



SHS LAW
Since 1868

Add: Suite 61.02 Level 61
MLC Centre 19 Martin Place
Sydney NSW 2000 Australia
Post: GPO Box 2041 Sydney NSW 2001

When a Child is Drowning in a Pond--

Appropriate treatment of asylum seekers by respecting their moral rights of migration

Submission to Legal and Constitutional Affairs References Committees
Parliament of Australia

Dr Dianne F Qu

LLB, LLM, PhD

Senior Legal Researcher

SHS LAW

&

Josh Chan

LLM, GDip, GCert, BCom, BSc, BArt, Dip

Chief Executive Officer

Date: 30 October 2016

About 45 years ago, Australian Moral Philosopher Peter Singer wrote that “if it is in our power to prevent something very bad from happening, without thereby sacrificing anything morally significant, we ought, morally, to do it. An application of this principle would be as follows: if I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out. This will mean getting my clothes muddy, but this is insignificant, while the death of the child would presumably be a very bad thing” (Singer, 1972).

Compared with the hypothetical scene above, the current position taken by the Australian government towards asylum seekers, which is simply watching them doing self-harm and feeling hopeless, is more like as an irresponsible person, standing there watching the child sinking. Before things get any worse, the current Australian government should at least do something to assist those offshore asylum seekers and prevent their lives ending up as pure tragedies. If even getting its clothes muddy is too much to ask from the current Australian government, we should at least expect it to yell for help and so to resettle these people somewhere appropriate. We believe it is a moral right for people to migrate and there is a moral obligation for Australia to honour this right other than undermining it in a systematic manner or abusing these people in various ways.

When we talk about moral behaviours, the application of different moral principles may lead to different expectations regarding behaviours. In this submission, we take Joseph Carens’ argument and agree that there is a moral right for people to migrate.

Under Joseph Carens' interpretation of John Rawls' "veil of ignorance" principle, free migration is an essential moral right for all humans (Carens, 1987). Because when we take a global rather than a national view of Rawls' original position, we would exclude choices based on social class or citizenship, since they represent a type of feudal privilege, which does not help to reach the original position. These relevant privileges put men at odds and the whole purpose of the "veil of ignorance" is to avoid such odds. The original position prevents us from knowing their place of birth or whether they were members of one particular society and so on, by having the "veil of ignorance". When an original position allows people to be truly free and equal, it excludes the knowledge of one's race or sex or social class, and certainly it excludes citizenship considerations as well. Under this condition, the right to migrate is just as valid as the right to religious freedom and it is essential to everyone's life, which is merely self-evident (Carens, 1987).

Theoretically, Carens is right. The free movement of EU residents almost proves that this kind of moral right is highly achievable. Nevertheless, the exercise of the migration right should not severely damage or undermine the basic rights and liberty of people living in the host state. It is possible that the arrival of migrants may jeopardise the basic rights and life of people in the host countries due to unsuccessful resettlements. For Rawls, the liberty of migration might only be restricted when the public order and security of the host country is at risk, but such an excuse should not be used when it is not really necessary (Rawls, 1971).

If we agree that migration is a kind of moral right for all people, we may accept and feel grateful towards those countries which honour such rights, particularly those countries receiving special categories of migrants, namely refugee and asylum seekers. When Australia and its policy on the asylum seeker issue is concerned, its hostile and irresponsible attitude becomes intolerable. All it wants is an absolute sense of control over the borders, regardless of what is going on around the world. The world is at war and there are 65.3 million refugees and forcibly displaced people, with an increase of 5.8 million within a single year (UNHCR, 2014, 2015), but here Australia is completely obsessed with border control. There seems to be no other utterable words to describe such behaviour other than obsession. Comparatively, with Australian's generosity of dumping asylum seekers offshore, Nauru ranked third among countries holding the largest number of refugees on a per capita basis (UNHCR, 2015). Australia might be a generous country with its high refugee intakes by the absolute number it takes in, but its current attitude towards asylum seekers arriving by boat is terrible. Even if there is a que and these people are "queue jumpers" as described by the Australian government, they are still humans and deserve proper treatment. When doctors, psychologists, teachers, social workers all come forward to the media to reveal all the hidden stories occurring behind the scenes, despite the fact that by doing so they may face legal penalties imposed by the Australian government via contractual obligations, we see how public morality is severely challenged. Dumping refugees offshore at detention centres in Papua New Guinea (PNG) and Nauru only shows to the international community how irresponsible Australia is

towards those asylum seekers. It is arguable that both of the countries actually constitute failed states, though the mere fact is that the United Nations High Commissioner for Refugees assessed both of them as having no legal framework nor capacity to resettle asylum seekers (AHRC, 2012).

Hereby we suggest that:

- If the boat interception programme is successful, just as the Government boasts, if the government is willing to spend millions of dollars pouring into Nauru and PNG to maintain the detention centres, it should at least show some least mercy towards the last group of asylum seekers staying at the offshore detention centres.
- When New Zealand offers to take asylum seekers, Australia should just let these people leave. One way that the Australian government found to reject such an offer is by saying that this may give a chance for people smugglers to offer promises of coming to Australia eventually. When the asylum seeker issue is at concern, Australia is not just interacting with people smugglers. Nevertheless, if the government insisting on seeing the whole thing as counter playing with people smugglers, it will find itself acting no better than those smugglers in terms of morality.
- As it initially tried to seek a solution in the Pacific region (Bem, Field, Maclellan, Meyer, & Morris, 2007), Australia should be more active in negotiating a country of acceptance for the people they have dumped in both PNG and

Nauru. Even though this simply reaffirms in the mind of the international community how selfish the Australian government is, in refusing to share its responsibilities when the world is experiencing a real crisis. If there are no possible receiving countries to be found within a reasonable time framework, Australia should simply take back the last group of boat arrival asylum seekers and grant them resettlement according to the result of their visa procession. It is the last opportunity for Australia to remit its errors from its previous dumping behaviour.

- The Australian government should consider setting up special programs and help these people get educated or to improve their language skills, since these are regarded as important for people to be able to integrate into societies eventually (Menadue, Keski-Nummi, & Gauthier, 2011). Experience also shows that when a refugee merges well in Nauru society, or even becomes employed, that is because he or she has something to offer to the society (Bem et al., 2007). Thus, it is also possible to consider the introduction of work skills to the asylum seekers detained. At least no time (and lives) should be wasted during their time at the detention centres.

David Hume once stated that sympathy is a very powerful principle in human nature, one which allows us to share the psychological state of another. It is also the basis of all our rational moral judgments (Hume, 2012). We plea for sympathy from the Australian government towards the last group of asylum seekers, to treat them with

dignity. It is immoral for a moral agent to just watch people drowning or dying in a slow motion.

References:

- AHRC. (2012). *Human Rights Issues Raised by the Transfer of Asylum Seekers to Third Countries*. Retrieved from <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/human-rights-issues-raised-transfer-asylum-seekers>
- Bem, K., Field, N., Maclellan, N., Meyer, S., & Morris, T. (2007). *A Price Too High: The cost of Australia's approach to asylum seekers*: Oxfam Australia.
- Carens, J. (1987). Aliens and Citizens: The case for open borders. *The Review of Politics*, 49(2), 251-273.
- Hume, D. (2012). *A Treatise of Human Nature*: Create Space Independent Publishing Platform.
- Menadue, J., Keski-Nummi, A., & Gauthier, K. (2011). *A New Approach: Breaking the stalemate on refugees and asylum seekers*. Retrieved from Centre for Policy Development: https://cpd.org.au/main_wordpress/wp-content/uploads/2011/08/cpd_refugee_report_2nd-run-WEB-VERSION2.pdf
- Rawls, J. (1971). *A Theory of Justice*. Cambridge Mass: Belknap Press of Harvard University Press.
- Singer, P. (1972). Famine, Affluence and Morality. *Philosophy & Public Affairs*, 1(3), 229-243.
- UNHCR. (2014). *World at War: Global trends forced displacement in 2014*. Retrieved from <http://www.unhcr.org/556725e69.pdf>
- UNHCR. (2015). *Global Trends: Forced displacement in 2015*. Retrieved from <http://www.unhcr.org/576408cd7.pdf>