Beyond border control: rethinking asylum and refugee protection in Australia and the region

Anne McNevin

Asylum seekers arriving by boat off the coast of Australia continue to provoke emotionally and politically charged debate, despite their relatively small numbers by international comparison. Boat arrivals have captured the public imagination and have come to stand in for asylum seekers in general, most of whom arrive by plane. The symbolism of boat arrivals taps into deep-seated (perhaps universal) anxieties about encounters with the unknown. The boats prompt legitimate questions: how did these people get here? Where have they come from? Why are they on the move? And what legal, moral and ethical response does their arrival require?

In recent years, Australians’ historically embedded fears of the unknown have been fuelled and exploited for political gain. The result has been a series of simplistic and inflammatory answers to the questions above. Politicians have failed to engage the community in informed debate about forced migration or to demonstrate vision or leadership on the issue. In former Prime Minister John Howard’s words, the right to ‘decide who comes to this country and the circumstances in which they come’ has trumped all other considerations.

Howard’s slogan continues to resonate in more ways than one. It is not enough to interpret his words as a dog-whistle to those with blatantly racist views on refugees and others—though this it may well be. Howard’s slogan has stayed with us partly because it speaks to rights that we tend to take for granted; namely, the rights of citizens to collectively define group membership and to police entry and exit to their territory. In liberal democracies, however, the rights of the group always sit in tension with those of the individual—in this case, the right to freedom of movement and to freedom from persecution. The tension is real and worthy of debate. Yet the terms of the debate, at least in so far as it relates to the plight of asylum seekers, have been overwhelmingly clouded by fear mongering and misinformation, whether in regard to the number of spontaneous arrivals, their link to security concerns, the ‘illegal’ nature of their transit, the social

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and financial burden they represent, or the relative costs of border policing designed to keep them out.

Australia’s long-term response to asylum seekers has been reduced to a technical matter of finding ways to ‘stop the boats coming’. Both Coalition and Labor governments have agreed on this much. Prime Minister Gillard’s regional take on border policing retains this central goal, only this time by more effective means than the Opposition proposes (undermining the incentives for the people smuggling trade versus turning the boats around and inviting sabotage). In the process, we have lost sight of the connection between present day asylum seekers who wash up on our shores and the original refugees who inspired the international community to enshrine protection as a principle of international law. In 1951 the Refugee Convention was conceived against the backdrop of the thwarted journeys of European Jews fleeing Nazi persecution. The convention aimed to provide a legal means for those uprooted by war and human rights abuse to find a new home. Though the terms of the Convention and the institutions it spawned have also been mired by politics, its spirit retains an implicit injunction to ‘let the boats come’.

Much has certainly changed since 1951. As Erin Wilson points out in her article in this volume, the Cold War is over and the strategic advantage of welcoming refugees from Communist states has long since passed. The numbers of refugees and others in refugee-like situations currently sits at 43 million people around the globe. The reasons they have fled their homes are multi-dimensional, spanning all forms of persecution, war and generalised violence, the ongoing effects of natural disasters, state failure and poverty. In many cases these factors intersect. The legal concept of the refugee simply does not cover the spectrum of reasons why people seek refuge and a sharp divide between economic and political causes of migration is increasingly unhelpful as a way of distinguishing legitimate from illegitimate protection claims. The legal and institutional apparatus inherited from the Refugee Convention is not enough, in its current form, to provide effective and long-term solutions for forced migration today. We only have to think of the looming spectre of environmental displacement—which does not trigger recognised refugee status—to know that this is the case. Unless we confront the long-term realities of forced migration in all its forms we are unlikely to find long-term solutions to the boats that arrive on our shores (as well as the planes) or to put an end to the politicisation of what remains one of the gravest questions of justice in our time.

If the nature of forced migration has changed, the nature of borders that migrants cross has also been transformed, perhaps irrevocably. Borders have become less of an obstacle to certain kinds of flows of goods, ideas and people than they were in decades past. However, the movement of people attracts more attention and generates more anxiety than other aspects of globalisation that are far more abstract but no less consequential. Partly
on account of the visibility attached to migration, the movement of people is regulated in increasingly polarised ways. Transit is eased for certain types (business professionals, students and tourists) but restricted or circumscribed for others (asylum seekers and low-skilled workers). Many of the latter have compelling reasons to be on the move. However, fewer avenues for licit migration available to the poor and displaced force many into orbit as an increasingly unauthorised and criminalised class of traveller.

All of this suggests the need to rethink the question of border control in big-picture ways that intersect more realistically and less fearfully with Australia’s regional and global future. The question in relation to the regulation or liberalisation of borders—for people as much as for finance—is how to manage our increasingly global interconnections in ways that restore justice to the local, regional and global distribution of security and livelihood. How can we learn to live with the fact of forced migration, just as we have learned to live with the movement of finance, goods, services, tourists, students and business people without having our sovereign rights and identity come to a standstill? The choice is not one between fully open or fully closed borders. Nor are we likely to avoid tensions and hurdles, whatever route we take. Rather, we can choose between nostalgia for a less mobile world and the kind of conceptual openness and political leadership that any complex human transition requires.

Recent commentary on current asylum policy in Australia has called for this kind of political leadership. Robert Manne, in his September article in The Monthly, argues by contrast that ‘[n]either ‘education’ nor ‘leadership’ seem likely in the near future to make Australians open their hearts to asylum seekers or to challenge the mood of the conservative populist political culture that crystallised at the time of the Tampa’. Manne challenges the progressive left, in particular, to be more politically savvy when it comes to appealing to Howard’s battlers and Rudd’s working families and warns of the dangers of clinging to politically unachievable ideals. He contends that the left’s failure of political acumen and intellectual honesty contributed to the return of Howardesque extremes in the figure of Tony Abbott, who remains committed not only to Temporary Protection Visas but to the worst of the Pacific Solution. In the short term, Manne’s assessment might well give pause for thought for all of us—left or right—seeking a more just approach to asylum. In order to mitigate the current climate of hostility towards refugees and asylum seekers, compromised positions may well be required. But in the longer term, it is nothing other than leadership that can take us in new directions. There is little about our current politicians that suggests they are up for the task. While there may well be a glimmer of hope for more rational debate on account of a hung parliament and the influence of independents, we are far from seeing any indication that our mainstream party leaders are committed to non-partisan discussion of asylum seekers in particular. Leadership may well have to come from other sources.
This state of affairs provides the impulse for this volume. Much has been written by way of critique of Australia’s asylum policies over the last ten years. It is not our intention to revisit that debate here. While some of the articles in this volume address the implications of the Rudd government’s record on border control, our emphasis is on practical and conceptual strategies for genuine alternatives to where we are now. Conceptual questions are essential because the current way of framing debate has failed to address the changing nature of borders or the realities of forced migration and has failed to inspire genuinely ethical attempts to grapple with either. We also need ways to mediate the shift from policy as it stands to a more enlightened and achievable approach. This is a practical question of what policy and community sectors can do now to change things for the better.

This volume, however, is not intended as a series of policy proposals. Rather its purpose is to bring contributors together from academic and community sectors to begin a conversation about working together—practically, strategically and intellectually—to drive positive change. The volume is an initiative of RMIT University’s Globalism Research Centre, which is committed to working in partnership with the community sector to undertake research into real-world problems and to generate ethical responses to our rapidly transforming local and global environments. We hope that this volume will foster enduring connections across these sectors. We also hope it will invigorate its audience with fresh ideas that can add to existing momentum for a better politics of asylum.

Three key themes are addressed by the papers in this volume: (1) regional engagement on border control and refugee protection, (2) the limits of humanitarian principles and practice with respect to asylum seekers and refugees, and (3) community and activist strategies for change. The first of these is the most policy-oriented theme. In the lead up to the 2010 election, Julia Gillard made a regional approach to refugee protection a centrepiece of her campaign. More specifically, she has committed to a regional asylum seeker processing centre based, she hopes, in East Timor. Gillard and others have frequently referred to the ‘complexity’ of the issues at stake. We are yet to see, however, if the new government’s approach represents genuine policy innovation or simply extends former governments’ efforts to push the problem offshore. It is one thing to address the less palatable aspects of the treatment of asylum seekers who make it to Australia and to ease the task of doing so by reducing the numbers who arrive. It is quite another to recognise that whether people make it to Australia or not, they are still compelled to leave their homes and are still in need of protection. There is growing evidence to show why countries like Indonesia and Malaysia are dangerous places for asylum seekers to be—even for those recognised as refugees by the UNHCR. There are also good reasons to doubt the capacity of poor countries like East Timor or Nauru to provide an adequate refugee determination process—whether they are signatories to the Refugee Convention or not. Important questions remain, therefore, about
the government’s regional approach—most obviously around processing procedures, judicial review, prolonged detention and resettlement options. Against the backdrop of this debate, several contributors ask what genuine regional engagement on the question of forced migration might look like. Martin Mulligan does so with respect to Sri Lanka. Mulligan suggests how Australia might direct its aid to Sri Lanka beyond collaboration on policing exit-migration and in ways that generate substantive improvements in the very conditions that allow people to live with dignity at home—post-conflict reconciliation, sustainable employment, and democratic governance. Michele Ford, Lenore Lyons and Wayne Palmer examine the nature of Australia’s heavy dependence on Indonesia for its border protection policies and the significance of regional Indonesian authorities. With reference to the Oceanic Viking and the Jaya Lestari, two boats carrying asylum seekers at the centre of border ‘incidents’ in 2009, they show how the ad hoc arrangements made by the Rudd government to satisfy all parties highlight the need for more formal and transparent regional agreements. Jessie Taylor provides an eyewitness account of exactly what happens to asylum seekers in Indonesia when we ‘stop the boats coming’. She reveals the appalling conditions faced by asylum seekers detained in Indonesia as ‘illegal immigrants’ and the minimal prospects available to them for protection there. Savitri Taylor analyses the bilateral co-operation between Australia and Papua New Guinea on border control. She raises questions about whether these arrangements fulfil Australia’s legal obligations with respect to refugee rights. She contends that there are important precedents here that should make us sceptical about current plans for processing centres in East Timor and elsewhere.

The second theme addressed in this volume relates to the humanitarian principles and practices that underwrite the Refugee Convention and that guide the work of service providers and advocates for refugees. By raising this theme, contributors attempt to engage defenders of asylum seekers’ rights in critical reflection about their own conceptual starting points. The legal framework and institutional architecture of refugee protection compels us to define refugees in particular ways (as those who are vulnerable to specific kinds of persecution). How do these generalised definitions make it harder to engage with asylum seekers and refugees as multi-dimensional human beings? What assumptions do we make about who refugees are and what they are capable of doing when our encounters are shaped by prevailing but inadequate legal and institutional settings? These questions are important on a number of fronts. Humanitarian narratives about refugees as victims can play into justifications for ‘stopping the boats’ that rest on notions of ‘desperate hordes’ and ‘drains’ on society. But the reverse is also true. Accounts of refugees as capable, purposive people can play into the hands of those who cast asylum seekers as ‘queue jumpers’ and ‘opportunists’. How can we move beyond crude representations of who refugees and asylum seekers are? How might doing so reinvigorate
humanitarian practice to engage asylum seekers and refugees as co-authors of our responses to an increasingly mobile world?

In his article, Kim Huynh reminds us that displacement, exile and estrangement, are enduring human experiences that have given rise to all kinds of creative endeavours, from science to philosophy and the arts. Huynh compares the biographies and achievements of famous refugees, Albert Einstein, Primo Levi, Leo Strauss and Roman Polanski, as well as those less famous but closer to home. He highlights dimensions of the refugee experience that make people both good and bad, insightful and phobic, admirable and despicable—never wholly victim or wholly agent, but always eminently human. Brett Neilson draws our attention to the range of actors—commercial and non-profit, private and public—involved in setting new norms of human mobility. As such he points to the complicity of humanitarian agencies with government efforts to manage and contain global migration flows—forced or otherwise. Erin Wilson gives an overview of current proposals for reform of the International Refugee Protection Regime. Pointing to the practical difficulties of many of these proposals, she explores how the notion of hospitality might provide alternative starting points for rethinking refugee protection in ethical as well as legal terms.

Thirdly, contributors share some examples of community and activist work that is moving the politics of asylum in new and exciting directions. The artist collective boatpeople.org include images in this volume from their recent work on race, nation, borders and history. They include a statement which speaks to their own activist practice in relation to the politics of asylum. Heidi Abdel-Raouf provides an account of a recent theatre performance, Journey of Asylum—Waiting, performed by asylum seekers in Melbourne. She describes the significance of the project from a therapeutic perspective for the asylum seekers involved and also how it challenged her community organisation, as the sponsoring body, to reassess the terms in which it engaged with asylum seekers beyond a service-delivery model. My own article provides another perspective on the same theatre performance. I emphasise the political dimension of what asylum seekers achieved as actors and advocates. Both the performance itself and the community arts project of which it was a part launched asylum seekers into the public sphere as spokespersons for themselves. To this extent, asylum seekers engaged with the audience as neither victims nor opportunists but as parties to debate on the nature and limits of contemporary Australia.

Together these articles speak to the potential for renewal in the politics of asylum. It is our hope at the Globalism Research Centre that we can work with community sectors to further change in this direction.
Endnotes


