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***The Global Criminal –
Who is It?***

by

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THE GLOBAL CRIMINAL -WHO IS IT?

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Physical borders are not, of course, simply arbitrary creations. Although they may be based on historical accident, or reassigned after political incident, geographic borders continue to operate as a necessary construct for lawyers and law makers around the world. Borders are intrinsic to the notion of sovereignty and create at least a notional divide between domestic and international law.

Australia's island status is central to the way in which its migration law have been developed and enforced. It has also had a primary influence on the way in which the Customs Act 1901 was originally drafted, as one piece amongst a raft of legislation to announce the arrival of Australia as a nation state. The way the government of the day has responded to the complexities of foreign trade by sea and air, and the way it has reacted to commodity smuggling of all kinds has provoked amendments of a staggering number over the last century. A one time Federal Attorney General and later NSW Supreme Court judge declared to the house, with the insight befitting the office, "Most goods imported into Australia come from overseas".

In more recent years the way in which the government as law maker has responded to the massive increase in the incidence of the smuggling of people into Australia cannot be divorced from our unique position as the world's largest island and smallest continent. While globalisation allows for the free movement of capital, people come up against protective barriers.

In June 1999 the Prime Minister convened a joint press conference with Mr Ruddock, the Minister for Immigration and Ethnic Affairs, to announce a \$124 million 4 year program to 'boost the fight against illegal immigration'. The Prime Minister said, amongst other things, that Australia was seen as a more attractive target than most countries because it is a very attractive country to live in. It has a stable political system, it is a fair and open society, we have a very big coastline and, importantly, we are perceived to have laws that make it easy for people once they get here to tie up the legal system and stay for a long time.

Quite apart from whether we are in fact viewed that way around the globe, (something which I rather doubt) there have been quite different experiences of the justice and fairness of our detention system by those who have arrived as illegal immigrants in very recent times. Earlier this year the Sydney Morning Herald reported that an Iranian man who had just been transferred from the Woomera detention centre in South Australia was violently assaulted at the Port Hedland detention centre by a guard before a violent riot broke out involving up to 180 asylum seekers. In the past year, about 1,500 asylum seekers had been sent to Woomera, a makeshift camp at a former rocket test range 280 miles north of Adelaide. Former Prime Minister Malcolm Fraser condemned it recently as a "hellhole" remarking that he couldn't imagine a worse place to send people who are fleeing persecution.

Port Hedland police advised that the detainee had been taken into an observation area because he was agitated. It was there that the Australasian Correctional Management guard punched the detainee twice in the face while he was handcuffed and being carried by four other guard. The same guard then bashed the man while he was restrained with handcuffs to a bed.

The Australasian Correctional Management is a U.S. private firm that runs the government's detention system and other prisons in various Australian states. It is a subsidiary of Wackenhut Corrections Management, a billion-dollar global company owned by former Federal Bureau of Investigation Agent George Wackenhut. The head overseer of 40,000 prisoners worldwide, Wackenhut says: "Australian operations are very important to us, they're really starting to punish people the way they should have done all along. The do-gooders say 'no, punishment is not the answer.' But I can't think of a better one."

While it cannot be said that we in fact 'imprison' illegal immigrants, after all to do so would be a flagrant breach of our international obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention relating to the Status of Refugees, the attitude of that particular guard was deplorable. After the riot Mr Ruddock promised a tough new regime for detention centres, saying 'boat people' who might normally qualify as refugees will be deported if they riot in detention centres. Mr Ruddock, said he accepted the view that chemical injections needed to be more "comprehensively implemented". The existing law allows detainees to be injected only after authority from doctors. Under Ruddock's proposals, detainees could be deported for 'threatening or assaulting' detention or police officers, and the search powers of guards would be increased. Under the new legislation, offences such as escaping from detention or threatening or assaulting guards would become "serious offences" which would allow the Government to deport people who would otherwise be given refugee status.

The alleged ringleaders of the riot at Port Hedland then went on a hunger strike to protest against the conditions and, as the final post script on the incident, the guard was given a 15 month suspended jail sentence.

International criticism of Australia's treatment of refugees, particularly the Government's increasingly hardline approach by the restriction of social and educational support for asylum seekers, and the restrictive view taken of the right to legal advice is notorious, but is beyond the reach of this paper to explore in depth. The related question of Australia's legal obligations under the United Nations conventions is also a subject for a paper in itself. Suffice to say that that the issue of Australia's compliance is at best controversial. What is clear is that the concept of 'Fortress Australia' is alive and well.

While smuggling is a form of deviance that has received little attention from criminologists, it is nevertheless counted amongst the oldest form of deviance¹. The earliest legislation dates back to at least 14th-century England, when the Statute of Treasons 1351 made it a crime to import counterfeit money. Since that time as both commodity markets and patterns of consumption of both licit and illicit goods have changed worldwide, so also have smuggling laws developed and adapted. For example whilst it might have been the case that in the 18th-century that an estimated one third of all tea consumed in the British Isles was smuggled, it would hardly be the case that the humble tea-leaf would be smuggled to or from anywhere in the world today. Less likely still would it have been thought at the turn of the last century that the smuggling of people

¹ Jutte, Robert 1994 *Poverty and Deviance in Early Modern Europe*. Cambridge University Press

would rank third only behind narcotics and arms as the new century dawned. The heart rendering stories of misery, hunger and death at the beginning of the 21st century are being enacted just as they were when refugees from European countries passed through examination halls in recipient countries to escape repression and hunger in the old world. Some one suggested to me that water is said to be the commodity next on the list behind human cargo and narcotics as clean drinking water becomes scarce world wide. Already the traffic in body parts is documented.

Whether the smuggling is outlawed by the criminal law or simply by forfeiture of the commodity smuggled, the primary motive of the smuggler is always profit. Smuggling is properly described as a crime of opportunity and the smuggler of people the most opportunistic of all.

The focus of this paper is to attempt to profile the people smuggler and to seek some understanding of why, at this time in world history, that cargo in human beings should prove so profitable on the one hand and largely unstoppable on the other. This involves understanding what it is that motivates a person to undertake the risks and bear the cost involved in leaving one country and travelling vast distances to the unknown.