

Liberal Democracy's Asylum Seeker Paradox: A Case Study of Australian Labor Party's  
Policies on Offshore Detention

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## ABSTRACT

This thesis asks why the Australian Labor Party was opposed to the policy of offshore detention for unauthorized maritime arrivals from 2002 to 2008, when they ended it, only to bring it back a few years later in 2011? The Australian Labor Party, the major left-wing party in Australia, campaigned against offshore detention as being antithetical to Australia's liberal values, which proclaimed human rights as an Australian value. After winning the 2007 federal election the policy of offshore detention was ended. By 2009, the Australian Labor Party changed its position on the issue going into the 2010 federal election. In 2011, the Australian Labor Party announced that it was looking to bring back offshore detention. The explanation for this change I find is that the Australian Labor Party wanted to hold political power. As the minority party the Australian Labor Party used the policy of offshore detention for unauthorized maritime arrivals to attack the Liberal-National Coalition-controlled government as being a financial waste and cruelly inhumane. After ending the policy, the rates of unauthorized maritime arrivals increased drastically, creating pressure on the Australian Labor Party to find a solution or risk losing control of the Australian government, which it did in 2011.

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GENERAL AUDIENCE ABSTRACT

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This thesis is dedicated to the memory of my oldest brother Robert Frank Henry.

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## **Chapter 1: Introduction**

In this age of increased global interconnections, with an increase in the flow of people, information, goods, and services, state sovereignty has taken on great importance. During this same time, there has been an increase in security policies due to perceived security threats around the world from non-state actors. Individuals that seek to be granted refugee status are fleeing from harm and seek to live in a state that will provide protection. The problem of and for asylum seekers is that many can request asylum, but this leads to skepticism in the states where individuals seek refuge as victims of persecution. States take protective measures against asylum seekers as means of asserting the sovereignty of their borders. In the process, states have placed a priority on state security over granting hospitality for asylum seekers, partly by using poor treatment of asylum seekers as a deterrent. States form an international society of human rights when they create and ratify treaties regarding refugees and children to create international law. However, citizens often feel that hospitality for asylum seekers places a burden of care upon the state that will become an economic drain. Citizens are often suspicious of claims for asylum when asylum-seekers do not follow immigration policies when attempting to enter the state illegally.

### The Purpose of the Thesis

The purpose of this thesis is to apply what James Hollifield calls the paradox of liberal democracy, in which states become more open to trade and immigration, but in turn racist

and xenophobic views increase. When it comes to national security of the state and obligations to international human rights law regarding refugees, national security is the top priority while asylum seekers become a lower priority for democracies. The priorities also depend on the framing by political actors, who may view asylum seekers as economic migrants trying to force their way into the state or as using asylum for more nefarious purposes such as terrorist attacks or smuggling. The case of Australia presents a real-world example of this response. As a case, because of the geography of the Australia and its history of immigration policies as liberal democratic state, it presents conflicts between national security and international human rights law. Within the region of Oceania, Australia is also unique given its status as a regional power because of its wealth and its military capabilities. New Zealand is the only other state in the region as developed economically. Immigration to Australia is only possible by boat or plane. This makes it challenging for asylum seekers to reach Australia especially by irregular means.

### Primary Research Question

Following the 2007 election when the Labor party took control of the Australian government, the party ended the policy of offshore detention. In 2011, the Labor Party began exploring how to reimplement the policy of offshore detention, which resulted in Operation Sovereign Borders that took a zero-tolerance approach to illegal maritime arrival by refusing to accept those whose claims to asylum were found to be valid. In this thesis I ask the question of why the Australian Labor Party ended the policy of offshore detention in 2007 only to bring it back in 2011.

## The Argument

The argument of this thesis is that although the Australian Labor Party is the major left-wing political party with strong support for human rights, it must compete for votes to win elections in order to control parliament. This means shifting policies to the whims of the voters on issues. Immigration is a complex social, political, and economic issue that is exacerbated when unauthorized arrivals claim to be refugees seeking asylum. For liberal democracies this presents a paradox as values of openness and human rights must yield to opinions of voters who feel threatened by the mass influx of unauthorized entries into the state.

## The Significance of the Thesis

The value of this thesis is in its exploration of how a liberal democratic state like Australia addressed the problem of unauthorized maritime arrivals. Australia's policy response was to intercept the boats and place those on board in offshore detention centers on Manus and Nauru from 2001 to 2007, and it did so again from 2012 onward, although it closed the Manus Regional Processing Centre in 2019. This included processing asylum seeker claims in third party states so that Australia would not be responsible under international refugee law. The United States has implemented a similar policy with asylum seekers arriving at the southern border. Italy is another state that has been following the Australian model by intercepting boats before they arrive and returning them back to the northern African states like Libya, from which they are fleeing. Greece

has started to build its own detention centers to house asylum seekers that arrive via irregular means. These aforementioned states are also liberal democracies like Australia. Examining why the Australian Labor Party brought back the policy of offshore detention also provides an exploration into how liberal democracies balance cosmopolitan ideals with nationalist priorities.

### Theoretical Explanation

The Australian Labor Party both ended in 2007 and then in 2011 brought back the policy of offshore detention. One explanation for this is a form of liberal nationalism, as described by Will Kymlicka, that had been embodied in the party platform in 2007 on cosmopolitan norms. This is not to be confused with the Liberal-National Coalition, which is an alliance between two center right political parties. This only provides an explanation for one half the question. The other half can be explained by what James Hollifield called the liberal paradox in regards to immigration, in which liberal democratic states proclaim to be open but create restrictive immigration policies. This will be explained further in the literature review section.

In the book, *Another Cosmopolitanism*, Will Kymlicka (2006) describes how Anglo-American political philosophy has focused on the ideals of political community and citizenship, both of which have been defined in liberal democratic terms according to Kymlicka. For example, Kymlicka sees citizenship as being shaped around liberal democratic values of individuals with rights and responsibilities such as freedom of association, speech, and conscience. However, Kymlicka also recognizes that citizenship

in regard to liberal democracy has boundaries that are defined by belonging to a political community in terms of the nation-state. Kymlicka calls the rise of the liberal democratic nation-state liberal nationhood. This shift towards liberal nationalism is not without injustices. Kymlicka identifies three groups that suffered injustices with the shift in the world toward liberal democratic nation-states: immigrants, substate groups such as indigenous people or regional minorities, and neighboring nation-states. Kymlicka points out that what separates liberal from illiberal and nationalism from chauvinism is a tolerance for diversity as well as a willingness to extend the same rights to other nations that one claims for oneself. For the purposes of this thesis, using this form of liberal nationalism would explain why the Australian Labor Party ended and brought back the policy of offshore detention. Liberal nationalism provided humanitarian grounds for ending the policy of offshore detention while an emphasis on national security motivated the push for stronger policies that brought it back.

The humanitarian aspect is further supported by research by Claudia Tazreiter. Tazreiter argues that public campaigns against offshore detention centers by groups like Oxfam and Amnesty International that focused on the inhuman conditions forced upon asylum seekers led to ending the policy of the Pacific solution. This explains why the Australian Labor Party ended the policy of offshore detention. The rationale for humanitarian reasons can be explained by a liberal commitment to human rights that shaped international law on the refugees and asylum.

The second half of the primary question regarding why the Australian Labor Party brought back the policy off offshore detention for unauthorized maritime arrivals is accounted for by the nationalist side of liberal nationalism. With control of the

government, the Australian Labor Party brought back the policy of offshore detention for national security reasons and pushed aside humanitarian reasons for ending it. The rationale behind this move was that the policy of offshore detention for unauthorized maritime arrivals functioned as a security apparatus for the state and prioritized the protection of its citizenry over that of outsiders. This supports the liberal nationalism interpretation in which citizens of the state are the top priority over non-citizens. It would also explain how the security rhetoric influenced changes of 2011.

### The Structure of this Thesis

This thesis proceeds as follows. Chapter Two starts off by providing a broad view with a literature review of previous research discussing liberal democracy and immigration policies while narrowing the focus to the subject of asylum seekers. From there, the chapter covers the hypothesis, a clarification of key terms, and a brief history of Australian immigration policies and unauthorized maritime arrivals. It ends with an explanation of the methods used to research this thesis. Chapter Three provides background of the events surrounding the implementation of offshore detention, such as the MV Tampa Affair and Children Overboard Affair. It also covers the origins of the Australian Labor Party's opposition towards offshore detention and its position on it during the 2004 federal election. Chapter Four begins by covering the 2007 federal election campaign of Kevin Rudd and the Australian Labor Party with a focus on the party's national platform and its opposition toward offshore detention for unauthorized maritime arrivals. It then shifts the focus on the build up towards the 2010 federal

election as Rudd's approval ratings declined while the amount of boats and unauthorized maritime arrivals increased. Chapter Five concludes by summarizing the contents of the thesis and returns to the question of why liberal democratic states restrict access to asylum seekers.

## **Chapter 2: Literature Review and Methods**

This chapter explains the basis and methods for this thesis. It begins with a literature review about the relationship between liberal democratic states and asylum seekers. This covers a range of issues such as how states view asylum seekers as a security risk and how states implement systems to prevent asylum seekers from reaching their borders. It provides an explanation of key terms. A brief history of Australia and its treatment of asylum seekers arriving by boat shows how this is not a new phenomenon but an ongoing issue. Finally, it explains the methods used to answer the question of the thesis.

This thesis explains why the Australian Labor Party ended the policy of offshore detention for unauthorized maritime arrivals only to bring it back a few years later. There is a paradox for liberal democracy when it comes to immigration and human rights concerning the issue of asylum seekers. This paradox exists because liberal democracy promotes ideals such as human rights, equality, and openness but public opinion prefers security at the expense of non-citizens that in turn undermine its values. The paradox is the focus of this thesis. To address the paradox, this chapter will elaborate why it exists and how the case study is a prime example.

### Literature Review: Liberal democracies' barriers to asylum seekers

The liberal democratic state and asylum seekers have a contentious relationship. Liberal democracy values various rights of the individual and enshrines those rights into law to give legal protection. Two core elements of liberal democracy are having a strong rule of

law and encouraging political participation by voting in elections to assert control over of the state. Human rights when codified become civil rights. Liberal democracies are typically proponents of human rights at the international level to create treaties that when signed and ratified by states become law in those states. The 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees is one such example of international human rights law. The 1951 Convention covered the basic tenets of refugee law such as who is and who is not a refugee and what states are and are not allowed to do with refugees. The 1967 Protocol globally expanded the application of refugee law based on events in Europe after the second world war without any time constraints. The most important aspect of refugee law is the concept of non-refoulement, which means that states cannot send someone who is a refugee back to their state of origin. This also covers those seeking asylum. Asylum seekers are afforded the same protections as refugees receive, such as non-refoulement, while their claims are assessed to determine if they will be granted refugee status. As a result, asylum seekers make liberal democratic states their preferred destination. In response, liberal democratic states do what they can to prevent asylum seekers from reaching their borders and entering. There is well established literature of how liberal democratic states have worked to prevent asylum seekers and have securitized against them.

James Hollifield coined the term liberal paradox, which described how the expansion of rights-based politics mixed with economic openness has led to a backlash politically against immigration to restrict entry.<sup>1</sup> Anne McNevin followed Hollifield by exploring the liberal paradox regarding the politics of asylum. McNevin argues that in

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<sup>1</sup> James Hollifield, *Immigration, Markets, and States: The Political Economy of Postwar Europe*. (Cambridge: Harvard University Press, 1992).

Australia, the liberal paradox has been visible in securitization to create policies that make asylum seekers out to be an existential threat by emphasizing the attempts of unauthorized arrival via rhetoric of ‘us’ verses neoliberal globalization.<sup>2</sup> On the one hand, liberal democratic states such as Australia shape and ratify treaties and laws based on liberal ideology such as human rights. Support for these positions is key to defining the state’s values and a reflection of the social norms. On the other hand, a competing concern is for states to be secure from existential threats that often come from those outside the state. One common threat that is often promoted is the existence of an “other” from outside of the state that is not a citizen and whose culture is a threat not just to the state but society as well. This literature review will be an exploration of how liberal democratic states have addressed this paradox.

In his book, *The Ethics and Politics of Asylum*, Matthew Gibney explores how liberal democratic states have handled the issue of asylum seekers.<sup>3</sup> Gibney notes that, from 1946 to 1990, Australia accepted and re-settled more than half a million refugees. According to Gibney, the problem for Australia is asylum seekers. Those who have not already applied for asylum and who seek entry into the state, by any means possible, present a problem. Gibney goes into detail about the MV Tampa affair that occurred in 2001, in which a Norwegian freighter rescued 400 asylum seekers from a sinking ship. Provoking international backlash, Australia seized the ship using Australian SAS forces to prevent it from reaching Australian territory. For Gibney, the case of Australia is unique compared to the other states he examines such as the United States and Germany.

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<sup>2</sup> Anne McNevin, "The Liberal Paradox and the Politics of Asylum in Australia," *Australian Journal of Political Science* 42, no. 4 (December 2007).

<sup>3</sup> Matthew Gibney, *The Ethics and Politics of Asylum: How Liberal Democracy* (New York: Cambridge University Press, 2004).

He points out that compared to asylum seekers arriving at the borders of those states being in the tens of thousands, Australia declared a couple of thousand asylum seekers at its own borders to be a crisis. Gibney adds that the debate in Australia has led to a distinction between those considered to be “genuine refugees” and “economic migrants.”

In the book, *Asylum Seekers and the State*, Claudia Tazreiter examines how states like Australia deal with the problem of asylum seekers arriving by unauthorized means.

<sup>4</sup>This is a comparative case study of states’ immigration policies and perceptions in Australia and Germany. For Tazreiter, asylum seekers present a security problem to the state. Asylum seekers are problematic for states because of the uncertainty of their claims. States like Australia that have signed and ratified the 1951 Convention and the 1967 Protocol are required to provide protections to asylum seekers while they are in the process of applying for refugee status. Tazreiter emphasizes this point as a reason that western developed states like Australia started implementing policies to deter asylum seekers arriving via irregular means. States are legally obligated to care for those that meet the standards established in international law from the treaties. Tazreiter argues that globalization influenced developed states to provide aid to developing states to prevent asylum seekers from reaching their own borders. This has resulted in asylum seekers being portrayed as a security threat. Tazreiter concludes that asylum seekers are viewed as outsiders to be protected from, as they arrive via irregular means without establishing themselves as refugees under the guidelines established by the 1951 convention and the 1967 protocol. Tazreiter adds that the public opinion in a state like Australia sees refugees as acceptable but asylum seekers as “queue jumpers.” Non-Government

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<sup>4</sup> Claudia Tazreiter, *Asylum Seekers and the State: The Politics of Protection in a Security-Conscious World*. (Burlington: Ashgate, 2004).

Organizations (NGOs) play an important part in shaping public opinion as Tazreiter notes their ability to disseminate information. Such actions are a drain on resources as the debate about asylum seekers' rights is cyclical due to the constant need to repeatedly engage in public discourse. This perpetual debate is fueled by states that still seek to frame asylum seekers as a threat.

In the book, *The Securitization of Humanitarian Migration*, Scott Watson focuses on the same problem that Tazreiter addresses about why liberal democratic states restrict access to asylum and implement policies that undermine human rights<sup>5</sup>. While Tazreiter focuses more on how states like Australia perceive asylum seekers, Watson examines the actions of states like Australia and Canada. An important distinction between their research is that Watson uses securitization theory to explore why liberal democratic states have accepted restrictive immigration policies for asylum seekers and explains the ramifications for international norms regarding human rights. Watson's use of securitization theory to examine what he calls humanitarian migration regarding asylum seekers is a shift away from traditional security studies. Watson finds the tension between national security of the state and international obligations of protection for refugees results in international law being undermined by national security. Watson concludes that humanitarian migration is an impractical means of infiltrating any Western industrialized state due to the amount of scrutiny asylum seekers go through during the refugee determination process. Watson adds that political elites frame the receiving of asylum seekers or accepting refugees as a security threat to justify their detention by states. Watson notes that Australia made detention mandatory beginning in 1989 and in 2001

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<sup>5</sup> Scott Watson, *The Securitization of Humanitarian Migration: Digging moats and sinking boats* (New York: Routledge, 2009).

authorized the use of its military to engage in naval interception of boats that carry asylum seekers. He adds that while there have been occasional calls for Canada to implement similar policies, these receive pushback in the public sphere. Among all the other western liberal democratic states that Watson examines, he finds that Australia is the most restrictive and hostile toward asylum seekers. In the end, Watson finds the erosion of norms regarding obligations for refugees and asylum seekers to be spreading among western liberal democratic states.

David FitzGerald explores the legal aspects of immigration policies and refugee law. FitzGerald examines in his book, *Refuge Beyond Reach*, how these Western liberal democracies like Australia, Canada, the United States, and European Union states have not only eroded international norms but have actively sought ways to follow the letter of the law surrounding refugees while evading the spirit of the law.<sup>6</sup> FitzGerald explains the situation for asylum seekers when they deal with the various immigration laws designed to prevent asylum seekers from arriving so that states can avoid the obligation of non-refoulement. Regarding Australia, FitzGerald notes that the excision of territory not part of the mainland allowed Australia to create a buffer zone as well as provide a legal mechanism to prevent asylum seekers without a visa from applying for one. FitzGerald points out that an individual that arrives without proper authorization could physically be inside territory that is under Australian jurisdiction, such as Christmas Island, which had been excised, but that this would allow Australia to send the individual to an offshore detention center on Manus or Nauru. FitzGerald points out that the image of Australia abroad as a progressive liberal democracy is damaged by its what he calls “policies that

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<sup>6</sup> David Scott FitzGerald, *Refuge Beyond Reach: How Rich Democracies Repeal Asylum Seekers* (New York: Oxford University, 2019).

are too callous." He adds that the secrecy as well as the lack of oversight by the courts, media, and civil society has had damaging effects inside the state regarding rule of law. In his conclusion, FitzGerald argues for action to be taken by individuals to hold states like Australia accountable to uphold the spirit of protecting rights of seeking asylum under refugee law.

There is expansive literature on the contentious relationship between liberal democratic states and asylum seekers. This thesis seeks to add to the literature by examining why a political party such as the Australian Labor Party in one election would be more receptive of asylum seekers by advocating for the end of offshore detention and upholding the spirit of the law, only to reverse course in the next election by using a platform that was more hostile towards asylum seekers and human rights. As the literature shows, liberal democratic states like Australia are supportive of refugees and human rights but do not want asylum seekers arriving at their borders and will use the law to get around having to uphold the principles that liberal democracies proclaim to support.

### Interpretive Perspective and Hypothesis

The hypothesis for explaining why the Australian Labor Party both ended and brought back the policy of offshore detention centers on Manus Island and Nauru is that this was due to the political nature of the liberal democratic state. The primary reason for ending the policy was for humanitarian reasons as offshore detention was cruel and inhumane as contrary to Australian views and values. The policy was brought back for national

security reasons as response to curb the increase rate of unauthorized maritime arrivals. Australia is a liberal democracy which places a strong emphasis on rule of law while ensuring rights of the individual. At the same time, it is still a nation-state which provides security from threats to society that would undermine or destabilize it. Trying to balance between the ideals of rights and the necessity of security is paradoxical and is a source of conflict among political parties in democracies. The need to win popular support to maintain power can lead to drastic shifts in policies as seen with the change by the Australian Labor Party regarding offshore detention for asylum seekers under two prime ministers within the span of one election cycle.

### The Difference Between "Refugee" and "Asylum Seeker"

For the purposes of this thesis, this section is designed to clarify the terms refugee and asylum seeker. These are two very distinct and related terms that cannot be used interchangeably. A refugee is an individual that Article 1 of 1951 Convention Relating to the Status of Refugees defines as:

As a result of events occurring before 1 January 1951 and owing to 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>7</sup>

The 1967 Protocol relating to Status of Refugees removes the date restriction of 1 January 1951 as a necessity to claim refugee status.<sup>8</sup> It must be noted that refugee status

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<sup>7</sup> United Nations, *Convention and Protocol Relating to the Status of Refugees*, 14.

<sup>8</sup> *Ibid*, 51.

is not granted by states, but is a status that is merely recognized by states.<sup>9</sup> To be classified as refugee means that an individual has been found by a state to have legitimate fears about the use of violence against them for who they are as an individual.

To be an asylum seeker is to be an individual making the same claim as a refugee without the status acknowledged by states.<sup>10</sup> All refugees were asylum seekers. Not all asylum seekers are refugees. This raises a problem for states when there is a mass influx of asylum seekers arriving at their borders.<sup>11</sup> It is a problem that has become more prominent for western liberal democracies that typically did not deal with the issue of asylum seekers reaching their borders as they were far from the conflicts.<sup>12</sup> This in turn has made refugees a political target, since asylum seekers are making the same moral claim as refugees without any verification to their claims.<sup>13</sup> Australia, like other liberal democracies has set up legal and political barriers to prevent asylum seekers from reaching its soil in addition to the physical barrier of being an isolated continent.

Since states are the ones determining the validity of asylum seekers as being legitimate refugees, then this also means that there can be illegitimate asylum seekers.<sup>14</sup> The term economic migrants is a phrase that has come into use to describe those seeking a better life and making the moral claim of seeking asylum.<sup>15</sup> As liberal democracies impose stricter immigration policies, this had the unintended effect of causing would-be

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<sup>9</sup> James C Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge: Cambridge University Press, 2018), 1.

<sup>10</sup> Gibney, *The Ethics and Politics of Asylum*, 10.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, 11.

<sup>15</sup> *Ibid.*

economic migrants to apply for asylum, which in turn has made it more difficult to help refugees.<sup>16</sup>

### A Brief History of Australia and Unauthorized Maritime Arrivals

Australia is a liberal democracy that has signed and ratified the 1951 Convention Relating to the Status of Refugees and the additional 1967 Protocol that shape how states define refugees and how they are to treat asylum seekers. At its core, Australia is a nation-state. The nation-state is a socially constructed community that symbolizes a homogeneous collection of people that reside within a defined geographical space who share a common history, culture, and identity.<sup>17</sup> Nationalist discourse is a very powerful and effective way to promote and mobilize public support on political issues.<sup>18</sup> As such, political parties in democracies present their political platform and policies as being in the national interest along with embodying the national identity.<sup>19</sup>

Since 1976 when Vietnamese refugees fled to Australia because of the war in Indochina, Australia has been dealing with people arriving by boat to seek asylum.<sup>20</sup> This has resulted in the term of boat people that has been sensationalized in the Australian media. This in turn has caused Australians and the media to question the veracity of claims of the people seeking asylum.<sup>21</sup> In 1992, while the Australian Labor Party had

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<sup>16</sup> Ibid, 13.

<sup>17</sup> Kieran O'Doherty and Martha Augoustinos, "Protecting the Nation: Nationalist Rhetoric on Asylum Seekers and the Tampa," *Journal of Community & Applied Social Psychology* 18, no. 6 (2008):578.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Danielle Every and Martha Augoustinos, "'Taking Advantage' or Fleeing Persecution? Opposing Accounts of Asylum Seeking," *Journal of Sociolinguistics* 12, no. 5 (2008): 649

<sup>21</sup> Kieran O'Doherty and Martha Augoustinos, "Protecting the Nation: Nationalist Rhetoric on Asylum Seekers and the Tampa," *Journal of Community & Applied Social Psychology* 18, no. 6 (2008): 576-7

control of the government, they implemented a policy of mandatory detention for all asylum seekers.<sup>22</sup> After the Liberal-National coalition took control of the government, a temporary protection visa (TPV) was created and required for all asylum seekers.<sup>23</sup> This visa had a limit of three years for asylum seekers to go through the process to become refugees. Refugees in Australia who had a TPV were only allowed permanent residence if they did not reside seven or more days in another state before entering Australia.<sup>24</sup> TPV also restricted asylum seekers from having access to settlement services such as English classes, employment, and housing assistance as well as barring the holders from applying for family members to migrate to Australia.<sup>25</sup>

It has become a regular talking point in political discourse on the issue of seeking asylum and the politics surrounding it to question the legitimacy of the claims made by asylum seekers. This has resulted in calls for policies in the national interest to securitize against asylum seekers. The use of nationalist rhetoric, questioning the legitimacy of asylum seekers' claims and framing asylum seekers as illegitimate, is dangerous for both asylum seekers and refugees.<sup>26</sup> The end result is that states like Australia have ended up securitizing against asylum seekers with anti-immigration policies.<sup>27</sup> Nationalist rhetoric is exacerbated with publicized instances of asylum seekers acting in ways such as protesting for better treatment, making demands, and planning or coordinating actions in large groups.<sup>28</sup> Such behavior is interpreted as meaning they are illegitimate refugees, especially when they partake in actions that violate the law of the state like trying to

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<sup>22</sup> Every and Augoustinos, "'Taking Advantage' or Fleeing Persecution? Opposing Accounts of Asylum Seeking," 650.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> O'Doherty and Augoustinos, "Protecting the Nation," 590.

<sup>27</sup> Watson, *The Securitization of Humanitarian Migration*, 150.

<sup>28</sup> Ibid, 151.

reach Australia by boat without a visa in a vessel that is not authorized to arrive.<sup>29</sup> This has resulted in unauthorized maritime arrivals in Australia being labeled as boat people and queue-jumpers.<sup>30</sup> Queue-jumpers are viewed as people trying to immigrate to Australia that are undermining the state's humanitarian efforts to resettle there.<sup>31</sup> Instances of unauthorized maritime arrivals during an election year in Australia, like the MV Tampa and the Children Overboard affair (explained in Chapter 3), are examples of creating political controversies in using nationalist rhetoric in opposition to asylum seekers.

## Methods

This thesis is a qualitative case study. The primary question of why the Australian Labor Party ended the policy of offshore detention of asylum seekers, only to later bring the policy back, requires a qualitative approach since the answer requires an explanation of policy choices, including the factors that influenced the party. Quantitative data, such as opinion polls or rates of illegal maritime arrivals, will be drawn from archival sources and only used to provide the descriptive context. During the 2007 campaign, illegal maritime arrivals were also asylum seekers trying to reach the safety of a liberal democratic state with a strong commitment to international law and human rights. In the years afterward, these same people were viewed differently as the “boat people” that were trying to jump the line of people looking to immigrate to Australia through the

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<sup>29</sup> Ibid.

<sup>30</sup> Elizabeth Rowe and Erin O'Brien, "Genuine' Refugees or Illegitimate 'Boat People': Political Constructions of Asylum Seekers and Refugees in the Malaysia Deal Debate," *The Australian Journal of Social Issue* 49, no. 2 (2014): 147.

<sup>31</sup> Watson, *The Securitization of Humanitarian Migration*, 143.

proper legal processes. Exploring this juxtaposition of the people sent to the offshore detention centers helps to explain why the policy was ended and then brought back.

The primary thesis question requires a two-part explanation. There are two distinct time periods to be examined. The first part involves explaining why after the Australian Labor Party won the 2007 Australia federal election, they ended the policy of offshore detention. This requires an examination of the 2007 campaign of Kevin Rudd, who was the Australian Labor Party leader at the time and became Prime Minister of Australia. The second part examines why the policy was brought back, which requires exploring everything that happened after the 2007 election in the lead up to the 2010 election, after which the policy was restored. The method of data collection is open-source archival reports surrounding these events.

In addition to examining the 2007 and 2010 campaigns, I provide background on events which influenced the position of the Australian Labor Party on the issue of offshore detention, such as the Children Overboard affair and Parliament's investigation in 2002. That was the beginning of the Australian Labor Party's opposition to offshore detention. The last two major events occurred after the 2010 election, showing how committed the Australian Labor Party was to restoring the policy of offshore detention after the rejected deal by East Timor and the failed agreement with Malaysia. The Australian government under Julia Gillard tried to send asylum seekers to Malaysia via an agreement reach between the two states. This agreement was struck down by the High Court of Australia because Malaysia was not a signatory to the 1951 convention and 1967 protocol which would risk non-refoulement, the key component of refugee law. This led

to the re-opening of detention centers on Nauru and Manus Island, since both states had signed and ratified both. This will be covered in chapter four.

### Conclusion

This chapter started with a broad view of the relationship between liberal democracies and asylum seekers. The literature review narrowed the focus on a specific state, Australia, and its history and politics of how it had viewed asylum seekers. Going forward with the information and context provided, this thesis will be able to explain why the Australia Labor Party campaigned for five years in opposition to the policy of offshore detention for asylum seekers only to bring it back within three months after retaining control of the Australian Parliament.

## **Chapter 3: Early 2000s Labor and the Australian Way Towards Ending Offshore Detention**

This chapter covers the origins of the policy of offshore detention for unauthorized maritime arrivals as well as the opposition by the Australian Labor Party towards it. It starts in 2001 with the MV Tampa Affair. This event along with another incident at sea, which came to be known as Children Overboard Affair, were used by John Howard and the Liberal-National Coalition to win the 2001 federal election and pass a series of policies that would be known the Pacific Solution that implemented offshore detention for unauthorized maritime arrivals. This led to the origins of the Australian Labor Party's opposition to offshore detention and how it was presented in the 2004 federal election.

### The MV Tampa, Children Overboard, and the Pacific Solution

On August 26, 2001, there was an international incident at sea as a Norwegian container ship called the MV Tampa had responded to a distress call from a fishing vessel that was carrying 438 Afghans. These people boarded the fishing vessel with the intent to go to Christmas Island, a territory of Australia, to seek asylum. As the MV Tampa had finished boarding the passengers of the sinking fishing boat, five men made their way to the bridge and demanded that the MV Tampa head towards Australia.<sup>32</sup> John Howard, Prime Minister of Australia and member of the major right-wing Liberal Party of Australia,

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<sup>32</sup> Jason Burke, Matthew Brace, and Sandra Jordan, "All Australia can offer is guano island," *The Guardian*, September 2, 2001, <http://observer.guardian.co.uk/international/story/0,6903,545649,00.html>.

issued a directive denying the MV Tampa access to Christmas Island.<sup>33</sup> This caused a diplomatic dispute between Australia and Norway. Norway was upset that Australia refused to follow its “international duty” to allow Afghans passage to Australia in order to seek asylum.<sup>34</sup> Australia declared that it had the right to deny entry to what it viewed as “queue-jumpers” that had hijacked the ship in order to reach Australia.<sup>35</sup> Adding to the tension, Indonesia refused to take back those that had departed on boats towards Australia.<sup>36</sup> At the time, John Howard was seeking to win an upcoming national election in November. As supplies aboard the MV Tampa were dwindling, the captain declared a state of emergency and entered Australian waters.<sup>37</sup> The Howard government was able to make a deal with the government of Nauru to take the 438 Afghans.<sup>38</sup> This solution to this specific crisis would lay the groundwork for Australian policy of offshore detention.

Shortly after September 11, 2001, and a couple months after the MV Tampa affair, another incident at sea between asylum seekers and the Australian navy was reported by Liberal Party members. It was reported on October 7, 2001 that the Australian Naval ship HMAS Adelaide intercepted a Suspected Illegal Entry Vessel (SIEV) that held 187 Iraqi asylum seekers.<sup>39</sup> At the time it was reported that the adults on the SIEV had thrown children overboard to force the Australian Navy to rescue them.<sup>40</sup> Prime Minister John Howard condemned the reported behavior by saying, “quite frankly, I don’t want in this country, people who are prepared, if those reports are true, to throw

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Oliver Lees, “How an Afghan refugee crisis at sea transformed Australian policy,” *Al Jazeera*, 25 August 2021, <https://www.aljazeera.com/news/2021/8/25/how-an-afghan-refugee-crisis-at-sea-transformed-australia-policy>.

<sup>38</sup> Ibid.

<sup>39</sup> “Iraqis all at sea as boat starts to sink,” *Gold Coast Bulletin*, October 9, 2001, Factiva.

<sup>40</sup> Ibid.

their own children overboard.”<sup>41</sup> However, the reports that adults on board had thrown children into the water were eventually revealed to be false.<sup>42</sup> The false reports garnered support for the Liberal-National coalition to win the 2001 Australian federal election, as it presented itself as strong on border control and protection. This event, combined with the MV Tampa affair and the terrorist attack on September 11, resulted in the Howard government creating and implementing the Pacific Solution. This plan took unauthorized maritime arrivals who had presented themselves as asylum seekers and put them in offshore detention centers on the micronation of Nauru and Manus Island of Papua New Guinea where their claims to asylum would be processed.

#### The Beginnings of the Australian Labor Party’s campaign against offshore detention

In the 2001 Australian federal election, the Liberal-National Coalition won with the help of the events to shift public support to the Howard government because of its strong stance in protecting Australia by defending its borders. Over time, the issue of offshore detention became a controversial issue. An investigation into the Children Overboard affair revealed that Peter Reith, the Minister for Defence in the Howard government, misinformed the public about the event itself.<sup>43</sup> The investigation revealed that the acting head of the defense force, Air Marshall Angus Houston, told Reith that the claims of children overboard were false three days before the election on November 7.<sup>44</sup> Houston

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<sup>41</sup> Ibid.

<sup>42</sup> “Truth overboard – the story that won’t go away,” *The Sydney Morning Herald*, February 10, 2006, <https://www.smh.com.au/national/truth-overboard-the-story-that-wont-go-away-20060228-gdn224.html>

<sup>43</sup> Shane Wright, “Aust’s Reith knew children overboard claims wrong,” *Australian Associated Press Financial News Wire*, February 21, 2002, Factiva.

<sup>44</sup> Ibid.

was concerned about the event after seeing a report in a newspaper.<sup>45</sup> This led Houston to review records of the event, whereupon he found evidence from the HMAS Adelaide that the claims that children thrown overboard were false.<sup>46</sup> The claims made by Houston that he had informed Reith were supported by Brigadier Gary Bornholt, who claimed to be in the room with Houston as he informed Reith on speaker phone that the claims being made in public about children being tossed overboard were false.<sup>47</sup> In the lead up to the 2004 Australian federal election, it was revealed that on the same day November 7, 2001, that Michael Scafton, a former senior advisory to Peter Reith, told Prime Minister John Howard that the claims were false.<sup>48</sup> The revelation that Howard knew the accusation of asylum seekers having threatened to throw children overboard was false put him in a precarious position as he sought to win re-election. After the revelation, a poll showed 53% of the public supported the Australian Labor Party.<sup>49</sup> Opposition parties attacked Howard for lying to the public in order to get votes to win the election.<sup>50</sup> In the end, Howard and the Coalition won the 2004 election, but offshore detention became a major election issue that Howard and the Coalition were forced to campaign on and defend the policy of offshore detention.

Going back to late 2002, the Australian Labor Party had prepared to make the policy of offshore detention a political issue. A political party document, by Simon Crean the leader for the Australian Labor Party at the time and Julia Gillard his immigration

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> "Howard lied over 'children overboard' affair, says senior aide," *The New Zealand Herald*, August 16, 2004, <https://www.nzherald.co.nz/world/howard-lied-over-children-overboard-affair-says-senior-aide/5QRWSL7OKYKUMQP5N6QPRITNWA/>

<sup>49</sup> Greg Ansley, "Late poll Howard's way out; AUSTRALIA: 'Children overboard' furore may push PM to delay election," *The New Zealand Herald*, August 18, 2004, Factiva.

<sup>50</sup> Ibid.

spokeswoman, laid out the policy for the party in opposition to the Pacific Solution.<sup>51</sup> In the policy paper entitled, *Protecting Australia and Protecting the Australian Way*, they laid out five steps to make Australia safer and more secure as well as five steps to create a more humane system for refugees on a global scale.<sup>52</sup> Another way to look at this is as the way the Australian Labor Party was going to handle the problem of asylum seekers as an issue of smugglers and immigration while staying committed to the liberal concept of human rights and international law regarding asylum. Three of the five points for making Australia more secure focused on the aspect of human smuggling.<sup>53</sup>

The policy proposal was to go after individuals that engaged in human trafficking by imposing fines in the millions and dismantling organizations that smuggle people.<sup>54</sup> The concept human smuggling differs from human trafficking. Human smuggling and human trafficking are linked because of their similarities as well as how human smuggling leads to human trafficking.<sup>55</sup> Human trafficking involves a specific purpose such as sexual and labor exploitation.<sup>56</sup> Human smuggling is facilitating the unauthorized entry of migrants into a state. The focus on human trafficking is a common approach for states when it comes to policy on asylum seekers and increased boarder control. Asylum seekers are desperate to reach safety and when faced with increased border restrictions often turn to human smugglers to circumvent such security measures.<sup>57</sup> In turn this leads

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<sup>51</sup> Irial Glynn, *Asylum Policy, Boat People, and Political Discourse* (London: Palgrave Macmillan, 2016) 134.

<sup>52</sup> Simon Crean and Julia Gillard, *Protecting Australia and Protecting the Australian Way. Labor's Policy on Asylum Seekers and Refugees*, December 2002, i.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> "Human trafficking and migrant smuggling," Human trafficking and migrant smuggling, INTERPOL, <https://www.interpol.int/en/Crimes/Human-trafficking-and-migrant-smuggling>.

<sup>56</sup> Ibid.

<sup>57</sup> Jef Huysmans, *The Politics of Insecurity: Fear, migration and asylum in the EU* (New York: Routledge, 2006), 58.

to the perception that asylum seekers that use human smugglers do not have legitimate claims to asylum and that they are economic migrants that use the claim of seeking asylum when caught.<sup>58</sup> The increase in border security and implementation of visas has led asylum seekers to engage with smugglers.<sup>59</sup> The association of asylum seekers with human smugglers draws abuse by the human traffickers.<sup>60</sup> Conversely human smugglers provide a service as they help asylum seekers reach safety where they can apply for asylum.<sup>61</sup> As in the case of Australia, around 80 percent of people caught at sea that applied for asylum were found to meet the criteria set by the Australian government that was based on the 1951 Refugee Convention.<sup>62</sup> For the Australian Labor Party to make a significant portion of its official policy on asylum seekers about stopping human trafficking is unsurprising. Making human trafficking the primary focus of the policy allowed the Australian Labor Party to indirectly focus on stopping the flow of asylum seekers trying to reach Australia via unauthorized maritime arrival.

The other major policy proposal outlined by Crean and Gillard was a processing system for dealing with asylum seekers' claims and caring for refugees.<sup>63</sup> This is the most ambitious part of the policy proposal as it called for Australia to advocate for the creation of a global system to process asylum claims so that individuals would not have to travel to a developed nation. To accomplish this goal the Australian Labor Party proposed spending \$25 million per year to the United Nations High Commission for Refugees for

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<sup>58</sup> Ibid.

<sup>59</sup> David Scott FitzGerald, *Refuge Beyond Reach: How Rich Democracies Repeal Asylum Seekers* (New York: Oxford University, 2019), 261.

<sup>60</sup> Ibid.

<sup>61</sup> Chandran Kukathas, "The Strange Virtue of People-Smuggling," *Quadrant Magazine* 47, no 9 (September 2003): 40.

<sup>62</sup> Ibid.

<sup>63</sup> Crean and Gillard, *Protecting Australia and Protecting the Australian Way. Labor's Policy on Asylum Seekers and Refugees*, i.

the purpose of improving conditions in refugee camps overseas.<sup>64</sup> The other proposal was to provide aid to countries of first asylum to help develop a system of return of asylum seekers.<sup>65</sup> Crean and Gillard went on to say that the reason why the Australian Labor Party was taking the policy position of shutting down the offshore detention centers in Nauru and Manus Island was because:

The Australian Labor Party stands for fairness and compassion and the Australian People share these values. A unique part of what it is to be Australian will be lost if this nation does not nurture and protect the Australian way of treating people fairly and with compassion. Mandatory detention as administered by Howard Government has degenerated into a system of punishment. It is no wonder that many Australians are deeply uneasy that children are behind razor wire and people are being detained on Pacific islands. Many Australians are worried that treating anyone this way is not the Australian way.<sup>66</sup>

This argument put forth by Crean and Gillard about the Australian way is a humanitarian view that is opposed to the way that those placed in the offshore detention centers are treated. Focusing on the optics of children behind razor wire is intended to draw attention to the inhumane treatment of living in the detention centers. The argument is that this treatment is antithetical to the views of the Australian people and the state of Australia. For the Australian Labor Party there is a more humane way to treat asylum seekers that is in line with the values of Australia, rather than how the Howard Government at the time was handling the issue of asylum seekers arriving by boat. While Crean and Gillard made the argument for shutting down the offshore detention centers, their policy proposal did not adequately address the issue of asylum seekers via unauthorized maritime arrivals. Visa requirements for entry into the state severely restrict options for asylum seekers to choose where to go to seek asylum. Airlines check for visas

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

to avoid penalties or being prosecuted by destination states, a situation that in turn discourages the movement of asylum seekers to states further away from the state they are fleeing.<sup>67</sup> In addition to this, states normally do not grant a visa for the purpose of applying for asylum status within that state.<sup>68</sup> Anyone who says they intend to seek asylum as refugees upon arrival are in practice turned away and sent back to the port of departure.<sup>69</sup> As part of their argument for shutting down the offshore detention centers, Crean and Gillard mentioned in the policy proposal that there were asylum seekers within Australia that arrived on visas.<sup>70</sup> They did not consider how visas restrict asylum seekers and in turn cause the problem that the state is dealing with in regards to unauthorized arrivals. Nevertheless, the position of the Australian Labor Party was to shut down the offshore detention centers, but not how to prevent asylum seekers reaching Australia by unauthorized maritime arrivals. This failure to properly address the issue of asylum seekers going to Australia via unauthorized means, specifically by boats, would come back to hurt the Australian Labor Party in later elections.

In the 2004 federal elections, the Australian Labor Party challenged for control of the Australian parliament under the leadership of Mark Latham, who had taken over as party leader in December 2003.<sup>71</sup> The official national platform and constitution for the Australian Labor Party had a chapter focused on human rights written in a point-by-point format. The chapter clearly explained the views of the party when it comes to refugees and asylum seekers. The first mention of asylum seekers came under the section, Migrant

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<sup>67</sup> James C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge: Cambridge University Press, 2018), 311.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> Crean and Gillard, *Protecting Australia and Protecting the Australian Way. Labor's Policy on Asylum Seekers and Refugees*, vi.

<sup>71</sup> Paul D. Williams, "The 2004 Federal Election: Why Labor Failed," *Australian Quarterly* 76, no. 5 (2004): 4.

Australians: Responding to Particular Needs, which stated that Labor would ensure that Australia fulfills its international obligations to asylum seekers and refugees are met.<sup>72</sup>

The first point of this section also clearly stated in its opening that, “Australia is a multicultural society.”<sup>73</sup> The specific policy of the Australian Labor Party regarding asylum seekers and refugees was elaborated under the section on Immigration with points 109 and 110.<sup>74</sup> Point 109 stated that party would administer a fair and flexible refugee and humanitarian program as well as ensure that Australia would obey its obligation to non-refoulement.<sup>75</sup> Point 110 laid out the various principles that shape how the policy regarding refugees and asylum seekers would have been implemented by the party. It started with stating that Australia should comply with both the letter and the spirit of the obligations that it had voluntarily agreed to by signing the Refugee Convention and other international agreements pertaining to asylum law.<sup>76</sup>

On the issue of detention, the position taken by the Australian Labor Party was, “that mandatory detention be used for the proper administrative purposes of ensuring the health, identity and security checking of all unauthorized arrivals, enabling the expediting of processing and ensuring that those whose claims have failed are locatable and available for removal from Australia.”<sup>77</sup> The Australian Labor Party went on to add that conditions of detention needed to be humane and appropriate for asylum seekers with accommodations for families and unaccompanied children.<sup>78</sup> The last sub-point under 110 ended stating that the length and conditions of detention of asylum seekers and the

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<sup>72</sup> Australian Labor Party, *National Platform and Constitution 2004*, March 2004, 121.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid, 124.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid, 124-5.

<sup>78</sup> Ibid, 125.

centers be reviewed and managed by the public sector.<sup>79</sup> The only direct mention of the “Pacific Solution” in the *National Platform and Constitution 2004* was in the resolutions portions at the end of chapter on human rights under the section of Better Processing which states, “end the so called ‘Pacific Solution’, with its huge cost to Australian taxpayers.”<sup>80</sup>

It is worth noting that the Australian Labor Party at the time was not willing to do away with the idea of mandatory detention for asylum seekers. One of the resolutions was called Mandatory Detention and laid out how the Australian Labor Party envisioned it. The first point of the resolution stated that the Australian Labor Party would, “maintain mandatory detention as an essential part of Labor’s approach.”<sup>81</sup>

The difference between this and the Pacific Solution, established by the Howard Government, was that the Australian Labor Party wanted greater public oversight of the detention centers and processes.<sup>82</sup> The biggest difference is that the Australian Labor Party did not want to continue to pay for detention centers on Manus Island and Nauru. Instead, the view of the party was that Australia should process the claims of asylum seekers within Australia as well as provide relief and shelter.

In the end, the Australian Labor Party did not win the 2004 Australian federal election as the Liberal-National Coalition under Howard won 52.8% of the parliamentary vote to win 87 seats in the House of Representatives, a net increase of five seats from the 82 seats held by the Liberal-National Coalition.<sup>83</sup>

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<sup>79</sup> Ibid.

<sup>80</sup> Ibid, 129.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Williams, “2004 Federal Election,” 4.

The issue of offshore detention was not a contributing factor. The loss was blamed on policy blunders made by the Australian Labor Party on economic issues, Howard's leadership skills being viewed more favorably than Latham's, and the effectiveness of the Liberal-National Coalition being able to spin attacks from the Australian Labor Party as signs of success. Also, an intentional late release of core policy failed to gain momentum among voters. These were major contributing factors for the failure of the Australian Labor Party to win an election where many damaging allegations and controversies against the Howard government had damaged its integrity.<sup>84</sup> The simplest explanation was that the Australian Labor Party under Latham ran a bad campaign that did not capitalize on the vulnerability of the Howard government. The revelation of the Children Overboard affair was an example of how the Howard government had misled the public to win the 2001 federal election for the Liberal-National Coalition. The Australian Labor Party would carry onward with opposition to mandatory offshore detention for asylum seekers in centers on Nauru and Manus Island.

### Conclusion

John Howard and the Liberal-National Coalition retained control of Parliament in 2001 with the help of the MV Tampa Affair, which led to a series of policies setting up offshore detention known as the Pacific Solution. The Australia Labor Party framed the policies as antithetical to Australian values which support human rights and contended that the policy of offshore detention for asylum seekers was cruel and inhumane. Simon Creen and Julia Gillard emphasized this when they titled their report, *Protecting Australia and Protecting the Australian Way*. The Children Overboard affair was an

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<sup>84</sup> Ibid.

opportunity for the Australian Labor Party to attack both the Howard government and the policy of offshore detention. In the 2004 federal election, the Australian Labor Party campaigned against offshore detention but was unable to sway voter support to end it. For the 2007 federal election the Australian Labor Party expanded its opposition towards offshore detention beyond what it had been in 2004.

## **Chapter 4: The 2007 and 2010 Elections**

The failure of the Australian Labor Party to take control of the government in the 2004 federal election led to a change of leadership for the party. Kevin Rudd would become the leader of the Australian Labor Party in the lead up to the 2007 federal election. The Australian Labor Party focused more on human rights and emphasized ending offshore detention. Offshore detention was ended a few months into the Rudd government in 2008. 2009 would see a massive increase in the amount of SIEVs that attempted to reach Australia. The Australian Labor Party changed its previous position of opposition to offshore detention with intent to bring it back. During the next federal election in 2010, Kevin Rudd was removed as Prime Minister and leader of the Australian Labor Party. He was replaced by Julia Gillard. The Gillard government attempted to reach deals with East Timor and Malaysia to process asylum seekers before making deals with Nauru and Papua New Guinea to re-open the offshore detention centers that were shut down by the Australian Labor Party. This chapter examines why the Australian Labor Party ended the policy of offshore detention upon taking control of the government after the 2007 federal election but brought it back in 2011 after the party retained control in the 2010 federal election.

This chapter shows how when the approval rating for Kevin Rudd started to decline and the rates of suspected illegal entry vessels increased the official view of the Australian Labor Party on offshore detention flipped from opposition to support. With support from the more right-leaning members of the Australian Labor Party, Julia Gillard became party leader and Prime Minister. In order to win the 2010 federal election, Gillard

and the Australian Labor Party had started to undo policies that were implemented under Rudd. The decision to end offshore detention had become an issue for the Australian Labor Party, which in turn led to its return under Gillard.

### 2007 Federal Election of Kevin Rudd and the Australian Labor Party

In late 2006, Kevin Rudd became the leader for the Australian Labor Party.<sup>85</sup> Upon assuming leadership Rudd continued the call for a more humane and liberal approach to immigration and asylum policy for Australia.<sup>86</sup> The Australian Labor Party 2007 National Platform and Constitution began with stating the values of the party by saying:

Labor's enduring values, which were born in the collective struggle for better living and working conditions in the last century, are reflected in the progressive and reformist tradition which the Party embodies and in the continuing pursuit of a society which values our security; champions fairness and equality; believes in communities and families; promotes social justice and compassion; values environmental sustainability; supports freedom, liberty and enterprise; and strives for opportunity and aspiration.<sup>87</sup>

A common running theme for the Australian Labor Party for the 2007 federal election was fairness.<sup>88</sup> The concept of fairness was emphasized as an enduring value of the Australian Labor Party with the statement that, "Labor believes that all people are created equal in their entitlement to dignity and respect."<sup>89</sup> As with the 2004 National Platform and Constitution, the Australian Labor Party kept most of the language in place for the 2007 National Platform and Constitution. The section on human rights in the 2004 party constitution stated that the Australian Labor Party was committed to a just and tolerant

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<sup>85</sup> Glynn, *Asylum Policy, Boat People, and Political Discourse*, 153.

<sup>86</sup> *Ibid.*

<sup>87</sup> Australian Labor Party, *National Platform and Constitution 2007*, April 2007, 5.

<sup>88</sup> *Ibid.*, 4.

<sup>89</sup> *Ibid.*, 8.

society. It protects the rights and freedoms of Australians as well as the rights laid out in the Universal Declaration of Human Rights and other international treaties that Australia is a party to and the inclusion of those rights into domestic law.<sup>90</sup> One major shift in the values of the party from 2004 to 2007 was the inclusion of security and compassion as enduring values, albeit separate from each other.

Security as a value for the Australian Labor Party included protecting the state as well as individuals, communities, and the environment.<sup>91</sup> Some of the threats to national security are terrorism, climate change, and regional instability.<sup>92</sup> However, the Australian Labor Party rejected resorting to the manipulation of fear and political exploitation to combat those threats.<sup>93</sup> In order to safeguard Australia against threats, the Australian Labor Party said that it was committed to promoting peace on an international and regional basis as well as making sure that proper funding was in place for defense forces, police, and emergency services.<sup>94</sup> The party was also opposed to unilateralism and taking actions to undermine the United Nations.<sup>95</sup> This approach to the offshore detention of asylum seekers was a different approach from that of the Howard government. The Children Overboard affair in 2004 revealed how the Howard government had used fear and political exploitation to mislead the public with intent to win the 2001 federal election and implement the Pacific Solution. Security as a value of the Australian Labor Party in 2007 was viewed as not just traditional national security of the state but also human and environmental security.

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<sup>90</sup> Ibid, 9.

<sup>91</sup> Ibid, 8.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid

<sup>95</sup> Ibid.

Compassion as an enduring value for the Australian Labor Party was based in the notion that the party believed in social justice.<sup>96</sup> That party believed the greatness of Australia lies in their treatment of those that are most marginalized.<sup>97</sup> Compassion for the Australian Labor Party was based in a tradition of reaching out, embracing, protecting, and supporting those in need as well as supporting those that helped those in need.<sup>98</sup> The rhetoric used by the party to define compassion as an enduring value was directly in conflict with the policy of offshore detention for asylum seekers. Many of those that are granted asylum are among those that are marginalized as they lack the protection of their own state which has pushed them to seek out asylum. The act of putting people that are seeking asylum in detention centers beyond the purview of the Australian government was in opposition to the stated values of the Australian Labor Party in 2007.

The subject of asylum seekers and offshore detention was addressed in chapter 13 of the Australian Labor Party National Platform and Constitution for 2007 entitled, “Respecting Human Rights and a Fair Go for All.” The chapter re-stated the broad view of human rights from the 2004 National Platform and Constitution such as affirming Australia’s commitment to the various international human rights laws that the state had signed on to, including the Refugee Convention. While similar, there are quite a few differences such as the section Human Rights and Responsibilities, point 8, which stated that human rights are inalienable. It further recognized a responsibility to respect the individual and collective rights enjoyed by others and the need to protect and promote institutions that result in an equal, just, democratic, and tolerant society.<sup>99</sup> In this regard,

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<sup>96</sup> Ibid, 9.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid, 207.

the Australian Labor Party in 2007 did not merely see human rights as an enduring value of the party but as essential pillar to democracy based in liberal thought.

The position of the Australian Labor Party on asylum seekers and offshore detention was laid out in the section on immigration policies. It should be noted that the first point about asylum seekers and detention mentions doing away with the policy of offshore detention like the 2004 party platform. Point 151 clearly stated that, “Labor will ensure that our borders are secure and that the processing and detention of asylum seekers is fair.”<sup>100</sup> This was the first mention within the 2007 party constitution about the treatment of asylum seekers and detention. It came after discussing how the Australian Labor Party believed in an immigration system that was orderly, fair, and based on the rule of law to protect the national interest and borders of Australia.<sup>101</sup> The official policy of the Australian Labor Party on asylum seekers and refugees was laid out in point 153 with several subpoints that were the guiding principles.<sup>102</sup> The party ensured that all claims be processed fairly, independently, and free of any outside influence such as political or diplomatic.<sup>103</sup> This was a reaffirmation of the 2004 Australian Labor Party National Platform and Constitution that Australia should comply with both the letter and the spirit of obligations that Australia voluntarily agreed to by signing the Refugee Convention.<sup>104</sup> The act of following the spirit of the law was critical as it implied going beyond doing the bare minimum by just following what the law said the state was required to do. The policy view on asylum seekers and refugees for the Australian Labor Party in 2007 was more expansive than the 2004 national platform as the document

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<sup>100</sup> Ibid, 221.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid, 222.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

emphasized ending the Pacific Solution by name as having been a massive cost for Australian taxpayers. However, the Australian Labor Party still accepted using detention for limited reasons listed in 2004.<sup>105</sup> Unlike in 2004, the party kept with the theme of fairness that, “as a matter of fairness, Australia should seek to assist the world’s most vulnerable whether these people are within or beyond our immediate line of sight,” which was a call for increased humanitarianism and a reason for ending the policy of offshore detention since it hid asylum seekers from view of the Australian public.<sup>106</sup>

While the Australian Labor Party made the argument in their party platform and constitution for having opposed the Pacific Solution for political ideology and moral reasons, it was also concerned with the financial cost of maintaining offshore detention centers and processing asylum claims outside of Australian. A joint report put together by A Just Australia and Oxfam Australia called *A Price Too High* detailed the costs of detaining people on Manus and Nauru under the policy of the Pacific Solution. It gave the Australian Labor Party empirical financial evidence for being opposed to it and needing to end the policy of offshore detention for unauthorized maritime arrivals on Manus Island and Nauru. Since 2001, the Australian taxpayers had spent more than \$1 billion to process fewer than 1,700 asylum seekers.<sup>107</sup> The report argued that the Pacific Solution undermined the legal and democratic systems of Australia, as the government denied access to legal counsel for asylum seekers as well as preventing government accountability.<sup>108</sup> Internationally, the Pacific Solution had undermined international law and Australia's commitment to it by failing to uphold the non-refoulement clause by

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<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Bem Kazimierz, Nina Field, Nic Maclellan, Sarah Meyer, and Tony Morris, *A Price Too High: The Cost of Australia's Approach to Asylum Seekers* (Oxfam Australia: 2007) 3.

<sup>108</sup> Ibid, 35.

placing asylum seekers on Nauru and Manus Island where they were pressured to return to dangerous situations where they faced persecution.<sup>109</sup> The report also specifically mentioned that other countries belonging to the European Union had started to have discussions about establishing offshore centers to deal with asylum seekers while keeping them out of the EU in the form of a "Mediterranean Solution."<sup>110</sup> The Executive Director of Oxfam Australia pointed out that the cost of \$1 billion to process 1,700 asylum seekers was \$1,800 per day for individual housing on Christmas Island, while it cost \$238 to house at the detention center in Sydney.<sup>111</sup> The argument made in the report aligned with the aforementioned views and positions of the Australian Labor Party.

Julia Gillard focused on what the Pacific Solution had cost Australia based on the findings of the report.<sup>112</sup> The part of the report's finding that drew the most attention from Gillard and the media was the financial costs to Australia taxpayers.<sup>113</sup> Gillard said while Australian taxpayers supported the Pacific Solution initially they would be concerned about the report and she restated the official position of the Australian Labor Party to end all offshore detention if they won the upcoming federal election in 2007.<sup>114</sup> This report allowed the Australian Labor Party and Kevin Rudd to make an argument to voters that the policy of offshore detention under the Pacific Solution was financially costly as well as harmful to people seeking asylum and the global reputation of Australia.

Earlier in the year, Kevin Rudd and the Australian Labor Party were forced to defend their position on ending offshore detention on Manus Island and Nauru. On

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<sup>109</sup> Ibid, 44.

<sup>110</sup> Ibid, 47.

<sup>111</sup> "Pacific Solution a waste of money: Oxfam," *Australian Broadcasting Corporation*, August 24, 2007. <https://www.abc.net.au/news/2007-08-25/pacific-solution-a-waste-of-money-oxfam/650102>

<sup>112</sup> "Labor vows to end offshore processing," *Australian Broadcasting Corporation*, August 25, 2007. <https://www.abc.net.au/news/2007-08-25/labor-vows-to-end-offshore-processing/650574>.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

February 20, 2007, 83 Sri Lankan men, who were ethnic Tamil, were rescued at sea after their boat had become disabled while trying to make their way from Indonesia to Christmas Island, a territory of Australia.<sup>115</sup> The boat was labeled SIEV XX by the Australian government, which caused references to be made to SIEV X of the Children Overboard affair that helped Howard to win in 2001.<sup>116</sup> Immigration Minister Kevin Andrews was hoping to negotiate a deal to send them either to Nauru or Indonesia instead of processing them on Christmas Island.<sup>117</sup> The Australian Labor Party took the position that the 83 men be processed on Christmas Island instead of sending them back to Indonesia, where officials had made comments about sending them back to Sri Lanka.<sup>118</sup> Tony Burke of the Australian Labor Party said, "there are Australian standards of decency that involve principles of not locking up children and not detaining people indefinitely that are undeliverable in other countries."<sup>119</sup> Burke also added that the Australian government had a processing center on Christmas Island and that it would be a waste of money to send them somewhere else that Australia would have to pay more for.<sup>120</sup> Kevin Rudd spoke out on the situation in saying that vessels should either be sent back from where they came or that if they carry asylum seekers these people should be processed on Christmas Island, while John Howard was adamant that they not be allowed

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<sup>115</sup> Cath Hart, Steve Lewis, and Paige Taylor, "ALP bid to avoid another Tampa," *The Australian*, February 28, 2007, Factiva.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

into Australia.<sup>121</sup> The Sri Lankans were placed into the detention center on Nauru while 72 of them were given refugee status and eventually settled in Australia.<sup>122</sup>

On 25 November 2007, Kevin Rudd and the Australian Labor Party officially won enough parliamentary seats to form a government and Prime Minister John Howard also lost his seat in Parliament.<sup>123</sup> Rudd and the Australian Labor Party were able to use anti-government sentiment to win by focusing on other issues such as the Kyoto agreement that John Howard and the Liberal-Nation Coalition refused to sign and on public opposition to the Iraq War.<sup>124</sup> By February 2008, both offshore detention centers on Manus Island and Nauru were shut down by the Rudd government as the last remaining 82 refugees detained on Nauru were settled in Australia.<sup>125</sup> Immigration Minister Chris Evans rejected calls to make it so the policy of offshore detention could not be re-implemented so easily by saying that Rudd led government was able to successfully end the policy of the Pacific Solution without needing to take legislative action.<sup>126</sup> This refusal by the Rudd government to take legislative action to restrict the use of offshore detention or make it more difficult to restart shows the extent of how far the Australian Labor Party under Kevin Rudd was willing to go to end it. The Australian Labor Party had an official policy position that supported use of detention for national security purposes which was a foreboding sign for asylum seekers arriving by boats.

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<sup>121</sup> "Process asylum seekers on Christmas Is: Rudd," Australian Broadcasting Corporation, February 23, 2007, Factiva.

<sup>122</sup> Jamie Walker, "LP backs away from refugee changes," *The Australia*, November 22, 2007, Newsbank.

<sup>123</sup> "Prime minister Howard concedes Australia election Labor leader Kevin Rudd praises John Howard's dignity in defeat," *Sunday Tribune*, November 25, 2007, Factiva.

<sup>124</sup> Ibid.

<sup>125</sup> Andrew Fraser, "Labor ends Howard's Pacific policy 'abomination,'" *The Canberra Times*, February 8, 2008, Factiva.

<sup>126</sup> Ibid.

In 2007, Kevin Rudd and the Australian Labor Party emphasized cosmopolitan ideals on the subject of offshore detention for unauthorized maritime arrivals and argued against it on moral and financial grounds. When pressed to defend their position on offshore detention, Kevin Rudd and the Australian Labor Party used SIEV XX to against the current policy as going against the national identity of Australia as a liberal state. Rudd also used the event to argue to allow asylum seekers to have their claims to asylum processed in Australia. As the vast majority of the Sri Lankans were granted refugee status and resettled in Australia it helped to valid the argument by the Australian Labor Party against offshore detention.

#### 2010 Federal Election: A Change in Leadership and Policy

By February 2008, the Rudd government officially ended offshore detention as the last of the unauthorized maritime arrivals had been transferred out of the Nauru Regional Processing Centre. The closure of the detention center prompted the United Nations High Commissioner for Refugees to release an official statement welcoming the closure and praised the Australian government, under the Australian Labor Party led by Kevin Rudd, for acting swiftly on the matter to officially close the detention centers on Nauru and Manus Island.<sup>127</sup> The UNHCR added that the closure of the center on Nauru marked the end of a difficult chapter for asylum seekers and refugees and their treatment by Australia.<sup>128</sup> From 2002 to 2008, the policy of offshore detention was enforced, less than

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<sup>127</sup> "UNHCR welcomes close of Australia's Pacific Solution," Briefing Notes, United Nations High Commissioner for Refugees, February 8, 2008, <https://www.unhcr.org/47ac3f9c14.html>

<sup>128</sup> Ibid.

500 people had attempted to reach Australia by boat.<sup>129</sup> Chris Evans, the Minister for Immigration and Citizenship, announced in July 2008 that the policy of mandatory detention was being overhauled with people detained as a last resort instead of standard practice.<sup>130</sup> Detention was only used for those considered to be a security risk or did not comply to their visa conditions.<sup>131</sup> The excised migration zone was kept in place, which allowed the Rudd government to use Christmas Island to process unauthorized maritime arrivals.<sup>132</sup> This change in policy was problematic for the Rudd government as Australia saw a massive increase in the number of boats with unauthorized arrivals going to Australia.

A total of 25 boats carried unauthorized arrivals to Australia as the destination from 2002 to 2008.<sup>133</sup> None of those years individually had double digit numbers of boats.<sup>134</sup> In 2009 there were a total of 60 boats.<sup>135</sup> This was a massive increase in the number of boats that headed towards Australia. One boat made headlines on 16 April 2009; SIEV 36 carrying 49 asylum seekers caught fire and exploded killing five people.<sup>136</sup> The fallout from this in the Australian media was bad for Kevin Rudd and the Australian Labor Party as the focus was on how this was the sixteenth SIEV reported since ending offshore detention.<sup>137</sup> Reports that the boat was sabotaged by the people on

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<sup>129</sup> Glynn, *Asylum Policy, Boat People, and Political Discourse*, 154.

<sup>130</sup> Janet Philips and Harriet Spinks, "Boat arrivals in Australia since 1976," Parliament of Australia, last updated July 23, 2013, [https://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/pubs/rp/rp1314/boatarrivals](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp1314/boatarrivals)

<sup>131</sup> Ibid.

<sup>132</sup> Ibid

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Fiona H. McKay, Samantha L. Thomas, and R Warwick Blood, "'Any one of these boat people could be a terrorist for all we know!' Media representations and public perception of 'boat people' arrivals in Australia," *Journalism* 12, no. 5 (2011): 608.

<sup>137</sup> Ibid.

it played into the notion that unauthorized maritime arrivals are not legitimate refugees.<sup>138</sup> Newspapers like *The Herald Sun* framed SIEV 36 as an example of how the Rudd government had made it easier for human smugglers to try to reach Australia because of lax border protections.<sup>139</sup> The reporting on SIEV 36 predominantly used nationalistic rhetoric and views to go against Kevin Rudd and the Australian Labor party.<sup>140</sup> The Rudd government looked weak combating human trafficking, which it had also campaigned against.

In 2009, after the SIEV 36 incident, the Australian Labor Party changed its national platform and constitution regarding immigration policies. It emphasized the security of Australia and significantly less support for human rights. The 2007 national platform and constitution for the Australian Labor Party had a chapter dedicated to human rights in which there was a detailed talking point about Labor's refugee and asylum seeker policies.<sup>141</sup> This change was made under Kevin Rudd's leadership. In 2009, the Australian Labor Party's national platform and constitution only mentions asylum seekers once in the entire 206-page document under the section on maintaining the integrity of the migration system.<sup>142</sup> The only mention of asylum seekers said that the Australian Labor Party would work to eliminate human trafficking by, "pursuing strong regional and international arrangements to deter secondary movements of asylum seekers."<sup>143</sup> This signifies a very sharp reversal for the Australian Labor Party from two years prior when Kevin Rudd led the party to emphasize support for human rights.<sup>144</sup>

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<sup>138</sup> Ibid, 619

<sup>139</sup> Ibid.

<sup>140</sup> Ibid, 623.

<sup>141</sup> Australian Labor Party, *National Platform and Constitution 2007*, April 2007, 222.

<sup>142</sup> Australian Labor Party, *National Platform and Constitution 2009*, July 2009, 95.

<sup>143</sup> Ibid.

<sup>144</sup> Australian Labor Party, *National Platform and Constitution 2007*, April 2007, 206.

Early on, Kevin Rudd had a high approval rating among Australians. In April 2008, Rudd had an approval rating of 71%.<sup>145</sup> Rudd still had an approval rating of 63% in October 2009.<sup>146</sup> In May 2010, Rudd had an approval rating of 39%.<sup>147</sup> By July 2010, Rudd faced a challenge for leadership of the government and the party by Julia Gillard, who was supported by the more right-wing members of the Australian Labor Party. This challenge for party leadership was caused by poor polling numbers that showed the Australian Labor Party would likely lose control of the government back to the Liberal-National Coalition.<sup>148</sup> The catalyst for the challenge was a mining tax that caused fellow party members to act against Rudd to remove him from power. On 24 June 2010, Kevin Rudd resigned from leadership as he realized he no longer had the support of the Australian Labor Party and Julia Gillard ran unopposed for party leadership to become Prime Minister of Australia. After Gillard had defeated Rudd for party leadership, there was a fear among human rights groups that Gillard would, "lurch to the right," when it came to unauthorized maritime arrivals, which had started to drain support.<sup>149</sup> During a press conference on 17 July 2010, Gillard announced that a snap election would take place on August 21.<sup>150</sup> During this press conference Gillard said that the Australian Labor Party would lead by the lessons learned.<sup>151</sup> On the issue of asylum seekers, Gillard stated

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<sup>145</sup> "Rudd on the tracks as Gillard takes over," *The Economist*, Jun 24, 2010.

<https://www.economist.com/asia/2010/06/24/rudd-on-the-tracks-as-gillard-takes-over>

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> Pamela Williams, "Kill Kevin: the untold story of a coup." *The Australia Financial Review*, July 16, 2010. Factiva

<sup>149</sup> "Rudd on the tracks as Gillard takes over."

<sup>150</sup> "Prime Minister Julia Gillard calls 2010 Federal Election for August 21" *news.au.com*, July 17, 2010. <https://web.archive.org/web/20101009221223/https://www.news.com.au/features/federal-election/prime-minister-julia-gillard-calls-federal-election/story-e6frflr-1225893145471>

<sup>151</sup> *Ibid.*

that there would be stronger protection of Australia's borders.<sup>152</sup> This resulted in the return of offshore processing outside of Australian territory.

After winning the 2010 federal election, Gillard and the Australian Labor Party looked for solutions to deal with the issue of increased unauthorized maritime arrivals. At first, Gillard tried to set up deals with East Timor and Malaysia to let Australia process asylum seekers there so they would not risk traveling by boat.<sup>153</sup> The parliament of East Timor refused the plan but Malaysia was willing.<sup>154</sup> An agreement was reached between Malaysia and Australia in May 2011 that 800 asylum seekers would be transferred to Malaysia for processing while 4,000 refugees in Malaysia would be resettled in Australia.<sup>155</sup> The agreement with Malaysia was voided by the Australian High Court because Malaysia was not a signatory to the 1951 Refugee Convention or the 1967 Refugee Protocol.<sup>156</sup> This meant that there would not be any protections for asylum seekers that would be sent to Malaysia and at risk for refoulement.<sup>157</sup> The High Court ruled that any state that did offshore processing must offer effective protection for asylum seekers that would be similar to what they would receive in Australia.<sup>158</sup> This was specifically referencing the non-refoulement clause of both treaties. Since Papua New Guinea and Nauru are both parties to the 1951 Refugee Convention and the 1967 Refugee Protocol, this meant that the level of care that the high court was reference in its ruling would be met. In the end, the offshore processing centers on Nauru and Manus that the

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<sup>152</sup> Ibid.

<sup>153</sup> FitzGerald, *Refuge Beyond Reach*, 233.

<sup>154</sup> Ibid, 233-4

<sup>155</sup> Ibid, 234.

<sup>156</sup> Ghezelbash, *Refuge Lost*, 118.

<sup>157</sup> Ibid.

<sup>158</sup> FitzGerald, *Refuge Beyond Reach*, 234.

Rudd government had closed in 2008 were reopened in 2012, almost a decade after they were first opened.

### Conclusion

After ending the policy of offshore detention for unauthorized maritime arrivals, the Australian Labor Party brought it back in its original form as a means of deterrence towards asylum seekers. The Australia Labor party had campaigned on ending offshore detention as an issue to sway public opinion to vote the party into power. In a span of just a couple years, the Australian Labor Party changed the official party stance on offshore detention to being in favor of it, less than the five years it had campaigned against it. The reason for the shift was one part of a bigger shift in policy for the party to be more in line with public opinion to win over voters to maintain control of the government and hold on to power. This resulted in the security of Australia taking a priority over asylum seekers arriving by boat. As a result of the 2010 election, the Australian Labor Party under Julia Gillard was able to maintain power, but was forced to form a minority government with the more socially-progressive Greens Party that was opposed to the deal. The history of Australia and unauthorized maritime arrivals has been controversial. Australia is a liberal democratic state with a strong rule of law, which makes it a very appealing spot for asylum seekers in a region where there are not many. Australian public opinion has been skeptical of claims for asylum as being valid and of legitimate refugees by labeling such people as queue jumpers trying to get into Australia by circumventing the immigration process. Each incident at sea, such as the MV Tampa Affair or SEIV 36, as reported by the Australian media heavily shaped public opinion on unauthorized maritime arrivals

and asylum seekers. It is striking that one of the co-authors of the first major policy piece that started the Australian Labor Party's opposition to offshore detention would later go on to be the leader of the party and the head of government that brought back the policy. The re-opening of the closed detention centers on Manus Island and Nauru shows how volatile views about asylum seekers in liberal democratic states can be. In the end, a liberal democratic state is still a nation-state at its core and requires popular public support to govern.

## **Chapter 5: Conclusion**

The Pacific Solution, specifically the policy of offshore detention for unauthorized maritime arrivals, was opposed by the Australian Labor Party as part of its opposition to the Liberal-National Coalition in power at the time. In 2004 and 2007, the Australian Labor Party strongly opposed the Pacific Solution and the policy of offshore detention for asylum seekers that were also unauthorized maritime arrivals. During the 2007 federal election campaign, SIEV XX forced Kevin Rudd and the Australian Labor Party to defend their opposition toward offshore detention as well as their position that asylum seekers should be processed on Christmas Island and other Australian territories. After the Australian Labor Party won the 2007 federal election, the Rudd government ended the policy of offshore detention in early 2008. When the boats came at an increased frequency in 2009, the Rudd government was left to find a solution to stop the boats. The 2009 national platform and constitution for the Australian Labor Party removed both opposition to offshore detention for asylum seekers and support for international law based in human rights. This was a change made while Kevin Rudd was still the party leader. Kevin Rudd led the Australian Labor Party to end offshore detention, but Julia Gillard was the person responsible for bringing back offshore detention. Gillard was a co-author of a policy document for the Australian Labor Party in 2002 that was the beginning of the opposition to offshore detention. Nine years later, when she was both Prime Minister and leader of the Australian Labor Party, Gillard looked for a way to bring back offshore detention for asylum seekers to also curb unauthorized maritime arrivals. The failure of the Gillard government to reach deals with East Timor and Malaysia led

Australia back to the detention centers on Nauru and Manus Island. The Australian Labor Party used the issue of offshore detention for asylum seekers to criticize the Liberal-National Coalition controlled government as a humanitarian issue. When the Australian Labor Party had control of the government, offshore detention became a security issue to deal with the issue of unauthorized maritime arrivals.

Two former Prime Ministers, Kevin Rudd and Julia Gillard, played key roles in the Australian Labor Party's opposition towards offshore detention for unauthorized maritime arrivals as well as in the party's reversal on the policy. Julia Gillard helped shape the Australian Labor Party's opposition towards offshore detention. Kevin Rudd was the leader of the Australian Labor Party when it won control of parliament. Rudd and the Australian Labor Party ran a campaign that strongly emphasized cosmopolitan norms of human rights. In two years, while Rudd was still in leadership, the official stance of the Australian Labor Party had walked back its support of human rights and opposition to offshore detention. When Julia Gillard won leadership of the Australian Labor Party, human rights groups feared that she would move further away from supporting such ideals. This shows that the reversal on the policy of offshore detention was not the act of a single individual. Instead, it was the act of individuals including leaders like Rudd and Gillard, the party members that elected them to party leadership, and lastly the voters that elected the party to form a parliamentary government. The Australian Labor Party would lose the 2013 federal election to the Liberal-National Coalition which took a more restrictive policy on offshore detention for unauthorized maritime arrivals by refusing to resettle any unauthorized maritime arrivals in Australia regardless of their status as refugees. This was an example of Hollifield's liberal paradox on immigration.

Liberal nationalism as explained by Will Kymlicka is compatible with the nation-state. It is the idealized version of what a liberal democratic state and its citizens should aspire to be. As seen in 2007, the Australian Labor Party emphasized the norms and values regarding human rights and equality. However, the re-implementation of offshore detention for unauthorized maritime arrivals as a means to secure Australia against possible national security threats by human trafficking is a rejection of those same norms and values. Hollifield's liberal paradox helps to explain why liberal democratic states like Australia reject upholding the spirit of international law on seeking asylum. The perception of asylum seekers as illegitimate economic migrants results in public support for more restrictive immigration policies. The security threat associated with traffickers also leads to harsher punitive actions such as asylum seekers as being held in a detention center while their claims are being processed. Kymlicka argues for an ideal form of liberalism that is inclusive in extending rights to others. Hollifield shows that in practice within liberal democratic states there is an inclination to be more restrictive toward outsiders. Asylum seekers are not viewed as vulnerable people fleeing from violence. Instead, asylum seekers are seen as both illegitimate economic migrants and a national security threat.

The act of securitization against asylum seekers reveals some insight into the tension between state sovereignty and international law in an increasingly globalized world. While Australia is a liberal democratic state, it functions as a representative democracy. If the citizenry feel that the government should have stronger border controls and stricter immigration policies, then the people will vote for those that will deliver their demands in policies. Since asylum seekers engage with human smugglers to reach

Australia by boat it causes the issue to be viewed as a security and immigration issue. Yet the desire of asylum seekers is to escape unsafe living conditions in their homeland. The optics of people coming from political unstable area causes skepticism from the citizens of the destination state. This causes the act of seeking asylum to become securitized as an immigration issue instead of a humanitarian one. This is further strained as both the 1951 convention and the 1967 protocol allow for people to enter a state to apply for asylum and prohibits the act of criminalizing those that do. If Australia were not allowed to create and implement policies to combat human smuggling, which violates state sovereignty because of international law the state has agreed to, then it would be a liberal autocracy.

The main issue that this case study showed was how liberal democracies like Australia address the issue of asylum seekers arriving in mass at their borders. Immigration policy is paradoxical for liberal democracies that struggle with economic openness but are also politically restrictive. Asylum seekers made this paradox more complex with support for the universality of human rights against the need for the nation-state to ensure the security of society and the citizenry. This case study showed how quickly and easily a major political party in a liberal democracy will change its position on how to address the paradox based on its position of power.

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