

**Australia's Refugee Policy: Hypocrisy and
Human Rights**

by

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The Chairman of the meeting was Ms. Pauline Shiff.

The subject I've chosen is quite broad, although I will focus principally on Australia's refugee policy, but I do want to talk about human rights because the record of human rights, not just here but across the western world, is stained with hypocrisy and it's a matter of great regret that it is so. I suspect that it's so for this reason: the people whose human rights are usually under threat are generally the people who are powerless and voiceless. The people who are capable of upholding the human rights of others are generally those whose human rights are perfectly secure. And what happens then, as a matter of practical reality, is that people's human rights are very often trampled, despite high rhetoric and good intentions.

Let me give you a couple of simple illustrations to make the point. The history of human rights really can be traced back to the second half of the 18th Century. Probably the first notable human rights rhetoric was the US Declaration of Independence. It's a noble document, its words resonate even now and they're familiar to most of us.

It begins like this. *When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them. A decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self-evident, but all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness, that to secure these rights governments are instituted among men, deriving their just powers from the consent of the government.*

Revolutionary words at the time. Revolutionary because until that time the Divine Right of Kings had prevailed and the idea had been received that all power came from the King. This was a complete reversal. This founded the notion that power of government comes from the people. It's interesting to reflect that at the same time as those words were written Tom Payne had written "The Rights of Man" and, of course, that's now a highly regarded work but he was prosecuted for sedition for having written it.

Thirteen years after the Declaration of Independence the French Revolution took place and the revolutionaries declared in their simple utterance "liberty, equality, fraternity", the fundamental principles of human rights. Now that seemed like a terribly good start but, of course, 100 years later the United States Supreme Court had to deal with those

very words in the Declaration of Independence. What did it mean when those who signed the Declaration of Independence said that "all men are created equal."

The case of Dred Scott decided by the US Supreme Court in 1857 had to deal with that question because Dred Scott had been born a slave and had lived in free States with his owner for about thirteen years. According to English precedent, he was entitled to his liberty on account of having even for a moment stepped into a free State. So he sued his then slave owner for a declaration of his liberty. Because they lived in different States the federal jurisdiction was attracted and the slave owner demurred to the Bill saying the diversity jurisdiction of the Federal Court is not attracted because you do not have citizens of two states. You do not have citizens of two states because Dred Scott is a black American and is therefore not a citizen. Why? Because he's not one of the men of whom the Declaration of Independence speaks. Astounding proposition. By a majority of seven to two, the United States Supreme Court held in 1857 that when the Declaration of Independence spoke of all men being created equal it did not include black Americans. It went on at some length to point out that African Americans were of an inferior species and could not be regarded as part of the common citizenry of the United States. So after 100 years of human rights rhetoric there was not much progress.

The French Revolution didn't do much better because after a few stops and starts the foundation of the Dreyfus trial in the 1890s was really founded on the proposition that Dreyfus, being a Jew, was not entitled to equal or fair treatment along with the rest.

More recently, human rights got a shot in the arm because after the Second World War the world shook itself collectively and looked back in horror at what had been taking place over the preceding six years. In the wake of the Second World War the first great international instrument of human rights was signed by almost every civilised nation of the world.

The Universal Declaration of Human Rights signed in 1948 by many nations, including ours begins with these propositions. *Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want have been proclaimed as the highest aspiration of the common people, whereas the peoples of the United Nations have in the charter reaffirmed their faith in fundamental*

human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom and ... and it then declares a range of rights which are universal human rights, including *All human beings are born free and equal in dignity and rights. Everyone has the right to life, liberty and the security of person. No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. No one shall be subjected to arbitrary arrest, detention or exile.* That seemed like a pretty good way of redeeming the failings of the first half of the 20th Century. But at the same time as those words were being polished the Americans were doing a quiet deal with the Japanese government by which the butcherous doctors of Unit 731 at Harbin were being given immunity from prosecution provided they made available to the United States exclusively the benefits of their hellish research. Research which rivals Dr Mengele's work at Auschwitz was made over to the Americans in exchange for immunity. Once again the acts did not match the rhetoric.

And, self-evidently, the noble sentiments of the Universal Declaration didn't help to prevent the Jim Crowe laws of the second half of the 20th Century in America; institutionalised torture in Chile; the genocides of Yugoslavia and Rwanda and the subordination of the judiciary in places like Malaysia and Singapore. We, of course, count ourselves as lucky and separate and perhaps more enlightened than these other places and we fondly hope that such things could never happen here. In fact a very important Australian spoke on this subject not very long ago, November 2000. He said this: "I have no qualms in saying that one of our abiding values is that of a fair go for all. I believe this blend of practical and the idealistic very much reflects the character of Australia, a separate public forum could no doubt be dedicated to discussing what core Australian values are in the year 2000." And he goes on to suggest that "Human rights are central to Australia's foreign policy objectives. Human rights are central to the maintenance of a peaceful world and our nation's security." And he went on to say "This audience will be well acquainted with my view that you do not measure a government's interest in human rights by the decibel reading of its public criticism of others. You measure it by what it actually does." Those words might come back to haunt Mr Downer and no doubt they haven't been read in recent times by Mr Ruddock or Mr Howard, because what we are doing in fact in connection with refugees is a direct refutation of those sentiments, leave aside being done in defiance of the Universal Declaration of Human

Rights, the Convention on the Rights of the Child and the Refugees Convention.

I want to talk about a couple of aspects about what we do in connection with refugees which seem to be to involve flagrant breaches of human rights both in the letter and in the spirit. There are three aspects that I want to focus on. The first is our system of indefinite mandatory detention. The second is the grotesque unfairness of the procedure by which we assess people's claims to be refugees and the third - and perhaps more briefly - what travels under the auspicious title of "the Pacific Solution." It just hints at the horrors that it conceals.

I want to start with the Refugee Review Tribunal and let's clear up a couple of misconceptions and matters of language. People get a bit unsettled about the use of the expression "asylum seekers" and "refugees." An asylum seeker is simply a person who comes to this country, or any country, claiming asylum - seeking protection. If their claim is ultimately accepted then they are refugees. It's a useful distinction although one which tends to cause more confusion than it prevents. But if I speak of asylum seekers I simply mean to refer to those people who seek asylum but have not yet established at law their claim to asylum.

It's also useful to bear in mind that arriving informally without an invitation and without papers is not an offence under Australian law nor is it an offence at international law. On the contrary, it is a right. Every human being in distress has a right to seek asylum in any country which they can reach. It's therefore rather unfortunate that the government calls asylum seekers "illegals." It's unfortunate because it is false and the falsehood gives the government licence to do to those people things that it would never ever get away with in relation to any other group in our society.

How does it treat asylum seekers in practice when it comes to testing their claims to be refugees? What happens is that when a person arrives and engages our refugee obligations by saying "I seek asylum in Australia" is that a representative of the Department will take the person's story and determine on the basis of that story whether they satisfy the definition of refugee. That is to say, a person who fears to return to their country of origin owing to a well-founded fear of persecution by reason of race, religion, ethnic origin or the like.

If the delegate of the Minister (as that officer is called) decides in favour of the refugee claim then in most cases that person will be given a Protection Visa. If, however, the delegate decides that the claim is

not well founded then the asylum seeker has the right to appeal to the Refugee Review Tribunal. When a layperson hears about an appeal to a tribunal they think, "Ah, here is a good guarantee of fair process." Unfortunately, it is not so.

I daresay there are some people on the Refugee Review Tribunal who are good people and I daresay that some of them do their conscientious best. But I have to say it does not show in many of their decisions. First of all, they do not have to be lawyers. Now there's no necessary virtue in being a lawyer although lawyers are trained at decision-making and a decision is what these people have to make and some experience and qualification for making important decisions is probably desirable. Second, they are short-term appointments. The maximum time for which they can be appointed as members of the Tribunal is five years. Typically, in the last short while, they've been appointed for as short a term as twelve months, but they're eligible for re-appointment, and if you think about that for a moment it's quite plain that there will be a natural human tendency to decide in the way your paymaster likes so that your contract will be renewed and that, I have to say, is an irresistible inference from the pattern of decision-making which you see in fact. Third, the people who go before the tribunal are not entitled to be represented by a lawyer. They may be accompanied by a migration agent. The migration agent might or might not be a lawyer but that person has as their principal function the preparation of the documents that the Tribunal looks at. They may put in written submissions in advance or perhaps after the hearing. The hearings themselves generally look much more like an inquisition in which the Tribunal member is pitted against the asylum seeker. Many asylum seekers come away with a profound sense of unfairness in the procedure.

I want to tell you a story which perhaps illustrates the worst features of the Refugee Review Tribunal. This is a true story and it is deeply upsetting and it's all the more upsetting when you realise that it is not at all abnormal. There was a family from a Middle Eastern country, members of a religious minority which has for centuries been picked on by the majority. They are regarded as unclean. Every day in every aspect of their lives they are treated as you might expect as a group who are regarded as unclean. If you turn your mind back to the treatment of the Jews in the 1920s and 1930s in Germany you will get a general sense of the way this group is treated. They put up with this for a long time because it's their home. Most people don't want to leave their

home unless they're driven out. But one day their ten-year-old daughter came home from school catatonic with fear and it became apparent that the caretaker of her school had sexually molested her. He was a member of the religious majority. The father made a complaint to the police and was taken before a judge. He was abused by the judge for having the temerity to report a member of the religious majority. He was told that the child had been cleansed by the contact with the caretaker and he was beaten up by the police and put in a cell. He bribed his way out and at two o'clock the next morning they got in a taxi and left the country and never returned.

So mother and father, ten year old and seven year old daughters fled indirectly to Indonesia and arrived in Australia after fifteen or sixteen days in a boat. They told the Minister's delegate the story that I've just told you. The delegate of the Minister accepted as true every element of the story but decided that those facts amounted to isolated acts of discrimination rather than persecution for Refugee Convention purposes and so he decided that they were not refugees and they were to be sent back.

They appealed to the Refugee Review Tribunal. The hearing took place with the parents in a hearing room in Woomera and was connected by video link to the member who was in a room somewhere in Melbourne. There was an interpreter somewhere else connected by telephone. I've read the transcript of the hearing and it's fair to say that it seemed friendly enough. There were two questions asked about the sexual assault. One was "What was the name of the person who did it?" and they gave the name and the second was whether they had reported it to the principal of the school and the father said "No, and I'll tell you why not, because he is also appointed by the church and if complaining to the police and the court achieves nothing then complaining to him would undoubtedly achieve nothing, except this: that everyone in the school would then know what had happened to our daughter and she would then be damaged goods forever. Unmarriageable. Literally, unmarriageable." And that was that. The daughters were immediately outside the hearing room being looked after by a carer. A little while later the decision was handed down and the story is recited and the reasons and each of the acts of what we would call persecution were cited and accepted but dismissed as being nothing more than discrimination.

And as for the sexual assault, the member decided that didn't occur at all. Didn't happen. The member didn't seek to ask the child anything.

Didn't ask to speak to her at all. The only living soul in the country who could give direct evidence of the fact, but the Tribunal decided that it had not happened. The Tribunal didn't ask to speak to the psychologist who had been treating the girl for ten months for post-traumatic stress disorder, it simply decided the assault hadn't happened.

We appealed that to the court but because the Migration Act has stringent restrictions on the availability of appeals, the judge decided that there was no appealable error. Until October of last year the Act said that "A decision of the Refugee Review Tribunal may be reviewed by a court only on the grounds that it is so unreasonable that no reasonable person could reach it." In the wake of the Tampa litigation they had decided to tighten up the appeal provisions and they did so again in June of this year, so there is now in the Act a clause which is called "the privative clause" which says in terms "that you may not challenge a decision of the Refugee Review Tribunal in any court on any ground whatever." Now such clauses had been read down by the High Court as leaving a little bit of scope for a review. For example, if the decision doesn't engage the terms of the Act at all. So if instead of getting an order for a visa you get an order for a pound of potatoes then that would be an error that can be corrected. If there is actual dishonesty shown then that can be corrected. But apart from that there is, in substance, no ability of a court to correct even the grossest errors by the Refugee Review Tribunal.

Anyone who tells you that the Refugee Review Tribunal system is fair is either a liar or a fool. It is the most appalling blot on our legal system. There is no other group in our society who would for a minute tolerate being treated as unfairly as refugees are treated in the Refugee Review Tribunal and if there was one single thing that I could do to change the law in relation to refugees in this country it would be to overhaul the Refugee Review Tribunal system from the ground up. It is a disgrace. And it leaves refugees with a profound and well-justified sense that they have been treated with gross unfairness.

The other thing that we have, of course, is the system of indefinite mandatory detention. The words now, so common to us that it's easy not to think about them, but reflect for a minute on what it means. It is mandatory - there is no option. The Act says that a judge may not order the release of a person who is held in immigration detention. It is indefinite. Unlike any convicted criminal the refugee who comes informally seeking our help is put behind razor wire and they do not know whether they'll be there for a week or a month or a year or half

a dozen years. And the fact is there are people who have been held in those conditions for as much as five years. People who have not committed any offence at all, people who come here seeking help, get incarcerated in dreadful conditions for an indefinite period. That's what indefinite mandatory detention means.

We have about half a dozen detention centres in Australia but of all the people who go into them 80 per cent are held in the desert camps, out of the sight of ordinary Australians, beyond the reach of well-intentioned visitors and beyond the gaze of the media. The treatment of refugees in our detention centres is a national disgrace which will haunt us for decades to come and it is all the more shameful for the fact that no one living in Australia in the last couple of years could be blind to what is going on, because bit by bit the facts have come out.

A number of non-government organisations have reported on conditions in detention centres and they have uniformly condemned them and our Government has uniformly dismissed those condemnations. The Government that has Mr Downer talking in such lofty terms about our dedication to human rights ignores every criticism of what goes on in our detention centres.

Let us reflect for a minute to see what it is that is being done in these places. Kate and I have arranged a large number of people around the country to write to detainees. Over the last year the numbers have grown to I think now over a thousand people around the country writing to people in detention and getting replies and many of them have been sending copies of their replies to us and so we now have a growing body of material, letters written by various detainees in various detention centres simply responding to Australians who reach out to them. Some of them would break your heart. 10 March 2002, Port Hedland. This is in your Australia. "Thank you very much for your letter you sent to me. I got it the other day. I was thinking all Australians are heartless and racist but I am now think positive that there is people who care to think about me. I'm 17 years old. I came into Australia when I am 16. On March 26 I will turn 18. I've been in this centre for 22 months, almost two years without contact or heard anything about my family. I know you can't do anything but your letter just gives me hope."

Think for a minute what it must be like to be locked up in a foreign land having committed no offence at all with no idea how long you'll be locked up there. Will it be another year? Will it be the rest of your life? There was a man who we're trying to do something for at the moment in Curtin. He's from Iraq. He's been in detention for three years. He's

been rejected as a refugee but he can't be sent back to Iraq and he's been told by the Department he may remain in Curtin for five to ten years. This is a person who has not committed an offence. Even murderers do less time than that on occasions. Most rapists do less time than that on occasions and let me tell you, conditions in these camps are much worse than in orthodox prisons.

My professional work has taken me to Port Phillip Prison on a number of occasions. Carlos Cabal was in the highest security part of Port Phillip Prison. The atmosphere there, the ambience of the place is far better than even in Maribyrnong and Maribyrnong is probably the best of the detention centres. The atmosphere in Maribyrnong is one of profound depression, hopelessness and despair because the people there have absolutely nothing to hope for.

This letter was written in Port Hedland on 8 February this year. "I saw this government what they say to people about us. They told us this people is criminal or terrorist or boat people is not normal people but we're just humans like other people. I was wrestler in my country and going to every country and in my country I was very famous but now I lost everything from my life. I lost my love, my life and I think if I stay here any longer maybe I lose my mind. From two week ago I decided to go back to my land and actually I don't know what happened to me in Iran but I just know to die in my country is much better than die in detention centre." Two weeks later he left Australia and was returned to Iran at his own request and he was arrested at the airport and hasn't been heard of since.

And then some of the ugly things that happen out of sight. 18 April this year. "I really appreciate your paying attention to Woomera Detention and especially to me. You had just watched read about what happened but the fact is bigger than that." - this is reference to the Easter disturbances there - "The ACM officers have changed to monsters. They couldn't see anything except how to hit the people. They entered the compound with the blue uniform so you couldn't see any part of their bodies. They were like an army. They used the sticks and hurt the people without any mercy or thinking about women or childrens. After that they used the tear gas against the families and they were avoided to film when they used that gas. Then at two o'clock at the morning they came to the buildings and pushed all the people to go to the mess for head count without any paying attention to the pregnant women or the childrens where the weather was too cold. They hit and hurt anyone who refused to move. When they had chosen 40 men and they had put

handcuffs on their hands and ordered them to sit on the ground till the morning like criminals. They did not allow us to smoke or go to toilets or even to pray. I wondered at that moment if this is where we had chosen and asking for protection. What the difference between this and our countries and why we escaped from there." What a great reputation we're building for ourselves as a country.

In the desert camps children and adults alike are referred to only by numbers. Educationists who visited the desert camps say that when they're introduced to children they ask them their name, the child responds with a number. They get no education that is worth the name. Children who arrive there below their teenage years are seen regularly and uniformly to regress by about two years in their development. Young children who arrive there and the children who've been born there do not reach their normal developmental milestones.

A friend of mine was in Woomera about two months ago and saw a thirteen-year-old Afghan girl walking around in the red dust wearing a nappy. She asked about that and was told that the child is incontinent from the stress of the place. Incontinence in children even up to teenagers is common. Bedwetting is almost universal amongst the children. If a woman has her period in the desert camps she must fill out a form, queue up at the nurse's office and apply for sanitary pads and she will then be given a packet of ten. If she needs more she has to fill out another form explaining why she needs more and queue up again and explain herself to the nurse and she may then be given another ration.

People are not allowed to take food from the mess back to their rooms. For women with children of course that creates major problems because children don't necessarily get hungry at the times that food is being served in the mess. Children generally have an air of listlessness about them. They lose their childish demeanour within a few months of being in Woomera or the other desert camps.

I told you about the family who were so badly treated at the Refugee Review Tribunal. Consider this report. This is talking of an eleven year old. "She refuses to engage in self-care activities such as brushing her teeth. She has problems with sleeping. She tosses and turns at night, grinds her teeth and suffers from nightmares. She has been scratching herself constantly until her skin bleeds. She doesn't eat her breakfast or other meals and throws her food in the bin. She is preoccupied constantly with death, saying "Don't bury me here in the camp, bury me back in my home country with grandfather and grandmother." She

carried a cloth doll, the face of which she had coloured in blue pencil. When asked in the interview if she'd like to draw pictures she drew a picture of a bird in a cage with tears falling on a padlock on the door. She said she was the bird.

The psychologist who wrote this report finished after five pages of such material: "It is my professional opinion that to delay action on this matter will only result in further harm to this child and her family. The trauma and personal suffering already endured by them has been beyond the capacity of any human being." The clinician who wrote that report was particularly concerned at the deterioration of the eleven year old girl, although she was equally concerned with the deterioration of the family generally. She agitated for over a month to have the family moved to a suburban detention centre where they might get proper and more regular medical attention because medical attention was plainly needed.

Eventually, the family was sent to a suburban detention centre but, despite the recommendations of that clinician, no medical person was assigned to look at the family or deal with their problems. Three weeks later when the mother and the father and the seven-year-old daughter were in the mess having dinner the eleven year old hanged herself. She didn't die and was taken to a local hospital with her mother. There is an interesting footnote to this. She arrived at the hospital at about eight o'clock on a Sunday night. The lawyer who had been looking after the family's refugee matters heard about this and went to the hospital. He went up to the ACM guard - of course you've got to have a guard with them in hospital - just tried to hang themselves, they've got real risk of bolting for it. An eleven year old, of course, is going to make a run for it on a Sunday night. He spoke to the guard who knew him well because he's a regular at the detention centre and asked if he could speak to the child and her mother. He was told he could not because lawyers' visiting hours are nine to five on weekdays. That gives you some little insight into the mentality of the people who have the care of these damaged, traumatised human beings who've come here looking for help.

A man wrote to us from Maribyrnong, just five miles out of the centre of the city, in February this year. "Today I had two visitors who came to my visit for the first time. One of them was journalist, another was a girl 25 years old. They hadn't any information about detention centres and couldn't believe and the girl was crying after we talked to her. I believe we don't must look at out situations like sentimental

people and you must look very deeply to these circumstances so that what we are eating and that we have a lot of suffering are on the second level. First you must see why the people are coming here and why for a long time we are staying in detention centres. Finally, I will write for you difference between camp and zoo. In the zoo the humans to care for animals but in detention centres the animals care for humans."

It will not surprise you to know that I'm critical of the Government's handling of these matters. I'm equally critical though of the Opposition. The Labor Opposition betrayed every commitment they pretend to human rights in their treatment of the election last November. They could have opposed the Government. They could have done what oppositions are meant to do. They could have said, "This is indecent and there is a better way of doing it", but they preferred what they considered to be electoral survival ahead of the survival of a few thousand fragments of injured humanity suffering in detention camps around the country.

I got this letter from Port Hedland. It was written on 20 May this year. "There was happened a sad incident on 24 April in this centre. In the morning of that day a group of Labor Party, including Miss Julia, had a visit from our centre but they didn't talk with any one of the detainees. One of the Afghani detainees requested to visit but was rejected. This 40 year old man got to a very dangerous physical condition, he was trying and entreating but was not allowed to meet the group. Several months ago this man had prepared a passport and visa for another country but the Immigration Department did not accept to send him. This man wanted to discuss this matter with that group." Let me interrupt myself for a moment and point out that here is a person who has been rejected in his claim for asylum and who prefers to leave the country than remain in detention, who's made arrangements to go to another country but the department will not send him. And that's the matter he wanted to discuss with the Labor Party delegates. The letter goes on: "This man wanted to discuss this matter with that group. After the group left the centre this man threw himself from a tree. When we reached the place we got him unconscious and bleeding from the ears and we thought he was dead. After about 30 minutes he was taken to hospital in Perth. Now it is about one month he has been in a coma." In fact he regained consciousness a week or two after this letter was written. But what a marker of the moral failings of the Labor Opposition that even such a person's individual and perfectly justified

request for a meeting was ignored and led him to such a desperate measure.

I never thought I'd read a letter like this written in Australia. It was also written in Port Hedland. It's dated 14 February, St Valentine's Day, this year. He thanks the writer for having written to him, a stranger from out of the dark. "I want to write to someone outside because I don't have anyone outside. I need to write some letter because I forget everything in this two years I'm in the prison. I'm very happy this time because I learn some good Australians support us. Please, Catherine, we need freedom like every human. I have two years here and I have not heard anything about my family and my country and I have not heard anything from any Australian. I know the Australian government no good about refugees. I'm very happy to write for you because this is the first one I write one letter. Please don't forget us, we're humans."

How many of you can take pride in the fact that we have a government whose policies induce any person at all to write quietly and with such dignity "Please don't forget us, we are humans." How can we in this prosperous 21st Century treat people so shamefully that they have to remind us that they too are human.

The Government is full of rhetoric about how this is the only way of dealing with this refugee crisis. It's nonsense. First of all it's not a crisis. Let's look at the figures for a moment and think about the alternatives that would work. In recent years the number of informal arrivals was approximately 4,000 per year, the maximum about 4,200. That's to be compared with our orthodox migration stream of 100,000 people per year. It's to be compared with our allocated or self-imposed quota of refugees of 12,000 a year, a quota which despite recent rhetoric from the Government has not been filled by refugees in any of the recent years. We've only gone over the 12,000 figure if you add humanitarian visas into the refugee figure. These are added regardless of refugee status and account for about 3,000 in each of the last two financial years. In earlier years before June 2000 we went several years without filling our quota by any measure and we actually had carry-over quota for the remaining years. The fact is we have a tiny number coming by not displacing other people from their claims to come here and seek asylum.

Second, the number of refugees we will ever get is bound to be small. It's bound to be small because we're protected by our geography. It's an incredibly dangerous journey to get to Australia by boat from Indonesia and there are not many other places that they're trying to

come from. It's possible, I suppose, if you're really generous about it and imagine a possible future, that the number might rise to 10,000 or even 20,000 a year. Compare that with most Western European countries that get in the order of 80,000 or 100,000 refugees per year.

Is it so difficult for this country, prosperous and large as it is, to handle 4,000 or 5,000 or 10,000 refugees each year? Is it so difficult for us to say we recognise their desperate plight and we will help them for as long as they need help? The extraordinary thing about this whole debate is that it's been somehow merged with migration questions. Of course we can, as Mr Howard famously said, decide who comes to our country and the circumstances in which they come, if you're talking about migrants. If you're talking about migrants there's nothing wrong with that, but if you're talking about refugees that is heartless and you cannot impose the same standards.

Think of a simple domestic analogy. We all own a house, we decide who comes into our house and in what circumstances they come. Fine. But if you see a child running down the street being chased by a rapist will you apply the same standard? Of course not. Any decent human being would allow the person in and protect them for so long as they needed protection and you don't leave them outside and ask questions; you don't mistreat them before you're satisfied with their story; you let people in and protect them because it's the decent human thing to do. That's what our country should be doing and we have signally failed since 1996 to do it.

The other thing that I want to say about the refugee treatment is this. Any decent country should receive refugees and treat them decently whilst their claim for asylum is processed. It should process their claims fairly and those who fail the test should then be removed from the country if removal is possible. What do I mean by "treating them decently?" It seems to me that especially with the small numbers we're confronted with there is nothing wrong at all with the notion of initial mandatory detention for perhaps three weeks whilst essential checks are carried out. Those essential checks would be make sure they're not on Interpol's most wanted list and make sure they're not carrying a communicable disease. That's the sort of test which most civilised nations impose and then they release the person into the community. You can release them into the community on bail. Bail works pretty well in the criminal justice system and there is no evidence that it would not work equally well in connection with refugees. In fact, I think, there's a guarantee that it would work well. Two things perhaps. First,

most people who skip bail in the criminal justice system skip bail by going overseas. That's not going to be a problem or, if it happens, it's the end of the problem. Second, if you're going to treat these people decently you've got to give them some money to survive on and that means they'll have to go to the Centrelink office every week or two to pick up their cheque. It's a pretty effective way of keeping tabs on them. I mean are we so stupid as a nation that we can't think of a substantially foolproof system of keeping control of people who are released into the community rather than being held behind razor wire? Really. We're supposed to be the clever country, I think.

If we deal with it like that we not only will improve our reputation and restore to ourselves some sense of dignity in the international community, we will also save a great deal of money. It costs about \$120 per person per day to lock these people up under the care of a subsidiary of an American prison organisation and destroy them. Because that's what we're doing, we're destroying them. \$120 per person per day it costs us to destroy them. A bail system costs about \$5.50 per person per day to administer. And even if you gave them a generous living allowance you would come in with a figure that's about 20 per cent of the amount of our taxpayers' money that is presently being spent brutalising these people. It seems to me that the Government has avoided all discussion of cost because they know how bad the figures look. So you probably will have picked up I'm not really in favour of mandatory detention.

I wonder if we can have a quick look at the so-called Pacific Solution. Let me remind you of something that Mr Downer said in his famous speech. He said in November 2000 - no doubt he regrets it now - bit by bit - "Leaders of governments that suppress human rights are being made to feel uncomfortable, however much they bluster and hide behind sovereignty arguments." You may recall that the entire foundation of the argument of the last election for the Tampa business and the treatment of refugees in detention centres was border protection, protecting our sovereignty. Now, of course, it's self-evident nonsense because you only need to protect your borders against a hostile invasion and on any view of things refugees do not constitute a hostile invasion. You may want to exercise some border control and you ought to bestow refugee protection. Unfortunately, we've got the equation all the wrong way round.

Then when it comes to sovereignty, look at what we've done to Nauru's sovereignty. Nauru has a modern constitution. Its constitution

guarantees that you will not be detained except in certain limited circumstances, typically after conviction of an offence. There's only one exception to the prohibition on detention that's relevant here and that is if you have entered the country illegally and you're being held for deportation or extradition. But, of course, the people who have been deflected to Nauru, kidnapped on the high seas and taken to Nauru, those people cannot be said to be unlawful entrants into Nauru. Why? First, because they were allowed in under an agreement with our government which provided them with millions and millions of dollars as a reward and second, because the visa application for the Tampa people, which I have seen, is actually made out on behalf of the Tampa people by a member of Nauru's own Immigration Department. So their Immigration Department actually applied for them to come into the country. So by what logic can it be said that these people could be mandatorily detained?

The DIMA website for a number of months boasted proudly of the number of asylum seekers who were detained on Nauru. When this little constitutional difficulty was pointed out to them they quickly changed the website so as to say that they were housed on Nauru and denied that they were being detained. It emerges that the visa they were granted is a visa which has a condition that they have to remain behind the wire in the topside camp. It's just detention by a different device, especially since they had no say about the terms of the visa. They didn't even want to be in the place. They had been forced there against their wills and given a visa which requires them to be detained. It is constitutional nonsense. It has trashed the sovereignty of Nauru and all for thirty pieces of silver from the Australian government.

Furthermore, we have letters from people on Nauru who tell us what it's really like and what happened to them on the way there. These are the people who just one year ago we were trying to get *habeas corpus* for. You will remember they were eventually transhipped from Tampa on to the Manoora and from Manoora they were taken to Nauru and there they were eventually forced off the boat against their will. On board the Manoora, they write, twenty people were unconscious due to the heat and starvation. "They treated us like terrorists and were ready to dish out rough and inhumane tactics. We were not given any food for eight days and when food did come it was stuffed in a plastic bag. All of us who ate the food became sick and had diarrhoea. Some of us were passing blood. While rushing to the toilets and having these discomforts the soldiers were smiling. We are sure that they had put

some poison in our food. Another incident was when they hadn't fed us for three days the soldiers came out with a loaf of bread and jam and placed this food in front of us. There were 152 of us who rushed out to get this food. While we were fighting over the food the soldiers were filming. It was a deliberate course of action to show the world that we were animals that would kill for food. Would they do this to their own kind? And if Australia does go to war can we expect them to be consistent to this behaviour of mistreating people and treating them like dogs and pigs."

This was written from Nauru. "By water supply I mean that we do not have enough water for going to the toilet, taking a bath and washing our clothes, for example. In one corner of the camp there is one water store in which often only one water is delivered every day and here are almost 500 people consuming water from the same tank. An interesting story is that when Mr Phillip Ruddock came here our water stores were all full and we tried to utilise our best. Most of us take bath when it rains heavily, however, the water is spent very soonly and then the rest of the day and the night our toilets are awfully smelling and thousands of flies and mosquitoes are in each toilet."

Another letter identifies how eight of them were arrested and put in gaol for having stepped outside the wire. That occurred in a country which bans detention without trial.

You will all have heard the sad and somewhat puzzling news that one of the people - one of the Afghans from the Tampa who was taken to Nauru died the day before yesterday. This morning we got a fax from some others from the Tampa. He died apparently of natural causes. There's no suggestion that there's going to be an inquest held. But he was only twenty-nine. Twenty-nine and he probably died of a broken heart. According to the traditions of the Afghan it would be a disgrace for this man to be buried on Nauru. There is no Muslim graveyard there and his family wish him to be buried in Afghanistan. The people who wrote to us say that they have telephoned this man's family in Afghanistan and the family desperately wants his body brought back. But at a time when Australia and the International Organisation for Migration is saying that it will compulsorily return all of these people to Afghanistan, they refuse to send back the corpse because of the risk that it will not arrive safely. So apparently it is so dangerous that you can't send a corpse but not dangerous enough to prevent you from sending live human beings.

I began with the theme of hypocrisy and human rights. It seems to me that Australia has got a dreadful problem on its conscience. What

we're doing to refugees onshore and offshore is nothing short of a national scandal. I don't know how many of you - probably most of you - have had the awful experience of waking in the dead of night, hearing a child sobbing in a nearby room. The refugees are the child sobbing in the next room for this entire country and we must do something to help them. Thank you.

QUESTION: Thank you very much for a wonderful address. What do you think the government's motivation is for continuing the current system?

MR BURNSIDE. They know it plays well in the middle areas where the votes are to be had and they do it for the votes. I am convinced that if 51 per cent of Australians said as one person "This is a disgrace" there would be a sudden wave of moral insight in the Government and it would all change. In fact I think it's one of the most disgraceful things about it that they can be so cynical and their cynicism was matched, as I said, by the Labor Opposition which had its own cynical motives for playing the same card.

QUESTION: Thank you for an extremely moving talk. Julian, I want to disclose my own bias in this. My family came here as political refugees in the 1950s and at that time this country was generous enough to give us refuge. I'm privileged enough to be a lawyer now and I'm grateful for the opportunity that this country gave to my family and to myself. When I did Law/Arts at Melbourne University, I studied the Third Reich because my mother was incarcerated under the Third Reich and I tried to understand that political period. I'm grappling currently with what it is about us as human beings which makes us vacillate in terms of our humanity and my dilemma currently is to understand why so many of us who are so privileged in this society - and that includes myself - are so silent over such an horrendous issue and how easy it is to build on human fear, particularly after 11 September. So when you talk about the Government, my view is you're talking about us. The majority of us in Australia is against a current group of people because we're frightened of them. What is it about us as human beings that makes us so frightened and then relies on arguments of legality, as you correctly pointed out. You said "Look, these people are here unlawfully", but are notions of unlawfulness appropriate when you're seeking protection when you're claiming to be a refugee? Some of my friends consider me to be a bit of a renegade because I do have this dilemma and I don't fit into the social mould very readily. How do you change the majority opinion?

MR BURNSIDE. It's a really good question and I've grappled with it. I'm not sure I've come to any conclusion. But for what it's worth, I think the problem is largely this. The Government has effectively hidden most of what is going on. If you look back at what happened at Harbin, what happened in Changi, on the Burma railroad, what happened in the death camps in Europe, what happened in the genocides in Rwanda and Yugoslavia, it's apparent that that sort of conduct is not possible unless the oppressor regards their victim as sub-human, children of a lesser God. So that's the necessary condition. You've got to not regard them as human. If the Government can keep them hidden from us and, in particular, keep their suffering hidden from us, it is much easier to justify what they're doing and they have been very effective in hiding it from people.

Now bear in mind they uniformly prevent the press from getting into the detention centres. They do so ostensibly to protect the privacy of the detainees, but when the Curtin detainees all signed a request that the press be allowed, the visit was nonetheless refused. More evidence of this. I was involved in the MUA case in '98 and you will remember on 8 April 1998 there were dramatic photographs of the large necked gents with the balaclavas sitting in the Patrick shelters and attack dogs chained to mesh fences and I think those images had a great deal to do with the sudden shift in public opinion from the MUA being public enemy No.1 to MUA being heroes. It was really astonishing. The Government learned its lesson from that.

When the Tampa arrived the airspace around it was closed, the port at Christmas Island was closed, the press were not allowed within coo-ee and the best images you got were distant images of what might have been people sitting on the deck of a ship. The Government has prevented us from identifying with these people as other human beings and until you see them as human beings it's very easy for your moral senses to be anaesthetised and the government, of course, plays on that.

Since September 11 things have been even more complex, but let's not be deceived about that. All of this has been going on since well before September 11. In fact, the judgment at first instance in Tampa was delivered in Melbourne at 2.15 p.m. on 11 September Australian Eastern Standard Time - nine hours before the attack on the twin towers. After September 11, of course, it simply adds a cheap shot for governments to suggest that the people who are fleeing Afghanistan are in some sense still terrorists who were operating in Afghanistan. It's

very weird logic. I don't understand why it is that a person who escapes a tyrant should be regarded as being the same as the tyrant, but that seems to be the logic underneath it.

Interestingly, one of the bases for rejecting refugees is on the "character" ground. If you were a terrorist undoubtedly you would be rejected on character grounds. I think of the 13,500 refugees who arrived informally up until the time of Tampa only five had been rejected on character grounds. So it's really a dishonest furphy to suggest that it is terrorists who are coming here and all you have to do is go to a detention centre and meet some of these people and you realise they are just other human beings, like the letter said. It's one of the hardest things. Meet a few refugees and discover these are human beings just like us. They hurt just like us. They need freedom just like us. It's much harder to treat them like this when you know that.

QUESTION: Once an asylum seeker has been rejected and sent home, is there any follow-up as to whether they got it right?

MR BURNSIDE. The short answer is that as far as I'm aware there's no follow-up, it's just too difficult. By definition these are people coming from places that are in turmoil and keeping track of them after they return is nigh on impossible. We do have reports of people who are sent back and are arrested, killed, but to be honest there's no reliable information.

QUESTION: I wasn't surprised to hear about how poor the conditions are at Woomera and some of these onshore detention centres, but what on earth is Australia building at Christmas Island? I read they're spending a couple of hundred million for a processing centre for refugees and, from what I can gather, there's been a very limited number of ships (if any) getting through from Indonesia these days. So is it a military base or are there gold-plated taps in the bathrooms or what?

MR BURNSIDE. I don't know why the price tag is so high. Why they're building it is this. The Pacific Solution can't survive. It really is nonsense. It's being challenged in Papua New Guinea which also has a modern constitution and I'd be astonished if the challenge didn't succeed. So it will collapse. That means that the people have to be sent somewhere unless the government reckons it's free to throw them into the ocean and let them drown. My instinct is that they will be taken from Nauru and Manus Island and put on Christmas Island where they will, under the present legislation, be entirely excluded from the Australian legal system. It's a startling thing when you think about it.

There is no other group in this country whose rights are so curtailed as people who come here seeking help.

Under the March amendments to the Migration Act a person may be removed from Nauru by force, taken to any part of Australia and whilst they are in Australia they may not make an application for asylum and they may not approach the courts for any reason, including it would seem a challenge to the legality of the force used to bring them here in the first place. It's an astounding thing. We have a country which has passed laws that allows people to be kidnapped at sea and moved around the globe at will and even if they're in our territory they can't challenge the legality of what's being done to them and this includes children as young as two and three years old. Staggering.

QUESTION: (Off mike).

MR BURNSIDE. The question is concerning the Afghans who have been repatriated with a package, I think it's about \$2,000 actually, and it is being offered to all of them as an inducement to go. It's very interesting psychology. You treat them really badly and then offer them some money to go back to a place that is part of the axis of evil and in gross turmoil. It's a pretty difficult decision for people to make. There are historic parallels for that too.

QUESTION: (Off mike).

MR BURNSIDE. Many don't want to go back to their homes, first of all because a lot of them are Hazara and the Hazara are in a position that's equivalent to the Jews in Europe in the 1930s. They are really treated very badly. So the fall of the Taliban is more or less irrelevant to them. But, of course, there's nothing new in this. In the late '30s we rejected Jewish refugees from Europe. In November 1938 we attended the Evian Conference that Franklin Roosevelt had established and our delegate said, "We do not have a race problem in Australia and we see no reason to import one." Terrific.

It comes down to this question of the genuineness of these people. There is no doubt that they come from desperately difficult circumstances. There can be some doubt at times about whether they meet the exacting test required if you're to be strictly a refugee. It may be not enough that you risk death when you return. And, of course, not surprisingly, there are some people whose desperation is such that they will try anything and so there are people like Mr Bahktiyari who, it seems, may have misrepresented aspects of his past. We know for sure he is Hazara and I frankly can understand why any Hazara would flee from Afghanistan or the adjacent parts of Pakistan. The unfortunate consequences of Mr Bahktiyari's case is that the Government now

thinks that it's got him nailed as being a fraud and usually you would think that if one refugee out of a few thousand was a fraud that wouldn't be headline news and yet it was. It was front-page news for a couple of days because the Government wants us all to think that because Mr Bahktiyari might have polished up his story a bit therefore every refugee is a fraud. There is no other explanation for making such a fuss of Mr Bahktiyari's case and I don't know how fair it is to Mr Bahktiyari himself. But let's put that to one side. Let's assume the worst against him. It's grossly unfair on the other refugees who come and any one of you who got even a moment's satisfaction out of Mr Bahktiyari's exposure should think very carefully about what that reflects on matters concerning prejudice and your views about other human beings and their entitlement to a fair hearing and decent treatment.

QUESTION: MS SHIFF. There was an application made by the Bahktiyari boys to the Family Court in Adelaide, Justice Burr was hearing that matter and the case has been adjourned until 6 September. The Government is contesting that the Family Court of Australia has jurisdiction to deal with the matter. Will you be monitoring that situation and do you have any particular views in relation to the arguments

MR BURNSIDE. I don't want to get into the legal debate because I haven't researched it. But it does strike me - as a matter of principle - as unfortunate, to say the least, that there's a group of people who can be excluded from the courts on some narrow jurisdictional quibble. If the Family Court otherwise would have jurisdiction in like circumstances for Australian citizens why shouldn't it have jurisdiction for people who are here held in Woomera?

You have the same problem in a starker form with the stand off between the State Child & Adolescent Mental Health Services on the one hand and the Department of Immigration on the other. The State Mental Health Services have the disadvantage that they're operating from state jurisdiction. But those bodies are there in order to protect children in our country and yet the Department of Immigration steadfastly refuses to let them protect children held in detention centres. Children who, on any view of things, are being abused. They're being abused not by individual treatment but by the way in which they're being incarcerated.

The whole of the medical profession, I think for the first time in history, united on the proposition earlier this year that what is going on in the detention centres amounts to child abuse. I don't know how we ever got to this position. We're a disappointing country at the moment.

