# *Deterrence: Australia's Refugee Policy*

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When the MV Tampa sailed into view the refugee policy rhetoric of the Australian government was confirmed: these are people we do not want. When photographs emerged of refugees on an Indonesian fishing boat they had travelled on to reach Australia, allegedly showing them throwing their children overboard, it was clear: these are people we must deter from coming to Australia. When information emerged that these pictures were distortions of photographs of refugees attempting to *save* their children from a sinking vessel the government misinformation and lies were a side issue, these were still people that we should not admit. When asylum seekers inside immigration detention centres sewed their lips together and went on hunger strike in protest at detention conditions and the prospect of Temporary Protection Visas (TPVs), these people in our midst were represented as culturally confronting and un-Australian, people who should be repudiated. Government rhetoric on refugee policy is that we must deter such people to protect the Australian community, to guarantee the integrity of Australia's borders and to regain control over the integrity of the Australian refugee program. In these incidents we had a national crisis which provided the site upon which the government was able to affirm the worst fears of the general public. But it was not in the coming of asylum seekers that this crisis was made possible, rather it came as the culmination of a refugee policy rooted in an idea of deterrence which is based on the incessant background hum of discourses of asylum seeker deviancy. Australia now operates a refugee policy that assumes that refugees *can* and *should* be effectively deterred from both claiming and gaining refugee status. It is a policy that operates across a boom and bust cycle, of lurching from crisis to crises, across governments of liberal and labor persuasion. We will argue deterrence has now been deployed across a continuum in refugee policy, with traceable beginnings, questionable means and with no end in sight.

Our examination of parliamentary debate on refugees is focused upon the onshore refugee determination component of Australia's refugee policy, and the ways in which deterrence has been deployed. The Australian refugee program is split into onshore and offshore components. The offshore program refers to those refugees that are processed by the United Nations High Commissioner for Refugees (UNHCR), usually in a country of first asylum. If they are accepted as refugees they are brought to Australia for resettlement. The onshore program refers to those people who arrive in Australia without the appropriate visa and are detained once they disembark from boats or planes. It also refers to those who come to Australia on a valid visa and then claim asylum. Australia links these two programs and caps the number of refugees annually accepted (currently around 12,000). This means

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that if more refugees are accepted in the onshore program, less are accepted from the offshore program. No other country maintains this zero sum game between offshore and onshore applicants. As a consequence of this approach the rhetoric of queue jumping is easily invoked against those coming as part of the onshore system; and it obscures the reasons as to why many make the hazardous journey. Onshore asylum seekers are considered less deserving because they have usually paid people smugglers to reach Australia. Genuine refugees are considered those that wait within camps in places like Pakistan and Thailand to be processed by UNHCR. Deterrence, as it has been positioned within refugee policy, is aimed at onshore asylum seekers. It is aimed at preventing them from embarking on the journey to Australia. Therefore our discussion remains trained on the onshore component of Australia's refugee policy.

We focus our discussion on debates in the Australian Federal House of Representatives and the Senate. In so doing the centrality of the legislature in contributing to popular perceptions relating to refugees is reaffirmed. While media representations of refugee issues are certainly important (see Pickering 2001), strong leadership by either of the major parties has the potential to transform the debate. It is for this reason that we have focused on the legislature. Successive governments have sought to reduce judicial review of the legality of refugee policy and refocus the initiative, parameters and substance of refugee treatment on the legislature. In so doing the rhetoric of the House of Representatives and the Senate are central to the ways the refugee is understood in the public domain. We systematically searched Hansard over a twenty-year period using strings of words. We did so through the discussion of proposed legislation as well as within questions on notice and questions without notice. Consequently, we focus on periods when new immigration legislation or amended immigration legislation was being debated. We isolated sections of text where ideas of deterrence were discussed, both implicitly and explicitly. From the isolated data we have assembled sections of text that independently help to understand the use of deterrence in discussion of refugee policy, but also text which when used interdependently with other extracts offers a nuanced account of refugee policy within the parliament in relation to deterrence. Importantly, we are interested in the ways an examination of the text can help us better understand the operation of power. In so doing we draw on the work of Fairlough's three dimensional conception of discourse, and correspondingly a three dimensional method of discourse analysis:

> Discourse, and any specific instant of discursive practice, is seen as simultaneously (i) a language text, spoken or written, (ii) discourse practice (text production and text interpretation), (iii) sociocultural practice (Fairclough 1995:97).

Deterrence has come to be the raison d'être of Australian refugee policy. We will chart the ways deterrence has developed within refugee policy by tracing its use in the discourse of the Australian federal parliament. We will argue that deterrence not only distracts refugee policy from the protection of refugees but comes to co-opt a discourse developed in the criminal justice system in a way that seriously distorts the debate on refugees. In so doing deterrence comes to rest on two key assumptions. First, deterrence assumes that a rational decision has been made to break legitimate laws. Second, deterrence excludes consideration of the structural conditions as to why a person may break seemingly legitimate laws. In relation to crime and the criminal justice system this includes the structural conditions of poverty, racism and the like. In relation to refugees it focuses solely on the 'pull' factors and excludes consideration of the 'push' factors. We will argue the use of deterrence effectively excludes a consideration of the conditions that produce refugees and as such seriously undermines principles of international refugee protection. In short, we are interested in the ways deterrence renders refugee policy a domestic concern divorced

from international conditions, the international community and most importantly principles of international refugee protection. Moreover, deterrence is uncontained: it has no bounds. With an objective of deterrence, the means of deterring refugees are limitless. The focus of deterrence is upon those we wish to deny: racially, bodily, legally, politically. The policy is not only aimed at the stranger, the non-citizen, it is aimed at the ultimate (discursively constructed) trans-national deviant. However deterrence is communicated almost entirely with an internal audience.

## Deterrence and the Criminal Justice System

Deterrence is a key component of sentencing legislation throughout Australian state jurisdictions. In this sense deterrence is often considered necessary '... to deter the offender or other person from committing offences of the same or a similar character ...'(s1A, *Sentencing Act* 1991 (Vic)). The rationale for this aspect of the sentencing smorgasbord[1] has been understood also in terms of a dessert of denunciation which broadly understands deterrence in terms of rationality or choice:

> In many cases before the courts, the offence may be motivated by malice, greed, thoughtlessness, stupidity or momentary anger, but may not be the product of some underlying psychological, psychiatric, social or other pathology. in these cases, the appropriate response is proportionate punitive response which addresses the retributive, deterrent and denunciatory aspect of punishment (Frieberg 2002:34).

Within such an understanding the duality of rationality and irrationality is reinforced. Offending is a rational activity and the state must respond rationally to deter the offender and others from such acts. Criminologists have long been interested in the rationales for sentencing and punishing offenders. Notably they have made a range of contributions as to the scope, nature and workability of deterrence in the criminal justice system. The most recent review of sentencing legislation in Australia contends that the sentencing system cannot, by itself, reduce crime and increase community safety (Frieberg 2002). Deterrence is considered but one component of the sentencing framework, a component overshadowed by concerns for proportionality and parsimony. In order to promote sentencing transparency and improve deterrence the proposal to develop guideline judgements for the judiciary was recently put forward in the state of Victoria. However, it was rejected because it limits the discretion of the judiciary to individually tailor sentences to individual offenders and in acknowledgment of the fact that offenders do not fall into neat categories (Frieberg 2002). Moreover, studies in a range of jurisdictions have found that deterrence does not have clear or measurable results. The rate of crime is seemingly unrelated to rates of imprisonment. The most clear example of this are studies that have consistently found that the operation of the death penalty does not deter the most serious crimes. Nonetheless, deterrence has come to be one sentencing component over which public concern has been paramount. Moreso than rehabilitation, and alongside incapacitation, deterrence has been the focus of media and broad public criticism of so called lenient sentencing by the judiciary. Research has found that the public has a high expectation of the sentencing process, especially in terms of deterrence and that public confidence is best addressed by improving the public's knowledge of the system and making the process more transparent:

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1 Noting that deterrence is but one of the rationales for sentencing along with rehabilitation, incapacitation, retribution, denunciation.

> Research into public opinion and sentencing consistently finds that the more information that is provided to respondents the less punitive are their responses, especially when the polling takes the form of sentencing vignettes or simulated sentencing exercises (Frieberg 2002:42).

In short criminologists have challenged and critiqued the notion of deterrence as it operates within the criminal justice system. Seriously questioning its workability, criminologists have offered complex arguments for its ongoing, but diminished inclusion, in a principled criminal justice system. In so doing they have helped to prepare the ground for the critique of law and order, upon which deterrence as a principle is popularly sustained.

Indeed, deterrence points to the meshing of law and order politics and refugee policy, particularly in relation to the notion of choice. In relation to the criminal justice system law and order rests on bipartisan support, with the only disagreement between major parties being who is tougher on law and order. While law and order politics have been more muted in Australia than in the United States or the United Kingdom, it is still clearly apparent in the introduction of mandatory sentencing in Western Australia and the Northern Territory during the 1990s, policies which disproportionately affected indigenous communities, and the use of zero tolerance policing in New South Wales. What is clear from the use of law and order style politics in Australia is that the implementation of such policies keeps a focus on street crime, is a source for bolstering police powers, and increasing prison capacity (and the development of the prison industry) at the expense of marginalising the young, indigenous and ethnic minority groups, and heightening a fear of crime in the community out of all proportion with the actual occurrence of crime.

Deterrence has been challenged, critiqued and given a reduced place within the criminal justice system. Deterrence remains important, but it is overshadowed by a more complex and nuanced approach to sentencing and punishment. Learning from the deployment of deterrence within the criminal justice system, what can criminologists offer to debates on current refugee policy?

## Hegemony and Censuring Western Democracies

How does the principle and rhetoric of deterrence as found in the criminal justice system provide a discursive repertoire that is both familiar and convincing in the promulgation of refugee policy? What are the implicit and explicit ways that deterrence operates in the messages government send about asylum seekers and the justifications they give for refugee policy? Can deterrence within refugee policy be understood as a form of state denial, and a buffer to external and internal censure? In asking these questions we are engaging in two distinct but related theoretical terrains.

First, drawing on the work of Gramsci, we are interested in the ways the ideological work of parliamentary debate has produced a kind of 'common sense' representation in relation to the deviancy of asylum seekers and the necessity and practicality of deterrence. The social function of the kinds of common sense deployed help us examine the ways legality and legitimacy is constructed and reproduced in western democracies. Largely, Gramsci's work on hegemony has been understood in terms of ideology, culture and civil society — particularly education, school, the Church and the media — and has usually been defined as consensual control rather than coercive control. Indeed hegemony, as Forgacs notes: '... has been linked by Gramsci in a chain of associations and oppositions to "civil society" as against "political society", to consent as against coercion, to "direction" as against "domination"' (1988:423). Hegemony, in this sense, is maintained through the

consent of the majority of the population and cannot be maintained by force alone. Indeed hegemony is viewed as being very much apart from the state and repressive apparatus and domination. However alternative readings of Gramsci reveal that the repressive state apparatus was central to his thinking, particularly in terms of consent and hegemony.[2] Ransome (1992), for example, notes that Gramsci shifted his focus to the *synthesis* of force and consent — a combination of social and political control which combines physical force or coercion with intellectual, moral and cultural persuasion or consent:

> The normal exercise of hegemony on the now classical terrain of the parliamentary regime is characterised by the combination of force and consent, which balance each other reciprocally, without force predominating excessively over consent (Gramsci 1971:80).

Hegemonic leadership has come to be understood as that which does not continually rely on the use of force. In contrast non hegemonic leadership is coercive, fragile and unstable because it lacks widespread legitimation. Ultimately Gramsci looked to explore, through the concept of hegemony, the ways social control is constituted by both force and consent, demonstrating that repression is not solely the remit of the State. Gramsci does not separate coercion and ideology but rather attempts to show that one cannot be understood without the other. Indeed, the repressive arms of the state, as part of political hegemony, are crucial to maintaining widespread hegemony:

> It is to be noted how lapses in the administration of justice make an especially disastrous impression on the public: the hegemonic apparatus is more sensitive in this sector, to which arbitrary actions on the part of the police and political administration may also be referred. [1930-32] (Gramsci 1971:246)

The way in which we do this, as mentioned earlier, draws on the work of Fairclough (1995), and in turn Foucault (1979), in understanding the kinds of 'technologies' constitutive of power in modern society and the ways hegemony and hegemonic struggle are constituted by and through the discursive practices of institutions, such as the parliament. We are also interested in the ways deterrence (as a form of technologisation) is not a flat or blanket discourse but one with ruptures and incommensurabilities:

> Discourse conventions may embody naturalized ideologies which make them a most effective mechanism for sustaining hegemonies. Moreover, control over the discursive practices of institutions is one dimension of cultural hegemony. Technologization of discourse is part of a struggle on the part of dominant social forces to modify existing institutional discursive practices, as one dimension of the engineering of social and cultural change and the restructuring of hegemonies, on the basis of strategic calculations of the wider hegemonic and ideological effects of discursive practices. However, hegemonic projects are contested in discursive and other modes of practice, and the technologization of discourse is no exception (Fairclough 1995:91).

In this light we want to explore the ways deterrence has become naturalised and 'commonsensical', an ideological presupposition of refugee policy. Naturalised discourse conventions are a most effective mechanism for sustaining and reproducing cultural and social hegemony (Fairclough 1995). Our project is part of an effort to denaturalise such conventions.

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2 For example: The fact that, more than any other great revolutionary Marxist thinker, he concerned himself with the sphere of 'civil society' and of 'hegemony', in his prison writings, cannot be taken to indicate a neglect of the moment of political society, of force, of domination. On the contrary, his entire record shows that this was not the case, and that his constant preoccupation was to avoid any undialectical separation of 'the ethical-political aspect of politics or theory of hegemony and consent' from 'the aspect of force and economics' (Hoare & Nowell Smith, 1971:207).

Second, we are interested in whether deterrence can be understood as a means to distance acts of western democracies from readings of criminality and censure. Drawing on the work of Cohen (2001) we are interested in the ways the nation state engages with ideas of national self interest, the moral agency of the state and doctrines of non interference and national sovereignty under the guise of deterrence. In his influential work, *States of Denial*, Cohen outlined the multifarious ways that individuals, groups and states come to deny suffering and atrocities. Across individual and collective accounts of, in particular, state crime he outlined the ways official discourse, as well as the recollections of those involved account for their part in the pain and suffering of others. In this sense we are interested in the ways deterrence becomes a defence of government policy and practice. In what ways does the rhetoric of deterrence aid in the systematic denial of truth about the plight and treatment of asylum seekers? How does deterrence work as a form of denial in the maintenance of a social world in which the (mis)treatment of the asylum seeker has been unrecognised, ignored or normalised? What are the vocabularies drawn upon, how do they mitigate or relieve responsibility, how do such vocabularies align interests within the community, within civil society and across trans state relations? In short, does deterrence act as a rationalisation in ordinary cultural transmission (of ideas and words that are well established and available) of repressive government policy and practice? We are interested in what Cohen (2001:59) has described as accounts and rhetorical devices that include active ideological justifications. What is the currency of deterrence and how do ideological accounts and defence neutralisation come together within the discourse of deterrence? How do they do so in ways that diminish criticism and censure of the government?

The discourse of the parliament is fractured and in many ways incoherent. Nonetheless, it provides a powerful site of contest in the explanation and rationalisation of the production of a common sense discourse of refugee policy (predicated on) deterrence, and is a window of opportunity for a socio-legal study of refugee policy. First, we begin by tracing the development of deterrence across parliamentary debate and highlight moments when deterrence has been both implicit and explicit in parliamentary debates on refugee policy. Second, we examine the potent discursive repertoire that makes deterrence convincing and familiar. Third, we examine the ways deterrence has been reproduced in relation to controlling the uncontrollable, particularly in relation to immigration detention and border control, and the ways the ideological work of parliamentary debate uses deterrence in constructions of legality and legitimacy. Fourth, we address the ways deterrence has rested upon the deployment of sovereignty and the ways deterrence works to buffer the state from internal and external censure. Across these areas three audiences are clear: primarily the internal domestic Australian audience, the external (potential) asylum seekers and the external international community.

## Tracing Deterrence: Explicit and Implicit Messages

Once upon a time, within the annals of parliamentary debate, deterrence was the language of nuclear arsenals and military might. Ministers for Defence rose in parliament and spoke of deterrence in speeches which sought an increase in defence force expenditure as a means of maintaining a system of détente. But then a different group of politicians began to rise in the House and the Senate, arguing that 'it is clear that Australia is increasingly seen by at least some of our neighbours as a soft target for waves of refugees and illegal entrants' (Aldred, *Hansard* 1995:1819). A new and more immediate threat to the defence of Australia was perceived. And so, the principles and language of deterrence were integrated into the practice and political rhetoric of Australian refugee policy. Where once refugee policy operated in the context of humanitarian law, it now existed along a continuum of deterrence

and its associated criminal law overtones. This enabled a series of legislative measures to be introduced which had the effect of producing a hegemonic representation of refugees as criminals; requiring forceful action by the Australian government, on behalf of the Australian community, to deter their illegal and unreasonable choices and to defend Australia's shores and way of life.

The Australian Labor Party (ALP) review of Australia's migration program in the late 1980s provided the first clear evidence of an awareness of deterrence as a factor in refugee policy. In conducting the review, the ALP sought to frame the issue of refugee determination within their broader review of immigration policy, which recognised that '... resettlement is the least preferred response to refugee situations' but nonetheless, remains an important part of immigration policy (Ray, *Hansard* 1988:3753). The ALP recognised that both onshore and offshore refugee determination was a part of their program, and under the review, stated that they would not amend laws regarding the status of those who arrived in Australia as asylum seekers arguing that 'The Government believes that this would create a certain pull factor and could place Australia in the situation faced in some countries where there are tens of thousands of onshore refugee claimants' (Ray, *Hansard* 1989b:3012).

Clearly, the language of pull factors works on a continuum of both explicit and implicit discourses of deterrence. But importantly, at this time the identification of deterrence as a policy motivation is not explicitly associated with a criminalisation of the refugee. Indeed, at a later point in the same speech, Senator Ray explicitly disassociated the government from such a position:

> The Committee's model bill provided for many of the enforcement functions relating to prohibited non-citizens to be carried out through the State law enforcement and justice systems. This so-called criminalisation of enforcement has been widely opposed as harsh and out of step with criminal law policy (Ray, *Hansard* 1989b:3012).

While Senator Ray invokes the language of *illegals* which has become so prevalent of late, the tone of his comment in relation to onshore refugee applicants retains a recognition of the legitimacy of both the onshore and offshore components of Australian refugee policy. Moreover, he explicitly links a failure to provide a just response to onshore applicants in terms of a barbarism of the Australian community:

> Although I want barriers to illegals, we must at all times leave some chink in the armour so that genuine refugees cannot be turned away at our borders. We must always have within our Migration Act provision so that when someone lands in Australia as a genuine refugee he is not turned away but is given due process, so that each of his claims is listened to until the case is finally determined. If we did not do so, we would become a very barbaric country (Ray, *Hansard* 1989b:3012).

Yet, even as the comments made in 1989 retain a sense of the humanitarian and justice dimensions of refugee policy (in so much as the policy still draws on the notion of honouring obligations contained in the Refugee Convention and ensuring that applicants have access to due process in the determination of their claims), it is clear that at this time the ALP Government initiated the discourse of deterrence as a legitimate element of Australian refugee policy. And while Senator Ray was careful to contextualise his comments within a broader statement of the humanitarian principles of the program, his speech marked a moment of legitimisation for the discourse of deterrence within refugee policy; he established what has become a continuum of deterrence which Australian refugee policy has operated along ever since. At any one moment within the Australian parliament and community people occupy a variety of positions along the continuum. While 1989 marked a moderate position, by the mid-1990s the ALP had moved a considerable distance along the continuum:

> What right do illegal refugees arriving in Australia as unauthorised entrants have over refugees from other parts of the world, those who cannot come here by boat? ... I want [Senator Coulter] to tell me why this Parliament, this Government and this country should allow into Australia unauthorised entrants who just happen to get here by boat. ... Let us show some decent concern for those who want to come to this country and who are prepared to stand in the queue ... for those who are legitimate refugees (Bolkus, *Hansard* 1992:2255).
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> The purpose of the Migration Legislation Amendment Bill (No. 4) is to ensure that Australia's onshore refugee determination system is not open to the abuse of forum shopping by asylum seekers ... (Crosio, *Hansard* 1994:2830).

Successive governments discursively produced representations of refugees that correlated with the lowest common denominator of public opinion at any one time. Significantly, in our analysis of Hansard, it was clear that it is the government of the day which most consistently introduces the discourse of deterrence and its associated linguistic triggers into parliamentary debate and broader public representation of the issue. Moreover, while Senator Ray introduced the discourse of deterrence into the Australian refugee policy lexicon, it was in the latter years of the ALP term in office that the language as well as the principles of deterrence came to be deployed on a more regular basis. While the Liberal/ National Party coalition remains in power at the time of writing, a similar pattern was observed in their use of the discourse of deterrence. At the beginning of their term in office it was possible to discern a use of the *principle* of deterrence as a component of refugee policy. This is in direct contrast to the dominance of the language and principle of deterrence since 1999:

> The government has agreed on a $124 million four year programme to strengthen Australia's capacity to detect and deter illegal arrivals (Howard 1999).
>
> I applaud the government on the recent advertising and the harsher measures taken to ensure that illegal boat people do not come to Australia or that they are deterred in the strongest possible way. ... These changes send a message to other people considering illegal travel to Australia that we are certainly not a soft touch, and that queue jumpers will be dealt with very harshly indeed (Gambaro, *Hansard* 1999:13993).

Moreover, refugee policy under the Howard government is now characterised by an overtly defensive policy in relation to onshore applications for refugee status. The Howard government identified the adoption of a five pronged program to address the perception 'that people seeking a migration outcome in a developed country have identified Australia as a soft touch' (Metcalf 1999:777). Mr Metcalf, an officer with the Department of Immigration and Multicultural Affairs (as it was at the time) identified, in that context, that:

> The government is determined to strengthen Australia's response to this unprecedented increase in five ways: firstly, through coastal surveillance and detection; secondly, through prosecution of the people smugglers and seizure of their boats; thirdly, an international information strategy directed at both the smugglers and those they seek to exploit; fourthly, addressing the factors that encourage those who select Australia as a target; and, finally, working internationally — with UNHCR and IOM, countries of first asylum, transit countries and other destination countries — to generate cooperative action against people smuggling and to provide durable protection solutions (Metcalf 1999:777).

Of the five elements of the program, four are clearly focused on actions which constitute a deterrent to people seeking to invoke Australia's onshore protection obligations. These measures were complemented in 2001 when Australia officially undertook a wide ranging approach to deter asylum seekers before they embarked for Australia, en route and upon arrival. The campaign involved an overseas information campaign which:

> Along with posters and other materials, ... included video spots showing the shark-infested seas around Australia, the crocodiles closer to shore, and the snakes further inland — where, as it happens, some of the detention centers housing unauthorized migrants are located. The title, and the message, of the campaign: "Pay a people smuggler and you'll pay the price" (US Committee for Refugees 2002:3).

Despite the dominance of the discourse of deterrence, some within the community have refused to participate, and have resisted the legitimacy of the discourse of deterrence within the debate. In the parliamentary context Green Senator Christabelle Chamarette, Independent Senator Brian Harradine, and latterly Senators from the Australian Democrats have been forceful in exposing what they perceive to be the injustice of the deterrence discourse, and its associated linguistic currency of illegals, queue jumpers, etc in refugee policy:

> It may be that the Government wants to set an example — this seems to be the underlying assumption — so as to deter others from entering Australia in this way. But how can we, in all conscience, accept this? In the criminal system, the principle of general deterrence ... violates justice. ... Much more so is it an offence against justice when no offence has been committed and people have simply sought refuge on our shores. Detention in this situation for people who are being processed for refugee application status is a crime against humanity (Chamarette, *Hansard* 1992:4304).

Yet, the counter discourse, both within Parliament and from those outside has had little impact on the dominant discourse. Successive governments have systematically produced a hegemonic discourse of onshore asylum seekers as deviant. This mechanism has been used to support the production of a refugee policy dominated by principles of deterrence, and has relied on a dualistic set of practices which simultaneously seeks to delegitimise international human rights and refugee treaty obligations[3] while criminalising refugees:

> But, Mr Flood notes that amongst those who have arrived unlawfully there are also former terrorists; former senior officers in repressive regimes; people suspected of crimes against humanity; people with criminal records; organisers of people smuggling rackets; people who have ignored or abandoned protection already available to them elsewhere; and people who have been refused migrant visas and then attempted to enter Australia unlawfully (Campbell, *Hansard* 2001:22076).

> The people on board MV *Tampa* are not refugees; they are occasional tourists: people who have contracted criminal elements or crime gangs who ... are transporting another form of human misery in the form of some who are seeking to come to Australia but not go through the regular channels (Hardgrave, *Hansard* 2001:30703).

The government represents onshore asylum seekers as implicated in a series of illegal activities, including the notion that individuals themselves have engaged in serious criminal offences and seeking to criminalise them through their association with people smuggling rackets. Criminalisation is further reinforced by the operation of mandatory immigration detention for so called 'unauthorised arrivals'. Members of Parliament deploy representations of refugees which contribute to the hegemonic production of refugees as individuals who need to be deterred from entering Australian society. We shall now turn briefly to a consideration of the ways in which the introduction of the category of the Temporary Protection Visa has contributed to and depended upon the discourse of deterrence.

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3 For example, in 1989 Senator Ray clearly articulated the list of human rights and refugee treaties which provided the basis of the Australian response to refugees (Ray, Hansard 1988.3753); in 1994 Philip Rudduck argued: '... We accept that there are certain international obligations that we have acceded to and that we have made important commitments which carry responsibilities that this government and other governments have to accept' (Ruddock, *Hansard* 1994:2834). Yet, the 2001 amendments to the *Migration Act* were such that UNCHR 'expressed concern that Australia is in danger of failing to meet its core obligation not to return people to their place of persecution' (Stott Despoja, *Hansard* 2001 27702)

## Ongoing Deterrence: TPV Holders in the Australian Community

The Temporary Protection Visa (TPV) is a mechanism by which onshore asylum seekers are released from immigration detention into the community if they are found to be a refugee. However, the provision of a TPV significantly reduces their rights to access services provided by the government for refugees who have been processed through the offshore program. The TPV acts to hamper re-settlement in the Australian community and to distinguish TPV holders from 'genuine refugees' and Australian citizens. The process of alienation and the reduction of rights seeks to deter individuals for engaging the onshore obligations of the Australian Government. The TPV program is predicated on the discourse of deterrence, of sending a message to onshore applicants that they are not welcome in Australia. To achieve this the TPV relies on, and perpetuates the representation of onshore refugee applicants as deviant and criminal 'unauthorised arrivals granted protection' (Ellison, *Hansard* 2001:23678), a person to be deterred from taking up a position within Australian society: 'TPV holders are temporary residents who are expected to leave Australia at the end of their visa unless they have an ongoing need for protection' (Ruddock, *Hansard* 2002:1293).

Moreover, the introduction of the TPV category also secures the removal of rights from TPV holders, placing them into a techno-legal realm where the language of rights is subordinated to a bureaucratic 'restriction of services': 'The government considers it inappropriate to provide TPV holders with the more generous range of settlement services available to refugees and others resettled permanently in Australia under the humanitarian program' (Ruddock, *Hansard* 2000a:19370).

The discourse of deterrence acts as the enabling discourse by which TPV regulations function smoothly: it contributes to a hegemonic representation of TPV holders as deviants in the midst of our society and rationalises the removal of a series of human rights that are accessible to others with a more regularised migration status in Australia. Yet, the TPV regulations demonstrates the deformation of the deterrence discourse as it is deployed in refugee policy debates. In domestic law and order debates deterrence in part operates on an assumption that individuals are removed from society as a punishment for their crime, and as a broader message to other individuals that they risk the same fate if they choose to act in a similar fashion. The state acts to physically remove them from society. In contrast, the discourse of deterrence within refugee policy requires the complicity of the community to enforce the act of deterrence as TPV holders move alongside us, yet are, through force of government regulation and community policing, removed from full franchise within the community. Moreover, while the principle of deterrence within domestic law and order debates relies somewhat on the notion that once you have spent your allocated time in prison you should be released into the community, for TPV holders there is an expectation on the part of the government that they will return to their country of origin at the end of the three year period. The action of deterrence in refugee policy is ongoing and conceivably unending in contrast to the fixed term nature of deterrence in domestic law and order debates.

## The Discursive Repertoire That Makes Deterrence Convincing

> The Migration reform Bill principally seeks to provide a system whereby it is much clearer who falls into the lawful and unlawful categories as far as their presence in Australia is concerned (Tate, *Hansard* 1992a:4311).

The press has routinely constructed refugees and asylum seekers not only as a 'problem' but as a deviant problem (Pickering 2001). Not surprisingly, the deployment of deterrence rhetoric in the parliament has similarly rested upon a common vocabulary of deviance. Deviance has been constructed through the deployment of legality and illegality in relation to the very presence of the asylum seeker. *Non citizens* become *illegal entrants*. *Illegal entrants* in turn become *illegals*. *Illegals* in turn become *parasites* and burdens upon the health and legal systems. Very quickly a vocabulary of deviance becomes interchangeable with the notion of the queue jumper. The *queue jumper* is understood as an individual who makes a choice to subvert appropriate procedures and hence colludes in their own illegality. Similar to law and order accounts of street crime, in which individuals must be deterred from making bad choices to offend, deterrence in refugee policy rests upon the common vocabulary of choice. In having a choice, asylum seekers should choose to be part of the offshore program, they should choose not to jump the queue and invoke onshore protection obligations. In their 'choice' it is as if the asylum seeker is able to opt for one side of the deviance binary such a vocabulary allows: they can be genuine or bogus, decent or dangerous, parasites or in need. The *choice* is *theirs*. With such a discursive repertoire at hand, shifting talk of deterrence to the bureaucratic and sanitised 'forum shoppers' seeking 'migration outcomes' seems an almost liberal reading:

> The people arriving on the boats are seeking to migrate to Australia as their destination of choice. There is increasing public sentiment that we should detect them and send them packing. The fact is, however, that many of these people are refugees. This means that we must carefully assess their claims and honour our obligations to those who are refugees. But many of these refugees have left countries where they already have effective protection. They are seeking to choose their country of protection; they are forum shoppers seeking a migration outcome. The minister has now announced further measures to deal with this aspect: measures to reduce the perception by those people that Australia is both a highly attractive destination as well as a soft touch (Chair, Legal and Constitutional References Committee, *Hansard* 1999:777).

Importantly, the discursive repertoire of deterrence and deviance allows us some windows into the ways parliamentarians are cognisant of the potent messages they send in their selection of vocabulary. In the following excerpt we may have been positioned for a cogent critique for the development of a deviancy and queue jumping rhetoric but instead the power of language is seen as a force to be harnessed for the legitimate cause of deterrence and demonisation:

> As illegal immigration has soared in comparison with previous years, so has the meritorious nature of many of these asylum seekers' claims, and the term 'queue jumper' has emerged, bringing with it a sinister meaning instantly recognisable as an un-Australian act, an action that goes against the very nature of our sense of fair play. To his credit, the minister for immigration has devoted much energy to addressing this problem with the full cooperation of the opposition (Sciacca, *Hansard* 2000:18063).

In moving from deterrence as base deviancy to deterrence as effective but banal bureaucracy, queue jumping and choice are navigated by the discharging of appropriate levels of compassion. Those that make claims for protection become the objects of (misplaced) generosity. Illegal immigrants are 'plainly seeking to use the generosity of Australians and are not concerned about the laws of this country' (Kelly, *Hansard*

1999:12305). The discourse is removed from notions of human rights, legal or moral obligations, international law, or a place within trans-national arrangements and communities, and is rather a matter of individually felt emotion, generosity, hospitality and compassion. Responding to refugees is not a legal matter but a matter of conscience — indiscriminately expended and retracted:

> I have compassion for those who obey the law, for those who come out of East Beirut, travel through West Beirut and past the Chouf mountains, get shaken down by the border guards, wait three days in a queue in Damascas, are numb from travelling on public transport and by taxi, and then find out because they do not have their birth certificate with them, they have to make the journey again, being shot at all the way. Our compassion must lie with those people, not with the first person who jumps off QF2, bypasses our immigration system and does a runner (Ray, *Hansard* 1989a:3012).

> Let us show some decent concern for those who want to come to this country and who are prepared to stand in the queue. Let us show some decent concern for those who are legitimate refugees and are prepared to go through the process. Let us show some disdain for those parasites in this community who are feeding off the plight of these people (Hand, *Hansard* 1991:2846).

In turn the deviant, parasitic queue jumper can never be the victim (of persecution by their home country, or by the Australian government) and instead it is those granting compassion that are repositioned as victim. Bipartisanship makes deterrence vocabulary omnipotent:

> We recognise that the asylum seekers covered by this bill are effectively jumping the queue, as it has often been termed. In many cases, they have ignored the decision of the UNHCR or the United Nations High Commissioner for Refugees, in another country and they have come to Australia seeking to try again. This is referred to as forum shopping. By currently allowing them access to our protection, we are discriminating against all other legitimate refugees and asylum seekers who are following correct procedures (Ruddock, *Hansard* 1994:2833).

> I would initially like to concede that the thrust of the opposition's amendments to the Migration Legislation Amendment Bill (no. 4) have been very constructive and of value. I personally associate myself with the concerns expressed by the previous speaker, the honourable member for Berowra (Mr Ruddock). That Australia has problems with a large number of people who feel that they can travel through a variety of countries before making a *claim of convenience* in this country (Ferguson, *Hansard* 1994:2838).

To deviate from bipartisanship is to collude with the object of deterrence. For deterrence to be effective the discourse must be blanket and unrelenting. If you are not deterring refugees then you are part of the (deviant) problem. The following excerpt also points to the portrayal of the audience of deterrence as being wholly external when in actual fact it is an entirely internal audience being addressed:

> The Labor Party, if it refuses to support the government's tough measures, will stand condemned by the community for allowing criminal gangs to portray this nation as a soft target, as an easy touch. Rejection of any part of this package of measures will give these criminal racketeers an enormous boost (Kelly, *Hansard* 1999:12305).

The discursive repertoire that deterrence depends upon disallows the designation of the asylum seeker as a legitimate victim. Instead it is the affluent western democracy that is the just victim. The parliamentary narrative of the predator deviant seeking protection upon its shores is almost uninterrupted. Asylum seekers cannot be regarded as 'real' victims as they are the 'real' aggressors. The nation state cannot be regarded as the aggressor as it is the victim. Moral legitimacy neatly remains the basis of deterrence policy against those that are inherently deviant. The vocabulary of deterrence confers legitimacy on the parliamentary

narrative that seeks to represent asylum seekers and refugees as a national, cultural and legal threat. The parliament is only acting in the country's best interests, while those interests are rarely a matter for debate: their meaning and terms remain assumed and unarticulated. Moreover, the words that surround deviance and deterrence anaesthetise the function of a highly political language (cf Cohen 2001) and provide a buffer between their use in the parliament and the experience of deterrence by asylum seekers. In seeking to 'interdict', 'detain', or grant 'temporary protection' the vocabulary of deterrence leaves us without the sights and sounds of asylum seekers drowning at sea, breathless in a desert detention centre, isolated and depressed in an inner city suburb with little hope of ever seeing their family again.

The vocabulary that deterrence rests upon blurs populist and official discourses for the internal domestic audience. In so doing, the government repositions itself as the ordinary bloke in the street with a vocabulary that reflects street level preoccupations and distances itself from the rhetoric of international law and obligation. The discourse, however, is also fluid enough to embrace a more sanitised vocabulary in relation to the specifics of legislation. The victim status of the nation state is reconstituted through notions of deterrence and defence in the vocabulary of agreements, obligations, resolutions, legislative guidelines and the like. In 2001 there is a particularly compelling example of the ways that the policy pragmatics of deterrence (namely TPVs, immigration detention, expeditious deportation and attacks on international refugee protection regime) is made legally impenetrable and bureaucratically slick. In responding to the question from the opposition:

> Are refugees being accorded treatment as favourable as possible with regard to education, as Australia committed itself to do in Article 22 of the Convention; if so, how does this correlate with the Temporary Protection Visa provision to deny access to basic English classes?

The response from the Minister was:

> Yes. Article 22 requires 'treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally ...'. An 'alien' in the same circumstances would be a temporary entrant. Temporary entrants are not eligible for Government-funded English language tuition (Ruddock, *Hansard* 2000b:21964).

Deterrence is a rational and considered response to the incessant hum of the deviancy of the asylum seeker. Deterrence is aided by the deployment of 'queue jumping' and is underpinned by a conception of international refugee protection as a matter of national generosity. Deterrence taps into a legalistic and technical language that is not only familiar but also becomes comfortably enmeshed in legalistic distancing. In the next section we will argue that deterrence becomes a ground upon which the victim nation state fights back against the deviant refugee through the (re)assertion of control.

## Deterrence and Controlling the Uncontrollable: Constructing Legality and Legitimacy

> The issue of uncontrolled migration has not arisen over the past week — it has been a growing global problem for at least five years (Sciacca, *Hansard* 2001:30954).

In relying on the rhetoric of deviance, deterrence contributes to reinforcing the legality and necessity of state responses. As the original illegality resides with the asylum seeker there is an obvious need to repel such deviance that in turn re-affirms the legitimacy of state responses. Deterrence, as the response to the illegality and deviancy of asylum seekers, becomes part of the techno-legal and bureaucratic response of control. When we deter asylum seekers we are in control. Deterrence comes to represent a way of responding to

refugees that is orderly and has integrity, both of which assume that controlling the movement of persecuted people is both possible and desirable. The techno-legal rationality of deterrence has been played out in the parliament in relation to two major sites: immigration detention and border control.

### *Immigration Detention*

Under a Federal Labor Government Senator Ray introduced measures to shift the cost of detention and deportation onto the asylum seeker (the 'offender') in order to deter spurious claims for asylum. The Senator noted that these measures would restore balance to *numbers* and *processes* that resembled a tap that could be turned 'on and off':

> The third major feature of the Bill is that it spells out mechanisms for ensuring that planned immigration program intakes are not exceeded. Senators will understand that though the rights and entitlements of the individual must be protected, it is equally important that the restrictions which have to be imposed on the overall numbers and categories of people entering Australia in the public interest, also be spelt out in the regulations. In this way the Government will be able to quickly correct any unforseen fluctuations ... Effective management of intake levels is essential to ensure planned program outcomes are not exceeded. Governments have traditionally relied on their ability to turn the tap on and off. The alternative is an immigration program out of control. The Bill also addresses this management issue (Ray, *Hansard* 1989a:922).

With the introduction of mandatory detention for those that arrive without a valid visa and claim asylum, a system of control was introduced that would not only deter those in detention from pursuing their claims but also deter others from making similar journeys. How this message was to reach those en route to Australia or considering such a journey was not clear. How such detention should be considered by potential asylum seekers in relation to conditions in Afghanistan, Iraq, Sri Lanka or Iran remained unclear. However, what was made clear (but not evidenced) was that mandatory detention would help restore 'balance' to a program that needed to be effectively managed. By putting immigration detention centres in the hands of private corporations the methods of such deterrence ('daily operational matters') fell within the exclusive purview of commercial in confidence agreements. Quickly we had service providers and clients at the heart of this keen measure of refugee deterrence.

By 1994 immigration detention was touted as *the* method of deterrence for those seeking asylum onshore. Since then mandatory detention has been at the forefront of a *deterrence as control* and *control as deterrence* discourse:

> ... [W]e are not talking about protecting the rights of those who arrived here illegally — and we are not distinguishing between citizens and non citizens: we are distinguishing between those who come to Australia legally and those who come to Australia illegally. We are protecting those who, in many cases, probably are not even in this country and who under our processes have been rejected as refugees. We are doing so in a way that does not allow this government to act in accordance with international law. That is the advice we have had. What we are doing is in accordance with international law; we are doing it in accordance with the principles governing our constitution. Why is that the case? Because we are overcoming a technicality (Bolkus, *Hansard* 1994:2716).

In response Senator Chamarette [DM] noted

> Senator McKiernan said that this — and I assume he is referring to the policy of detaining the boat people — had not deterred the boat people who continued to lodge applications on legal technicalities while the Government had paid for expensive legal defences. ... This is an extraordinary admission from the senator who, as chair of the Joint Standing committee on migration, insisted that the detention policy must be upheld even though no

> evidence was provided to the committee to suggest that detention deters anybody from coming. Indeed, the arrival earlier this year of a group which had already been in detention in Australia once, had been deported and decided to risk the journey again, shows how pathetic a justification of deterrence is. It is quite apart from the fact that deterrence is not a just principle upon which to act.

The effectiveness of immigration detention as a form of deterrence and control cannot be measured in terms of numbers of asylum seekers still willing to make the journey to Australia, as it was never meant to be quantifiable. Deterrence was never meant to be measurable or justifiable in its own terms, not least because of the difficulties involved of proving its effectiveness or otherwise. Rather, deterrence is about a strategy of control that only those apart from the experiences of persecution and forced migration could contemplate, only an internal audience would consider.

## *Border Control*

> The importance of a managed outcome is critical and is brought sharply into focus when we look at the way in which migration issues are managed — or more properly — mismanaged around the world ... Border control and the management of people movements.
>
> As well as our determination to safeguard the integrity of our Immigration program, we are also determined to safegard the integrity of the nation's borders and to protect the Australian public from the entry of people who have serious criminal backgrounds (Ruddock, Victorian Press Club 1998).

In the late 1980s border control was an attempt to ensure major refugee intakes occurred offshore rather than onshore. In particular, control remains apparent in the assumption that people smuggling can be controlled by deterring would be smugglers, most recently with the introduction of extensive prison terms for those convicted. Critics of such deterrence initiatives are discursively positioned as not understanding the need for control, and the legal requirement of control. Critics are also aligned with profit seeking people smugglers: 'Critics of Australia's approach to the issue must realise that Australia does have laws — laws regulate the flow of migrants to this country. These laws must be upheld and they must not be compromised by the dollar driven profiteers of people-smuggling rackets' (Crossio, *Hansard* 1999:12839).

Such positioning ignores the contradiction that the flow of goods in conditions of late modernity are highly unregulated, particularly those related to information and finance, while the flows of people are increasingly represented as a risk to the modern nation state. Instead, human rights lawyers have a vested interest in working against 'sensible immigration control' (Campbell, *Hansard* 1994:1640).

Ineffective border control has been at the heart of the discourse of failed deterrence. Most importantly parliamentary rhetoric surrounding the deterrence effect of border control has relied on a techno-legal rationality bound up with the need for 'precision' and 'management', 'surveillance' and 'interdiction', 'orderly processing' and 'documentation': 'Mr President, the measures that the Minister has announced so far will lead to greater precision in our efforts to control the border' (Bolkus, *Hansard* 1992:2255).

Throughout the 1980s the techno-legal rationality of deterrence on the border had some counter in a parliamentary discourse that underpinned the notion of a 'balance between control and refuge' (Ruddock, *Hansard* 1992:3142):

> ... perhaps the most significant feature of the Bill is the introduction of a new regime for the orderly processing of persons who arrive in Australia without documentation. I speak primarily of persons who arrive by boat at our northern shores such as the Cambodian boat arrivals. It is important such people be treated sensitively and yet in a manner which is conducive to orderly migration processes (Hand, *Hansard* 1991:2846).

However the techno-legal rationality of deterrence (new planes, radar systems, involvement of the defense force) quickly developed a different meaning that was more heavily grounded in the discourse of repelling deviancy:

> In spite of the 1989 reforms, a major issue confronting the Government is border control. These are people who are intent on bypassing the established categories of entry into this country. Some do this by trying to avoid immigration processing altogether by arriving in Australia without authority. The boat people are a good example (Tate, *Hansard* 1992b:2958).

The techno-legal rationality of *legalistic precision* has been buffered by measures of surveillance and interdiction. Such an approach equally relies on the national use of defence services in policing style roles. Militarism is drawn on to police the unpoliceable: Australia's Exclusive Economic Zone and Australia's Fishing Zone has a 29,100km boundary. Australia's territorial sea boundary is 27,637km with a coastal water boundary of 27,637km (Geoscience Australia 2002). The patrol of Australia's sea borders is an attempt to portray a form of control over the rolling oceans and unidentifiable borders that we claim:

> Clearly the most effective deterrent — indeed the only deterrent — to illegal entries which this legislation is purporting to deal with, into our exclusive economic zone and our fishing zone is the Australian Defence Force, the ADF. Only the ADF has the national wide area surveillance assets, including vital telecommunications, control, command and intelligence systems to deter, monitor and interdict illegal entries into our coastal waters (Aldred, *Hansard* 1995:1845).

The bundle of laws that were passed in the wake of the Tampa incident made sweeping changes to Australia's onshore refugee determination system.[4] Australia is the first western nation to put broad and significant legal effort behind 'the rhetoric of discouraging the "spontaneous" arrival of asylum seekers in favor of the more orderly, predictable, discretionary, and political system of selecting refugees for resettlement from overseas' (US Committee for Refugees 2002:38). *Deterrence as control* has become what Cohen (2001) might call a 'legalist defence' of current refugee policy. The deployment of deterrence in the parliament has been discursively constructed as a matter of effective and benign control when the consequences of surveillance, interdiction and detention are played out on the minds and bodies of those we know so little about.

## Deterrence and Sovereignty: Buffers to Censure

The maintenance of sovereignty, of the protection of Australian borders and population composition, is an intrinsic component of the rhetoric which builds immigration debates. The discourse of deterrence, of defending our sovereign (namely territorial but also legal, racial, cultural) interests, can be understood as one logical end point of debates about sovereignty within migration policy more broadly. Within debates on deterrence in the parliament sovereignty has been used in three key ways. First, politicians refer to the sovereignty, and the concomitant protection of Australia, both in terms of border protection issues and also in terms of control over the composition of the Australian population. Second, the spectre of parliamentary sovereignty is raised as it relates to the tripartite

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4 See the *Migration Amendment (Excision from Migration Zone) Act* 2001, *Migration Amendment (Excision from migration Zone) (Consequential Provisions Act)* 2001, *Migration Legislation Amendment Act (No. 6)* 2001, *Border Protection (Validation and Enforcement Powers) Act* 2001; *Migration Legislation Amendment (Judicial Review) Act* 1998, *Migration Legislation Amendment Act (No. 1)* 2001; *Migration Legislation Amendment Act (No. 5)* 2001.

system of democracy, where the other two institutions are the judiciary and the executive. And finally, politicians have referred to the sovereignty of national interest against the broader interests of the international community. These debates, and the process of linking sovereignty with the discourse of deterrence enables the push factors of refugees and asylum seekers to be obfuscated and ignored, replaced by a hegemonic production of a discourse of fear and threat against the Australian community.

Protection of Australian borders is one of the clearest articulations of sovereignty within the deterrence debates:

> ... Australia is a sovereign nation. We have the legal and moral right to protect our borders and coastal waters. ... If we do not demonstrate that we will defend our coastal waters from illegal intruders, we will not be respected in the region ... We will continue to be at the mercy of illegal entrants who exploit our vulnerability. ... To achieve the objective of deterrence, we need a dedicated surveillance service (Aldred, *Hansard* 1995:1845).

The deployment of sovereignty with the deterrence debates on refugee policy also invokes the ambivalence of Australia's position within the region and past immigration policies which had as their basis the exclusion of non-white immigrants. This also becomes apparent when we consider the ways in which sovereignty, population control and deterrence are simultaneously deployed in parliamentary speeches:

> ... certainly the Parliament of Australia and the Government of Australia elected by the people have an obligation to maintain the integrity of the borders and to ensure that those who come to Australia and seek to stay here have a real entitlement to do so ... They do not establish their claim to stay simply by arriving on our shores as boat people (Tate, *Hansard* 1992a:4311).

> We must not allow our immigration policy to be subverted by unchecked illegal arrivals. We must protect our borders (Sciacca, *Hansard* 2001:30954).

In deploying sovereignty within the context of this debate the rights of individuals to seek asylum are subordinated to national interests. The integrity of Australia's borders and the parliament become the barometer by which actions are measured. In such circumstances, policies which favour deterrence as a means of securing these objectives are legitimised, both by the parliament and also by the community in their acquiescence. In so doing the notion of justice, of a humanitarian response, is diminished: the markers by which such a perspective would be judged successful jar against those of deterrence.

Members of Parliament have also used the refugee debate to play out the sovereignty of parliament over the judiciary. In particular, they have argued that the judiciary have acted improperly and without due reference to the necessity of deterrence as a key component of refugee policy:

> Migration Legislation Amendment Bill (No. 6) 2001 addresses two very important issues: the integrity of our immigration program as it relates to illegal immigrants who manipulate our system; and the Federal Court, which aids them with its out of control interpretations as to what is a refugee. ... We hear a lot about rights in the illegals debate. Here is one more: it is Australia's sovereign right to ensure that the United Nations convention is implemented, as the minister said, both responsibly and consistently. To date, this has just not been the case. ... This legislation defines persecution, which, as might reasonably be expected, is a key principle in considering refugees' claims. It is not defined in the convention and until now has been undefined in the Migration Act. The result of that is that federal judges have been making decisions about refugees which are well beyond what Australia signed up to in the convention and well beyond what the community accepts as fair (Prosser, *Hansard* 2001:31119).

In giving precedence to international legal obligations the judiciary have often supported interpretations of the Refugee Convention which have enabled the international refugee definition to reflect the contemporary circumstances of people seeking asylum. Yet, rather than recognise the validity of such a process, many in Parliament have argued that the judiciary have threatened not just the integrity of the Australian immigration program (and thus the sovereignty of the nation), but have also threatened the integrity of the parliamentary process (and equally, thus the sovereignty of the nation). In this context, the tripartite model of democratic governance is obfuscated, as the will of the parliament becomes paramount:

> I ... have become increasingly concerned at what appears to be an interest of judges in involving themselves in how migrants ought to be selected for this country. ... I have been mystified by the conclusions of the judges on occasions in ruling on cases before them. It seems to me that parliamentary and government intent on the process that was desired to be undertaken or thought desirable to be undertaken was clear. Some of those judicial decisions have unearthed complexities and possibilities that those of us who have been involved in the process for years would never have dreamt were possible. One can only hope that this legislation will rectify the problems that those decisions have raised for this country (Sullivan, *Hansard* 1989:3504).

The sovereignty debate intersected with the continuum of deterrence most recently with the so-called Pacific solution applied to the MV *Tampa* crisis. The primacy and necessity of Australian sovereignty was the motivating force in the short-term resolution of the situation. The legitimacy of the claims of those on board, of conventions of the law of the sea or of refugee law were universally subordinated to the perceived requirements to protect Australian sovereignty and deter those who threatened it. Instead of addressing the issue from the perspective of a humanitarian crisis, the Australian government (with the support of the opposition and seemingly the majority of the Australian community) mobilised in the strongest possible terms the discourse of threat to sovereignty and the concomitant necessity of deterrence as the primary consideration in developing policy responses. In creating the Pacific solution, the government invoked the notion of burden sharing, the idea that other nations should come to the aid of Australia, who through virtue of geography, faced an unreasonable burden in relation to the increase in irregular migration flows. In all of this, the government, opposition and majority of the Australian community were seemingly oblivious to the irony of necessitating island states with a fraction of Australia's resources to bear the burden; or indeed of the irony of Australia suggesting that it was being overwhelmed by the problem, when European countries face the same circumstances, yet tenfold in figures. The Australian Democrats were cognisant of the irony, arguing that:

> ... Australia is part of a global approach to refugees, in which it must bear its fair share of the burden. Sending asylum seekers who arrive on our shores to other nations is inconsistent with the principles of solidarity and burden sharing that underpin the global refugee system (Stott Despoja, *Hansard* 2001:27702).

Yet, as has been suggested, such a discourse of burden sharing has been rendered illogical by the hegemonic production of a refugee policy which operates along a continuum of deterrence, as opposed to a continuum characterised by humanitarian considerations. Within this process we can recognise the power of Gramscian notions of hegemony, and the ways in which hegemony operates to obscure and deform the terms of debate. This is particularly apparent when we stop to consider the ways in which those who have resisted the continuum of deterrence have been represented. In the same way that the continuum of deterrence has supported the representation of onshore applicants as a threat to the sovereignty of Australia, those within Australian society who speak out against the practices which achieve the policy of deterrence, the mandatory detention, the interdiction in the high seas, the introduction of TPV status, are also represented as somehow un-Australian:

> ... This is a particular problem that has been identified by most of the Australian population and the Government. If Senator Coulter cannot see it, he does not deserve to be a representative in this place... (Bolkus, *Hansard* 1992:2255).
>
> It is clear to me, from my observations on immigration matters over the past few years, that there has grown up in Australia an industry dedicated to advancing the interests of asylum seekers, regardless of their merits, at the expense of Australian residents. There is a stark way to make that point but it is a fact: a national interest does not exist for most of these people. They have given up thinking in the national interest. Some of these people, particularly in the churches, may be misguided altruists, but I believe there are others who are far more selfish or cynical. Such people use the language of altruism, but they are basically out to increase their own personal profile as human rights warriors ... (Campbell, *Hansard* 1994:1640).

The spectre of inclusion and exclusion permeates every element of the debate on refugee policy. The continuum of deterrence is sustained by a homogenous view that those who resist it constitute a threat to Australian society. As such, it behoves parliamentarians to enact measures which, on a daily basis have the potential to reinforce the alien-ness of onshore refugee applicants (through mandatory detention and TPV holder status), and to characterise those who seek to resist such measures as un-Australian, as guided by political interests that are grounded in values external to Australian society. And it is here that we can see most clearly the strength of the hegemonic practices, in so much as the Parliament and the community have collaborated to produce a representation of onshore refugee applicants as so alien and threatening to the Australian way of life that actions that in a previous era would have been characterised as un-Australian are now legitimised as the norm.

## Deterrence and the 'Despair of Representation'

When we focus on parliamentary text we critique both the micro and macro operation of power. By tracing the development and deployment of deterrence in refugee policy (in the parliament) the criminologist is given an entry point to denaturalise punitive western state practices against those they seek to exclude and those they refuse to protect.

A Gramscian reading of hegemony is important as refugee policy clearly embraces the combination of force and consent. Parliamentarians use the discourse of deterrence to perform significant ideological work of exclusionary rhetoric whilst simultaneously deploying coercive aspects of the state against asylum seekers, most particularly through detention and the adoption of TPV policies. By relying on a discursive repertoire in which deterrence and deviancy are affirmed and reaffirmed in a symbiotic relationship, the asylum seeker is the subject of a familiar and convincing repertoire of criminal justice language. The legality and legitimacy of refugee policy is affirmed in parliament when not only the language but frameworks of criminal justice are mobilised, notably those of law and order politics. Significantly, deterrence has necessitated a rational individual approach to understanding the act of seeking asylum and feeds into the neo liberal economic arguments of individual responsibility. When deterrence is mobilised in refugee policy it circumscribes the understanding of asylum seekers to a domestic context, it removes the asylum seeker from the social and legal trans-state context and any possible concomitant social and legal responsibility of state protection.

Deterrence has been an enabling discourse of a repressive refugee policy in which affluent western democracies pose as beleaguered victim and those in need of protection are positioned as the ultimate deviant (cf Cohen 2001). Techno-legal rationality underpins common sense appeals to 'control' borders and protect territorial and parliamentary sovereignty. Deterrence has distorted and limited debate on refugee policy in the parliament

and has acted as a buffer between the suffering of others and ourselves. The deployment of deterrence has aided and abetted the construction of hegemonic relations of inclusion and exclusion that Gramsci focused upon in his writings on the operation of hegemony. While the discourse of deterrence has been led by the government of the day it has enjoyed widespread support. Resistance to the development and deployment of deterrence vocabulary, rhetoric and principles has been equally important in the maintenance of hegemony. It is in responding to, distorting and marginalising dissenting voices that the deployment of deterrence has often been most pointed and most in line with Gramsci's writings that noted that in actively creating and reproducing hegemony some dissent is required to ensure the production of consent.

Overwhelmingly, parliament uses a bureaucratic and detached tone that neutralises the discussion of atrocities and places us in an unrelated and detached position to suffering using the discourse of deterrence. Deterrence cannot convey the 'truly atrocious' aspects of, or elicit 'appropriate responses' to, those seeking Australia's protection. This is what Cohen (2001) has called the 'despair of representation'. When we trace the development and deployment of deterrence in refugee policy through the debates of parliament we are placed at a distance from refugee suffering, close to the re-legitimation of punitive state practices and the construction of hegemony, and unbearingly near the seeming impossibility of censuring the state.

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