

# Julian Burnside: Here we go again

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*by Julian Burnside*

On 20 February 2007, HMAS Success intercepted a small boat heading towards Australia. It carried 83 Tamils from Sri Lanka and 2 Indonesians. They were held on HMAS Success until they were taken to the high-tech detention centre on Christmas Island. The Australian government prevented anyone from contacting the men, while the new Minister for Immigration, Kevin Andrews, struggled to get his facts straight.

First, they were to be sent back to Sri Lanka. That would have been refoulement, which is prohibited by the Refugees Convention. Refoulement is to send a refugee back to a place where they face persecution. The prohibition of refoulement is the central purpose of the Refugees Convention. Then the proposal was to send them to Indonesia, where they could seek asylum. But Indonesia is not a signatory to the Refugees Convention, and eventually it emerged that Indonesia would send them back to Sri Lanka, so Australia would be guilty of indirect refoulement. While Andrews thrashed his way around the Migration Act, the Refugees Convention and a few political imperatives, the 83 Tamils remained on Christmas Island: an island which is as much a part of Australia as Tasmania. But under the Pacific Solution legislation, Christmas Island has been excised from the 'migration zone'. As a result, the Sri Lankans are not permitted to lodge a claim for a protection visa unless the Minister for Immigration gives permission. Eventually, after the men had been on Christmas Island for nearly a month, the government decided to ship them off to Nauru. They have been sent there for 'processing'. One of the deceptions of the Howard government is the idea of 'processing' asylum seekers offshore. It conveys the impression that their claims for asylum in Australia will be processed. That impression is false, and deliberately so. But it fools most of the people most of the time, and the Howard government works the numbers that way. What is 'processed' on Nauru is the asylum seekers' claims that they are refugees. They cannot apply for an Australian protection visa, unless the Minister gives them permission to do so.

Minister Andrews announced that their claims for refugee status would be processed on Nauru by UNHCR. He later corrected that and said the processing would be done by the International Organisation for Migration. He had to correct that as well. If he had been awake during the 6 years of the Pacific Solution, he would have known that the processing is done by officials of the Australian Department of Immigration. Australian officials will speak to the Sri Lankans and decide whether they satisfy the test for refugee status contained in the Refugees Convention. From that decision there is no avenue for appeal; no right of judicial review; no means of correcting errors of bias, or stupidity, or corruption. The officials who go from Canberra to Nauru to 'process' the Sri Lankans will not be operating under Australian law, or under Nauruan law, or under any other law. Although paid by Australian taxpayers, they will apparently not be subject to the constraints of any laws.

If the Sri Lankans are determined to be refugees, which looks likely, they will not be offered protection by Australia. Instead, we will hawk them around the world to see if another country will take them. The effrontery of this is awesome. Most countries receive unauthorised arrivals in significant numbers. European countries typically receive 50,000 to 100,000 unauthorised arrivals per year. In Australia, our geography has always limited the numbers. Over the life of the

Howard government, the arrival rate of unauthorised asylum seekers (boat people) has averaged about 1000 per year. On 19 October 2001 the SIEV-X sank on its way to Australia. 353 people, mostly women and children, drowned. After that, the arrival rate slowed significantly. At present, the rate of boat people in Australia is fewer than 150 per year. But we will ask other countries to take these 83 frightened young men off our hands, even after they have spent a month on Australian soil, and months or years on Nauru held by Australians, at the expense of the Australian taxpayer, as a result of a decision by the Australian Minister for Immigration. If history and commonsense are any guide, the world community will tell us to look after them ourselves. The Sri Lankans will languish on Nauru for years while Minister Andrews looks for other solutions to a problem he created for himself, but for which the Sri Lankans will pay with the lost years of their lives. All of this makes Minister Andrews' decision to send the Sri Lankans to Nauru look pretty bad. But it gets worse: he made it clear that the reason for sending them to Nauru is to send a deterrent signal to people smugglers. Mistreating innocent people in order to influence the conduct of others is morally beyond redemption. In addition, the practical effect of sending the men to Nauru will be to prevent them having access to legal help.

Getting to Nauru is difficult and expensive. For the first 4 years of the Pacific Solution, Australians could not get a visa to Nauru unless the Australian government approved. They most certainly did not approve of pro bono lawyers going to Nauru, and thwarted all attempts to get there. That has changed, but the practical difficulties are still considerable. Last June I managed to get to Nauru for the first time. I left Melbourne at 7 pm on a Thursday and arrived in Nauru 2 pm Friday. I had time for meetings and conferences and went back to the Nauru airport at 6 am Saturday. I arrived back in Melbourne at 7 pm on Saturday. The trip was tiring. It cost about \$4000. If I had needed more time on Nauru, I would have had to wait for the next flight out one week later.

Arranging pro bono help on Nauru will be very difficult.

Philip Ruddock's response to these propositions on 19 March on Radio National was that refugees do not have an automatic right to legal help. But Ruddock does not like lawyers, and has no taste for law or justice or human rights. Kevin Andrews is a devout Christian. He has just ignored the parable of the Good Samaritan. He has just acted in breach of the Refugees Convention (Article 16, access to legal help) the ICCPR (Article 9, arbitrary detention) and the Convention on the Rights of the Child (Article 37, detention of children is a measure of last resort: tell that to the 17 year old Sri Lankan who was locked up with the rest of them). He has just used innocent people as instruments of a deterrent policy. He has betrayed his religious principles in the service of a government of liars and hypocrites. He will need a powerful anaesthetic to dull the moral pain of what he has done.

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