

The Last Refuge Hard and Soft Hansonism in Contemporary Australian Politics

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Executive Summary

The arrival of Pauline Hanson's One Nation on the Australian political scene has been the subject of much discussion, but there has been little analysis of what its policies really mean. Consideration of those policies, or 'Hard Hansonism,' in relation to immigration reveals attitudes that are simplistic, populist, nostalgic and deeply hostile to Australia's liberal-democratic tradition.

One Nation is obsessed with the threat of 'Asians' and 'Asianisation' to an extent that can only be explained by racial prejudice. Its claim to support a non-discriminatory approach simply cannot be believed.

The sort of measures demanded by Hard Hansonism would involve increases in the power of government to shape and control Australia's population and would be fundamentally incompatible with liberal institutions.

However, the mindset expressed by One Nation is not dissimilar to tendencies that are already common in Australian politics, which could be called 'Soft Hansonism.' The example of treatment of asylum seekers makes this clear.

Despite growing domestic and international criticism, Australia under both Labor and Coalition governments has routinely detained asylum seekers while their applications for refugee status are determined. Innocent people have been effectively imprisoned, often for long periods, with limited access to legal assistance or other sources of support. For refugees who have already been through traumatic experiences in their home countries, this is grossly inhumane.

Both major parties have also collaborated in attempts to limit review by the courts of decisions concerning refugees. Their rhetoric has cast judicial independence as an obstruction to good government, instead of an essential feature of a liberal constitution.

A response to Hansonism must support the rule of law and defend the rights of Australians from whatever background. The rhetoric of *good neighbourliness* offers a way to appeal to the best in Australia's traditions. n

The Queensland State Election of June 1998 has turned the One Nation Party into a near neighbour of the ALP, the Nationals and the Liberals in the new political street. Whether or not Pauline Hanson's legions are here to stay, they have certainly arrived.

This is not a happy development. Whatever might be said of the virtues of democracy, and however much we might welcome the people having their say – particularly when they turn out in numbers to excoriate the ruling elites – this does not mean that the objects of their affection are without blemish. In the case of Pauline Hanson's One Nation Party, these blemishes are so serious that anyone with a concern for the welfare of Australian society, or with an appreciation of its finer traditions, must view 'Hansonism' with serious reservation, if not complete suspicion.

Nor is this simply a matter of focusing on one person's views. While 'Hansonism' is a convenient label to use, the set of attitudes that it encompasses has a significance that goes beyond current electoral events. While Ms Hanson has certainly been reviled, too little attention has been devoted to the content of 'Hansonism', and to the ways in which it threatens to manifest itself in the Australian polity. Our aim here is to redress that imbalance: to ask just what Hansonism is and to explain what it might involve in practice.

Yet there is also a larger purpose. One of the consequences of the failure to look seriously at Hansonism is that people have neglected to notice how much of what One Nation proposes or advocates is not so remote from our political practice or experience. While the major parties have tried to distance themselves from Hansonism as much as possible, in many respects they remain surprisingly wedded to those very ideas they repudiate – in ways which have, to date, escaped attention. Our larger purpose is to draw attention to this 'Soft Hansonism,' and to show how it underpins the 'Hard Hansonism' of which we see so much.

'Hard' Hansonism

Hard Hansonism includes a number of characteristic policies – on aboriginal affairs, protectionism, privatisation, competition policy, and so on. To try to understand the phenomenon, however, it makes sense to look at the immigration policies that first brought Hansonism its notoriety. We shall begin with the words spoken by the Member for Oxley in her maiden speech in the House of Representatives on 10 September 1996 (*Hansard*: 3860-63). Here she said:

I and most Australians want our immigration policy radically reviewed and that of multiculturalism abolished. I believe we are in danger of being swamped by Asians. Between 1984 and 1995, 40% of all migrants coming into this country were of Asian origin. They have their own culture and religion, form ghettos and do not assimilate. Of course, I will be called racist but, if I can invite whom I want into my home, then I should have the right to have a say in who comes into my country. A truly multicultural country can never be strong or united. The world is full of failed and tragic examples, ranging from Ireland to Bosnia to Africa and, closer to home, Papua New Guinea. America and Great Britain are currently paying the price.

Arthur Calwell was a great Australian and Labor leader, and it is a pity that there are not men of his stature sitting on the opposition benches today. Arthur Calwell said:

“Japan, India, Burma, Ceylon and every new African nation are fiercely anti-white and anti-one another. Do we want or need any of these people here? I am one red-blooded Australian who says no and who speaks for 90% of Australians.”

I have no hesitation in echoing the words of Arthur Calwell.

Although there is more to One Nation's immigration policies than the content of this speech, Pauline Hanson's first address to the Parliament is important for what it tells

us about the fundamentals of Hard Hansonism. First, the disdain for Asians and Asian immigration is expressed plainly, and is here for all to see. Despite numerous claims by One Nation that the party and its leader have been misrepresented, and wrongly described as anti-Asian and racist, the anti-Asian sentiment given voice here simply cannot be explained away.

Second, the attachment to the past, and more particularly to the era of the White Australia policy, is very sharply revealed. In praising Arthur Calwell, Ms Hanson was expressing her admiration for a leader of the Labor Party who is best known for his vigorous resistance to any attempt to end White Australia. This makes it difficult to take seriously One Nation's claims that racial prejudice is not in their make-up.

Third, Hard Hansonism plays on community fears by presenting immigrants, and Asian immigrants in particular, as a threat to Australian society. Asians will form ghettos, refuse to assimilate, and, eventually, 'swamp' the host society with alien cultures, religions and traditions. Just as Calwell thought that 'What is wrong with most coloured migrants is that they form hard core, anti-white "black power" pressure groups in every country that accepts them' (quoted in Grattan 1993), so does Hansonism portray Asians as prone to be separatist, criminal, and un-Australian.

Fourth, Hard Hansonism sees a multicultural society as an impossible ideal because different groups cannot live together in peace. Here it is important to note that this view reveals not only a hostility to the *policy* of multiculturalism but also an antipathy towards cultural pluralism more broadly. Policies of multiculturalism have been criticised, to varying degrees, by all kinds of people, including many who are strongly in favour of cultural diversity (Viviani 1996: 143-147; Viviani 1998). Hansonism, however, is not only against particular policies but is also deeply distrustful of the very idea of cultural pluralism.

Fifth, Hard Hansonism offers a vision of the world which is not just simple but *simplistic*. Hanson's 'Asia' is a mental construct which reflects almost none of the complexity – cultural, religious, social, political – of that part of the world. Furthermore, Hansonism fails to recognise the distinction between peoples and their governments, and attributes to Asian populations characteristics which, at most, may describe some of their rulers. It would be absurd to ascribe to the Burmese people the attitudes of the military junta that holds power over them – yet this is precisely what Hansonism does. Much political discourse is simplified, but Hansonism is simplified to an extreme degree.

Sixth, Hard Hansonism is populist. It looks to bolster and legitimise its contentions by claiming that it represents the will of the Australian people. Just as Arthur Calwell claimed to speak for 90 per cent of Australians, so does Hansonism dwell endlessly on its association with 'the people.' Oxley, Ms Hanson said in her maiden speech, was 'typical of mainstream Australia,' and she was concerned with their needs, and would be 'guided by their advice.' Yet the 'ordinary Australian' to whom this appeal is made is, like the Asian she has constructed, less an ordinary Australian than an imaginary one.

Finally, Hard Hansonism is characterised to a striking degree by a lack of appreciation – and indeed, sheer ignorance – of Australia's liberal democratic traditions, inherited above all from England. There is no understanding that a liberal

democracy is a society which rests not on the rule of the elected politician, but on the rule of law. While much is made of the fact that this country was built on the sacrifices of earlier generations, seldom is any understanding shown of the edifice actually constructed: a *constitutional* polity in which the power of populists is kept firmly in check so that the liberties of citizens will not be eroded (Lovell et al. 1998: 51-254, 623-742). The Hansonite demand for 'law and order' should be seen for what it is: not a defence of the rule of law, but a demand to increase the power of the government.

Hansonism and Migration

All of these features of Hard Hansonism are clearly present in the statement by the member for Oxley in her maiden speech. They are revealed even more fully in the policies which have been developed by the One Nation party. Since that party often claims that its views and policies are persistently misrepresented by those who never bother to examine them, it is worth looking at these policies more closely. In the *Pauline Hanson's One Nation Policy Document*, 'Immigration, Population and Social Cohesion,' released on 2 July 1998, it states clearly:

70 per cent of our immigration program is from Asian countries. Consequently Australia will be 27 per cent Asian within 25 years and, as migrants congregate in our major cities, the effect of Asianisation will be more concentrated there. This will lead to the bizarre situation of largely Asian cities on our coast which will be culturally and racially different from the traditional Australian nature of the rest of the country (Hanson 1998: 11).

For a party which complains so loudly that it is unfairly described as 'racist', one has to ask why it is so obsessed with Asians and Asianisation – and, indeed, why it is so obsessed with the question of society's racial composition. So what if 27 per cent of Australians are 'Asian'? Or 'English', or 'Egyptian' or 'European'? For anyone but a racist, this does not matter one bit – even if these categories are meaningful, which we are inclined to doubt. To the extent that Hard Hansonism holds to a doctrine about the appropriate racial composition of this, or any, society, it is racist; and this should be said very plainly.

This issue has been unnecessarily confused by complaints, by the Prime Minister as well as by One Nation, about 'political correctness' and the erosion of the right of free speech. The matter is quite straightforward. Hanson and her supporters have the right in a free society to express their views, and to defend them privately or in public. But those who see these ideas as racist are equally entitled to say so. Attempts to silence any group for its ideas must be deplored – and the violence against One Nation and its supporters has to be condemned. However, criticism of One Nation for its racism is entirely justified.

One Nation continues to play on community fears. In part it does this by suggesting that the changing cultural composition of the country is itself a problem – though it never explains why. But it also suggests that migrants are costing a fortune – \$12

billion per annum – while taking jobs, lengthening dole queues, and bringing in disease to boot (Hanson 1998: 7, 9). Those who have disputed these findings are dismissed as biased.¹ What is never mentioned is the remarkable success of Australian society in welcoming and accommodating a diversity of people, and showing that peaceful coexistence is perfectly possible (Castles et al. 1998: 97).

Hard Hansonism, however, is incapable of accepting this. This is why all its assertions that it is a party that believes in a non-discriminatory approach to immigration and social policy ring hollow. In its statement of principles it asserts (Principle Seven) that ‘Our migrant intake will be non-discriminatory’; but it cannot resist adding: ‘on condition that the numbers do not significantly alter the ethnic and cultural make up of the country.’ The inconsistency is plainly visible to anyone who cares to look. A policy which is looking to control the ethnic and cultural make up of a society *must* be discriminatory – though to be serious, such a policy must also encompass a eugenics policy, since different groups have different birth rates, and more babies born to ethnically disfavoured parents will also change the ‘ethnic and cultural make up of the country.’

Hansonism cannot accept that different peoples can live together – as they do and have, in most countries, for most of the time, for all of human history. It assumes that the only solution is to make us all the same, or at least more alike – seemingly oblivious to the fact that the most devastating conflicts in the world have been the product of attempts to do precisely this: establish the ‘one nation.’

Hard Hansonism continues to push the one nation line because it continues to see the world in highly simplified, and simplistic, terms. This is clearly apparent in its economic assessments. Its suggestion that ‘Australia’ is spending \$12 billion per annum to cope with immigration is offered with the following analysis:

Australia is forced to build the equivalent of a city the size of Geelong, or half a Canberra, with all the required infrastructure and social services just to cope with one year’s migrant intake. Every migrant must be provided with accommodation, food, transport, a job, schools, pensions, hospitals, water, electricity, roads, sewerage, universities and all other basic necessities of modern life. This has been a major factor in giving Australia one of the highest per capita foreign debts in the world (Hanson 1998: 12).

What is asserted here is not just that there is this entity or agent called ‘Australia’ which ‘does’ these things, but that it is being ‘forced’ to do them. Reading this one would not think that Australia was a modern capitalist economy, rather than a Soviet-style centrally-planned one. There is no understanding of the nature of markets, or the division of labour; or of the fact that people – migrants as well as natives – are both producers and consumers. One Nation seems to understand the economy, and society, as a shop with no customers, and whose proprietor must therefore be loath to employ any more staff.

Yet all this is, in the end, trivial when considered beside what remains the most disturbing feature of Hard Hansonism’s policy stance: its continued inclination to appeal to what it takes to be popular sentiment, and to suggest that the solutions to our problems require the exercise of the power of the central state. Hansonism is in

no doubt that it is the business of the state to shape and control the population of Australia: a population policy is at the very head of its agenda. 'In a democracy,' One Nation asserts, 'how dare our government force such changes [in the character of the population] on the Australian people without their consent' (Hanson 1998: 11). Yet one might do better to ask: how dare the government of any free society try to control the nature of the population.

In her maiden speech, Ms Hanson said 'if I can invite whom I want into my home, then I should have the right to have a say in who comes into my country.' Yet in One Nation's policy document the only agency which can decide who comes into our country is the government – even though many Australians clearly want to invite others in. Despite its claims that it wants the people's views respected, Hansonism is really uninterested in the people's views. It is simply troubled that many people do not share its preferences, and its solution is to take what it says the majority wants and impose that on all through government. In spite of its complaints about governments and elites, it is itself determined not to erode the power of government but to capture it for its own purposes.

How much this is at odds with Australia's traditions of *liberal* democracy would be difficult to overstate. What has made Australia a peaceful and prosperous society is not the Australian 'national culture' described by One Nation as 'emphasising a balanced way of life, free of excessive striving and materialism' (Hanson 1998: 10) – this is no more than an embarrassing caricature of our political and cultural inheritance. Australia's success is built on a tradition of respect for individual freedom, protected by the law. Hansonism has no appreciation of this, and looks only for ways in which the power of the state might be enhanced. None of its proposals increase individual liberty but many of them increase the powers of government – most notably, powers of 'detection, detention and deportation' (Hanson 1998: 9).

The mentality of Hard Hansonism is not that of the proud and free society that pops up occasionally in the rhetoric of One Nation. Its mentality is the mentality of the armed camp. 'To keep people out, rather than encourage them in, will be the job of the immigration department in the 21st Century' (Hanson 1998: 9). Even if they are refugees, keeping people out is what is most important. The reasoning for this could not be more bizarre: since the refugee program helps 0.1 per cent of refugees and does nothing for 99.9 per cent it is 'unfair and immoral'; so we should only give people temporary refuge.

Leaving aside the fact that this does not resonate at all with Australia's humanitarian traditions, one would have thought it was the basis of a case for being *more* generous, since so many are clearly suffering from persecution around the world. The fact that we can help only some is not a reason to choose to help none. But what is rearing its head here is not an Australian tradition but a corruption of it – succoured by the poisoned milk of isolationism.

Hard Hansonism wants to build a fortress. And a prison.

‘Soft’ Hansonism

Thus far, we have focussed our attention on the statements and policies of the One Nation party which anticipate, even if in a muddled and unsophisticated fashion, a tougher focus on an Anglomorphic ‘Australianness’ as the criterion of moral worth. This has of course attracted an enormous amount of media attention, which has in turn helped boost the party’s stocks. However, the distance between One Nation and the other major parties has never been as great as they have sought to maintain, and if the phenomenon of Hansonism is to be successfully consigned to the dustbin of history, it is vital that the ‘Soft’ Hansonism which has been routinely practised over many years be rooted out as well. Otherwise, like a demon, it will return.

But have not the major parties over the last two decades committed themselves explicitly, and with substantial contributions of taxpayers’ money, to a policy of multiculturalism that seems light years away from Hansonite postures? The answer is yes, but unfortunately it has been accompanied by other policies, less noticed by elites, which have resonated with the more disgruntled end of the electorate and prepared the way for the stronger but essentially similar meat that One Nation now has on offer. Soft Hansonism has also affected public policy in a way that Hard Hansonism simply has not. There are so many areas of public policy that show evidence of the insidious presence of Soft Hansonism that a thorough analysis of this influence would demand a lengthy study.

The constraints of space preclude us from offering this here. Our analysis will therefore be restricted to those features of Soft Hansonism that parallel most clearly the ideas and policies for which One Nation is famous. In particular, we want to focus on the treatment of asylum seekers, since it is their experience that has most to tell us about the consequences of Soft Hansonism for our traditions and our institutions. In our view, ‘Soft’ Hansonism is powerfully manifested in two key spheres of public life: in the persistently negative attitude to asylum seekers taken by the major parties, and in the attempt to limit or exclude the courts from ensuring that asylum seekers are accorded the protection of the law.

The Major Parties and Asylum Seekers

On 21 January 1954, the Menzies Government ratified the 1951 *Convention Relating to the Status of Refugees* (Brownlie 1992: 64-81), which *inter alia* defines a refugee as a person who

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it (Article 1).

The ratification of the 1951 Convention marked a significant, if little-advertised, shift away from the White Australia policy, since Article 3 provided that states should

‘apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.’

It will immediately be apparent that not everyone who claims to be a refugee need necessarily be one, and that some process is therefore required for determining whether a person claiming to be a refugee is entitled to the protection of the 1951 Convention. However, it has long been the position of the Office of the United Nations High Commissioner for Refugees that the operation of such a procedure is not required to *make* someone a refugee: the person concerned is a refugee from the moment the criteria set out in the 1951 Convention are met (Goodwin-Gill 1996: 141). For this reason, while those who claim to be ‘refugees’ are best described as ‘asylum seekers’ until their claims to be recognised as refugees in Australia are authoritatively judged in accordance with law, it is appropriate that they be treated with all the respect to which refugees are entitled, since at least some will certainly be found to be refugees.

It is in the pitiful ways in which asylum seekers are treated that Soft Hansonism has most obviously infected the major parties. At the heart of the problem is the requirement embodied in the *Migration Act* that asylum seekers who arrive without a visa *must be detained* while their cases are processed (excepting a few very limited classes of person who can be released at the discretion – rarely exercised – of the Minister for Immigration and Multicultural Affairs). This policy, which has resulted in innocent individuals being deprived of liberty for on occasion quite prolonged periods, has been the subject of embarrassing criticism from authoritative voices.

In April 1997, the United Nations Human Rights Committee held that Australia’s detention of a Cambodian asylum seeker for over four years while his application for refugee status was being processed was ‘arbitrary’ within the meaning of Article 9.1 of the *International Covenant on Civil and Political Rights* (Human Rights Committee 1997: 506-527). The Human Rights and Equal Opportunity Commission added its voice in a detailed report in May 1998 (HREOC 1998). Finally, in June 1998, the respected human rights organisation Amnesty International denounced the policy in a scathing analysis entitled *A Continuing Shame: The mandatory detention of asylum seekers*. It may not have escaped the attention of these critics that the bulk of those who have been subjected to mandatory detention happen to be from Asia.

In defence of compulsory detention of asylum seekers, the major parties and the Department of Immigration and Multicultural Affairs have put forward a number of justifications. In July 1993, the then Minister, Senator Bolkus, argued that it was ‘simply wrong to compare detention of boat people with imprisonment, as many critics have done’ (Bolkus 1993). At times Immigration officers have chastised critics for failing to distinguish ‘corrective’ from ‘administrative’ detention, apparently unaware that this distinction was also used in respect of concentration camp inmates in Nazi Germany (Favez 1988: 54).

The attempt to deny the punitive character of detention is deeply flawed in two respects. First, since it is deprivation of liberty itself that constitutes punishment, it is no defence to argue that the premises in which detainees are incarcerated are well run (although how well run Australia’s detention centres actually are has been a matter of considerable controversy). Decent treatment of detainees is no more than any respectable theory of *criminal* justice would require (Braithwaite and Pettit

1990: 130-132). The scandal of the detention centres is that the detainees are deprived of liberty even though they are not convicted criminals. Second, for those who have already been deeply traumatised in their home countries, detention in Australia is likely to be highly stressful – and since it is unnecessary, insuperably punitive as well. To overlook the traumas of the detainees is truly to cast aside all humanity.

Detention has also been justified on grounds of deterrence. As Amnesty International has noted, in 1992, the then Minister, Gerry Hand, justified detention with the claim that the Government was determined 'that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community' (Amnesty International 1998: 5). His colleague Senator McKiernan, Chair of the Joint Standing Committee on Migration, claimed that if 'the refugee assessment procedure was changed, Australia would be inundated, and boats filled with people, who can afford the fare and the bribes that go with it, will land on our shores by the score' (Amnesty International 1998: 5; see also McKiernan 1993).

Yet the morality of deterrent detention as practised in Australia is highly suspect. *Some* forms of deterrence can of course be morally justified. A common defence of punishment is that it deters the repetition of criminal conduct by the person so punished; and the deterrence of misconduct by mere threats of retaliation against the perpetrator also has its staunch proponents. In neither of these cases do innocent parties suffer. This is altogether different from the deterrence which mandatory detention of asylum seekers can involve: the punishment of an innocent A in order to influence the future behaviour of B. This mentality is one which does a civilised community no credit: exemplary punishment has quite rightly fallen into disrepute, since the choice of those to be punished should never be a matter of utilitarian calculation, but of justice. The automatic incarceration of all boat people for deterrent purposes constitutes a gross offence against the humane principles underpinning the 1951 Convention, and a pernicious example of Soft Hansonism.

The *tone* of Senator McKiernan's remarks – as quoted by Amnesty International – is interesting, for it evokes a rhetoric from days in which Pauline Hanson's views would have been mainstream: the days when the teeming hordes of Asia were allegedly poised to sweep over us, and when two Wongs didn't make a White. Such rhetoric has never been far below the surface in ALP circles. Anyone who has followed migration issues with any degree of care in recent times is aware that for years, Graeme Campbell got away with making Hansonite statements while he was ALP member for Kalgoorlie (Williams 1997: 144-145, 249), and only felt the blowtorch when he made a nasty remark about Mr Keating (the same Mr Keating, incidentally, who according to Mr Hawke used to refer to the Immigration Minister, Senator Ray, as 'the fat Indian' (Hawke 1994: 492)). Senator McKiernan was a past master at evoking fears of the Flood. In 1995, he reportedly warned that if one particular piece of migration legislation were not passed, 'Turning boats around at sea may be the only way to stop the floodgates opening and to protect Australia in the long term' (McPhedran 1995).

One might have thought from the Senator's choice of words that large numbers were involved. However, the opposite is the case: according to the Australian National Audit Office, 'Boat People represent less than 0.01 per cent of all arrivals in Australia' (Australian National Audit Office 1998: xv). Why this antagonism to

asylum seekers is so persistent in ALP circles is not so clear, but two possible explanations deserve attention. First, the detention of vulnerable asylum seekers is an attractive means by which the cruder variety of politician can appease a redneck domestic constituency while maintaining a formal commitment to multiculturalism. Second, there may be a lingering hostility in some political circles to Asian victims of communism – of the kind that, according to former Minister for Labor and Immigration Clyde Cameron, prompted Prime Minister Whitlam in April 1975 to cancel rescue flights for ‘babies and orphan children from Saigon’ with the comment that ‘he didn’t want any “Vietnamese Balts coming into Australia”’ (Cameron 1990: 801).

We would not, however, wish our readers to think that the ALP and ALP members alone have fostered Soft Hansonism. On the contrary, they have found active collaborators in the ranks of the Liberal Party. In 1992, in response to a High Court decision, the major parties cooperated to pass the *Migration Amendment Act (No. 4) 1992*, which limited compensation for unlawful detention to one dollar a day. Not a single ‘Liberal’ spoke against it in either House of Parliament. The politicians who voted for the legislation showed no understanding that the possibility of damages can be a powerful disincentive to bureaucratic arbitrariness, and that to insulate bureaucracy from accountability is always a dangerous step to take. It fell, as so often, to the independent Senator Brian Harradine to point this out: ‘In essence, if a boat person is found by a court to have been illegally detained in a detention centre and that boat person is entitled to compensation, the Government will determine that compensation. Just think of the precedent that sets’ (Hansard, 17 December 1992: 5436).² Some of the most depressing Soft Hansonite steps from Liberal Party politicians have been those which expose their indifference to the rule of law. It is to this issue that we will now turn.

Asylum Seekers and the Law

Constitutionalism and the rule of law are the great achievements of the Anglo-American democracies (Kukathas, Lovell and Maley 1990: 34-59). It is an elementary proposition in any liberal democracy that the state should not have unfettered power, for that way lies the path to tyranny. Officials, whether elected or unelected, are entitled to do only what the law permits, and it is not for them to determine its ambit. Unfortunately, the notion that maintaining an effective system of checks and balances is good for us all, no matter what the subject matter of the particular power under discussion, has increasingly been lost on those responsible for responding to the claims of asylum seekers, and we are all the poorer for it.

A barely-suppressed contempt for judicial review is very much a feature of recent comment from immigration policymakers. The Australian polity is much more threatened by those who scorn the rule of law than it is by a few wretched asylum seekers. For all but those who subscribe to the brave belief that bureaucracies never err, the Federal Court is a key agency through which the human rights of asylum seekers should be guaranteed. Yet when he was the Shadow Minister for Immigration and Citizenship, Senator Short of the Liberal Party complained that access by asylum seekers to our judicial system ‘should be strictly circumscribed’ (Short 1993). That a ‘Liberal’ could regard judicial review as part of the problem rather than part of the solution was truly terrifying. The ALP, not surprisingly, took Senator Short at his

word: s.476(2) and s.476(3) were inserted in the *Migration Act* to deny the Federal Court the ability to review decisions of the Refugee Review Tribunal on certain classic 'administrative law' grounds which had developed as protections of the freedom of the individual against state power (Thynne and Goldring 1987).

Constitutionalism and the rule of law involve much more than mere legalism. Totalitarian systems are frequently legalistic. Constitutionalism and the rule of law require a culture of respect for the fragmentation of power (Vile 1967). Of this there is far less in the Liberal Party than should be the case. In a disturbing speech to the National Press Club in March 1998, the Minister for Immigration and Multicultural Affairs, Mr Ruddock, complained that when he took office, 'it was in the courts where the most corrosive actions against an effective and fair immigration program were taking place,' and went on to assert that 'the courts have reinterpreted and re-written Australian law – ignoring the sovereignty of the Parliament and the will of the Australian people' (Ruddock 1998: 5, 7). In so speaking, he showed not the faintest comprehension that the Commonwealth Parliament in our system of government is *not* sovereign in any meaningful sense of the term (Dicey 1952: 39-40), but is, and was designed to be, constrained by the Constitution.

If anything, politicians in search of votes have egregiously sought to exclude the courts from their *proper* sphere of activity: for example, the High Court was obliged in *Chu Kheng Lim v. The Minister for Immigration, Local Government and Ethnic Affairs* (1992-1993) 176 CLR 1 to strike down as *ultra vires* a clearly unconstitutional section of the *Migration Act* which stated that 'a court is not to order the release from custody of a designated person' – with 'designated person' being a code-word for boat person.

Contempt for the judiciary is now being voiced by the Government even in publications intended for wide public circulation. In a July 1998 'Question and Answer' booklet launched by the Immigration Minister one finds the following:

Why are people who are in Australia unlawfully able to prolong their stay by taking advantage of our legal system?

The Government is concerned about the number of people who seek to prolong their stay in Australia by pursuing claims through Tribunals, Courts and sometimes even the High Court. Consequently it has introduced into Parliament measures that will reduce the opportunity for people to take their cases to the Courts (Dept. of Immigration and Multicultural Affairs 1998: 26).

This amounts, of course, to a blatant usurpation by the executive of the role which for centuries has been reckoned to be exclusively that of the judiciary in any free society worthy of its name: whether people 'are in Australia unlawfully' *is ultimately a question of law for the courts to resolve.*

Despotism is the consequence when the sheriff is also the judge. One need only point to the famous observation of Montesquieu, originally published 250 years ago, that there is no liberty 'if the power of judging is not separate from legislative power and

executive power. If it were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the legislator. If it were joined to executive power, the judge could have the force of an oppressor' (Montesquieu 1989: 157). In our view, there are compelling grounds for supporting the claim courageously put by ALP Senator Cooney in what was effectively a dissent from the February 1994 report on *Asylum, Border Control and Detention* issued by the Joint Standing Committee on Migration: 'if in fact the Judiciary is untrustworthy then this country is in a crisis which must be addressed immediately in a dramatic way. If it is not so, then its powers should not be limited on the basis that it is' (Joint Standing Committee on Migration 1994: 197).

The Soft Hansonite disregard for constitutionalism has surfaced in the form of a wider contempt for countervailing power. The most blatant example of this came in 1996, when the Human Rights and Equal Opportunity Commission was obliged to initiate Federal Court action against the Department of Immigration and Multicultural Affairs following the Department's refusal to convey correspondence from the Commission to detained asylum seekers. While the Federal Court ruled in the Commission's favour, the Government brought in legislation to Parliament to ensure that the Commission (and for good measure, the Commonwealth Ombudsman) could not initiate correspondence with detained asylum seekers. Following discussions with the Commission, the Government dropped the legislation, but that it could even have *contemplated* such a gross interference with freedom of communication speaks poorly for the sense of propriety at high levels of the polity. The response of the Immigration Department to this whole shabby episode was quite revealing. Its spokesman argued that it was 'worth noting' that the Government's legislation 'received the support of both Government and Opposition,' suggesting that the issue was therefore 'more complex and varied' than its critics allowed (Foster 1996). He seemed to have forgotten that White Australia also 'received the support of both Government and Opposition.'

What is to be done?

Hard Hansonism has let a malevolent genie escape from its bottle, and returning it to its former resting place will be no easy task. If this is to come about, it will be necessary to address the problem of Soft Hansonism as well. At one level, this requires little more than a maturation on the part of political and bureaucratic elites, whose rhetoric as detailed in this article has all too often played irresponsibly into the hands of Hard Hansonism. Yet in our view, if Soft Hansonism is to be combated successfully, it must also be through the promulgation of a legitimating rhetoric for community change which resonates with what is best in the wider population – in order to remove the incentive for politicians to seek votes by scorning asylum seekers.

There is such a rhetoric on hand. It is the rhetoric of *good neighbourliness*. This was for many years a dominant rhetoric underpinning a very substantial migration program, and it was one which, much more than the rhetoric of 'multiculturalism', resonated powerfully with the Judeo-Christian ethic of the majority Anglo-Saxon segment of the Australian population. Things changed two decades ago when the Good Neighbour Movement was wound up: as Ann-Mari Jordens has observed, this 'mainstream community structure which the Department of Immigration had

created in 1950 but did not control, was seen as superfluous. It intended that its role in fostering the social absorption and acceptance of migrants would be taken over by ethnic organisations which the Department was now attempting to foster, sustain and control' (Jordens 1995: 87).

This of course suited the ethnic organisations, but it helped alienate parts of the mainstream population from the settlement process, and set the scene for immigration to be increasingly viewed – at least by those for whom change felt threatening and required powerful normative justification – as an elite conspiracy rather than as an opportunity to prove how hospitable Australians can be. Recovering the sense that we are all ultimately each others' neighbours may at least help set us on the path to recover from the madness which has crept up on us.

Yet whatever strategy we adopt, it is important that we recognise that evils do not always reside in the noisiest quarter. One of the dangers of Hard Hansonism is that it threatens to distract us from real, and urgent, problems which have been with us for so long. But while Hard Hansonism is the squeaky wheel which will surely get the grease, we must not let this lead us to forget or ignore the more insidious rust of Soft Hansonism that has been eating away at the machinery for some years, and will continue to do so with destructive effect if not cut out soon.

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Endnotes

¹ For example, the Bureau of Immigration and Population Research concluded that the effects of immigration were, on the whole, benign, but is dismissed as 'biased' because it 'omitted the inherent enormous infrastructure costs' of immigration. See Hanson (1998:8). The sloppiness of One Nation's research and argument here, notably in its use of statistical data, deserves a fuller treatment than can be presented here.

² This approach to the curtailment of legal rights was abandoned only after the decision of the High Court in *Georgiadis v. Australian and Overseas Telecommunications Commission* (1994) 119 ALR 629 exposed the possibility that the offensive provisions of Migration Amendment Act (No.4) 1992 might amount to an unconstitutional acquisition of property.