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**BOOK REVIEW: TAMPERING WITH ASYLUM BY FRANK BRENNAN**

■ **Adrienne Millbank**

The debate about boat people and how they are treated in Australia is highly polarised and often emotive. The trouble with much of the commentary and writing is that it assesses Australia's actions devoid of the international context within which they are occurring. The situation, in a nutshell, is this. The system of international asylum was established by the 1951 UN Refugee Convention. Currently 450,000 people each year currently seek asylum each year in Western countries and the system is under enormous pressure. It is undermined by the numbers of people from poor and unstable countries using it to gain the security of residence in the West, and by the increasingly tough measures that Western governments are adopting to prevent their entry. It is increasingly described as 'dysfunctional' and, with the advent of people smuggling, many observers see it as failing refugees and as politically and socially corrosive for receiving countries. Post 11 September 2001, the need to address the situation of 12 million refugees, and millions more displaced people and 'internal refugees', is more urgent. Many of these people are in squalid camps and vulnerable to attack or rape or trafficking for prostitution or recruitment by militias or terrorists.

There is a need for a book which objectively examines the international refugee situation in all its moral and real-world complexity, and suggests ways that Australia, historically removed from mass asylum seeker inflows but with a strong record of managed immigration and refugee resettlement, can best contribute.

There is a need for a book which eschews moral judgements and simplistic international comparisons in the interests of better understanding, more civilised debate and the serious pursuit of international solutions. Despite Father Frank Brennan's stated intention to educate the refugee advocate as well as the government official, *Tampering with Asylum*, as its title suggests, is not such a book.

Father Frank Brennan SJ AO is a long-standing, articulate and publicly recognised human rights advocate. He has listened to asylum seekers in detention and to people working in the field. He imparts to the reader an understanding of the situations and absolutely ordinary human impulses driving 'secondary mover' boat people from countries like Afghanistan and Iraq to eventually arrive in countries like Australia. Of course such people deserve empathy; of course they do not deserve to be punished or demonised. It does not necessarily follow, however, as Brennan and others, like David Marr and Marian Wilkinson<sup>1</sup> argue, that Australia is the most morally reprehensible of countries for drawing a line in the sand with the *Tampa* and refusing the entry of its 348 rescued boat people. Nor does it follow that the international asylum system as it currently operates (or as it operated pre-*Tampa*) must be preserved at all costs.

*Tampering with Asylum's* claim to moderation is that, while the author empathises with the asylum seekers, he sympathises with government, whose responsibility it is to control the borders. He sympathises only up to a point, or

rather up to two points: mandatory detention and the *Tampa*. Brennan acknowledges the problems that the influx of asylum seekers has created for governments over the last 10-15 years and that an open border policy is not feasible. The central message or judgement he makes in his book is that Australia, with its *Tampa* stand-off, its naval blockade (Operation Relex) and its offshore processing through its 'Pacific Solution' has massively over-reacted to a relatively small number of boat people. He judges that the Government has 'used a sledge hammer to crack a walnut', and in doing so has taken Australia beyond the bounds of acceptable balance and beyond the bounds of decency.

It can be argued that books like Brennan's are part of the problem, rather than part of the solution. *Tampering with Asylum* belongs squarely in the shame-Australia-shame camp, the barrage of books and articles and sermons which appear to have done little to shift public opinion since the *Tampa* arrived in Australian waters 27 August 2001. (Phone polls in November 2003 on the Government's action to excise some 4,000 northern islands from the migration zone in order to thwart the entry of some 14 boat people showed 90 per cent approval.)<sup>2</sup> Books like Brennan's, the argument goes, confirm the sense of righteousness and self-importance of those who write them and their fellow ashamed Australians. However they don't speak to the middle ground, to the majority of people who support government action but who are dismissed as fearful of 'the other'. Thus they leave the middle majority open to precisely the sorts of populist politics that the righteous find so morally offensive. And there is a close and causal connection between the asylum standards in Western countries that

writers like Brennan claim Australia must uphold, and the battery of exclusionary measures Western governments are adopting, and which the righteous find morally indecent.

Brennan in *Tampering with Asylum* ignores the complexities of comparing asylum policies and procedures across countries with different histories, geographies and legal systems-and very different migration traditions and cultures. He sets Australia up against the high asylum countries of the UK, Germany and the US, applies his own simple compassion calculus, and judges us to be wanting. Insofar as Australia is going beyond the anti-asylum seeker practices of these other countries, he judges that we are failing to 'pull our weight in the world'. Worse, we are setting a very bad example. Why, he asks rhetorically, can't Australia be at least as decent as countries receiving ten times as many asylum seekers? We should, he argues, use the downtime from boat arrivals gained through the overly harsh post-*Tampa* measures to take a good look at ourselves. Suitably shamed, we should then retreat from the exclusionary 'fire-wall' of our Pacific Solution (and from mandatory detention and attempts to deny access to judicial review of refugee decisions) and avoid any further undermining of the rights and dignity of asylum seekers.

What Brennan appears to be advocating as a morally acceptable position for Australia on boat people is its pre-*Tampa* regime, minus mandatory detention throughout the entire period of status determination, but with strict visa requirements and carrier sanctions and all the other border control measures intact. This status quo position is one in which people smugglers deliver mixed loads of people, mostly 'secondary movers' from countries like Pakistan, and amongst

whom distinctions between ‘migrant’ and ‘refugee’ have become blurred. Pre-*Tampa* controls he finds acceptable, on the basis that a ‘balance’ must be maintained between compassion and control. This is a morally compromised position Brennan acknowledges that the asylum seekers who are resourceful enough to get themselves into countries like Australia are not the most needy or deserving. However he tasks this to be the only position possible if we are to maintain a ‘compassionate’ welcome for those who arrive on our doorstep. It may also be the only position possible if you judge, as Brennan does, that the institution of international political asylum must, as a fundamental moral imperative, be maintained in the way that it operated before August 2001.

Unfortunately for Brennan, his book appears to have arrived too late to prevent Australia’s bad example from eroding asylum standards elsewhere. Either that, or other countries do not need inspiration from Australia to devise their own ever-tougher measures to discourage asylum seekers. It was perhaps inevitable that his detailed description of UK policy and practice would be out of date before the book was published, given the rate of legislative change in this area. Changes recently announced by the UK Home Secretary include: plans to move to a single tier appeal system; limiting access to judicial review; reducing access to legal aid; introducing a two-year prison sentence for asylum seekers who destroy their identity papers; introducing a requirement for airlines to make copies of identity documents of all passengers; electronic tagging of failed asylum seekers; cutting off welfare payments to asylum seekers who do not apply for refugee status on arrival; cutting off welfare payments to failed asylum seekers;

and removing children into state care from failed asylum seekers who are left destitute but who refuse to leave the country on a free flight. None other than the leader of the opposition Conservative Party has accused the UK Government of being ‘despicable’ and ‘going further than any civilised government should go’ through its intended instrumental use of asylum seekers’ children.<sup>3</sup>

What Brennan’s book does well is engage sympathy for the plight of those asylum seekers — however mixed their motives — who reach our doorstep. What it does not do is provide any new understanding or insights into the broader refugee situation, and the particular challenges that asylum seekers pose for Australia, the pre-eminent country of managed migration. Brennan has obviously talked with and listened to asylum seekers and refuge advocates and NGOs. He has also talked with the former immigration minister, Philip Ruddock, (their failure to convince each other is the reason he gives for writing the book). Apart from these talks and visits, his source of inspiration and moral authority appears to be himself: the first seven paragraphs of the book’s preface begin with ‘I’ sentences. He does not seem to have felt the need to consult the considerable body of academic research that now exists on the asylum seeker issue.<sup>4</sup> Much of this research directly refutes or challenges the clarity of the moral position he asserts, which is that Australia is wrong to move ahead of other countries on asylum seeker movements, and that by doing so Australia is failing to pull its weight internationally.

Timothy Hatton at the University of Essex, for example, has demonstrated that the measures that Western governments have adopted to date have been effective in reducing the numbers of asylum

seekers. If the goals of governments are to reduce numbers, or to stop 'illegal' arrivals, which they are, the most effective time to do this, he concludes, is while numbers are small. Large inflows are much harder to slow or stop; increasingly draconian and punitive measures are required.<sup>5</sup>

If comparisons are made on the basis of the number of refugees or humanitarian entrants accepted, on a permanent or temporary basis, whether onshore asylum seekers or offshore-selected refugee or humanitarian settlers, then Australia, on a per capita basis, is among the most generous of countries in the world. (Sweden and Canada are others.) On this basis, Australia is much more generous than Germany or the US or the UK. An examination by Alexander Betts (of Oxford University) of figures during the 1990s shows that Australia on a per capita basis accepted four times as many refugees or humanitarian entrants as the UK, which has received the largest number of asylum claims in recent years.<sup>6</sup>

Not only has Australia accepted more refugees or humanitarian migrants, on a permanent or temporary basis, than the UK, it has absorbed all of its migrants more efficiently, with less social disruption and without constant strident accusations of 'chaos' or 'crisis in the tabloid press. It has also done so more effectively, through world's best practice settlement or 'integration' services (for all except 'illegal' arrivals).<sup>7</sup>

Analyses of public attitudes show that the racism or xenophobia or 'fear of the other' explanation for hostility to asylum seekers in countries like the UK or Australia is simplistic and inadequate. Public opinion today accepts immigration and refugee resettlement, but attaches a great deal of importance to maintaining control over numbers, and to transpar-

ency in policy including entry criteria. Research conducted by Shamit Saggarr, formerly of the UK Cabinet Office, confirms that the rising number of asylum seekers has fuelled intolerance in the UK, but shows that public anger is for the most part directed at government for what is perceived as incompetence in managing intakes or delivering on promises.<sup>8</sup>

Finding the solution to illegal and asylum-driven immigration has become a political imperative in high asylum countries like the UK. The solution recommended by many researchers is to move to managed migration and refugee intakes, along the lines of Australia's. Managed intakes are seen as the best way to promote a broad range of public policy objectives: labour market; national security; public expenditure; social cohesion; human rights obligations; and international development and cooperation.<sup>9</sup>

The estimated amount that Western countries spend on processing and accommodating and supporting asylum seekers, the great majority of whom are not found to be refugees, is estimated to be in the order of US\$12 billion.<sup>10</sup> This compares with less than US\$1 billion that the UNHCR receives in contributions to care for, and organise durable solutions (repatriation, local integration, or resettlement in a country like Australia) for, the 12 million people in refugee camps.

Brennan invites the reader to play a mind-game. Imagine, he says, what would happen if every country signed the refugee convention and then behaved as Australia has with its *Tampa* and Pacific Solution. The system of international asylum would collapse. Refugees would have to choose between remaining in countries where they face persecution, or long periods in detention.

Perhaps it is time for a different sort of mind-game. Imagine if every country did

as Australia does, and, after consulting with its residents, takes in the per capita equivalent of our 12,000 annual humanitarian settlers, through similar managed programs and with similar settlement or 'integration' services. Imagine further that even half of what is spent on processing and supporting asylum seekers in Western countries is redirected to resolving the situation of refugees in camps. New refugee norms would be developed, durable solutions would be found, and all those refugees who need to be resettled in countries other than in their region would be offered places. And the hypocrisy, misery and conflict associated with the asylum system would be ended.

For Brennan and his fellow shamees, the *Tampa* and Pacific Solution represent a moral crisis in the Australian population and its elected representatives. Alternatively, Australia's actions represent just one more example of the dwindling willingness of Western

governments to accept asylum seekers, and of the lengths to which governments are prepared to go in order to keep them out. The asylum system is failing and the refugee issue needs to be addressed in a more rational, productive and organised manner. Some commentators see the harsh measures adopted by Australia as a betrayal of its migrant and refugee history. There is another view. It is precisely because Australia has invested so massively in managed migration and refugee resettlement that it is prepared — and able — to take such tough and effective measures.

Someone should write a really good book about all of this.

Frank Brennan, *Tampering with Asylum*, University of Queensland Press, St Lucia (Queensland) 2003, ISBN 0 7022 3416 8, A\$30.00

## References

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- <sup>2</sup> 'To the point', *Daily Telegraph*, 11 November 2003, p. 37
- <sup>3</sup> 'Children of rejected refugees to go into care', *Times Online*, 27 November 2003
- <sup>4</sup> See for example: N. Steiner, M. Gibney and G. Loescher (Eds), *Problems of Protection*, Routledge, London, 2003; S. Spencer (Ed.), *The Politics of Migration, The Political Quarterly*, Blackwell, Oxford, UK, 2003; and M. Gibney and R. Hansen, *Asylum Policy in the West: Past Trends, Future Possibilities*, Discussion Paper No. 2003/68, United Nations University/World Institute for Development Economics Research, Helsinki, 2003.
- <sup>5</sup> T. Hatton, *Seeking Asylum in Europe*, University of Essex, September 2003 (draft)
- <sup>6</sup> A. Betts, 'Public goods theory and the provision of refugee protection: the role of the joint-product model in burden-sharing theory', *Journal of Refugee Studies*, vol. 16, no. 3, 2003
- <sup>7</sup> J. Salt, London School of Economics, and A. Casella, International Centre for Migration Policy Development, Geneva, and former UNHCR regional director speaking at Migration: Benefiting Australia conference, Sydney, 7-8 May 2001
- <sup>8</sup> S. Sagar, 'Immigration and the Politics of Public Opinion', in S. Spencer (Ed.), op. cit.
- <sup>9</sup> See for example Steiner et al., op. cit.; Spencer op. cit.; and Gibney and Hansen; op. cit. See also C. Boswell, *European Migration Policies in Flux*, The Royal Institute of Public Affairs, Blackwell, London, 2003.
- <sup>10</sup> Special Report, 'Asylum, a strange sort of sanctuary', *The Economist*, 15 March 2003