GENDERED TECHNOLOGIES:
THE POLITICS OF FEMINIST MIGRATION RESEARCH

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Is it useful to analyse migration through a gendered or feminist lens? If so, what will this mean—whose feminism will be applied? And how will such an analysis challenge common-sense assumptions about migration in general and irregular migration in particular? These questions continue to provoke scholars in feminist theory, law, politics, sociology, criminology and cultural studies, as indicated by the recent publication of books such as Seyla Benhabib and Judith Resnick (eds) *Migrations and Mobilities: Citizenship, Borders and Gender* (2009) and Sharon Pickering's *Women, Borders, and Violence: Current Issues in Asylum, Forced Migration and Trafficking* (2011).[2] There is some interesting discussion and research emerging about the relevance of gender to migration, and the significance of women's experiences of migration. Given the importance of so-called 'extra-legal' migration as a political and human rights issue in Australia in the past 20 years, this research may be particularly pertinent to Australia. Gendered analyses of asylum seeking, irregular migration, and the policing of Australia's borders have the potential to provide new perspectives and 'shake up' dominant modes of thinking and speaking about these phenomena.

However, I want to suggest that in order to be effective, such analysis needs to critically examine its own theoretical basis as well as its institutional context. While there is plenty of academic and political speech about gender, migration and asylum seeking, much of it employs a relatively essentialist or 'common-sense' notion of gender. All too frequently, it reproduces banal clichés about men, women and children and power and seems uncertain about its purpose or underlying political basis. Where other strands of contemporary feminist analysis employ a post-structuralist understanding of gender and power, research on gender and migration often falls back, implicitly, on uncritical notions of universal patriarchy and female oppression.

This article makes an argument for an approach to gender and irregular migration which has potential to challenge dominant ways of thinking and speaking about irregular migration and thus, to destabilise

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[2] Seyla Benhabib and Judith Resnick (eds) *Migrations and Mobilities: Citizenship, Borders and Gender* (New York University Press, 2009); Sharon Pickering, *Women, Borders, and Violence: Current Issues in Asylum, Forced Migration and Trafficking* (Springer, 2011). See also: Sarah van Walsum and Thomas Spijkerboer (eds) *Women And Immigration Law: New Variations on Classical Feminist Themes* (Routledge-Cavendish, 2007), Marlou Schrover et al. (eds) *Illegal Migration and Gender in a Global and Historical Perspective* (Amsterdam University Press, 2008), Maroussia Hajdukowski-Ahmed, Nazilla Khanlou and Helene Moussa (eds), *Not Born A Refugee Woman: Contesting Identities, Rethinking Practices* (Berghahn Books, 2008) and Navnita Chadha Behera (ed.) *Gender, Conflict and Migration* (Sage Publications, 2006).

configurations of power in relation to people who cross national borders without authorisation. The approach that I suggest is to see gender as a mobile and adaptable 'technology' of power which is brought to bear on both men and women in multiple, shifting ways, especially those men and women who are rendered vulnerable by virtue of their status as irregular border-crossers, refugees, asylum seekers, stateless people and non-citizens. I begin with a short overview of research on gender and migration, then outline the approach which I think is useful by way of a discussion of how gender has impacted on asylum seekers in Australia. In the process I critically examine Sharon Pickering's book *Women, Borders and Violence*, considering the limitations of her approach to gender and migration but also exploring the potential that her research has to challenge dominant ways of thinking about gender, borders and violence.

Why Gender Matters?

In the late 1980s and early 1990s, a body of research and analysis about gender and migration started to emerge in fields such as sociology and law, following and growing out of the earlier work of immigration activists in places such as the UK and US. The two main strands of this research were critiques of refugee and asylum law suggesting that this law discriminated against women,[3] and analysis of the ways that citizenship and immigration laws in Western countries have gendered effects, for example: favouring male migrant workers, entrenching the dependence of migrant women on men, or subjecting non-citizen women to intrusive forms of surveillance and scrutiny.[4] This coincided with the implementation of 'gender mainstreaming' in United Nations policies and in political, development and human rights discourse: the notion of taking gender seriously in all policy development with the ultimate aim of bringing about gender equality.[5] This research has spawned a number of debates, particularly around the best method to address gender inequality in refugee law.

But what exactly is a gendered analysis? In her overview of feminist jurisprudence, Kitty Calavita notes that, with the exception of more recent postmodern critiques, feminist legal scholars have tended to treat gender and the male/female binary as fixed social realities, 'at a time when many social scientists had begun to recognize gender as processual and fluid'.[6] Calavita suggests that this may be somewhat inevitable if feminist legal scholars are to respond to law on its own terms: 'the gender binary is solidly entrenched in the law where it is repeatedly shored up as a taken-for-granted social reality'.[7] Similar issues exist around research on gender and migration. Frequently, attention to gender in this research means a focus on women, and the categories of 'women' and 'men' are treated as naturally existing, without consideration of social constructionist approaches to gender.

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[3] Jacqueline Greatbatch, 'The Gender Difference: Feminist Critiques of Refugee Discourse' (1989) 1(4) *International Journal of Refugee Law* 518; Doreen Indra, 'Gender: A Key Dimension in the Refugee Experience' (1987) 6(3) *Refuge* 3.

[4] Jacqueline Bhabha and Sue Shutter, *Women's Movement: Women under Immigration, Nationality and Refugee Law* (Trentham Books, 1994).

[5] Hilary Charlesworth, 'Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations' (2005) 18 *Harvard Human Rights Journal* 1.

[6] Kitty Calavita, 'Gender, Migration and Law: Crossing Borders and Bridging Disciplines' (2006) 40(1) *The International Migration Review* 104, 106.

[7] Ibid.

There are certainly some good justifications for focusing on the experiences of women as migrants, refugees and extra-legal border crossers. One is that dominant accounts of migration tend to treat the male body and male experiences as the norm. Women's experiences are likely to be different, it is assumed, and are therefore worthy of discussion for the purposes of giving a more balanced and complete picture.[8] Another argument is that immigration law tends to implicitly privilege male migrants so that men migrate as potential workers and women migrate as the spouses of male workers or else in order to join men under family reunion migration provisions. This structure of migration law discriminates against women and naturalises women's dependence on men.[9] Furthermore, in the category of humanitarian migration, it seems that although there are more female refugees in the world, fewer women than men are able to move from the Global South to North.[10] There is also the argument that refugee law tends to exclude women applicants because it has traditionally focused on public forms of persecution for public political activities, whereas violence against women tends to be treated as a private matter.[11]

However, other scholars' research has problematised some of the assumptions about gendered experiences of migration, forcing a rethink of what is important and worthy of study. The work of scholars such as Barbara Ehrenreich and Arlie Russell Hochschild focuses on an increasing 'feminisation of migration' whereby women migrate from poorer to richer countries in order to do the feminised 'care work' (childcare, aged care and housework) as women in more affluent countries move into the paid, public workforce.[12] This research challenges the assumption that women usually migrate as men's dependents, and thus highlights that gender categories are fluid and contested rather than fixed, as the character of global migration is undergoing processes of change. It also challenges the assumption of the commonality of women's experiences across cultures by highlighting divisions and power dynamics between women. Spijkerboer's work, focusing on Europe, suggests that although the majority of asylum seekers who enter western countries in order to claim asylum are male, female asylum claimants who do make it into western countries are as successful as male claimants, for reasons that are not entirely clear.[13] Other scholars whose attention focuses on questions of representation, power and agency have shown how the image of refugees as helpless, silenced women and children may generate sympathy in the Global North but at the same time, contribute to a 'fetishisation' of the refugee woman. In this context, the unexamined privileging of female asylum seekers in analysis or narrative may simply further this fetishisation and appear to give women a voice while at the same time co-opting this voice to serve the purposes of western imperialism.[14] For these reasons, it is helpful to critically interrogate what is meant

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[8] See for example Bhabha and Resnick, above n 2.

[9] Catherine Dauvergne, 'Globalizing Fragmentation: New Pressures on Women Caught in the Immigration Law-Citizenship Law Dichotomy', in Seyla Benhabib and Judith Resnick (eds) *Migrations and Mobilities: Citizenship, Borders and Gender* (New York University Press, 2009) 333-355.

[10] Ibid; see also Suvendrini Perera, 'Oceanic Corpo-graphies, Refugee Bodies and the Making and Unmaking of Waters' (2013) 103 *Feminist Review* 58; and Ratna Kapur, 'The 'Other' Side of Globalization: The Legal Regulation of Cross-Border Movements' (2003) 22(3–4) *Canadian Woman Studies* 6.

[11] Greatbatch, above n 5; Indra, above n 5, Talia Inlender, 'Status Quo or Sixth Ground? Adjudicating Gender Asylum Claims', in Seyla Benhabib and Judith Resnick (eds) *Migrations and Mobilities: Citizenship, Borders and Gender* (New York University Press, 2009) 356-379; Thomas Spijkerboer, *Gender and Refugee Status* (Ashgate, 2000).

[12] Barbara Ehrenreich and Arlie Russell Hochschild, *Global Woman: Nannies, Maids and Sex Workers in the New Economy* (Holt, 2002).

[13] Spijkoerboer, above n 13, but see Dauvergne, above n 11.

[14] Anna Szörényi, 'The Face of Suffering in Afghanistan: Identity, Authenticity and Technology in the Search for the Representative Refugee' (2004) 21 *Australian Feminist Law Journal*; Suvendrini Perera, 'The Impossible

by gender and to think of 'women' as a category that is always being constructed and reconstructed through discourse.

Women, Borders and Violence

Sharon Pickering's recent study of gender and irregular migration reproduces some of the problems of traditional gender and migration research, but also stimulates some interesting new questions with particular relevance to Australia. Pickering's work focuses on the 'extra-legal' movement of women from the Global South to the Global North. She uses the term 'extra-legal' to encompass multiple categories of women who are positioned adversely in relation to law, including asylum seekers, trafficked women and stateless women. Her discussion of the notion of 'extra-legality' attempts to highlight that a person's legal status in relation to law may be quite arbitrary, and that a person may be constructed as 'extra-legal' when their crossing of a border is in fact permitted by the law (asylum seekers, for example). Therefore, her use of the term 'extra-legal' is both a political gesture aimed at destabilising official discourses, and also an attempt to capture the ways that peoples' movements, rather than being a contravention of the laws of one or another nation-state, may simply be 'outside' the law or beyond the reach of law. Their plights and situations may not in fact be addressed by the law at all; they may simply be invisible.

One of Pickering's central ideas is that borders—nation-states' restrictions on people's movements—can be understood as performing an invisible kind of violence: potentially, a gendered form of violence. She explores this idea from a number of different case studies through her research: focusing on the journeys of female refugees from Somalia to Malta; the experiences of female Burmese activists living illegally on the Thai-Burma border; Australian Refugee Review Tribunal decisions on 'gendered' asylum claims; and attempts to police and legislate against the apparent sex-trafficking of women into Australia.

Pickering is concerned with how institutionalised ways of thinking and speaking about an object effectively create that object, constructing it in certain limited and specific ways, and thus exerting power.[15] For example, objects such as the 'refugee', the 'illegal immigrant' and the 'trafficked woman' do not simply exist *a priori* in the world, independent of speech and representation, waiting to be studied, analysed and reported on. Rather, these 'objects' come into existence as they are spoken about, represented, studied, analysed and reported on. On this basis, Pickering does not take for granted institutionalised frameworks for thinking and speaking about her objects of analysis but seeks to interrogate the institutions that construct these objects and exert social power.

She begins by outlining the sketchy data on women's extra-legal border crossing: primarily research on refugees, research on trafficking, and criminological research on immigration. This allows her to show the motivations behind these sorts of research and how it consequently constructs its objects. For example, research on trafficking tends to be associated with increased surveillance of trafficked women and

Refugee of Western Desire' (2003) 2(3) *Lines Magazine* <http://www.lines-magazine.org/textnov03/suvendrini.htm>; Liisa H. Malkki, 'Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization' (1996) 11(3) *Cultural Anthropology* 377. Spijkerboer, above n 13, 129, argues that the focus on the female refugee's situation as unique and 'aberrant' can in fact have an adverse effect on the outcome of female applicant's claims, as 'exceptional cases' are seen as requiring greater scrutiny.

[15] Geoff Danaher, Tony Schirato and Jenn Webb, 'Discourses and Institutions' in *Understanding Foucault* (Allen and Unwin, 2000), 30-45.

conservative attitudes to prostitution, and the collection of data on refugee women tends to be made possible by the confinement and surveillance of such women in camps. However, a weakness of Pickering's research here is that while she focuses on how objects such as the refugee, the 'illegal immigrant' and the border are constructed through discourse, she tends to take for granted that a *gendered* analysis is useful, that a gendered analysis means a focus on women. Her research often seems to treat 'women' as a fixed, stable, naturally existing, and broadly homogenous social category, and to imply that we all know and agree on the concerns and shared experiences of women. More explicit critical attention to how discourse about women and extra-legal border crossing helps to construct and reinforce gender binaries would have been productive, because aspects of Pickering's research have some interesting implications for these questions. Her analysis would have been enhanced by some consideration of how a certain understanding of what it means to be a woman has come to be accepted as common-sense, particularly in relation to third world and stateless women.

For example, her chapter on female refugees attempting to travel from Somalia to Europe builds a powerful picture of the multiple sites at which extra-legal border crossing is policed, both before and beyond 'the border', and the way that policing of women travelling extra-legally may occur indirectly through the threat of such 'gendered' forms of violence as rape and sexual harassment perpetrated by 'ordinary' men as well as border guards, police and soldiers. Pickering suggests that this sexual violence blurs a need to police 'active' women with a need to police extra-legal migration, and her research highlights the broader vulnerabilities of women travelling extra-legally. However, it is worth looking critically at the assumption that rape and sexual violence are gendered crimes. To what extent is this element of 'border policing' only perpetrated on women, and if it is, what accounts for this? What other forms of 'gendered' policing might apply to men who move extra-legally? Is sexual violence qualitatively different to other forms of threat, physical violence, torture and humiliation perpetrated on those people who are effectively without rights? How do NGO reports of violence against female refugees (the source of Pickering's research in this chapter) construct women's experiences in a certain limited way so that things like rape stand out as 'obviously' gendered experiences while other aspects of their experience are written out of the story? To what extent does this sort of research reinforce the common-sense assumption that women in general and third world women in particular are inherently 'rapeable' and 'impregnable'? Rather than thinking of sexual violence against women as a natural, timeless element of human societies, how is it socially produced and reproduced? How should we make sense of the ways that the unique effectiveness of sexual abuse of women is made possible and compounded by broader social attitudes to women's sexuality, which vary across cultures and communities? Some of these questions are perhaps beyond the scope of Pickering's book, but her research certainly highlights an area requiring further analysis.

Here and elsewhere in her book, Pickering's broader point is that the policing of extra-legal border crossing by nations of the Global North has a particularly violent effect, indirectly, on women.[16] It is worth noticing, furthermore, that this is a challenge to the Global North's view of itself as 'pro-feminist', sympathetic to women, and 'advanced' compared to the Global South when it comes to gender issues. In order to begin to unpack this ideology of the 'postfeminist' Global North, it is helpful to critically analyse how feminism has come to be accepted as a privileged discourse in the Global North. In the case of

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[16] That is, the sexual violence perpetrated on women refugees trying to leave conflict situations is not simply an effect of the supposedly 'patriarchal' attitudes of men in the Global South, it is an effect of the rendering of whole classes of people as illegal by the tightening of national borders.

Pickering's book, just as she analyses how objects such as the refugee, the illegal immigrant and the border are produced by the discourse of criminology, international relations and human rights, it is worth looking more closely at the ways that the object 'woman' is constructed by institutionalised western feminism in academia. It would be helpful for scholars of gender and migration such as Pickering to interrogate feminism and gender studies as institutions. From within these institutions, their research constructs their research subjects in certain ways: subaltern women whose voices speak truths. Yet the kinds of 'truths' that these women are made to speak in such research is, in a sense, set up in advance for them by the framework of western feminism: for example, subaltern women may be assigned a role as victims of universal, uniform patriarchy such that the complexities of their identities and experiences are reduced to this role. It is becoming increasing necessary to give some attention to how the questions of researchers in western academia shape the kinds of data they are able to obtain. One reason why I focus on Pickering's work as an example of this problem is that her discourse analysis approach comes closest to interrogating these issues and her own position.

Gendered Asylum as 'Fault Line'

Research and analysis of gender-based asylum claims is a key example of how scholars in law, sociology, and human rights seek to explore the significance of gender to migration and border policing. On that basis, it is the kind of research that bears critical scrutiny of its positionality. Pickering's discussion of the response by Global North states to gender-based asylum claims is a uniquely useful example. It generates some productive questions about the multiple ways in which gender operates in asylum claims, often to the detriment of the claimant, and usually as a means for the state to exert power over her.

As Pickering notes, the body of discourse around women, asylum and gender-based persecution serves to crystallise broader issues about gender and extra-legal migration. To illustrate this, she analyses 25 cases before the Australian Refugee Review Tribunal in which gender was raised as part of the claim for asylum. She focuses especially on 6 of these cases from 1993-1997 and the reasons for decisions given by the Tribunal, providing a 'snapshot' of discourse in action about gender and asylum. By focusing on the 'everyday' cases before the Refugee Review Tribunal we are able to see the common-sense and taken-for-granted ways that tribunal members think about gender, gendered persecution, and women from the Global South. This body of discourse or 'speech', which determines who will be permitted to enter the Global North and under what circumstances, can be understood as one of the sites where 'the border' is produced and continually reproduced.

The legal definition of a refugee was formulated by the United Nations in 1951 in the Convention on Refugees, and it established certain criteria against which all applications for asylum will be measured. This much discussed definition requires that the applicant:

> …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 to or, owing to such fear, is unwilling to avail himself of the protection of that country…[17]

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[17] *Convention Relating to the Status of Refugees*, (1951) art 1A(2).

Pickering's research is situated within a body of international scholarship and debate over how this definition impacts in gendered terms, and whether it needs to be modified to take gender into account. Key early contributions to this debate were Doreen Indra who argued in 1987 that the refugee definition is gendered male because it focuses on public forms of persecution most likely to apply to men, and Jacqueline Greatbatch, who in 1989 called for the inclusion of gender in the UN definition as a sixth ground of persecution.[18] This opened a theoretical and policy discussion about whether the kinds of persecution suffered by women can be adequately accounted for by the current legal definition (e.g. by treating women as a 'particular social group') and about how asylum law and legal decision makers can be made more sensitive to gender.[19] As Pickering discusses at length, the UN released a set of Guidelines for member states which have ratified the Convention on refugees, with the aim of achieving greater gender sensitivity in the application of the current definition. Some scholars argue that the singling out of women's experiences of persecution as fundamentally different to men's is unhelpful in that it essentialises women and can actually hinder their chances of making a successful claim.[20] A helpful recent contribution to this theoretical discussion is by Talia Inlender, who distinguishes between gender-based persecution (in which women are persecuted *because of* their gender, such as being subjected to genital cutting or forced marriage) and gender-specific persecution (in which women are persecuted *in a gendered way* for some other reason, such as a female political activist who is subjected to sexual violence because of her political activities). Inlender argues that it may be useful to include gender as a sixth ground to address gender-based claims, but that gender-specific claims would be better dealt with using the other grounds in the refugee definition.

Alongside these theoretical and policy developments, there have also been a steady increase in applicants attempting to use the current definition to make gender based or gender related claims for asylum, with mixed success. To some extent, it seems as though the recognition of gendered persecution is emerging as a means by which some women are able to gain access to the Global North or, as Pickering puts it, 'a basis for keeping the gate wedged open'.[21] Fear of persecution in the form of Female Genital Mutilation was recognised as a ground of asylum (using the 'particular social group' ground) in the cases of *Kasinga* in the US in 1996, and *Fornah* in the UK in 2006.[22] In 2002, an Australian High Court decision recognised that a Pakistani woman who was unable to obtain effective police protection from domestic violence could have grounds for asylum.[23] Critical work on these claims suggests that the legal decisions

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[18] Indra, Greatbatch above n 5; see Pickering, above n 4, 62.

[19] For analysis of the relevance of gender to the refugee definition and asylum decision making, see: Susan Kneebone, 'Women Within the Refugee Construct: Exclusionary Inclusion in Policy and Practice—the Australian Experience' (2005) 17 *International Journal of Refugee Law* 7; Melanie Randall, 'Refugee Law and State Accountability for Violence against Women: A Comparative Analysis of Legal Approaches to Recognizing Asylum Claims Based on Gender Persecution', (2002) 25 *Harvard Women's Law Journal* 281; Spijkerboer, above n 13; M. Chaudhry, 'Particular Social Groups Post Fornah' (2007) 21(2) *Journal of Immigration, Asylum and Nationality Law* 137; Catherine Hunter, 'Khawar and Migration Legislation Amendment Bill (No 6) 2001: Why narrowing the definition of a refugee discriminates against gender-related claims' (2002) 8(1) *Australian Journal of Human Rights* 107; Erika Rackley, 'What a Difference Difference Makes: Gendered Harms and Judicial Diversity' (2008) 15(1-2) *International Journal of the Legal Profession* 37; Inlender, above n 13, Calavita, above n 8.

[20] See for example, Spijkerboer, above n 13.

[21] Pickering, above n 4, 61.

[22] *In re Fauziya Kasinga*, 3278, United States Board of Immigration Appeals, 13 June 1996; *Fornah v Secretary of State for the Home Department* [2006] UKHL 46; Pickering, above n 4, 57-59.

[23] This judgment prompted an amendment to the migration act to narrow the grounds on which people could claim asylum. See Hunter, above n 20.

cannot be understood separately from their social context and attitudes towards non-Western cultures. For example Sherene Razack argues that gendered claims for asylum are more likely to be successful in Canada when they reinforce comfortable assumptions about the barbarism of non-Western cultures, such as Muslim cultures, in comparison to the 'civilised' West.[24]

Pickering's analysis demonstrates a series of contradictions and hypocrisies in the ways that gender is routinely made sense of in asylum claims. She does demonstrate that RRT decisions often have recourse to stereotypes about the 'backward' treatment of women in non-Western cultures. However, she notes that this can play out in contradictory ways—it can be used to deny asylum as well as to grant it, through rather convoluted arguments that a certain experience (e.g. repeated rape by a soldier) does not amount to 'political' persecution but is merely an instance of the inevitable gendered harm suffered by women the world over (that is, it is simply a crime). More broadly, Pickering suggests that the granting or denial of gendered asylum claims by the RRT needs to be understood in the context of a tightening of grounds for asylum across the Global North, amid anxieties about the apparent 'hordes' of refugees from the Global South. This can be seen in Australia and elsewhere in various legislative measures to restrict access to refugee law and to offer asylum to a narrower and narrower class of people. In this context, certain kinds of gendered persecution may be acknowledged by institutions such as the RRT on the basis of permitting certain limited kinds of cases to fall within the privileged status of asylum. But at the same time, gendered asylum claims generate anxieties in the Global North about 'opening the floodgates' to a much wider class of people who would have grounds for asylum:

> The punitive trend in refugee protection within developed nations has been marked by watershed moments in relation to issues raised by, or in direct response to, cases of gender-based persecution. Gender-based persecution has often acted as the moment to usher in more restrictive refugee protection policies for all those seeking asylum in the developed world. [25]

As a result, decision makers routinely find ways to 'get around' gendered persecution and render it invisible, performing a systematic denial both of this persecution and of the gendered harm of the tightening of controls on refugee law.

Ultimately, Pickering argues that the reason asylum decision-makers have been erratic in granting asylum on the grounds of gender is not because the refugee definition fails to take account of gender, but because governments of the Global North are fundamentally resistant to the movement of people from Global South to North. The restriction of movement, she suggests, has a dangerous and devastating effect on women, but this can only rarely be challenged via asylum on the grounds of gender persecution. In other words, most of the time gender is invisible. This raises the perhaps rather radical idea that the exclusion of people from the Global North is in itself a form of persecution that has gendered effects. Pickering suggests that attempts by the UN to make asylum decision-makers more gender sensitive will never be very effective unless it is understood that there is a fundamental anxiety in developed nations about the recognition of gendered persecution 'opening the floodgates' to an indefinite number of refugees.[26] For Pickering, then, a response to gendered experiences of asylum requires rethinking the legitimacy of the

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[24] Sherene H. Razack, 'Policing the Borders of Nation: the Imperial Gaze in Gender Persecution Cases', *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms* (University of Toronto Press, 1998) 124.

[25] Pickering, above n 4, 83.

[26] Ibid.

border policing performed by countries of the Global North, whereby refugee protection is still understood as 'an act of gratuitous humanity' offered at the whim of the western governments.[27]

This part of Pickering's analysis is commendable in that she avoids simplistic assumptions about why the nation-state might or might not operate in the interests of the female asylum claimant. Rather, she demonstrates the multiple and often contradictory ways in which gender operates as a technology of power, and she directs our critical attention towards the exercise of this power by the Australian nation-state.

Gender as a Technology of Power

The best and most challenging examples of recent research about gender and migration lead us to employ a critical approach to gender and power: that is, they do not take for granted the relationship between gender and power but seek to analyse and question this relationship. I suggest that such an approach is imperative in any analysis of gender and unauthorised border-crossing in Australia. As a basic starting point, a feminism which conceptualises gender in terms of 'inequality' and is primarily concerned with challenging male power and privilege over women or protecting women from 'patriarchy' is of limited relevance to understanding women as extra-legal border crossers. Simply, this is because it makes little sense to focus on raising the status of women to make women equal to men when their male counterparts are themselves radically disempowered. Furthermore, if we think of the state as a patriarchal institution which enforces certain roles on women and men, the gendered roles expected of extra-legal people are vastly different to those expected of citizens. What may be more useful is a conceptualisation of gender not as a natural fact of existence (we are born male and female) but as a normalising ideology which demarcates the acceptable and the deviant,[28] a tool or technology which can be employed in unexpected ways by new configurations of power to manage and control people, for example, to manage and control male and female extra-legal border crossers. A feminism which conceptualises gender as such would seek to denaturalise gender and challenge the multiple and contradictory ways in which this technology is used to exert power, repress, and enact violence.

I suggest, then, that a 'gender as technology' approach is vital for critiquing and challenging the ways in which power is exerted over extra-legal border crossers, especially asylum seekers, who seek to enter Australia. An equality based approach is of fairly limited use here. For example, it might lead us to focus on taking steps to equalise the numbers of male and female asylum seekers who are able to enter Australia, in keeping with the fact that there are apparently more female and child asylum seekers in the world than adult male asylum seekers but most of those who are able to enter the Global North are adult males. Indeed, this seems to be the rationale behind the Australian Government's 'Women at Risk' visa category offered to a relatively tiny number of asylum seekers who are accepted through the Special Humanitarian Program from refugee camps in the Global South at the discretion of the government. Such an approach, which implicitly renders male asylum seekers who enter Australia independently as 'queue jumpers', is hypocritical given the key role that governments of the Global North play in restricting the 'extra-legal'

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[27] Ibid, 84.

[28] For example, following the approach of post-structuralist feminists such as Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 1990).

movement of asylum seekers from the Global South, thus making it more difficult for women to enter the Global North to apply for asylum. Similarly, an equality based approach to women in Australian (or Australian run) detention centres is fairly unsatisfactory: it inevitably essentialises women as more vulnerable than men and allows little more than a questioning of whether the 'special needs' of women are being met and whether they are being 'kept safe'.[29]

By contrast, a 'gender as technology' approach lets us notice and critique things like the ways in which women and children have often been separated from men in detention through various practices over the years that mandatory detention has been policy in Australia.[30] This is ostensibly on the grounds of protecting women and children from the harsher and more volatile side of detention. However, it is based in several problematic and potentially harmful assumptions about men, women and children which are still largely taken for granted. These include: the assumption that women are automatically more vulnerable and men (including boys over the age of 13) more 'tough', the assumption that mothers belong automatically with their children but fathers do not, the assumption that male asylum seekers are dangerous and need to be kept in maximum security facilities, and the assumption that the family relationships of those who are 'extra-legal' are unimportant.[31] Such gendered policies have played out differently at various times, and in a rather arbitrary fashion. They have included the detention of mothers, and other women, with children in so-called 'residential housing facilities' while fathers and other men remain in high security detention, the release of women and children on bridging visas or community detention, and the 'release' of mothers, fathers and children into community detention or low security detention while other male asylum seekers remain in high security detention. In 2005, a campaign to get 'women and kids' out of detention led by some backbenchers of the Liberal Party resulted in an amendment to the *Migration Act* which gave the Minister a discretionary power to release any person into 'community detention' as he saw fit. For a period of time this was used to allow families with young children, including fathers, to live in relatively normal suburban settings, albeit still under the surveillance of detention officers.

More recently, however, this policy seems to have been abandoned as asylum seekers are being held in detention centres (apparently with some degree of separation of 'families' from single men) at Christmas Island, Darwin, Derby, Nauru, Manus Island, and Northam in Western Australia. As of early 2013, 'single' men were being held in detention in tents on Nauru, and 'families' were being sent to a tent detention centre on Manus Island. Because the power to release families was never more than discretionary, it can be withdrawn whenever it becomes practically or politically inconvenient. In other words, tokenistic gestures towards the protection of 'vulnerable' women and children reinforce sexist, essentialising assumptions yet always remain precarious and contingent rather than a right that can be claimed. Such policies also permit increasingly harsher detention conditions to be inflicted on male detainees (as long as women and children are protected this is seen to be enough). Gendered ideology, then, is operating here

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[29] See for example, Eva Cox and Terry Priest, *Women in Immigration Detention: More Questions than Answers* (August 2005) University of Technology Sydney,
<http://www.ajustaustralia.com/resource.php?act=attache&id=122>
[30] Some of these practices are documented in Human Rights and Equal Opportunity Commission, *A Last Resort? The Report of the National Inquiry Into Children In Immigration Detention* (2004)
<http://www.hreoc.gov.au/human_rights/children_detention_report/>.
[31] Such policies of gendered segregation, especially when applied to asylum seekers held in detention for long periods of time, have the (hopefully) unintended effect of preventing male and female asylum seekers from forming sexual relationships and reproducing.

as a technology to permit power to be exerted over male asylum seekers in ever more violent ways, and to allow violent interventions into the families of asylum seekers. Only a critical 'gender as technology' approach will make it possible to argue that a certain level of human rights standards should be maintained for all asylum seekers, both male and female.[32]

Because much of the experiences of extra-legal border crossers, both in detention centres and on their journeys to Australia, are kept away from public scrutiny, we have only sketchy indications of the ways in which gender operates as a technology of power on a day to day basis. The documentation of particular incidents sometimes gives insights, but gender is not always explicitly visible in those accounts. One such example from 2003 indicates the insidious ways in which gender can operate as a technology of power. This incident was never widely publicised but can be pieced together from some submissions to human rights inquiries, a few news articles, and the Federal Court judgment for a related claim against the Department of Immigration, Multicultural and Indigenous Affairs. A seven year old girl, Miss M, and her father, Mr M, were Iranian asylum seekers who had been held in immigration detention since their arrival in Australia in 2001.[33] In July 2003, while Mr M was being held in solitary confinement at Baxter Immigration Reception and Processing Centre, DIMIA officers sent his daughter back to her mother in Iran without her father's knowledge. When Mr M asked to see his daughter, detention officers initially attempted to conceal her deportation by telling him that she was out shopping.[34] At this time, in conjunction with her father, Miss M still had an application for asylum pending before the High Court so her removal was *not* a deportation at the end of a processing of a claim for asylum but a removal in response to a custody dispute. Forced to defend the deportation to the ABC, and later in Parliament, Immigration Minister Philip Ruddock and other representatives from DIMIA claimed that they had sighted an Iranian court order which specified that the mother had custody, although this was apparently disputed by Mr M.[35] However, if this was a custody dispute, presumably due process would require that the father be given the opportunity to dispute the custody order in the Family Court. It appears that the

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[32] For an illustration of how gender as a technology has operated more recently in relation to gender, see Dylan Welch, 'Nauru Demands Segregation at Camp', *The Age*, 19 September 2012, <http://www.theage.com.au/opinion/political-news/nauru-demands-segregation-at-camp-20120918-264rr.html>

[33] Accounts of Mr M and Miss M's story can be found in the report of the People's Inquiry into Immigration Detention: Linda Briskman, Susie Latham and Chris Goddard, *Human Rights Overboard: Seeking Asylum in Australia* (Scribe, 2008), 237-43; and in the submission to this Inquiry compiled by the advocacy group A Just Australia. This submission is available on A Just Australia's website at: A Just Australia, "The Removal of an Asylum Seeking Child from Australia," Submission to the People's Inquiry into Immigration Detention, November 2005, accessed 15 February 2008 <http://www.ajustaustralia.com/informationandresources_researchandpapers.php?act=papers&id=64>. Some important details of this story are also set out in the record of the court case for breach of duty of care that Mr M subsequently brought against DIMIA in the Federal Court: *Secretary, Department of Immigration and Multicultural and Indigenous Affairs v Mastipour* [2004] FCAFC 93.

[34] See *Secretary, Department of Immigration and Multicultural and Indigenous Affairs v Mastipour* [2004] FCAFC 93.

[35] See Ruddock cited in 'Ruddock Defends Iranian Girl's Deportation', *ABC News Online*, 27 August 2003, <http://www.abc.net.au/news/stories/2003/08/27/932717.htm>; and Parliamentary Questions on Notice 11 October 2005, 17 February 2004 and 11 February 2004. In its description of the case, 'A Just Australia' cites a claim by Mr M's legal counsel, Julian Burnside QC, that the only custody papers to have been sighted grant custody to the father with visitation rights for the mother ('A Just Australia', 9-10). 'A Just Australia' raises a number of questions about this dispute over custody papers which have not been addressed: which papers were correct? Did the department take steps to ensure that the documents from Iran were genuine? Was it possible that an Iranian court may have granted custody to the mother after the father had fled with the daughter on the basis that he was now considered a traitor?

Department of Immigration took steps to ensure that Mr M did not know about the deportation so that he could not dispute it, or even say goodbye to his daughter. What we can glean about this incident suggests not only that Mr M's parental rights were overridden, but also, Miss M's application for asylum was overridden. [36]

While Mr M subsequently brought an action for breach of duty of care against DIMIA, this action did not directly pertain to the legality of the removal of his daughter. Therefore, while there are unresolved questions about whether DIMIA or its agents breached the law by their actions, it is also important to scrutinise the ways in which gender was an underlying catalyst for the treatment of Mr M and Miss M in relation to the law. Given the ways in which gendered ideology operates in Australian culture, it is highly unlikely that DIMIA officers would have acted in an underhand fashion to remove a seven year old asylum seeker child from her mother in detention and return her to her father in Iran. The treatment of Mr M and Miss M seems to have been possible because of gendered assumptions that children belong with their mothers, and that fathers—in particular, those with precarious access to rights such as asylum seekers—do not have a legitimate relationship with their children and are probably dangerous and threatening. This incident is one example of how gender may be used as a technology of power in relation to men, and the operation of gender here is difficult to identify within the dominant 'gender and migration' discourse.

Gender in the Borderscape

One of Pickering's insights is that an understanding of borders, border policing and the experience of border crossing cannot be limited to a focus on the 'line' of the border which must be crossed. She suggests that extra-legal border crossing encompasses so much more than just 'going through the gate' and the full gendered experience of extra-legal migration is concealed by a (legalistic) focus on, for example, whether or not women can obtain refugee status in the Global North. In this sense, her approach is akin to the notion of 'borderscapes' employed by political theorists Prem Kumar Rajaram and Carl Grundy-Warr (and their contributors) in the edited collection *Borderscapes: Hidden Geographies and Politics at Territory's Edge*.[37] Like Pickering, they conceptualise the border as an expanse rather than a line, and suggest that borders and border-policing extend beyond the control of entry and citizenship:

> …the border becomes not the imaginary line of separation but something camouflaged in a language and performance of culture, class, gender and race … Such camouflage reproduces the border in the multiple localities and spatialities of state and society. Borders … can fold inward, enveloping and containing individuals and groups in society within particular regiments of governmentality. Or they can fold outward, restricting entry and expelling irregular migrants. The term *borderscapes* is an entry point, allowing for a study of the border as mobile, perspectival and relational.[38]

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[36] This raises the question of whether the Department of Immigration took the action in order to pressure Mr M to withdraw his High Court appeal and voluntarily return to Iran.
[37] Prem Kumar Rajaram and Carl Grundy-Warr (eds), *Borderscapes: Hidden Geographies and Politics at Territory's Edge* (University of Minnesota Press, 2007).
[38] Ibid, x.

These ideas are highlighted effectively in Pickering's chapter on anxieties about the need to prevent sex-trafficking into Australia. Here her research indicates that, despite broad concerns in Australia about the apparent 'crisis' of sex-trafficking and the introduction of legal and policy measures to prevent it, there are in fact probably only small numbers of women trafficked into Australia to work as prostitutes against their will. She documents that there is a blurring in discourse on trafficking between a 'pro-feminist' need to protect women from being coerced or forced into prostitution and a conservative agenda of policing sex work and 'unacceptable' sexual practices generally. Furthermore, this policing of trafficking, which is ostensibly about saving women from violence, becomes an excuse for a broader project of border policing and surveillance. It manifests both as increased monitoring of women who enter Australia from certain regions of the world and increased, intrusive surveillance of sex-workers in Australia. The hypocrisy of concerns about the trafficking of women is highlighted most clearly in legislative measures to prevent the immediate deportation of 'illegal' trafficked women who agree to testify against their traffickers, but which offer to such women no permanent right to remain in Australia (they will be deported once their testimony is completed).[39] While sex trafficking is officially policed on the basis of protecting women, the women who are actually coerced to work in the sex industry are themselves policed as illegal immigrants.

This is a useful illustration of the ways in which gender can play a part in border policing: the imperative to control the irregular crossing of national borders coalesces with the imperative to control women's sexual behaviour and contain sexual practices which are considered to be unacceptable. This is border policing of a different kind—where gender itself is a border which categorises people and distinguishes the normal from the deviant. To make sense of this we do need to conceptualise borders and border policing as extending beyond the narrow 'line' of the border. However, we also need to start to interrogate more strongly the assumptions about feminism, gendered justice and the nation-state as a site where such justice can be achieved. As Rajaram and Grundy-Warr emphasise, a critical approach to border policing requires a rethinking of the nation-state as a site of justice:

> We want to emphasize that the study of borders and migration centers on questions of justice and its limits. The border is not a neutral line of separation; borders between nation-states demarcate belonging and nonbelonging and authorize a distinction between norm and exception. The authority accorded by the territorial border vindicates a curtailed conception of justice, one that is particularly telling in its circular claim to being an exhaustive representation of human need.[40]

Following the implications of their critique, we need to think beyond state-based approaches to gender justice.[41] This is particularly important for addressing the ways in which gender plays a part in the policing of extra-legal border crossing, and more generally, for thinking about the relationship between gender and migration.

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[39] Pickering, above n 4, 100-2; see also Suvendrini Perera, 'The Gender of Borderpanic: Women in Circuits of Security, State, Globalisation and New (and Old) Empire', in Maureen Cain and Adrian Howe (eds), *Women, Crime and Social Harm: Towards a Criminology for the Global Age* (Hart Publishing, 2008).

[40] Rajaram and Grundy-Warr, above n 29, ix.

[41] See also Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton University Press, 1995) who argues in a different context that feminists should be wary of looking to the state for protection, but rather need to remain critical of the state as a source of power.

Conclusion

One of the most compelling reasons for focusing on women's experiences of extra-legal border crossing is because many aspects of state control over migration and borders still tend to envision a single, male, adult individual as the primary subject of border-policing. Of course, this is how western culture operates more generally. Attention to the experiences of women under border laws can show up the limitations and invisible violence of such systems by highlighting the ways that people who attempt to move from Global South to North are usually connected within networks of family and community rather than being discrete, separate objects. Women's bodies, giving birth to children of uncertain citizenship in immigration detention, in hospitals under the guard of detention officers, on boats in the Indian Ocean, and in the water in the aftermath of tragic sinkings[42] are rendered 'unruly' by a system of law which seeks to categorise people definitively as lawful or unlawful, belonging or unbelonging, deserving or ungrateful. Women who try to claim asylum on the basis of 'private' persecution upset the comfortable distinction between public and private sphere and confront us with the idea that 'the political' extends beyond the world of work, government and 'activism' into the personal aspects of our lives, demanding a much more pervasive understanding of justice and human rights. Women who cross borders extra-legally to work in the sex industry, either voluntarily or due to coercion, make visible the inevitable interdependency between Global South and North and highlight the hypocrisy of a purportedly fair international migration system which excludes many people and offers them no legal means of survival.

However, the radical implications of such women's experiences will be lost if attention to gender in the analysis of border crossing is reduced to a focus on women as a special category with special needs. As in other spheres of life, women's experiences which upset the operation of everyday border-policing require a rethinking of the status quo, for example attention to the ways that all people, both men and women, are part of networks of family and community which cannot be easily severed, and the ways that people stripped of the protection of citizenship will be especially vulnerable to directly physical forms of abuse, degrading treatment and exploitation. Research such as Pickering's highlights that there are still many questions to be explored about the effect of gender on extra-legal border crossing. To begin to answer these, we need to see gender as an unfixed category, which is being used in new and unexpected ways to exercise power over those who are vulnerable.

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[42] See Suvendrini Perera, '"They Give Evidence": Bodies, Borders and the Disappeared' (2006) 12(6) *Social Identities* 637.

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