There is another point that illuminates Hal s lecture in 2008: a real appreciation of literature in general and poetry in particular. His lecture refers to Lord Wavell s anthology Other Men s Flowers , and to Shakespeare, Dickens, Thackeray, Mayfield, Henley, Cervantes and Jean-Dominique Bauby. Among other things, his lecture quoted the first verse of Henley s *Invictus*:

> Out of the night that covers me,
> Black as the pith from pole to pole,
> I thank whatever Gods may be
> For my unconquerable soul.

His taste for poetry is hidden in the title of tonight s lecture. When I agreed to speak tonight, I was told that my theme was to be The Bludgeoning Of Chance. That phrase comes from the second verse of *Invictus*:

> In the fell clutch of circumstance
> I have not winced nor cried aloud.
> Under the bludgeoning of chance
> My head is bloody, but unbowed.

The bludgeoning of chance is an idea rich with possibilities.

Chance has paid a major role in stumbling from an uncertain Year 12 student to be here tonight speaking in honour of one of the greats of the Australian legal profession.

At the end of Year 12, I did well enough to surprise myself and everyone else, but I had no idea what to do with my future. Back then, when standards were lower than they are now, I was accepted to four or five different courses at both Monash University and Melbourne University. Those were the days when Victoria had only two universities.

I chose to do law at Monash University rather than law at Melbourne, or engineering or architecture or arts, for the unsophisticated reason that a former boyfriend of my sister was doing law at

Although notions of justice had always

The Commonwealth fought the case vehemently. During the running of the case, Mr Howard announced the formation of the so-called Pacific Solution. The Judge reserved his decision on the afternoon of the 5th September and delivered judgment at 2.15 in the afternoon (Melbourne time) on the 11th September, 2001. It was not good timing. Some hours later, the attack on America happened. Some people said it changed the world. I disagree, but it certainly changed the appearance of many things.

Suddenly, there were no terrorists, just Muslim terrorists. Suddenly, there were no boat people, only Muslim boat people. Suddenly, boat people were not frightened refugees but illegals and queue jumpers .

By virtue of doing the Tampa case, I learnt quite a lot about Australia s refugee law and policies. I knew enough about economics from my university days to know that when the price of a to zero, the elasticity of demand goes vertical. So it was that I found myself doing a substantial number of pro bono refugee cases. And that is when I began to s

After about 15 or 18 months in detention, he fell into hopelessness and despair. It is typical for asylum seekers in Australia's detention system to lose hope after about 15 or 18 months. When Mr H fell into hopelessness, he started self-harming. Whenever he could find a bit of broken glass or a bit of razor wire, he would cut himself. When he cut himself, the Immigration Department did two things: they gave him Panadol (which seems to be the universal treatment in immigration detention) and they put him in solitary confinement in a small cell. This did not help him. After a couple of weeks in solitary confinement, he would come out even more desperate than when he went in. He would then harm himself again and the Department would give him Panadol and solitary confinement. This went on for five years. Eventually, some lawyers in

There was the case which, for me at least, forever changed my view of this

On a Sunday night in May of 2002, while her mother and father and young sister were up in the mess hall having the evening meal, this little girl alone in their cell in Maribyrnong Detention Centre took a bedsheet and hanged herself. But she was only little and didn t know how to tie the knot properly, so she was still strangling when the family came b

In my naivety, I thought that, if the rest of Australia knew the things that I had learned, the Government s refugee policy would not long survive. I started accepting invitations to speak about refugee matters. Only those here tonight who are practising lawyers will understand what a difficult decision that is. For members of the profession generally, and members of the Bar in particular, speaking publicly is not quite the done thing. I was deeply conscious of this as, one by one, professional colleagues and people I had thought were friends turned their backs on me. On this occasion, however, chance played a surprising role. Kate and I were at a very glamorous social function one night when the wife of a very senior and highly respected professional colleague sidled up to me and said, somewhat archly, Do you think it appropriate that a member of the Bar should speak publicly about these matters? With more wit than preparation I replied Do you think it appropriate to know about these matters and remain silent?

The conversation ended there. And I gather she has no retort, because she hasn t spoken to me since. And it resolved my anxiety about speaking publicly about these matters .

As time went on, our mistreatment of asylum seekers got worse and worse. There was Amin s case. Amin and his eight year old daughter were in detention at Baxter. Baxter was a high-tech high security prison designed and purpose-built by the Howard Government for detaining refugees. Amin and his daughter were in their cell in Baxter one day when five guards entered the room and ordered Amin to strip. They thought he had a cigarette lighter. In Muslim culture, it is deeply shameful for a man to be naked in front of other people, but in any event his eight year old daughter was in the room so he refused to take his clothes off.

The guards roughed him up a bit and handcuffed him and took him to the management unit. The management unit at Baxter was a series of 13 solitary confinement cells. Each cell measured approximately 2‰ metres square; the walls and floor are bare concrete. There are no furnishings in the cells except for a mattress on the floor. The occupant of the cell has no company for 23‰ hours out of every 24 but no privacy either: because each cell is video-monitored 24 hours a day and for that purpose the lights are left on 24 hours a day. The occupant of each cell had nothing to read, nothing to write with, no television, no radio, no form of distraction of any sort. For Amin, the only break in his regime of solitary confinement was a 30 minute visit from his daughter each day. One day, when he had been in solitary confinement for a couple of weeks, his daughter did not come for her visit. Amin complained, and was assured that she had been taken into Port Augusta shopping and would be there the next day. But the next day came and went, and his daughter did not visit. The manager of the centre, an employee of the Department of Immigration, then explained to him that his daughter was now back in Tehran and if he wished to see her again he should abandon his claim for protection and return to Iran voluntarily. But first, Amin thought the man was playing a practical joke but when he was persuaded that it was true he had what amounted to a complete nervous collapse. He remained in solitary confinement for another six or eight weeks.

When the case went to court, the Department s argument was that the Judge had no power to tell them how they should treat people held in Immigration Detention. The Judge disagreed. The Department appealed, apparently wanting to persuade three judges of the Full Federal Court to say that the Department was at liberty to treat people in Immigration Detention in any way it wanted. The appeal was dismissed.

By 2008 the boats had virtually stopped arriving. In July 2008, the first Rudd Government introduced a number of reforms to the Migration Act which satisfied about 90% of the concerns of refugee advocates. A while later however chance played another wild card. Tony Abbott became leader of the Opposition by one vote. As soon as he became leader of the Opposition he began complaining publicly and loudly about boat people. Mr Rudd responded by mounting a ferocious attack on people smuggling. It seems that in the heat of the moment he had forgotten that his moral hero Dietrich Bonnhoeffer had been a people smuggler, albeit a benevolent one. He had forgotten, it seems, that Oskar Schindler was a people smuggler and that Gustav Schroeder, the Captain of the St Louis, were both people smugglers.

When Julia Gillard became Australia s first female Prime Minister, she ran a very ambivalent line about boat people. While expressing some concern for the circumstances which led them to flee, she said that she understood why Australians were concerned about boat people arriving in Australia. The asylum seeker debate went off on a new tack at about that time.

The low-point of the debate was seen in the campaign that preceded the Federal election of September 2013. That election campaign, for the first time in Australia s political history, saw both major parties try to outbid each other in their promises of cruelty to boat people.

Tony Abbott won the election and made good of his promise to mistreat boat people. We now have the harshest inhumane policies in relation to boat people and arguably the harshest treatment of boat people of any country which has signed the Refugees Convention.

In broad outline it goes like this.

When boat people arrive at Christmas Island, they have typically spent eight or 10 days on a rickety boat. They have typically come from landlocked countries and have typically never spent time on the ocean. Typically, they have had not enough to eat and not enough to drink. Typically, they have had no opportunity to wash or to change their clothes. Typically, they arrive distressed, frightened and wearing clothes caked in their own excrement.

They are not allowed to shower or change their clothes before they are interviewed by a member of the Immigration Department. It is difficult to think of any decent justification for subjecting them to that humiliation.

When they arrive, any medical appliances they have will be confiscated and not returned: spectacles, hearing aids, false teeth, prosthetic limbs, are all confiscated. If they have any medications with them, those medications are confiscated and not returned. According to doctors on Christmas Island, one person has a fulltime job of sitting in front of a bin popping pills out of blister packs for later destruction.

If they have any medical documentation with them, it is confiscated and not returned. The result of all of this is that people with chronic health problems find themselves denied any effective treatment. The results can be very distressing. For example: a doctor who worked on Christmas Island told me of a woman who had been detained there for some weeks and who was generally regarded as psychotic. Her behaviour was highly erratic for reasons that no-one understood. The consultation with this woman was very difficult because, although the doctor and the patient were sitting across a table from each other, the interpreter joined them by telephone from Sydney. Eventually, the doctor worked out that the problem was that the woman was incontinent of urine. She could not leave her cabin without urine running down her leg. It was driving her mad. When the doctor worked out that this was the cause of the problem, she asked the Department to provide incontinence pads. The Department s initial response was we don t do those . The doctor insisted. The Department relented and provided four incontinence pads per day: not enough, so that the woman needs to queue for more but incontinence pads made a profound difference to her mood and behaviour.

In February 2014 Reza Barati was killed on Manus Island. Initially, Australia said that he had escaped from the detention centre and was killed outside the detention centre. Soon it became clear that he was killed inside the detention centre. It took nearly five months before anyone was charged with the murder of Reza Barati. Nobody has yet been brought to court.

Just a couple of weeks after Reza Barati was killed, I received a sworn statement from an eyewitness. The statement included the following:

J is a local who worked for the Salvation Army. He was holding a large wooden stick. It was about a metre and a half long it had two nails in the wood. The nails were sticking out

When Reza came up the stairs, J was at the top of the stairs waiting for him. J said fuck you motherfucker J then swung back behind his shoulder with the stick and took a big swing at Reza, hitting him on top of the head.

J screamed again at Reza and hit him again on the head. Reza then fell on the floor

I could see a lot of blood coming out of his head, on his forehead, running down his face. His blood is still there on the ground. He was still alive at this stage.

About 10 or 15 guards from G4S came up the stairs. Two of them were Australians. The rest were PNG local. I know who they are. I can identify them by their face. They started kicking Reza in his head and stomach with their boots.

Reza was on the ground trying to defend himself. He put his arms up to cover his head but they were still kicking.

There was one local I recognized him he picked up a big rock he lifted the rock above his head and threw it down hard on top of Reza s

Australia s system of mandatory detention has been trenchantly criticized by Amnesty International and UNHCR. In late 2013, UNCHR delivered a report on conditions in the Regional Processing Centre (RPC) on Manus Island, saying:

> UNHCR was deeply troubled to observe that the current policies, operational approaches and harsh physical conditions at the RPC do not comply with international standards...

It also reported on conditions in Nauru and said:

> ...Assessed as a whole, UNHCR is of the view that the transfer of asylum-seekers to what are currently harsh and unsatisfactory temporary facilities, within a closed detention setting, and in the absence of a fully functional legal framework and adequately capacitated system to assess refugee claims, do not currently meet the required protection standards...

Just as a person s character is judged by

One of the most distressing things about the present situation is that it is based on a series of lies. When politicians called boat people illegals and queue jumpers they are not telling the truth. When politicians say that they are concerned about people drowning in their attempt to reach safety, they are not telling the truth. Australia has recently introduced temporary protection visas. Temporary protection visas not only offer only three years protection, they deny the prospect of family reunion. That has one obvious practical consequence: families who wish to rejoin the husband or father who is living in Australia on a temporary protection visa are not allowed to come to Australia by any orthodox means, so the only way in which the family can be reunited is by the women and children using the services of a people smuggler. Temporary protection visas are a positive incentive for people to use people smugglers. Quite apart from that, there is something indecent about the idea that in order to prevent people from drowning in their attempt to reach safety you punish the ones who don t drown. That is precisely what this country is doing right now.

Like most of you, I am aware that Donald Horne was speaking ironically when he wrote of Australia as the lucky country . But in most important ways, compared with the boat people who try to reach safety in Australia, we are indeed lucky. Over the past 15 years, 94% of boat people have been assessed, by us, as refugees genuinely fleeing the fear of persecution. In Australia, most members of the community never have to fear persecution; never have to fear for the late night knock on the door; never have to fear for their human rights.

But it is all because of the play of chance. Imagine for a moment that you are a Hazara from Afghanistan. You have fled your country and you have come down the northwest corridor through Malaysia and Indonesia. You can travel through both of those countries because they give you a one month visa on arrival. While you are in Indonesia you can go to the UNHCR office in Jakarta and apply for refugee status. If you are a Hazara from Afghanistan, you will almost certainly be assessed as a refugee. But when your one month visa expires, you have to hide because if you are found by the police, they will jail you. You cannot work because if you work you will be found and then you will be jailed. You cannot send your children to school because if you do you will be found and then you will be jailed. If the UNHCR has assessed you as a refugee, you can wait patiently in the shadows until some country offers to resettle you. That may take 20 or 30 years.

Now, for just one minute, imagine that you have been bludgeoned by chance into that position: you are that person. Will you wait in the shadows for 20 or 30 years or will you take your courage in both hands and get on a boat? I have never met an Australian who would not get on the boat. It s a very strange thing that we criticize, revile and punish those who do precisely what we would do if chance had bludgeoned us into their position.

We know how chance has bludgeoned people who flee for safety. Chance never did them any favours: can t we?

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By

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