarian and compassionate grounds.<sup>14</sup> The changing economy led to a need for more highly educated workers than before and successive immigration policies reflected this changing economic environment. The arrival in waves of asylum seekers by boat, mostly from Asia, quickly influenced the government to establish measures to regain their control over the immigration intake.

It is the relatively brief period from the mid-1970s to the end of the 1980s that Australia can accurately claim to have had a generous and liberal humanitarian program that accepted genuine refugees regardless of race, employability or how they entered Australia. Between 1945 and the 1991 Census, Australia had admitted more than 550,000 refugees and humanitarian cases, over a third of whom arrived between 1975 and 1991: 124,800 from Indochina, plus several thousand refugees fleeing conflict and political unrest in Asia, the Middle East, Central and South America, and Africa.<sup>15</sup> However during this period growing discontent in the community towards the increasing number of Asians<sup>16</sup> and 'economic' refugees emerged. In 1989 the *Migration Act* was overhauled to help 'curb the abuse of the immigration program by people seeking to come to Australia illegally.'<sup>17</sup> In 1991 the Port Hedland Immigration Reception and Processing Centre was opened and detained its first group of asylum seekers while their refugee status was determined.<sup>18</sup> Mandatory detention for all 'unlawful arrivals' was enacted under the *Migration Reform Act* 1992 by the Keating Government to deter further asylum seekers from coming to Australia.<sup>19</sup>

The 'temporary' nature of humanitarian protection visas for asylum seekers was first introduced by the Hawke/Keating Government in 1990 in response to the Chinese Government massacre of students at Tiananmen Square in 1989. Prime Minister Bob Hawke famously wept in public as he committed to protect Chinese nationals in Australia on student visas, issuing them with four year temporary protection visas. Hawke's decision was unpopular amongst his own party, the Liberal opposition and the Immigration Department. Around 20,000 Chinese nationals granted the four year temporary protection visa were eventually

permitted to remain permanently in Australia. The policy was considered unsuccessful and quickly ended.

The conservative Howard Government came to power in 1996 following 13 years of Labor governance during which fundamental changes to the Australian economy and society were experienced: 'economic upheaval was accompanied by challenging debates in national identity: the Republic, Native Title, reconciliation, and high profile "official" multiculturalism.'<sup>20</sup> The lack of agreement and therefore closure on these debates put many of these policies in jeopardy.<sup>21</sup> The magnitude and rapidity of changes and new policy directions implemented by the Keating Government were opposed by many in rural and regional Australia who, by the 1996 federal election, were ripe for political exploitation.<sup>22</sup> The electorate was tired of Keating's 'big picture', 'elitist' politics that were seen to benefit minority groups such as Aborigines, women and ethnic groups at the expense of the majority.<sup>23</sup> The Liberal Party's slogan 'For all of Us' and its vision of a 'comfortable and relaxed' Australia appealed to the public. John Howard positioned himself so that he was able to tap into the national mood of discontent with Paul Keating's big picture focus that was seen to disregard more immediate personal issues such as interest rates and mortgages.<sup>24</sup>

In 1996 Pauline Hanson, elected to Federal Parliament for the first time, quickly gained notoriety and support for her message that 'the "Nation" was at peril, in danger of losing its identity, its unity, of being swamped and above all divided. In a time of profound economic change and increasing uncertainty, we witnessed in Hansonism the re-articulation of partially submerged discourses of cultural identity.'<sup>25</sup> In 1998 Hanson suggested granting temporary visas for all refugees and humanitarian places allocated by Australia annually.<sup>26</sup> Her articulation of fears for our national identity raised through issues from globalization to asylum seekers resonated with a large number of the Australian electorate and this did not go unnoticed by the Howard Government.

In September 1999 during the Kosovo War, the Howard Government offered to provide a temporary safe haven to around four thousand (predominantly Muslim) Kosovars under 'Operation Safe Haven'.<sup>27</sup> Two important precedents for Australia's humanitarian program were created during Operation Safe Haven: the first was the offering of temporary protection to people in genuine need (unlike the Chinese nationals in 1989, however, there was no prospect of the Kosovars remaining in Australia); and the second was the introduction of 're-integration' packages or financial inducements to return home.<sup>28</sup> Operation Safe

Haven was largely successful as by 2000 nearly all the refugees from Kosovo had returned home.

### The War on 'Boat People'

From the late '90s, boats carrying asylum seekers fleeing violence and persecution in Iraq and Afghanistan started to arrive on Australia's northern shores. Thirty per cent of boat arrivals in 1999/2000 were Afghani, and 55 per cent were from Iraq, while the rest were predominantly Iranians, Palestinians and, to a lesser degree, Syrians and Kurds.<sup>29</sup> In response, the Coalition Government introduced the TPV in 1999 as part of a harsher policy aimed at deterring onshore asylum claims. Opinion polls from that time showed that the government had widespread support from the Australian electorate for this approach.<sup>30</sup>

Recent changes to the refugee policy in Australia may at best be described as an *ad hoc* series of harsh poll-driven measures, and at worst, as an excessively inhumane regime that seeks to punish genuine refugees for the mode of their arrival. This new approach to asylum seekers fleeing the turbulent political situation in the Middle East can best be understood in the context of local debates in Australia about national identity and border control.<sup>31</sup> In fact, in 1999, one year after Pauline Hanson's right-wing, populist One Nation party called for a regime of 'temporary' refuge to deal with the 'influx' of asylum seekers, the Federal Government produced Visa subclass 785, the 'Temporary Protection Visa' (TPV). In so doing, it overturned an erstwhile principle of refugee protection: that genuine refugees should not be penalized for their method of entry.<sup>32</sup> Previously described by then-Immigration Minister Phillip Ruddock as 'totally unacceptable and quite extreme,' the concept of temporary protection has subsequently been expanded as a punitive form of deterrence for would-be asylum seekers. In practice, the TPV has created exactly the type of uncertainty Ruddock predicted in 1998 when criticizing One Nation's 'highly unconscionable' immigration agenda.<sup>33</sup> Indeed, in one critical respect, the Federal Government has gone one step further than the anti-immigration hardliners of One Nation. By denying recognized refugees the right to family reunion, Ruddock's position became markedly more punitive than that of One Nation, which still appears to recognize that the obvious corollary of accepting 'a person ... in need of protection' is that 'we must grant their wife or husband and dependent children residency also.'<sup>34</sup>

Given the magnitude of the refugee crisis globally, Australia's annual quota of 12,000 places — including both offshore and onshore

applicants — is by no means excessively generous. The World Refugee Survey reports that:

Australia hosted some 21,800 refugees and asylum seekers at the end of 2001. These include 7992 refugees resettled during the fiscal year 2000–2001 (which ended June 30); 5495 persons granted protection visas during the year (of which 974 were permanent and 4521 were temporary); 2703 persons remaining on temporary visas granted in previous years; applicants in 5385 pending asylum cases; and 180 persons with temporary safe haven visas.<sup>35</sup>

Incorporating unused admission places from the previous fiscal year, Australia allotted a total of 13,733 asylum places for allocation during the 2001–2002 year. In accordance with the recent policy of linking offshore (resettlement) and onshore (asylum) places in a single quota, Australia allocated 7992 places to applicants from outside Australia and 5741 places for those granted asylum in Australia. This artificial policy link has allowed the government to argue that 'unauthorized' onshore arrivals deny resettlement places to more 'deserving' offshore applicants. The Federal Government has been pushing the line that Australia is being swamped by cashed up 'illegal' migrants who are choosing Australia for 'lifestyle' reasons. The introduction of the TPV (for onshore applicants) was sold to the public as a necessary measure to stop the 'waves' of asylum seekers coming from the Middle East via Indonesia. These, asylum seekers most of whom have been found to be Convention refugees are routinely referred to by the various government agencies as 'illegal boat arrivals', an explicit and deliberate expression aimed at justifying their harsh and inhumane treatment at the various phases of the asylum process.

### Border Protection Amendments and the Pacific Solution

The 2001 border protection changes were aimed at discouraging 'secondary movement' by eliminating the prospect of permanent protection to asylum seekers who spent seven nights in a third 'safe' transit country. Whilst this aspect of the 2001 changes was presented as a counter measure aimed at eliminating the 'pull factors' as the basis for asylum seeker movement, in reality it is another step towards ensuring that the Australian Government is able to screen potential refugees according to its own criteria and timetable. This goes against the spirit of the 1951 Convention which is built upon the 'internal arrangements of

Western societies, founded upon principles of individual rights, liberty and democratic tradition.<sup>36</sup> Border controls, the government argues, are legitimate aspects of state sovereignty, yet in reality they are exclusionary deterrence measures which lead to *refoulement*, a breach of obligations toward the spirit of transnational justice embodied in the Convention.

Border protection became the major issue of the 2001 federal election. Following the *Tampa* incident and the Coalition Government's Pacific Solution a few weeks prior to the election, the 'children overboard' incident was reported in the media. Though the Coalition Government was returned for a third term, from the outset it was under pressure from allegations of misleading the Australian people with regard to the children overboard affair and providing poor political accountability. The government has also been under sustained pressure from its own Members of Parliament who are themselves under pressure from refugee advocates concerning the indefinite detention of refugees on the islands of Manus and Nauru, and the ongoing detention of children. Large populations of TPV holders within their electorates, many of whom make a valuable contribution to society also seek support from local MPs.

In August 2004, responding to these MPs and the criticisms in the national and international media over its treatment of asylum seekers, the Howard Government portrayed itself as being generous to TPV holders by allowing them to apply for a permanent migration visa. The catch was that the majority of TPV holders had little chance of meeting the criteria attached to permanent migration visas. Through applying the same criteria for general migration visas to TPVs the government is able to effectively exclude those TPV holders who are not healthy, employable or living in rural regions. It appears that for TPV holders there has been a blurring of the boundaries between humanitarian and migrant visas not dissimilar to the situation that existed prior to the 1970s.

The government is under no obligation to offer permanent protection to refugees unless this is seen to serve the 'national interest', be it international prestige or capitalist state imperatives. Refugees admitted following the Second World War were given permanent visas because the underlying rationale for their admittance to Australia was the need to increase the workforce. From the '70s, however, unemployment has plagued successive governments and the migration intake has changed to reflect the need for highly skilled labour. Refugees experience higher levels of unemployment than other migrants. The adoption of TPVs and the new changes announced by Senator Vanstone allowing TPVs to

apply for regular migration visas reflect an underlying desire to accept only those humanitarian entrants that will not be a financial burden on society.

It is estimated that by mid-2005 all TPVs will have expired and, as the expiration of these visas results in holders having to apply for further protection, TPV holders will be left in a void until decisions are processed. Pending the outcome of the protection visa applications, they are permitted to remain in Australia temporarily. In January 2004 3960 TPVs had expired and, of the 660 decisions that had been finalised by mid-February 2004, 627 (88 per cent) were refused further protection. The remaining 33 applicants who were granted permanent protection, had arrived in Australia prior to the tightening of the law in September 2001.<sup>37</sup> A majority of those refused visa applications appealed to the Refugee Review Tribunal (RRT).

When in July 2004, the government announced that all TPV holders would have the opportunity to apply for permanent visas enthusiasm was soon tempered as, on closer examination of the details, it became evident that not all TPV holders would automatically qualify. All TPV holders wishing to remain in Australia would have to reapply for another visa and 'not all of them, of course, will get them,' Senator Vanstone admitted.<sup>38</sup> The 'devil was in the detail', as the announced regulatory changes gave temporary visa holders the right to apply for other non-humanitarian visas — such as family or spouse, employment, or student visas — however only some of these visas are permanent. For example, student visas are also temporary and, unlike humanitarian visas, do not commit the Australian Government to any protection obligations once the visa has expired. Consequently, since its introduction, there have been only a handful of TPV applicants applying for these non-protection visas.<sup>39</sup>

Equally stressful for TPV holders was the requirement that they go through the visa application process all over again, prolonging their deep sense of uncertainty. It was this aspect that prompted refugee advocate Marion Le to call it 'one of the cruellest things this government has done.'<sup>40</sup> Critics saw the announcement as being driven by the proximity of the 2004 federal election, and cynically called the changes 'ballot box compassion'<sup>41</sup> and 'temporary election visas'.<sup>42</sup> Mares noted that government rhetoric had changed, and the old Iraqi, Iranian and Afghan 'illegals' and 'queue jumpers' now made 'a significant contribution to the Australian community' and are 'contributing to the economies of regional Australia.'<sup>43</sup> He attributed this to pressure put on the

government by influential rural and regional advocates who have benefited economically from the presence of TPV holders and 'have given TPV holders a voice in the corridors of power.' Indeed, Minister Vanstone was careful to confirm that the regulations would be 'framed in a way that clearly recognizes the contribution that many TPV holders are making in regional areas'<sup>44</sup> and would specifically include lower-skilled workers. She suggested this would be done by amending the skill requirements of the Regional Sponsored Migration Scheme to include people who had worked for their sponsor for 12 months.

This emphasis on work skills creates a new fiction that distinguishes between 'deserving' and 'undeserving' refugees.<sup>45</sup> It benefits the few who have been fortunate enough to secure long term employment, but does not help the majority of TPV holders who are unemployed, self-employed, or in short-term insecure or casual employment. Ironically those genuine refugees on TPVs unable to qualify under general migration criteria to gain permanent residence in Australia are likely to be those most in need of humanitarian protection given that many are suffering from psychological illnesses and trauma that prevent them, for example, gaining employment.

The TPV policy itself is flawed, and rather than amending it, the simplest and most humane solution is to make the visas permanent.<sup>46</sup> What is needed is a 'genuine act of humanity, not a policy that will, yet again, prolong the agony of people who have suffered enough.'<sup>47</sup> The proposed changes represented a step in the right direction but did not fundamentally change the TPV, as many TPV holders, already found to be refugees, are still required to argue their case again and many will fail.

A return pending visa has been introduced for applicants whom the Australian Government has deemed to be 'no longer in need of protection'. This allows 18 months for rejected applicants to make arrangements to return home, and carries the same rights and restrictions as the TPV. This is undoubtedly a more humane alternative for rejected asylum seekers than (often forcible) removal or detention, which are the extant responses, and allows them to examine other alternatives.

From early 2004, the Immigration Minister has stated that the government is not encouraging the return to Iraq of the 3346 remaining Iraqi TPV holders in Australia, indicating that it was adhering the advice of the UNCHR.<sup>48</sup> Nevertheless, following the fall of Saddam Hussein's regime there were some refugees who sought to return to Iraq, possibly as many as 900.<sup>49</sup> This came despite the lack of basic services, such as housing, and the tenuous state of security in Iraq. For these returning

Iraqi refugees, however, 'the present horrors of detention in Australia outweighed whatever future fears they might have about the chaos and violence of occupied Iraq.'<sup>50</sup> By the end of 2003, the Department of Immigration and Multicultural and Ethnic Affairs (DIMIA) had facilitated the voluntary repatriation of 11 Iraqis from detention in Australia and 23 from Nauru<sup>51</sup> and in December 2004, Minister Vanstone was encouraging Iraqi asylum seekers who had failed in their applications for refugee status to 'return to their home country as quickly as possible.'<sup>52</sup> Considering that Iraqis are the single largest group of TPV holders in Australia, it was somewhat surprising that the government offered TPV holders a 'Reintegration Assistance Package', which provides financial grants and travel costs to those who volunteer to return to their home country. Encouraging Iraqis to return to Iraq has been clearly discouraged by the UNHCR, and acknowledged as dangerous by the Australian Government.<sup>53</sup>

#### **Discursive Constructions of Middle Eastern Asylum Seekers**

It has been argued that 'discourses are not about objects; they do not identify objects, they constitute them and in the practice of doing so conceal their own invention.'<sup>54</sup> This is clearly the case in the way the Australian Government constructed threats posed by asylum seekers to Australia's national security and identity. This negative discourse set the backdrop for asylum seekers to move from a humanitarian issue to a border protection issue. For this to occur, the government had to convince the general public of the threats posed by genuine asylum seekers arriving by boat. I argue here 'that rather than responding to a crisis, the Australian Government has generated the perception of a crisis in the Australian community.'<sup>55</sup> Manufacturing a crisis situation is crucial to ensuring popular support in order to secure the introduction of draconian policies. In fact, the number of asylum seekers reported during the 'crisis years (1999–2001) did not exceed 10,000; far smaller proportionally than most other Western countries and certainly not comparable to the numbers that developing countries such as Iran and Pakistan are accommodating (close to four million between them).

What is most striking about the asylum debate in Australia, however, is that the voices of Middle Eastern refugees themselves have rarely been heard.<sup>56</sup> This effective silencing of refugees and asylum seekers in Australia has been one of the more disturbing aspects of the debate as a whole as the individual human story was lost in the midst of legal and political arguments.<sup>57</sup> For several years now, the primary public labels

employed to describe onshore asylum seekers have been 'queue-jumpers', 'cashed up immigrants' and 'illegals'.<sup>58</sup> The term 'queue-jumper' has been particularly prominent in public discourse; a term designed to suggest that onshore arrivals are undeserving, having taken a resettlement position from a more worthy (and certainly more grateful and compliant) 'offshore' refugee. Playing upon notions of fairness and orderliness, former Immigration Minister Ruddock even likened onshore asylum seekers to 'thieves' who 'steal' places from genuine refugees. Despite the absence of any real 'queue' in receiving countries such as Pakistan, Iran and Indonesia,<sup>59</sup> this language has been effective in depicting asylum seekers as a deviant group unworthy of protection.

These discourses of exclusion and denigration were reinforced throughout 2001–2002, when a systematic pattern of government misrepresentation sought to portray asylum seekers as serial child-abusers.<sup>60</sup> This was not limited to the most well-known and notorious case of the children overboard incident. Other episodes include the claim made by Liberal Senator George Brandis that 'a potential illegal immigrant [had] attempted to strangle a child.'<sup>61</sup> A subsequent Senate Inquiry found that navy witness statements reportedly relating to this alleged episode did not exist.<sup>62</sup> In another case of alleged child abuse it was claimed that adult Afghan detainees had forcibly sewn together children's lips during a hunger strike.<sup>63</sup> Separate investigations by the South Australian Government and the Human Rights and Equal Opportunity Commission, with the co-operation of Australian Correctional Management, however, found no evidence of parents encouraging children to engage in acts of self-harm.<sup>64</sup> This too was found to be an unsubstantiated allegation, but a pattern or regime of representation was now apparent. Under pressure, or to gain electoral mileage out of their tough stance, the government appeared quite willing to portray asylum seekers as an irresponsible and aberrant group, hostile to Australian standards of decency and parental responsibility, with little regard for their children's well-being or safety.

Meanwhile, Australia continued to be the only regime in the world where a mandatory detention policy applied to children, and continued to lock up young children in defiance of international treaty commitments on the rights of the child. Government rhetoric implicitly shifted the blame to the parents for putting their children in this situation. Despite a letter by Afghani detainees expressing their great offence at the baseless accusations of child abuse, and urging the Prime

Minister to set the record straight, the government refused to apologize.<sup>65</sup>

The *Tampa* and children overboard incidents described above became the 'central motifs' of the government's 2001 election campaign. Both issues involved the government as representative of the Australian nation and its clearly defined national identity against an 'other' that was Muslim and primarily Middle Eastern. This 'other' was first clearly established in the *Tampa* incident, when Howard declared as a central stance of the election campaign that 'we will decide who comes to the country, and the circumstances under which they come.'<sup>66</sup> Thus Middle Eastern, Muslim asylum seekers were established as a threat to the Australian nation, as indicated by the use of words such as 'floods' and 'waves' of onshore asylum seekers, when in reality the numbers of onshore asylum seekers were relatively small.<sup>67</sup> This is reminiscent of the pre-Federation fear and anxiety about the 'yellow peril' as captured powerfully in David Walker's *Anxious Nation*. More recently, Leach has argued that the government constructed and exaggerated particular representations of cultural difference as 'foreign' and threatening to the Australian nation.<sup>68</sup> For example, in referring to the parents who supposedly threw their children into the sea, Howard was quoted as saying 'I certainly don't want people like that coming to Australia.'<sup>69</sup> The government constructed an image of abhorrent parental behaviour framed by cultural practice, and inimical to Australian values of parental responsibility:

The children overboard affair again presented Islam as an alien culture in which parents were so barbaric, so subhuman that they would endanger their children by throwing them into the sea to stop the Australian navy from doing its 'duty'.<sup>70</sup>

Moreover, the Coalition Government played a dangerous game of collapsing the distinctions between Middle Eastern, Muslim and terrorist by implication. In the fearful environment post-9/11, Howard declared that he could not rule out that some asylum seekers may be linked to global terror networks.<sup>71</sup> So the 'facile associative logic of racism'<sup>72</sup> attached itself to Muslim- and Arab-Australians in general, and to asylum seekers specifically, through the government establishing, or building upon, a particular discourse of Australian nationalism that excludes Muslims and Arabs. Once again Muslim asylum seekers, and by implication Muslim- and Arab-Australians as a cultural 'other', were dehumanized and Islam portrayed as threatening and dangerous to the

Australian nation and Anglo-Australian values. This cemented a hostility and distrust of Australians who may be associated with Islam, whether they are Muslim Australians, or mistakenly identified with Islam because they are of a certain ethnicity, particularly Arabic. These images were reinforced by shallow media coverage, as Pickering illustrates in her survey of refugee and asylum seeker issues in the *Sydney Morning Herald* and Brisbane *Courier Mail*:

Press coverage has focused on the deviant problem that asylum seekers and refugees represent to the robust Australian nation and the need for a strong state to keep out and control the menace. With few exceptions, reports on asylum seekers and refugees have not been interested in listening to the voices of asylum seekers, nor of home country conditions or conditions of flight. When alternative views are offered, they are usually presented as 'human interest stories' rather than 'hard' news.<sup>73</sup>

While Pauline Hanson was scorned for ignorance and racism when she suggested in 1996 that 'boat people' should be turned around and refugees sent home when their countries 'get better', both Liberal and Labor Parties have now become complicit in instituting punitive, inhumane measures in Australian law. Such changes signify that 'our leaders, from both major political groupings, are turning us into a nation of thugs.'<sup>74</sup> The question then is: why have these political leaders acted in such 'thuggish' ways and why do opinion polls suggest that they are acting in ways that are widely supported by the Australian people? One of the reasons Australians have acted so adversely to the arrival of asylum seekers is that they have a deep-seated fear of invasion and that this has been present since the arrival of the British in 1788.<sup>75</sup> Having seized Australia so easily, it was initially the Dutch and the French who were seen as the enemy and then later the Japanese, the Germans, the Indonesians, the Vietnamese and the Chinese, who each took their turn in providing the potential threat of invasion. There has, ironically, never been any real threat of invasion, with the Japanese in 1942 specifically rejecting the idea on the basis that it would require too many personnel, and that the 'national character' of Australians would mean they would 'resist to the end.'

Government rhetoric is starting to change: the old 'illegals' and 'queue jumpers' are now making 'a significant contribution to the Australian community' and are 'contributing to the economies of regional

Australia.' This change can be attributed to pressure put on the government by members of its own backbench as well as influential rural and regional advocates who 'have given TPV holders a voice in the corridors of power.' The recent announcement to soften up the mandatory detention laws has also coincided with a higher approval rate for TPV cases finalized by DIMIA. As the latest figures published by the RRT show, between 1 July 2004 and 30 April 2005, more than 97 per cent of Iraqi and 89 per cent of Afghani TPV cases have been successful in their appeals to the Tribunal.<sup>76</sup>

### Conclusion

It has been argued that this recent episode in the treatment of asylum seekers cannot be properly understood in isolation from the ethnic and cultural backgrounds of those involved.<sup>77</sup> The fact that most of the asylum seekers originated from Middle Eastern countries was seen as one of the main reasons for the public paranoia and the government's excessive punitive reaction. The government has argued that the harsh deterrence measures were justified because the so-called 'boat people' are essentially 'queue jumpers' who bypassed the available avenues offered through the resettlement program. Sadly, and following 9/11, there were even suggestions by government ministers that stopping the boats would help prevent the infiltration of potential terrorists. Strong rebuttals to all these arguments have been made by expert groups and even international agencies such as the UNHCR and Amnesty International. However, one crucial point that goes to the heart of this debate is the confusion between Australia's resettlement program which has a fixed annual intake of offshore applicants and its treatment of onshore asylum seekers.

The resettlement program is not a proper substitute for claiming asylum, a fact that has not been lost on all other countries signatory to the Convention. As some have noted, this is because Australia controls the selection process and the make up of the intake. In fact, 'preference goes to the educated rather than the skilled, the healthy rather than the disabled, the quiescent rather than the "troublesome".'<sup>78</sup> The most revealing aspect of Australia's radical asylum approach, in comparison to other countries, is that so few asylum seekers were needed to provoke it. 'Australia's historical fears about invasion from the populous nations to its North no doubt played a part in explaining the degree of controversy generated in 2001,<sup>79</sup> but in reality, other Western countries such as the US, Germany and the UK receive on an annual basis tens of thousands



of asylum seekers. While arguments for strong and effective control of the movement of people are valid, there should be a clear distinction between seemingly connected but quite separate issues such as terrorism and illegal people smuggling on the one hand, and the legitimate plight of asylum seekers on the other.

A question that has often been raised in the midst of this controversy is the apparent 'indifference' of the majority of Australians to the plight of asylum seekers from the Middle East. This indifference raises deep ethical questions about Australian society as a liberal democratic country. Perhaps, as some have noted, indifference is nothing more than 'a potent psychological defence'<sup>80</sup> against compassionate feelings which might otherwise overwhelm our detachment from the inhumane suffering of those who invoke our protection obligations under international humanitarian law.

One of the most paradoxical aspects of the asylum seeker debate in Australia has been that, while Australians pride themselves on having created one of the most successful models of a pluralistic and diverse society, they have also overwhelmingly shown themselves to be indifferent, if not outright antagonistic, towards the plight of asylum seekers. This apparent paradox can possibly be explained in terms of the arguments put forward by the government when justifying its harsh deterrence measures. The perception created is that refugee problems are essentially the product of bad governance or conflict stemming from the country of refugee origin alone. The assumption is that a liberal democratic state, such as Australia, has little or no role in creating refugee-producing conditions, and is acting in a charitable rather than a duty-bound role when accepting settlement of any pre-determined quota of Convention refugees.<sup>81</sup> Yet many of the situations which now produce forced migration result directly and indirectly from the foreign policies of Western countries which are now trying to exclude migrants.<sup>82</sup> A good case in point is the war in Afghanistan, and more recently Iraq, where the local conditions are not conducive to forcible repatriation of refugees. Western states have played major and minor roles in creating refugee-producing conditions — directly through foreign military intervention<sup>83</sup> and indirectly, through the global economic system which creates conditions of extreme hardship or conflict. As such, there are clear ethical, economic and legal obligations on countries such as Australia to ensure a responsible and humane approach to asylum seeker policies that transcends short-term political calculations.