A Fair Queue? Australian Public Discourse on Refugees and Immigration

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The term 'queue-jumpers' and variations on this theme have been widely applied in recent months in Australian public discourse, especially since the commencement of the so-called 'Tampa crisis' on 27 August 2001, when a boat carrying 438 unauthorised arrivals heading for Australia sank in international waters in the vicinity of Christmas Island.[1] This paper analyses this discourse in three components. First, I will identify the use of the queue analogy within contemporary Australian public discourse. I will consider definitional and historical uses of the term 'queue', and explore the implicit themes embedded in the meaning of queues, with a view to identifying an established word-use. Finally, I will examine elements of refugee immigration policy in Australia to establish whether this policy conforms to the characteristics and thematic underpinnings of a queue as defined earlier. The focus of this paper will be on the use of the terms 'queue' and 'queue-jumpers' in Australia between 26 August and December 2001, during and immediately after the Tampa crisis. Restricting the word-use to this specific timeframe enables a coherent analysis of immigration policies, procedures and outcomes within a rapidly changing policy area.

Contemporary Australian Public Discourse

Recently, the use of the queue analogy and synonymous terms has become ubiquitous in several fora. In the case of public discussion on regular radio talkback shows, for example, on 27 August John Laws on 2UE spoke to a caller who referred to unauthorised arrivals as 'backdoor people'. Laws responded by referring to them as 'gatecrashers'.[2] On 28 August Mike Carlton on 2UE spoke to a caller who raised the issue of 'correct procedures' for immigration twice within a two-minute call and, in an obvious reference to the notion of a queue, asked: 'If you were in a parking lot waiting for a parking spot and somebody pushes [sic] in, how do you feel?'.[3] On 31 August Kerri-Anne Kennerley on 2GB spoke to another caller who used the term 'queue-jumping' twice within a two-minute telephone conversation.[4] Also on 31 August Richard Glover on ABC's 2BL radio program spoke to a caller who opined that 'these new arrivals are just jumping the queue'.[5] On 3 September Alan Jones on 2UE said of asylum-seekers who had tried to come to Australia via Indonesia that 'as soon as they left Indonesia they were queue-jumpers'.[6] On 4 September he again used the term 'queue-jumpers'.[7]

Similarly, the queue analogy has been evident in the parliamentary arena. On 23 August 2001 the House of Representatives discussed the *Migration Legislation Amendment (Immigration Detainees) Bill (No 2) 2001*, which strengthened the ability of Australian officials to respond to the escape of detainees, and the use or manufacture of weapons by detainees. During debate National Party MP De-Anne Kelly referred to unauthorised arrivals as people 'trying to migrate to Australia by

queue-jumping'.[8] During federal parliamentary debate on 29 August on the *Border Protection Bill 2001*, which would have retrospectively sanctioned the Australian government's treatment of the Tampa crisis and permitted the Australian navy to tow a ship carrying unauthorised arrivals out of Australian waters and into international waters, Labor senator Robert Ray reaffirmed the notion of a queue by suggesting that the Labor Opposition wanted to 'build an orderly refugee program, and … allow people to queue orderly [sic]'.[9]

The use of the analogy has been evident in the print media also. On 20 November in a letter to the editor in the *Australian* newspaper, Gavan Breen referred to the 'queue whose jumpers the Minister [for Immigration] likes to talk about'.[10] On 2 December an article in the *Sun Herald* was titled, 'More boat people jump the queue'.[11]

Although the term queue has become ubiquitous in contemporary discourse, this is far from the first time the term has been used in the context of Australian immigration policy. Nancy Viviani, for example, notes its use in reference to the unauthorised arrival of Vietnamese nationals in 1978.[12] In 1989 when the House of Representatives discussed a *Migration Legislation Amendment Bill*, Labor MP Dr Charlesworth advised visitors overstaying work or holiday visas who expected to 'slip past the system' to 'wait in the queue in your country of origin'.[13] The term queue-jumpers is even given credence in a publication by the Human Rights and Equal Opportunity Commission (HREOC), which investigates the detention of unauthorised arrivals.[14]

In Search of Queues: Definitions, Implications and Social Meaning

What is a queue? Many people envisage a line of people, or objects, waiting for a service or product. The *Oxford English Dictionary* defines a queue as 'a number of persons ranged in a line, awaiting their turn to proceed, as at a ticket office; also, a line of carriages, etc'.[15] However, this investigation into the use of the term extends beyond a strictly definitional one. I am concerned to investigate the conceptual presuppositions of the use of the queue analogy in public discourse in Australia in relation to the processing of application for refugee status.

Analogies, as Wittgenstein argued, are a method of reasoning which moves meaning from a known, understood context into a 'to be understood' context. That is to say, they assist in the acquisition of meaning and understanding in new contexts.[16] At the same time, the study of analogy allows for the identification of misunderstandings, in the sense of the use of an analogy to link forms of expression in what Wittgenstein calls 'different regions of language',[17] that is, in new and inappropriate contexts where the meaning of the word is so different as to be misunderstood. Investigating the use of a word in a new context requires considering previous, legitimate uses of the word with more recent, yet to be understood uses of the word.[18] Thus an analysis of the use of the word queue in the context of refugee intakes in Australia enables the applicability and legitimacy of this word-use to be examined in a relatively new context.

What, then, are the historical uses of the term, and is it possible to establish an understood context for the term? The term 'queue' appears in modern usage. It was used in 1837 to describe a line of people in France, in 1862 to describe a line of carriages, and in 1876 to describe a line outside a French theatre. It is not,

however, exclusively a Gallic term. In 1953 the UK House of Commons discussed a queue of claims before it, and in 1956 *Newsweek* reported a queue for theatre tickets in Leningrad. In 1958 an article noted that 'after the war the railways had to take their places in the queue after housing and housing repairs', as reported in the *Oxford English Dictionary*. Definitionally, a queue is often, but not always, a physical entity constructed by a line of people or objects.

Relatively few social science investigations have been made into the sociology of queues, although queuing theory is an important area within mathematics.[19] In sociological terms, queues can be seen to represent the values and characteristics of modern, impartial bureaucracies. Weber argues that a 'pure' modern democracy is one which is devoid of any expressly ordered status privileges for individuals.[20] Instead, one of the hallmarks of a modern democracy is the manipulation of a bureaucracy via the institutionalisation of impersonal criteria for making decisions. Bureaucracy is guided by rules, which can be learnt. Abiding by these rules ensures a levelling of economic and social differences, the creation of a modern mass democracy.[21] Bureaucracy is 'rational' and impartial in the sense that the rules are carried out 'without regard for persons'. Bureaucracy becomes dehumanised, eliminating personal, emotive and irrational elements. Experts who administer the rules are unmoved by arbitrariness, favour, grace or gratitude.[22] This ensures objectivity and impartiality, which denote fairness. This idea was consciously iterated in the federal Parliament in 1989 when a Government member argued that they were attempting to make the immigration system 'as objective as we possibly could because we were looking for a fairer and more objective way of deciding things'.[23]

In many senses, the idea of a queue accords with a Weberian ideal-type of bureaucratic decision-making. Queuing operates by the principle 'first come, first served'. The rules which govern queuing behaviour (which will be discussed below) are impersonal. Social and economic characteristics including race, sex, wealth, class or health are rendered irrelevant by the queue, which operates in an impartial manner to ensure each individual has an opportunity to receive the service or product desired, depending only on their place — and preparedness to wait — in the queue.

Leon Mann argues that queues exhibit cultural values including that time served in the queue denotes the appropriateness of receipt of service.[24] Those who come first must queue longest. The effort of waiting longest is rewarded when they reach the service or product provider and receive the service or product they have been waiting for. This is regarded by participants as 'fair'.[25]

Besides the first come, first served nature of the queue, rules exist to govern aberrant behaviour. For example, queuers may take 'time out' from a physical queue, holding their place in the line by placing an inanimate personal object (such as a bag) in their space.[26] Such 'time outs' are accepted by others in the queue so long as the time out is not excessive. Overly long absences from the primary task of waiting are considered to be a derogation of obligation, and the time-outer may experience difficulty in returning to their place. Mann explains queues as a social system,[27] a means of maintaining control while moving towards a goal, characterised by organised patterns of behaviour and a common set of norms and values.

Other sociologists regard queues as representing orderliness,[28] or patterns of equality and standardisation.[29] 'Rank order' has been regarded as a principle of distributive justice.[30] Rank order is embodied in the first come, first served order of queues.

What these explorations share thematically is the idea that a system of allocating service to individuals functions on the basis of a pattern of their preparedness to wait, is not based on any personal criteria such as wealth, class, race, sex or health, and that this represents impartiality and fairness. The rules of queuing are similar to the rules of bureaucracy envisaged by Weber and implemented in Western liberal democracies.[31] They can be learnt, and they can be impartially applied. Those who 'earn' the service do so by virtue of their preparedness to wait — and waiting is within the capabilities of all who wish to benefit from that service or product — and wait patiently until it is their 'turn'.[32]

If a queue is seen to represent impartiality and fairness, this helps to explain the hostility that can be shown toward queue-jumpers. Queue-jumping violates the *modus operandi* of a queue: first come, first served. As such, it can easily be characterised as 'unfair'. Queue-jumping also violates the single and impersonal criterion by which one's turn is determined in the queue — how long one has waited. As such, it violates the very impartiality and impersonality of the bureaucratic chain. To assess queue-jumping against the characteristics of an impartial bureaucracy described above, it can be seen to break the physical line (by the interjection of the queue-jumper), break the learned rules (and simultaneously illustrate that breaking the rules is possible), create a new level by which one's turn is determined (one's sheer procacity), introduce emotion as a successful criterion for determining place (one's desire to be served faster), introduce irrationality in the selection process (due to the arbitrariness of those who possess sufficient procacity benefiting, while those who hold the rules in esteem suffer), override orderliness, threaten equality, and violate rank order.

These are rigorous criticisms indeed. Assessed against the characteristics of impartiality and fairness, queue-jumping fares particularly poorly. In Australia, where fairness is sometimes promoted as a major theme within political culture,[33] a violation of fairness can easily raise public ire. Even where the political culture may not be determined to be fair in a general sense,[34] individual violations of an impartial set of rules may still raise the hackles of members of the public who perceive a lack of fair treatment.[35]

It would seem an appropriate framework of analysis, then, to assess allegations that asylum seekers heading for Australia by boat in the period under discussion were queue-jumping against these characteristics of an understood word-use of queues. That is, does Australian immigration policy towards asylum seekers[36] represent an impartial process, designated by waiting periods? Does a potential refugee receive service in accordance with the impartial and impersonal criterion of how long they have waited? Are there personal elements in refugee immigration policy which arise in determining one's likelihood of achieving settlement, and can asylum seekers learn the rules by which they may join this queue? In other words, is Australian immigration policy towards refugees characterised by an impartial waiting procedure that asylum seekers should join? Below, I will provide an overview of Australian immigration policy at work. Immigration procedures for asylum seekers are complex and subject to change. Nevertheless, some themes can be identified.

Refugee Immigration to Australia: A Fair Queue?

Australia accepts people defined as refugees, or in dire need of humanitarian assistance,[37] for resettlement in Australia under refugee and humanitarian programs with both offshore and onshore components. The determination of those who qualify from offshore for entry into Australia is complex, time-consuming and involves huge numbers of people.[38] The United Nations High Commissioner for Refugees (UNHCR) sets up emergency posts where refugees gather in numbers due to major emergencies, and operates in a variety of locations around the world including capital cities, remote camps and border areas.[39] Under normal circumstances, an asylum seeker who applies through UNHCR procedures cannot request resettlement in a specific country.[40] Resettlement to Australia occurs after submissions are made by UNHCR field officers to Australian processing posts, or on the advice of UNHCR regional resettlement officers.[41]

A number of offshore posts for assessing refugee applications, including Nairobi and Islamabad, have been reported by Peter Mares as having a backlog of applications that is so large that new applications will not be considered for several years. Mares also notes that the Department of Immigration and Ethnic Affairs (DIMA) admitted in its 1994 *Annual Report* that Australian officials experienced difficulty in making contact with asylum seekers through their offshore programs.[42]

The idea that it is difficult to make contact with Australian officials offshore is borne out by other evidence. On 28 November 2001, following a report in the Australian media,[43] I telephoned the Australian High Commission in Islamabad, Pakistan to ask how it might be possible to apply for a visa and/or refugee status to come to Australia. After navigating my way through three levels of an automated menu system in English, I found my way to the section dealing with immigration enquiries. I was listening to an answering machine in English. The message told me that 'until further notice all visa processing is suspended'. I was advised that the office in Islamabad was unable to respond to enquiries concerning new or existing visa applications. All enquiries were to be directed to the Australian Embassy in Bangkok, Thailand. Pakistani nationals were also asked to apply at the Australian Embassy in Bangkok. The telephone and fax numbers, email address and postal address of the Australian Embassy in Bangkok were then given. I called Bangkok and was told, again by an answering machine message in English, that 'we are unable to take a message'. I was advised to email the Embassy, and was given the email address by the answering machine service.

I then emailed the 'Islamabad Processing Office' in Bangkok, asking how a person might apply to come to Australia as a refugee. They informed me that it would be best for a person to apply directly to the UNHCR for refugee status, and that the UN refers applicants registered as refugees to Australia for resettlement 'if they have close links to Australia'.[44] So already-existing contacts in Australia enhance one's chances of resettlement here, even once other barriers such as achieving refugee status and being selected for resettlement have been overcome.

It seems that no matter how long an asylum seeker waits in offshore processing procedures, there is no guarantee that their claim will be able to be processed, nor that they will be placed in a safe country for resettlement. Anecdotal evidence suggests some people in refugee camps live there for years.[45] Furthermore, in

particular times of crisis a special appeal may be made by the UNHCR for additional resettlement places for people in dire need. This occurred, for example, when Australia responded to a special appeal for people from the former Yugoslavia.[46] No overt attempt was made, in responding to this appeal, to force people fleeing the war-torn region to wait 'behind' others in, for example, a camp in Nairobi.

The onshore component of refugee processing relates to those people already located on Australian soil. This includes tourists, students and other visitors who want to stay after the expiration of their temporary entry permit, and unauthorised arrivals by plane or boat. In the onshore program, some waiting characteristics do exist. When an unauthorised non-citizen arrives they are mandatorily detained.[47] The Australian government attempts to process their application for refugee status quickly to minimise the period of detention.[48] The speedy processing of applications from detained asylum seekers occurs even if it results in delays in processing applications from other asylum seekers who are not detained. The Minister for Immigration can also act on his or her discretion to grant asylum to an applicant. This discretion is used in a small, but regular, proportion of cases each year.[49]

The procedures for offshore applications from people who entered Australia in an unauthorised manner are different from those for people who entered legally. For example, the *Migration Act* (1958) differentiates between onshore applicants who enter Australia with legal authorisation, who may be granted a Protection Visa giving them permanent residence, and onshore applicants who enter without authorisation, who may only be granted a Temporary Protection Visa giving them residence for three years.[50]

Furthermore, the Commonwealth Parliament has specifically legislated to deny non-citizens who enter Australia unlawfully the same access to legal advice and access to information on how to lodge a formal application for a protection visa. This position was upheld by the full bench of the Federal Court, which determined in *Fang v Minister for Immigration*[51] that a formal, written application for a protection visa on Form 866 must be made for an application for a Protection Visa to be valid, that detainees may not be given access to legal advice unless they specifically make a request for same,[52] and that officers of the Australian government may not inform detainees that their request for asylum must be lodged within two working days of their arrival in Australian territory.

In making his argument, Justice Nicholson stated that 'the reality is that parliament has chosen to take a tough line on the provision of information, including information concerning access to legal advice, in relation to non-citizens and … courts are bound to apply what parliament has enacted although it may be arguably contrary to provisions of Australia's international obligations'. International obligations are only brought to bear where ambiguity exists in the law. In this case, the *Migration Act* is entirely unambiguous. Justice Nicholson continued that 'the context of the *Act* … contains provisions which, in my judgement, manifest strongly an intention to exclude procedural fairness of the type particularised in [section 198 of the Act]', and that 'this is a case in which parliament has negated the possibility of common law concepts of procedural fairness applying in favour of the non-citizen applicants. Parliament has achieved

this by the enactment of ss45-47 and ss193(2) and 198(4) of the *Migration Act*'.[53] There is a clear intention within current statute and policy towards unauthorised arrivals that they are not given any opportunity to learn the rules of the 'queue' which they are attempting to join.

Furthermore, under legislation introduced in October 2001, Australian authorities are permitted to 'draw adverse inferences about the veracity of the person's claimed identity, nationality or citizenship' if an asylum seeker cannot reasonably explain why they are not in possession of identity documents.[54] Legislation passed in September 2001 excised Christmas Island from Australia's migration zone and ensured that people who are processed at Christmas Island can never be granted permanent residence in Australia.[55]

The main use of the queue analogy in contemporary discourse has been to suggest that unauthorised boat arrivals such as those on the Tampa may be trying to introduce the benefit that their procacity (in undertaking a perilous and expensive journey by sea) might aid their likelihood of achieving service ahead of others who are more needy.[56] However, two elements render even this partial attempt to gain advantage in receipt of service marginal to the overall procedures faced by asylum seekers. First, it is normal for asylum-receiving countries around the world to deal with onshore applications for asylum. Indeed, in many countries with more easily accessible borders than Australia, the number of onshore applications is far higher than in Australia.[57] So an attempt to join the onshore program does not, in and of itself, represent queue-jumping. Secondly, the *Migration Act* in various provisions ensures that the procacity and determinedness of unauthorised arrivals severely hamper their likelihood of achieving the service they desire, because unauthorised arrival by non-citizens disadvantages an asylum seeker considerably in the applications process.

Conclusion

There is, then, no offshore queue to join in even the most basic sense of the word. There is no single queue, nor are there several queues, labelled 'destination Australia'. The offshore picture of refugee claims is fluid, complex and subject to vagaries of unrest occurring and new, urgent crises. It seems the only realistic prospect for asylum seekers of being able to apply for refugee status within Australia specifically is to lodge an onshore application. There are, however, many obstacles and anomalies in the procedures for determining refugee status in onshore applications. The characteristics of Australian immigration policy towards asylum seekers do not conform to the established word-use of a queue.

I return to the question of an analogy, derived from Wittgenstein, as a method of reasoning which moves meaning from a known, understood context into a to-be-understood context. The idea of a queue and the hostility expressed towards queue jumpers in the context of a line for theatre tickets, are well known elements of liberal democratic orders. This is why the use of the terms queue and queue jumpers has such resonance. However, the extension of the analogy to the position of unauthorised boat arrivals in Australia transfers that known meaning to a different 'region of language', and an inappropriate context. The use of the term queue in the immigration context is misplaced. It renders any understanding of the queue analogy illegitimate.

There is another, more profound, conclusion which can be drawn from the evidence presented. Refugees, by definition, are people who find themselves in dire personal situations, crises and emergencies. Indeed, the very reason refugees and asylum seekers are seeking refuge is due to the disorderliness of the situations they are fleeing; their dire need stands in contradistinction to the notions of the orderliness and impartiality of queues.

This means that not only is there no queue for refugees to join, but even if there were I would argue that it would be inappropriate to ask them to join one. In the emergency wards of public hospitals, for example, patients are not served on a first come, first served basis. Heart attacks are treated before sprained ankles.[58] This is accepted and normal procedure, which recognises that those most in need should be treated first and that those whose conditions are not life threatening may be asked to wait longer.

In the international refugee system, the situation is not quite as simple. Most refugees would qualify as 'heart attack' emergencies, because if they were to remain in their present conditions their lives would be threatened by war, famine, drought or persecution. Unauthorised boat arrivals in Australia may also be 'heart attack' patients. The issue is not that some refugees are more deserving than others. Rather, refugee policy strains under the burden that, with 21,793,300 people worldwide under the UNHCR's mandate, there are too many heart attacks occurring simultaneously to be able to save everyone.

Refugees who arrive in Australia by boat may be just as needy as refugees in a camp in Nairobi. All refugees are more in need of emergency assistance than ordinary immigrants who seek resettlement in Australia. We shouldn't be asking them to wait in line. We should be developing policy which offers them immediate and appropriate assistance. In this context, word-use which associates an accurate and established meaning with those policy procedures is important.

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1   On 26 August 2001, a boat carrying 438 unauthorised and mostly Middle Eastern asylum seekers in international waters between Indonesia and Australia was located by Australian and Indonesian search and rescue officers. Because the boat was sinking, the Australian government, in accordance with its obligations under the UN Convention on the Law of the Sea 1982, advised a nearby Norwegian freighter called the Tampa to rescue the asylum seekers. The Tampa rescued the asylum seekers in international waters in the Indian Ocean, and proceeded towards Christmas Island. Christmas Island was a destination for many unauthorised asylum seekers, was then within the Australian migration zone, and contained facilities for processing requests for refugee status. The Australian government denied the Tampa permission to enter Australian waters, and for two days the ship floated in international waters. After the captain of the Tampa reported worsening conditions on board, he issued a mayday and headed towards Australian waters. Although the ship reached Australian waters, the Australian government continued to deny the Tampa permission to dock at Christmas Island. One day later, Australian SAS navy forces boarded the ship. The asylum seekers eventually disembarked at sea onto an Australian navy vessel.

2   2UE, Transcript of radio talkback program hosted by John Laws, 27 August 2001, 11:38am.

3   2UE, Transcript of radio talkback program hosted by Mike Carlton, 28 August 2001, 5:43pm.

4   2GB, Transcript of radio talkback program hosted by Kerri-Anne Kennerley, 31 August 2001, 12:42pm.

5   2BL, Transcript of radio talkback program hosted by Richard Glover, ABC 702, 31 August 2001, 4:21pm.

6   Alan Jones, Editorial presented on radio 2UE, 3 September 2001, 10:41:20am.

7   Alan Jones, Editorial presented on radio 2UE, 4 September 2001, 10:06:44am.

8   *Commonwealth Parliamentary Debates*, 23 August 2001, House of Representatives, p 30117.

9   *Commonwealth Parliamentary Debates*, 29 August 2001, Senate, p 26988.

10 *The Australian*, 20 November 2001, p 12.

11 *Sun Herald*, 2 December 2001, p 2.

12 Nancy Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*. Melbourne University Press, Melbourne, 1984, pp 83, 84.

13 *Commonwealth Parliamentary Debates*, 1 June 1989, House of Representatives, p 3497.

14 HREOC acknowledges that unauthorised arrivals by boat come to Australia 'for many reasons. Some come simply to seek better economic conditions. Some may be queue-jumpers. Many seek protection from persecution', *Those who've come across the seas: Detention of unauthorised arrivals*, Human Rights and Equal Opportunity Commission, Sydney, 1998, p 2.

15 Queue is also variously defined in the *Oxford English Dictionary* as a tail, a long plait of hair, a support for the butt of a lance, the tail-piece of a violin, and a barrel, but these definitions are not relevant to the discussion here.

16 Eve Bannett, 'Analogy as Translation: Wittgenstein, Derrida, and the Law of Language', *New Literary History*, vol 28, no 4, 1997, p 655. Wittgenstein used the term Ähnlichkeit, translated as both resemblance and analogy.

17 Ludwig Wittgenstein, *Philosophical Investigations*, trans. G E M Anscombe, Basil Blackwell, Oxford, 1983, p 43.

18 Bannett, op cit, p 655.

19 See for example Thomas Saaty, *Elements of Queueing Theory with Applications*, McGraw-Hill, 1961; Richard Larson and Amadeo Odoni, *Urban Operations Research*, Prentice Hall, 1981; Edward Lazowska, John Zahorjan, G Scott Graham, Kenneth Sevcik, *Quantitative System Performance: Computer system analysis using queuing network models*, Prentice Hall, 1984.

20 H H Gerth and C Wright Mills (eds), *From Max Weber: Essays in Sociology*, Routledge and Kegan Paul Ltd, London, 1948, p 187.

Notes

21 Gerth and Mills, op. cit., pp 196–224; Max Weber, *The Theory of Social and Economic Organisation*, Introduction by Talcott Parsons, 6th ed., The Free Press, New York, 1969, p 340.

22 Gerth and Mills, op cit, pp 215–217.

23 *Commonwealth Parliamentary Debates*, 1 June 1989, House of Representatives, p 3497.

24 Leon Mann, 'Queue culture: The Waiting Line as a Social System', *American Journal of Sociology*, vol 75, no 3, November 1969, pp 340–354.

25 The idea of fairness also has resonance in Rawls' theory of justice. See John Rawls, *A Theory of Justice*, Harvard University Press, Cambridge Ma., 1971.

26 Mann, op cit, p 345.

27 This definition of a social system is derived by Mann from Talcott Parsons, *The Social System*, Routledge and Kegan Paul, London, 1951.

28 Edward Hall, *The Hidden Dimension*, Doubleday and Company Inc, New York, 1966, p 128.

29 Edward Hall, *The Silent Language*, 2nd ed., Anchor Books, New York, 1973, p 179.

30 George C Homans, *Social Behaviour: Its Elementary Forms*, Routledge and Kegan Paul, London, 1961, p 236.

31 Interestingly, in the Soviet Union queues — which were ubiquitous — were regarded as a failure of social policy, a 'national disgrace' and a 'social ailment'. See V O Rukavishnikov, *'The Queue'*, Soviet Sociology, vol 29, 1990, pp 20–36.

32 Impartiality also has its risks. Although Weber predicted efficiency benefits from bureaucratic systems, he warned that this same structure could become an 'iron cage', Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, George Allen and Unwin Ltd, London, 1984, p 181; a rigid structure devoid of feelings and values, Jay Klagge, 'Approaches to the iron cage: reconstructing the bars of Weber's metaphor', *Administration and Society*, vol 29, no 1, 1997, pp 63–78. This means that in practice, substantive justice would often be thwarted by the rigid implementation of impartial rules. See Gerth and Mills, op. cit., pp 220–221.

33 Ian McAllister, 'Political Behaviour', Woodward, Parkin and Summers (eds), *Government, Politics, Power and Policy in Australia*, 6th edn, Addison Wesley Longman, South Melbourne, 1997, p 245.

34 The idea that Australian political culture is straightforwardly imbued with fairness or egalitarianism is contested by commentators such as Smith and Thompson, who note the many exceptions to equal treatment which have existed throughout Australia's post-settlement history. See Rodney Smith, *Australian Political Culture*, Longman, Sydney, 2001; Elaine Thompson, Fair Enough: Egalitarianism in Australia, UNSW Press, Sydney, 1994.

35 For example, supporters of Pauline Hanson's One Nation Party posted their opponents as elitists who 'didn't believe in a "fair go"'. See Sean Scalmer, 'From Contestation to Autonomy: The Staging and Framing of Anti-Hanson Contention', *Australian Journal of Politics and History*, vol 47, no 2, 2001, p 220.

36 For the purposes of the argument, this discussion will focus on the refugee and humanitarian components of Australia's immigration program, and not other mechanisms for immigration. This is in part because ordinary immigration requires would-be immigrants to possess English skills and/or particular work skills and/or money. This means those seeking asylum would be ineligible for immigration under ordinary criteria. See the *Australian*, 31 August 2001, p 13.

37 The definition of a refugee is derived from the 1951 United Nations Convention Relating to the Status of Refugees, and the 1967 Protocol (which removed geographical and temporal restrictions). The United Nations High Commissioner for Refugees (UNHCR) acknowledges that many people in dire need of humanitarian assistance, including internally displaced persons, are not legally definable as a 'refugee'. Some of these people qualify for resettlement under 'humanitarian' programs.

38 As at 1 January 2001 the UNHCR estimated 21,793,300 people worldwide fell 'under the[ir] mandate'. UNHCR, The Refugee Story in Statistics, 2001.

39 UNHCR, *Helping Refugees: An Introduction to UNHCR*, 2001, pp 10, 7.

40 UNHCR, *Protecting Refugees: Questions and Answers*, 2001.

41 UNHCR, *Easy Guide to Refugee Resettlement Programs*, 2001, p 1. Only a 'handful' of the 189 members states of the United Nations have annual quotas on the number of refugees who may be resettled in their territory. Australia is one of these. UNHCR, *Protecting Refugees: Questions and Answers*, 2001.

42 Peter Mares, 'The New Peril: Australia's Media Coverage of the "Boat People"', Paper presented at the *Media and Democratisation in the Asia–Pacific Conference*, Research Institute for Asia and the Pacific, University of Sydney, 25–26 February, 2000.

43 *Sunday*, Channel 9, 4 November 2001.

44 Katharine Gelber, Personal email correspondence with Senior Migration Officer, Islamabad Processing Office (Bangkok), Australian Embassy Bangkok, Thailand, 6 December 2001.

45 This is the story told by Abraham Quadan, who grew up in a refugee camp in Jordan. 'Personal Reflections as a Refugee', address given to public meeting, *Refugees, Gangs and Racialised Punishment*, University of Sydney, 27 September 2001.

46 DIMA, *Annual Report 1996/97*, p 44.

47 DIMA, *Fact Sheet 64: Temporary Protection Visas*, 2001.

48 DIMA also reports significant reductions in the time spent processing applications from unauthorised arrivals. DIMA, *Unauthorised Arrivals and Detention: Information Paper*, 2001.

49 For example, in 1996/97 the Minister granted visas on humanitarian grounds in 79 cases, representing 107 people. DIMA, *Annual Report 1996/97*, p 48. These interventions were made after the applicants had failed to be classified as refugees in the primary determination made by the Department, and in a secondary determination made by the Refugee Review Tribunal. In 1995/96 the Minister exercised his discretion in 67 cases to grant asylum seekers permanent residence. DIMA, *Annual Report 1995/96*, p 57.

50 DIMA, *Fact Sheet 4.1: Seeking Asylum Within Australia*, 2001.

51 *Fang v Minister for Immigration and Ethnic Affairs 1996* 135 ALR 583. The case concerned a group of Sino-Vietnamese nationals who were intercepted in Australian waters and detained in Port Hedland in November 1994.

52 When lawyers employed by the Refugee Advice and Casework Service in Port Hedland requested access to these detainees, they were told that 'none of the persons from that boat have requested the provision of reasonable facilities for obtaining legal advice', and access was denied. See Nick Poynder, 'The incommunicado detention of boat people: a recent development in Australia's refugee policy', *Australian Journal of Human Rights*, vol 3, no 2, 1997.

53 *Fang v. Minister for Immigration and Ethnic Affairs 1996* 135 ALR 583 at 628, 631, 636.

54 DIMA, *Fact Sheet 75: Processing Unlawful Boat Arrivals*, 2001.

55 Phillip Ruddock, Minister for Immigration and Multicultural Affairs, *Media Release: Information on the new Border Control Legislation, 2001*. Seven Acts passed since the Tampa crisis combine to shape Australia's new border protection controls. See http://www.minister.immi.gov.au/media_releases/media01/r01164.htm. Accessed 1 January 2002. The *Migration Amendment (Excision from Migration Zone) Act 2001* excised Ashmore, Cartier, Christmas, and Cocos Islands from Australia's migration zone.

56 It has been reported that in 1996 the newly elected Liberal government combined Australia's onshore and offshore refugee programs into one 'humanitarian' category, which means that when a visa is granted onshore, the number of visas potentially available to offshore applicants can be reduced proportionally. See Mares, op. cit.; the *Australian*, 31 August 2001, p 13. Annual reports of the Department of Immigration and Multicultural Affairs show that in 1995/96 the offshore and onshore components were listed separately under different programs. DIMA 1996, op. cit. In 1996/97 they were both sub-programs of a newly titled 'Refugee and Humanitarian' program. DIMA 1997, op. cit. Under the 'Refugee and Humanitarian' program, the offshore sub-program in 1996/97 still had a separately listed quota of 10,000 and the onshore protection sub-program its own notional target of 2,000. The 2000/01 target was also a total of 12,000. However in a recent publication DIMA makes special note of the 'flexibility' of its program which allows places to be moved between the onshore and offshore components of the program 'as the need arises'. DIMA, *Fact Sheet 4.0: Australia's Refugee and Humanitarian Program*, 2001. This appears to have introduced the notion of queue-jumping, i.e. that the place taken by the new arrival displaces someone who has been waiting longer. This idea is promoted in the language of current immigration policy. A fact sheet released by DIMA argues that 'TPV holders are taking the places in the Humanitarian Program from refugees and others who are often in greater need of resettlement'. DIMA, *Fact Sheet 64: Temporary Protection Visas*, 2001. However, in the absence of an identifiable queue from which it would be possible to displace someone else, analogising this behaviour to 'queue-jumping' seems, at best, disingenuous. While the onshore applicant is attempting to enter Australian territory with the intention of achieving refugee status

and thus permanent residency, by doing so they are not consciously displacing another person from any identifiable queue or targetable procedure.

57 Sheridan claims, for example, that in 1999/2000 Australia had 4,450 unauthorised arrivals, the UK had 97,900 and the year before Germany had 95,000. The *Australian*, 6 September 2001, p 11.

58 I am indebted to Darryl Jarvis for help in developing this point.