

The Criminalisation of Asylum Seekers in Australia

Alperhan Babacan
Senior Lecturer in Law
School of Accounting and Law
RMIT University, Melbourne

Abstract

Throughout the 1990s and into the post 2000 period, the Australian government implemented a range of legislative measures directed at deterring and preventing asylum seekers from arriving on its shores. These policies were accompanied by political discourses which 'depicted' asylum seekers as 'criminals' or 'queue jumpers' who posed a threat to Australian society and were therefore unworthy of Australia's compassion and 'citizenship' rights. The same period was also marked by a growth of security politics across Australia.

Much of the literature concerning Australia's legislative policies relating to asylum seekers places emphasis on the impact of globalisation and Australia's attempts to close its borders to unwanted immigration and the impact of September 11 and the security politics pursued by the Australian government. This paper sets out how the language and policies relating to asylum seekers is similar to the portrayal of criminals. Through portraying asylum seekers as 'criminals' who pose a 'threat' to Australian society, asylum seekers were deemed to occupy the same societal role as criminals. This in turn promoted hostility and racism towards them.

The historical construction of asylum seekers

Historically, democratic states used refugee and asylum policy against the persecutory actions and policies of persecutory states (Watson: 2006, Gale: 2004). Particularly in the heightened environment of the Cold War, western states, including Australia, built their asylum and refugee law and policies around the theme of humanitarianism. This also accords with preamble of the Refugee Convention 1951 United Nations. In the context of asylum law and policy, the humanitarian theme portrayed the asylum seeker as a victim of persecution and as a fellow human being who should be afforded protection. Conversely, the receiving state was depicted as a compassionate liberal, western

democratic state that offered refuge to people who had been persecuted (Watson: 2006. Gale: 2006).

The contemporary policies of most western states were formulated in the aftermath of World War Two with the Cold War being a driving force behind refugee policy. Provision of asylum for refugees from the communist states was part and parcel of the West's fight against communism (Shukre: 1995, Whitaker: 1998, Martin: 2000, Hollifield: 1997) and Australia was no exception.

Reconstruction of asylum seekers in the post Cold War period

Following the downfall of communism, the portrayal of asylum seekers and the definition of 'humanitarianism' were fundamentally altered in western liberal democratic societies (Watson: 2006). In Australia, this especially occurred with the election of the Coalition government in 1996. Unlike previous decades where asylum seekers were depicted as being worthy of our compassion, they were portrayed as people to posed a danger and a risk to the state and to its citizens. The state continued to be depicted as a compassionate, western liberal democratic state (Watson 2006). Particularly in the securitised environment of the post September 11 period, the state was depicted as being threatened by a range of players including asylum seekers. That it was necessary to protect Australia's humanitarianism to that it would be able to continue to assist those 'genuine' asylum seekers who were in need of its protection. Those who jumped queues to arrive on Australia's shores or were 'illegal migrants' undermined the integrity and fairness of Australia's refugee determination system (Gale: 2004). Given the threat from asylum seekers, the state's humanitarian identity required protection and accordingly, it was essential that the state maintained its sovereignty which was being undermined by the arrival of onshore asylum seekers (Watson: 2006).

In Australia, the defence of the state's humanitarianism and sovereignty translated into the enactment of harsh legislation and the adoption of policies designed to deter the arrival of asylum seekers and to keep them out of the community. For example, in 1999, the *Migration Amendment Regulations (No 12)* created a new **Temporary Protection Visa** (TPV) for successful on shore asylum seekers (Subclass 785). The TPV restricted welfare benefits and family reunification and excluded asylum seekers' rights to membership through the limitation of the protection period offered to a maximum of three years (Parliament of the Commonwealth of Australia: 2003). This effectively created two classes of refugees in Australia as the visas provided different access to benefits. The TPV was the centrepiece of the government's deterrence strategy (Parliament of the Commonwealth of Australia 2003:91). The Government justified the introduction of the TPV on the grounds that it would curb the "increasing misuse of Australia's onshore protection arrangements by organised people smuggling rackets" (DIMA 2002).

In 2001, amongst a raft of legislation, the Government introduced *the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001 (Cth)* which barred unauthorised arrivals from applying for a visa in an excised offshore place (s. 46A) and allowed the Commonwealth to move these people to a declared safe country (s. 198A). It also provided for offshore entry persons to apply for a visa to the Immigration Minister (s. 46 A (2) (3) (4)). The granting of such visa was subject to the Minister's discretion. The new legislation also granted Australian authorities powers to detain and move asylum seekers from excised places and ensured that asylum seekers could not seek legal proceedings against the Australian Government (s. 494AA).

Prime Minister Howard clearly articulated the government's view to 'unauthorised' arrivals: *"Every nation has a right to effectively control, its borders and to decide who comes here and under what circumstances, and Australia has no intention of surrendering or compromising that right. We have taken this action in furtherance of that view"* (House of Representatives Official Hansard 29 August 2001, pp. 30517). Underlying the raft of legislative measures introduced in 2001 changes was the Australian Government's insistence that Australia was a sovereign country who would decide who can and who cannot stay in its territory (DIMIA Factsheet 70, 2002).

Criminalisation of asylum seekers

The post September 11 politics relating to asylum seekers can be characterised as a conflict between the states' commitment to the process of globalisation and pre-occupation with security issues (Muller). Since the 1990s, state discourses have depicted asylum seekers as deviant and illegal. Coupled with such discourses, the treatment of asylum seekers through law and order practices has been similar to that of criminals (Pickering 2005, Whitaker 1998).

In the media, the government portrayed a number of narratives. These included

- Asylum seekers were associated with criminal activity and people smugglers and that they were illegal;
- Australia's culture and sovereignty was being challenged and/or under attack;
- Those who sought asylum were not genuine refugees;
- Those who made it to Australia's shores were not deserving of our compassion;
- It was to implement tougher border control and other inhumane policies including mandatory detention in order to protect Australia (Wazana: 2004)

Gale (2004) rightly points out that language is crucial in setting out the policy problem and the perceived solution to the problem., Pickering and Van Acker and Hollander draw out in some detail the specific use and impact of language in the

criminalisation of asylum seekers (Pickering: 2001, 2005, Van Acker and Hollander: 2003). Oppositional terms such as deserving/ undeserving or legal/illegal are systematically used to create a value system whereby difference is established and asylum seekers are criminalised (Van Acker and Hollander: 2003). The use of binary oppositional terms do not create difference (whether it be racially, nationally or criminally), but also publicly justify the appropriateness of state practices towards asylum seekers (Van Acker and Hollander: 2003, Pickering: 2001, 2005).

Devetak (2004) reminds that the anxieties about being invaded from the North, the 'Yellow Peril', were part of Australia's nation building process around notions of nation, security and race. Philpott rightfully maintains that the historical fears of being invaded from the North have been laden with contemporary notions relating to invasion, namely by asylum seekers (Philpott: 2004). An asylum seekers crossing of the border has been rendered as the criminal act which justifies harsh action by a sovereign state which is under threat of being invaded (Pickering 2005). The exceptionally harsh measures adopted by the Australian government against asylum seekers in 2001 is a demonstration of how far the narratives relating to invasion, security and sovereignty can be taken by a nation state (Devetak) (Tazreiter).

Pickering and Lambert (Pickering and Lambert: 2003) argue that Australian government's media rhetoric serves to reinforce a belief in the populace that the government's mistreatment of asylum seekers is natural and normal . In the process the portrayal of asylum seekers as people who are illegal and deviant plays a significant role in the general public's acceptance of their mistreatment by the state . Such a distancing of the citizen from the asylum seeker enables for the easier implementation of punitive regimes (Philpott: 2004).

A binary system of representation also attempts to naturalise belongingness and otherness (Hall 1992). Asylum seekers have been perceived as a threat to the social cohesion of the state (Tazreiter: 2003). The Coalition government's victory in the 2001 Federal election on the issues of border control is a clear indicator of the conjoining of racism and border protection, which issues were also blurred and enmeshed with issues relating to security and the war on terror (Gale: 2004)

Gale highlights that old racisms have been replaced by new racisms which place emphasis on cultural incompatibility and what is a threat the Australian way of life/ culture (Gale 2004). The relationship between the media reporting and political representation of asylum seekers is a reflection of the intersection between populist politics and the imaginings of Australia's national identity (Gale: 2004). Social harmony, national interest and 'genuine' refugee status become blurred and race assumes naturalness (Pickering: 2001)

Conclusion

The discourses initiated by the Australian government have created stereotypes and prejudices about asylum seekers, arguing that, as illegal and deviant people, they should not be afforded Australia's assistance and compassion. Wazana (2004) rightly argues that "*in the face of international condemnation by human rights groups, the creation of such categories as the 'illegal' and the 'legal' becomes a way of 'justifying' state practices*". However, the Australian government's actions and policies have come at a high cost to asylum seekers and bitterly divided the Australian community.

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