

Don Chipp Foundation Ltd

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Fearing Going Home: Australia's return of rejected asylum seekers, temporary refugees and others from refugee-like situations¹

By David Corlett

Thanks very much to the Don Chipp Foundation for helping to fund this project, and also just to reiterate what Phil and others have said thanks to the Democrats for its outspoken support of refugees and asylum seekers over a period that, as Phil said, is a very dark one. I'd also like to thank Phil himself, and the Edmund Rice centre, for their support of this project since its conception, and also to congratulate them on what I think is a really important report, that I think will be part of the historical memory of this period.

I'd also like to send Robert Manne's apologies. He is the principal researcher on this project, *Fearing Going Home*, and he's sorry that he couldn't be here today. As part of this project, I recently conducted field work in Iran and Afghanistan and Pakistan, and that's part of what I want to talk about today. I also want to frame my talk in some more general reflections as well, and I'm not as clever as Phil in being able to stand here and talk off the top of my head, so I've prepared a paper, so bear with me.

During the last federal election campaign, the Prime Minister famously declared, 'We will decide who comes and the circumstances in which they come'.

It was a statement of national sovereignty; that a nation should have control over what goes on within its borders, including who it admits.

In one sense, the Prime Minister's statement was completely unremarkable. State sovereignty is the mainstay of the contemporary world and of mainstream political philosophy.

But this is only part of the story. Even the most state-centric of mainstream political philosophers argue that there are circumstances in which states have obligations to outsiders with particular sorts of need.

And it is not only philosophers who accept these obligations on states. States themselves do.

The 1951 Refugee Convention and its accompanying 1969 Protocol articulate, into international law, states' obligations to people with a particular need – the need for protection from persecution due to race, religion, nationality, membership of a particular social group or political opinion.

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State signatories to the Convention and the Protocol agree that their ability to unilaterally ‘decide who comes and the circumstances in which they come’ is limited by their obligations to protect those who fear persecution.

The cornerstone of the international protection regime is the commitment to non-refoulement, meaning that states will not return refugees to situations in which they will be in danger.

There is some difference of opinion about exactly what this might mean. Australia argues that so long as it does not return people to situations of persecution according to a narrow reading of the 1951 Convention, it is not in breach of its international obligations.

I agree with those who suggest that Australia has broader obligations; that to return people to situations in which their lives and liberties are threatened, in which there is a real possibility that their basic human rights will be violated, is indeed a breach of our moral, if not our legal, responsibilities.

But while returning people who need protection to situations where their human rights will be violated would undermine the reason for having a refugee protection system at all, the opposite is also true: Those who are not in need of protection should, except in extenuating circumstances, be sent from Australia.

Refugee protection regimes are not de facto migration programs. They serve a particular purpose: To protect those whose human rights would be violated should they be forced to return.

The institution of asylum is, to borrow a term from the US professor and refugee law specialist, David Martin, a ‘scarce resource’ that needs to be managed wisely.

It is scarce both because of the massive numbers of people who are in need of it and because public support for granting asylum within the developed world is so fragile.

Because of its scarcity, asylum must be used carefully and guarded vigorously.

But while asylum must be given sparingly, so should caution be taken before returning people to places in which they may be at risk.

Because while return of failed asylum seekers is a necessary goal of government, there is evidence, from my own fieldwork and from the work of the Edmund Rice Centre and others, that return is also used by this government dangerously inappropriately.

Australia has always vigorously removed non-citizens who it deems it has no obligations towards, including failed asylum seekers. One of the important gripes that led to the Pacific Solution was that, contrary to much of the political rhetoric, many of

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the asylum seekers who came to Australia between 1999 and 2001 were indeed refugees.

Given that they were refugees, they could not be returned. Even the 1999 introduction of the temporary protection visa was a deterrence measure rather than a genuine return mechanism.

No one seriously considered that within three years, the Taliban and Saddam Hussein would no longer be in power. Temporary protection, like mandatory detention, was unashamedly an effort to discourage future arrivals of refugees.

The Pacific Solution was borne from the failure of these deterrence mechanisms.

Then from early 2002, following the fall of the Taliban and later the Iraqi Baathists, the mantra ‘we will decide who comes here and the circumstances in which they come’ seemed increasingly less of a pipe dream and more of a possibility.

Afghanistan

Given that most of the Afghan asylum seekers caught up in the Pacific Solution and those in Australia – both those on temporary protection visas and in detention – were fleeing the Taliban, its fall gave the Australian government the opportunity to send them home.

The promises from the international community that Afghanistan would be rebuilt and the return of massive numbers of Afghan refugees from Iran and Pakistan meant that return seemed possible.

The Australian government upped the pressure on Afghan refugees and asylum seekers. It announced that it had signed a Memorandum of Understanding with the Afghan Interim Administration for the return of Afghan refugees and asylum seekers.

Unlike other such agreements that the Afghan government had signed, the United Nations was not party to the one with Australia.

When I spoke to the senior advisor to Afghanistan’s Minister for Refugees and Repatriation in Kabul, he said that the agreement was not ideal.

But given the conditions in which his fellow citizens were being kept in detention and on Nauru, it was better to do ‘bad than worse’.

‘Bad’ was returning to Afghanistan; ‘worse’ was remaining under Australia’s duty of care.

The Australian government followed the signing of the MOU with a repatriation assistance offer of \$2000 dollars for Afghans in detention who signed to return within

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28 days. Many eventually did. The government has characterised this as ‘voluntary’ return.

But none of the Afghans I spoke to in Afghanistan or Pakistan accepted that their decision was ‘voluntary’.

They all felt compelled to leave.

The conditions under which they were kept – in Australian detention centres and on Nauru – were sending them mad.

The people I met in Afghanistan and Pakistan, said that on Nauru there were weekly meetings between Australian officials, the camp administrators and block leaders. At these meetings, the Afghans were told that it was safe to return to Afghanistan and that if they did not return voluntarily, they would be forced.

Most of the Afghans on Nauru who were not given refugee status eventually accepted that they had no hope of gaining protection within Australia.

This is how one man I spoke to in Kabul put it:

“Finally I realised that there was no hope that the Australian government will protect asylum seekers from the problems that they have in their own country, especially Afghanistan. So I was so disappointed, so nervous. I was wondering what to do and one day I said, “OK fine. If this government is not going to help me, I will go back to [Afghanistan] and whatever is going to happen, it doesn’t matter, even if I get killed. Whatever happens, I don’t really care. For me I am a dead person right now [in Nauru]. I am a dead person...I have no future, no hope, nothing. So there is no difference between staying here and returning to Afghanistan”.

This man, let me call him Hamid, is now homeless in Kabul. He moves from house to house every few days. Sometimes he stays for a couple of weeks, but not often.

Hamid started to go crazy on Nauru, although reckons that he did not completely lose his mind.

He said that the week before he left Nauru for Afghanistan he was taken off the medication he was on for his anxiety and depression. The day before he left Nauru, he was released from medical.

I came across Hamid when I visited another returnee. Hamid was staying with his friend that night. It was a single room above a carpet shop. There were five men staying there the night that I visited. There was no kitchen, just a camping stove. There was no bathroom, just a wet area with no running water. There was a hole-in-the floor toilet and buckets which the men filled from a communal tap outside.

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I would not suggest that these conditions alone constitute grounds against repatriation. These are not protection related reasons; they are issues of poverty and development. But they do raise questions about Hamid's ability to recover from the psychological damage he suffered in Nauru.

If we accept that there is a nexus between mental health and homelessness, it is reasonable to assume that Hamid's life in Kabul is reinforcing his psychological ill-health. Hamid is continuing to suffer from mental health problems: "I am really getting sick and depressed from this country. I suffer from everything: nervousness, sleeplessness and depression. Depression I have it all the time".

These are problems that he developed on Nauru. This, I think, does raise questions about return – questions that go beyond the issue of fear of persecution.

There is another reason why Hamid should not have been returned and this is the broader security situation – including the risk of persecution – in Afghanistan.

I met another man in Kabul who was also homeless. When I met him, he had two weeks left of his one month's temporary accommodation. He feared that he was going to end up on the streets of Kabul, possibly one of the most dangerous cities in the world.

He also had left Nauru, thinking that it couldn't be any worse in Afghanistan. But when I met him, he had changed his mind.

And he was probably right that Nauru was better than Afghanistan.

Nauru was boring and humiliating. It was a place in which the fear of return and the hopelessness in the protection determination process slowly sent people mad.

But at least there was no ongoing conflict in Nauru. And this is part of what makes the situation in Afghanistan so terrible. Afghanistan is not, to use the language of those who work in such places, 'post conflict'. Indeed, conflict is ongoing throughout the country.

I met an Australian working for an aid agency in Afghanistan. His comment to me was that 'half of Afghanistan is inaccessible and the other half is increasingly so.'

A recent paper on security from the Afghanistan Research and Evaluation Unit supported this assessment. According to the paper's authors, the security situation in Afghanistan is worse now than when the international forces took control in 2002.

This is not a new or unique assessment: In late 2003, the UN Secretary General warned that unless the security situation improved, 'we might lose Afghanistan'.

Yet despite the obvious deterioration of security in that country, Australia continued – throughout 2002 and 2003 – to encourage Afghans to return.

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More recently, following advice from the UNHCR, Australia changed its position.

Most of the Afghans who remained on Nauru and in detention in Australia have now belatedly been given protection.

This is good news for those people, but does nothing for people who have already returned to the situation that the government now seems to have recognised as inappropriate for return.

Some of those I spoke to would probably have been given protection in Australia if only they had persevered with life on Nauru for a little longer: In other words the difference between their lack of protection and others being granted protection was not a dramatic change in circumstances in Afghanistan.

It was the time that it took the Australian government to recognise the lack of security there and the returnees' inability to sustain their lives in detention any longer.

A couple of weeks after I arrived home, there was a terrorist attack in Kabul – the most devastating since earlier in the year. The bomb went off near a restaurant I had been to with one of the returnees on the day that we met.

After the bombing, my friend emailed me. His work is so close to the bombsite that the windows in his office had been smashed by the blast.

But in the stoic way of people who have lived through years of violence and destruction, life goes on in Kabul. The roads are congested with traffic. Bakers' shops are full with bread. And the rebuilding of the city is obvious everywhere.

But this is only superficial. According to my friend, 'It seems quiet but this kind of silence is like a big bomb under ground [that] every one is worr[ied] and apprehensive [about, thinking] when [is] it gonna blow up [. A]nd this issue is for long time with my people's mind.'

It is not certain that the recent election of Hamid Karzai will make very much difference to this situation.

Many Afghans who returned to Afghanistan did not stay there. They returned to find that their families were no longer in the country and that the security situation was, despite official assurances from Australia, terrible.

One Afghan I spoke to fled from Afghanistan to Iran where he was imprisoned and tortured.

Another Afghan, still a minor, had tried to get to Europe, but was caught in Turkey where he was beaten. He was then sent across the border to Iran where he was beaten again.

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He now lives, like many other Afghan returnees from Australia, most of whom are Hazara Shias, in Quetta, Pakistan.

Let me just give you a sense of what it is like for these people.

In March this year, during a Shia religious procession in Quetta city, three gunmen opened fire on the crowd with automatic weapons before detonating explosives they had strapped to their bodies.

The gunmen were extremist Sunnis who believe that it is their religious duty to kill followers of Shi'ism.

Many of the returnees I spoke to in Quetta were at this procession when the terrorists attacked.

More than 50 people were killed in this attack.

They were just the most recent in a line of Shia and Hazara victims of terrorism in Quetta. There is now a section of the cemetery in Quetta that is devoted to the martyrs of terrorist attacks.

In the 12 months to March more than 100 Shia, most of whom were also Hazara, were killed by terrorists, including scores who were killed in an attack on a Shia mosque during Friday prayers.

So this is the overall security scene in Quetta.

As well as this, Afghan returnees from Australia in Pakistan are effectively illegally present there. They have no identity papers. This means that they must bribe their way through their lives.

Almost every returnee I spoke to in Pakistan had been picked up by the Pakistani police who had threatened to either return them to Afghanistan or put them in jail, unless they paid bribes. One man I interviewed said that he paid almost half his monthly income to the police on one occasion.

So the situation in Pakistan for Afghan returnees is unsafe and insecure – and again, this is not even mentioning their poverty, nor the psychological implications of their extended period of detention in Australia camps.

Iran

The situation for Iranian returnees is different to that of Afghans. Afghans in both Afghanistan and Pakistan are insecure primarily because of a lack of an effective state to offer security against terrorists and other non-state threats.

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In Iran, the problem is precisely the opposite: it is an over intrusive, repressive state that people have fled.

Iranian asylum seekers in Australia have been subjected to similar pressures to return as were Afghans. Some have returned, but many haven't. I met with about 10 Iranians who had.

The overwhelming sense I had in Iran is that it is a place of multiple realities. It would be possible to go to Iran and simply enjoy the hospitality of ordinary Iranians and the remarkable Persian history and culture.

It is also possible to get a sense of the popular disapproval of the regime – taxi drivers, shop assistants, people in the streets all commented how it was the mullahs that were ruining Iran.

But while this private disapproval has been noted by Human Rights Watch, that organisation has also documented the systematic silencing of political dissent in the country since 2000.

But for a foreigner visiting only briefly, this deeper level of repression in Iran is difficult to grasp. It is not possible to visit the secret detention centres that have been documented by human rights organizations.

It is not possible to speak to the intelligence forces.

It is not possible to get a sense of what are called 'parallel institutions' – agents of state coercion that sit outside the formal legal system. By their nature, these things are kept out of sight.

I have heard it said that Iran is like an onion. You peel away the first layer and you get to another and another and so on.

Consistent with this general complexity, the situation of returnees was not entirely certain. One man I spoke to had returned after his family had paid bribes to the authorities to ensure his safety. (Corruption is said to be rife throughout the country and represents another level of reality there!)

But despite the bribes, when he arrived in Iran, he had his money stolen and was jailed in one of the notorious Iranian prisons. Because of the bribes, he was released after many months and extensive interrogation.

He is now constantly observed and has restrictions on his movements. He is someone who should have been offered protection in Australia on the basis of a well-founded fear of persecution.

Another man was detained for nearly 2 weeks upon return. Others for several days.

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Others had court cases pending – on the basis of claims that they had converted to Christianity.

Others again had been monitored and interviewed by the authorities on several occasions.

Some did not want to talk about anything concerning their plight in any detail, including what they feared.

I met one man in a main street in Tehran and we walked up and down the busy shopping precinct talking – he was concerned that should we leave the shopping strip, we might be singled out and asked questions by the authorities.

Other people I met in public places so that I would not be observed walking into their homes.

These sorts of precautions were consistent with what I was told before I went to Iran – that the security intelligence apparatus is all-pervasive.

Yet I also had the sense that in some instances, Australian officials were right that the Iranians I met were not refugees when they arrived in Australia.

This is true both according to a narrow reading of the definition of a refugee and according to a broader understanding of Australia's obligations to offer protection to people whose safety might be at risk for a range of non-Convention related reasons.

Whether they became refugees in Australia – because they converted to Christianity, for example – is a different issue.

As I said, a number of the men had ongoing court proceedings against them on the basis of claims that they had converted to Christianity. They did not know what would happen next. And Iran's judicial system is notoriously corrupt. According to Human Rights Watch:

‘A handful of judges appointed by and accountable to the Leader define and enforce the law. The judicial system in practice violates basic due process rights at every level.’

One man told me that should he be found to have converted to Christianity, ‘The judge should act according to the religious law. And the religious law about this matter is to cut....The punishment would be death.’

What can be said with certainty is this: Returnees are actively seeking to keep a low profile in Iran; they deliberately deny that they believe something contrary to the state and lie about their activities in Australia.

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If asked, they deny that their motivation for leaving Iran and seeking asylum in Australia was related to the Iranian religious and political regimes.

And almost every person I spoke to in Iran was planning to leave the country again.

I sat with a man on the morning before he left Iran for Turkey. His plan was to get from Turkey to Greece and then Europe where he hoped he could breathe in and say what he wanted.

And this points to one of the most vivid metaphors that describes life in Iran: it is a sort of slow moral, intellectual and spiritual suffocation.

Returnees said that they were just biding their time, that they could put up with life, that they could pretend and persevere, for the time being.

But there would come a point in the future where they would have to escape. Their desire to breathe freely would get the better of them. And they would be compelled to leave again.

There is another thing that should be mentioned about Iranian returnees.

Every person with whom I spoke carried the scars of their detention in Australia. The people I spoke with had spent years in detention here.

There is now considerable evidence that Australia's immigration detention regime undermines the integrity and mental health of those caught up in it.

No-one has researched the longer-term implications of this on those who return.

But my clear sense was that the experience of long-term detention in a prison-like setting had ongoing and deep implications on the individuals I spoke with and that these impacted on their ability to re-establish their lives in Iran.

Some spoke of ongoing sleep difficulties; some of persistent headaches. Some spoke about not being able to settle, saying for example that they cannot hold down a job since they have been back.

One man described how he was institutionalised in detention:

“Imagine decisions.... When you decide you want to do something, you decide that you want to go out and go to the shops or whatever, you decide that you are going to pick up a plum or a cherry and eat it. Whatever you do, you think about it and then you decide to do it before you actually do it. So you have the ability to decide and to do it. Imagine...in the day, you probably decide about a hundred things. And imagine if things are limited to like 20. And I can count the number of decisions that a person is able to make in the

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camp and you can imagine what effect this has on your brain, your mind when the number of decisions you can make drops from that, so dramatically and be narrowed down to a few things.”

(I spoke to a man at Baxter earlier this week who said simply that he was treated like a child in detention).

And then people are sent back into their communities; communities in which the support infrastructure is often itself damaged by years of neglect, repression or war. This man was sent back to Iran without even the money to pay for a taxi from the airport to his home.

Comments like this also point to the counter-productiveness of long-term detention for achieving the legitimate goal of returning failed asylum seekers.

Even disregarding the human suffering it causes, it hardly makes sense to strip people of their ability to make decisions and then expect them to choose to abandon what they hoped would be a new life in Australia and return to their homelands.

Asylum seekers who arrive without prior authorisation should be screened on arrival for security and health reasons, then released into the community, given access to the necessary resources to ensure that their cases are properly and quickly assessed and then, if they are found not to be in need of Australia’s protection, counselled through the process to enable them to return in dignity.

Instead, people are being kept in detention for four, five, six years and then, unable to make the decision to return, they are forced back to places like Iran as broken people.

Other returnees spoke about being socially withdrawn, of not wanting to be around people since their experience in Australia’s detention centres. They had been completely humiliated in Australia.

One man told me that he returned for the sake of his humanity: ‘In detention I forgot that I am a human,’ he said. ‘I believed, in detention, really, that I am not human. Maybe better to say that I am – I don’t want to use the ‘animal’ word – but I am obliged to say it.’

The destructive implications of Australia’s treatment of asylum seekers raises different sorts of questions about return than those raised in a debate about asylum and its scarcity.

If people are so damaged by their experiences in Australia, then regardless of their risk of suffering persecution or other dangers, Australia has obligations to them.

There are certainly human rights issues here about the way we treat asylum seekers.

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But I think that in terms of Australia's obligations and return, that it might be more potent to talk about the ethical issues concerned – namely that Australia has damaged these people and because of this, it has moral responsibilities towards them.

This – the question of rights verses ethical obligations – is something I'd like to conclude on.

Human rights are useful because they are articulated in international law and because we live in a society in which we have a rights-based legal system.

They are a useful yardstick against which to measure our treatment of asylum seekers and refugees and a useful means of assessing the circumstances into which return might legitimately take place.

But a rights discourse, as attractive as it might seem, is of limited use in the asylum seeker area.

Because it is the state that ultimately confers rights, that makes rights meaningful.

States make rights meaningful for their citizens. Non-citizens are usually left out.

This is especially the case when the non-citizens are seen as a challenge to the state's very existence, as asylum seekers who arrive without prior authorisation are seen to do.

It is the state's right to control its own territory, that is, its right to national sovereignty that is the ultimate right, the right that trumps all others.

So the claim that Australia is violating the human rights of asylum seekers and refugees here is of limited political value.

And for those refugees who have been sent home, the appeal to rights is even more difficult; those people are in another country's sovereign territory.

Further, an appeal to human rights assumes a collective acceptance of the other's humanity. One of the things that has become evident in the public debate about asylum seekers is that this – the humanity of asylum seekers – cannot be taken for granted.

That asylum seekers are not fully human was particularly evident in the false 'children overboard' incident – asylum seekers were portrayed as not being capable of experiencing the fullness of human existence as 'we' are. That they would throw their children into the sea revealed their inhumanity.

But it was also evident before this, in suggestions that unrest and certain forms of protest in detention centres were the result of the cultural backgrounds of the detainees and that asylum seekers represented a threat to Australian culture and way of life.

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I have argued elsewhere that we have seen the emergence in Australian political life of a sort of racism that is based not on biology, but on culture. Like its biological predecessor, this 'new racism' denies the full humanity of certain people.

Following the philosopher Raymond Gaita, I think that unless we accept the common humanity of the other, talk of human rights makes little sense. The challenge for those of us who seek change in this area, is to continue to find ways of illuminating the humanity of asylum seekers and refugees.

In this context, rather than an appeal to rights, it is necessary to appeal to an ethical position that acknowledges the relationship that has been established between Australia and those who have sought protection here.

In the *Quarterly Essay*, Robert Manne and I referred to this as an ethics of proximity.

The analogy that we used to shed light on this notion was that of a woman who arrives at your door fleeing domestic violence.

You have a responsibility towards her regardless of the fact that she might have arrived in an unlicensed taxi and despite the fact that there might be millions of others like her throughout the world who could not even have afforded the taxi fare.

The obligation you have to this woman is that she is at your door and has asked for your assistance. Her proximity to you has put you in a relationship and that requires an ethical response.

I want to argue that in a similar way, we have a responsibility to those people who we have returned to circumstances in which they are in danger or who after their time in Australia are returned as damaged people.

This is not to say that the people I met with are any worse off than many millions of people around the world.

Indeed, they are probably better off than most. Some continue to be supported by Australian friends.

And as single men as most of them are, they are generally better off than a single mother in a refugee camp in Africa – or for that matter a single mother in Afghanistan.

But this is not the point. The point is that there are people who knocked at our door and who we might have assisted, but instead sent away.

Australia cannot possibly make a difference to the 12 or 15 million refugees throughout the world, although it should always do what it can.

It could have made a difference to the people who did seek to come here.

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We argued in the *Quarterly Essay* that this would mean giving permanent protection to those people on temporary protection visas and the release of long term asylum seekers from detention.

Given the success of the Pacific Solution in stopping new arrivals, the cost of this act of mercy would be negligible.

I want to extend our sense of moral obligation to those we returned prematurely to situations where their lives and liberties are threatened or who we returned as broken people because of the way we treated them.

Such an appeal is clearly not going to impact on the global refugee situation. Nor is it meant to.

It is an appeal on behalf of a relatively small number of people. It is also an appeal to a different sort of national imagining.