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Australia's "Rules-Based Order" and the Contradictions of Liberalism

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In a 2021 speech to the Perth USAsia Centre, the Australian Prime Minister Scott Morrison argued that “our countries can support, defend, and (where necessary) renovate a liberal, rules-based international order that supports universal human rights and opportunities for all. A world order that favors freedom over autocracy and authoritarianism.”¹ The speech was a departure from earlier iterations of Australia’s rules-based order (RBO) rhetoric in its explicit espousal of liberalism. Earlier versions of the RBO avoided the mention of liberalism to give the appearance of normative neutrality. This was useful in a diverse and

rapidly changing region, in which key partners in countering, deterring, and opposing revisionism have not just been resistant to Western posturing on values but have even put forward communitarian notions of “Asian values” as alternatives to liberal rights. Yet, the RBO has become increasingly political and normative, with liberal and democratic values coming to the fore in government discourse. In the process, however, this change in emphasis has exposed the deep contradictions of Australian liberalism.

Liberalism is a slippery concept constituted of contradictory ideas and a fraught history of political practice. It is generally agreed, however, that liberalism’s central ideas are the protection of universal individual rights and the reduction of violence in human relations. These foundations support various tenets such as the protection of private property, the rule of law within and between states, the promotion of civil society, an enlightened sovereign in the guise of a minimal state, rationalism, secularism, tolerance, and opposition to autocracy and totalitarian collectivism.

Yet, these liberal ideas are potentially contradictory in practice. Not all individuals own private property, for example, and so the elevation of that right (as in economic liberalism) can lead to the differential treatment

of individuals. Similarly, force and unequal treatment have been legitimized in the theory and practice of liberalism when meted out against those deemed irrational or intolerant. Internationally, this has led to liberal imperialism. Domestically, it has permitted punitive welfare systems designed to punish the so-called undeserving poor. Meanwhile, it has often proved difficult to curtail state authority in practice; states often reserve the right to abrogate self-limitations on executive power, which allows them to exercise power beyond normal rules.

Australia's RBO rhetoric reflects liberal ideas, but its practices reflect liberalism's internal contradictions. Australia's RBO is a proxy for a regional order built upon the primacy of the United States: an idealized liberal status quo overseen by a benign sovereign dedicated to protecting its liberal allies with minimal force. The RBO's unspoken illiberal "Other" is the People's Republic of China, with the obvious subtext of phrases such as "challenges to the rules-based order" being that rising and authoritarian China is attempting to revise and rewrite the regional order that has long served Australia's interests. Support for an idealized status quo centered on US regional hegemony was expressed in the 2017 *Australian Foreign Policy White Paper*, which noted that China was challenging the

post-Second World War liberal international order "built, contributed to and led" by the United States.² This "liberal" RBO is seen to be "premised around human rights, democracy, and free trade, taking the world towards deeper integration, interdependence, and cross-border cooperation."³

The declining power of the United States and doubts about its commitment to the Indo-Pacific region have spurred a desire to create new regional liberal institutions such as the Quadrilateral Security Dialogue ("Quad"), consisting of Australia, the United States, Japan, and India. Recent Quad proclamations highlight their role as rule-abiding maritime democracies in the Indo-Pacific and express a desire to limit China's economic power through the creation of China-free "resilient supply chains."⁴ The statement announcing the AUKUS trilateral security partnership between the US, UK, and Australia began by emphasizing their "enduring ideals and shared commitment . . . to the international rules-based order," as well as their shared traditions as "maritime democracies." Throughout his leadership, Prime Minister Morrison's speeches have focused on sovereignty and democratic values as part of a simplistic, binary vision of an Indo-Pacific split between democracies and autocracies.⁵

The apparent threat posed by

illiberal China has been used to justify the curtailing of individual freedoms and civil society autonomy. Several key pieces of legislation—from the Espionage and Foreign Interference Act 2018, Foreign Influence Transparency Scheme Act 2018, to Australia’s Foreign Relations Act 2020—all purport to be country-neutral, but political leaders have made clear that the laws are intended as a response to Chinese “foreign interference.” The broad and vague scope of such legislation targets mere contact with foreign actors rather than improper conduct. As such, these laws threaten civil liberties, effectively criminalizing actions as indeterminate as sharing information about “political, military or economic relations with another country,” linking on social media, or purchasing laptops.⁶

The portrayal of China as Australia’s main geopolitical challenge has also led to ignoring the illiberal actions of Australia’s allies and partners, who are described as “like-minded states.” While Australia forcefully criticized China’s rejection of the South China Sea arbitral tribunal ruling, for instance, there has not been a similar willingness to question US transgressions.⁷ India, too, has been embraced as a democratic ally despite its increasing illiberal and antidemocratic government.⁸

Australia’s refugee policies also expose the internal contradictions of liberal governance. Australia’s adoption of economic liberalism in the 1980s occurred alongside the introduction of restrictive migration and refugee policies, which have become more so with time. This “liberal paradox” can be understood as the result of political leaders seeking to assuage the disaffection produced by liberal economic policies among significant parts of the electorate with the assertion of sovereign border protection.⁹ Immigration policy since the 1980s has been built on differential categories of treatment for migrants, with refugees who have arrived in unauthorized ways treated as criminals, wealthy migrants given fast-tracked residency and citizenship, and low-skilled migrants subjected to laws that create workplace insecurity and mistreatment.¹⁰ Australia’s migration and refugee policies have become increasingly punitive. Immigration ministers now have unchecked power to determine entry, which can be denied on character grounds including expressing nonviolent political opinions contrary to government policy and popular opinion, as the tennis player Novak Djokovic recently discovered.¹¹ Indeed, the criminalization of dissent and protest has become a general feature of Australian governance, with the federal and state governments passing antiprotest laws to protect the agricultural and mining

industries.¹²

Australia's immigration policies not only erode domestic civil liberties but have resulted in noncompliance with international human rights law via the use of offshore processing centers. In 2012, the Australian Government began transferring asylum seekers who had arrived in Australia by boat to Nauru and Papua New Guinea. Asylees' claims for protection were then processed under the laws of those third countries. Australia's Human Rights Commission held serious concerns that the regional processing regime would risk violation of core human rights principles, including "the prohibition on arbitrary detention, the right to claim asylum, and the rights of children and the family."¹³

In 2014, the Australian Human Rights Commission conducted an inquiry into Australia's practice of placing asylum-seeking children in detention. It found that, since 1992, Australia's detention practices (especially as applied to children) have breached the right not to be detained arbitrarily.¹⁴ In the same year, then-Immigration Minister Scott Morrison steadfastly defended his border protection policies during the inquiry, arguing that when it came to the issue of child detention, "sentiment cannot be indulged at the expense of effective policy."¹⁵

Significant international attention

has also been devoted to Australia's failure to ensure the human rights of asylum seekers, including those housed abroad and those detained on Australian soil. In its sixth periodic report on human rights in Australia, the UN Human Rights Committee (UNHRC) noted that Australia's policies and legal framework concerning non-refoulement, mandatory migration detention, and the use of offshore processing centers (and Christmas Island) failed to meet international standards.¹⁶ In 2013, the UNHRC argued that Australia's detention of people in immigration was arbitrary and in violation of the International Covenant on Civil and Political Rights.¹⁷

The Office of the UN High Commissioner for Human Rights working group on arbitrary detention has also criticized Australia's indefinite incarceration of asylum seekers in immigration detentions on mainland Australia.¹⁸ This continues to be an issue, as asylum seekers who arrive in Australia without a visa are subjected to "punitive measures" that impact "their ability to meaningfully engage in the refugee status determination process" even if they are released into the community. These measures include waiting up to four years to be granted permission to apply for protection, inability to be reunited with family or apply for permanent residency, and, in many cases,

the removal of free legal assistance. The UNHRC estimates that there are approximately 30,000 asylum seekers affected by these measures, described by the Australian government as a “legacy caseload.”¹⁹

Australia has sought to defer some of its international legal obligations to smaller regional states. Offshore regional processing centers have been central to the border policies of both Labor and Coalition governments. In 2016, however, a court in Papua New Guinea declared the detention centers unconstitutional under section 42 of that country’s constitution, a human rights provision that prohibits arbitrarily depriving an individual of “personal liberty.” Australia’s position was that it did not exercise “effective control” of asylum seekers in regional processing centers and so should not be held accountable. The UNHRC refuted this, however, arguing that Australia’s establishment, funding, and servicing of detention centers met the standard of “effective control,” even if located in a third country.²⁰ As such, Australia was viewed as responsible for the severe conditions in the camps. Such policies raised criticisms that Australia was seeking to “pick and choose” the rules it wanted to follow, particularly when human rights norms (and international refugee law) conflicted with a political interest in maintaining “sovereignty” over

Australia’s borders.

Given the multitude of problems in abiding by domestic and international rules that promote individual rights among even avowedly liberal democratic states in the Indo-Pacific, effusive appeals to liberalism as a core feature of a “free and open Indo-Pacific” strain credulity. Australia’s vigorous promotion of a liberal RBO at the same time as its own liberal-democratic credentials are being called into question is a case in point. Increasingly, it is becoming clear that liberalism’s internal contradictions provide a shaky foundation upon which to build regional cooperation. ■

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Notes

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² Commonwealth of Australia, *Foreign Policy White Paper* (Canberra: Department of Foreign Affairs and Trade, 2017), 80.

³ Lee Jones, "Does China's Belt and Road Initiative Challenge the Liberal, Rules-Based Order?" *Fudan Journal of Humanities and Social Science* 13, no. 1 (2020): 113–133.

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⁵ Morrison, "The Beliefs that Guide Us," address to Asia Briefing Live, 1 November 2018, <https://www.pm.gov.au/media/keynote-address-asia-briefing-live-beliefs-guide-us>.

⁶ Melissa Conley Tyler and Julian Dusting, "What Should Australia Do About Its Foreign Interference and Espionage Laws?" *China Matters*, May 2021, <https://chinamatters.org.au/wp-content/uploads/2021/05/CME-May-2021-Foreign-Interference-Melissa-Conley-Tyler-and-Julian-Dusting.pdf>.

⁷ Gregory V. Raymond, "Advocating the Rules-Based Order in an Era of Multipolarity," *Australian Journal of International Affairs* 73, no. 3 (2019): 219–226, at 223.

⁸ Soutik Biswas, "'Electoral Autocracy': The Downgrading of India's Autocracy," BBC News, 16 March 2021, <https://www.bbc.com/news/world-asia-india-56393944>.

⁹ Anne McNevin, "The Liberal Paradox and the Politics of Asylum in Australia," *Australian Journal of Political Science* 42, no. 4 (2007), 611–630.

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¹¹ Paul Sakkal, "'Dangerous in a Democracy': Civil Rights Groups' Alarm at Government's Djokovic Case," *The Age*, 16 January 2022, <https://www.theage.com.au/sport/dangerous-in-a-democracy-civil-rights-groups-alarm-at-government-s-djokovic-case-20220116-p59omd.html>.

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¹³ "Asylum Seekers and Refugees," Australian Human Rights Commission, n.d., <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/asylum-seekers-and-refugees#:~:text=Seeking%20asylum%20in%20Australia%2C%20or,%20in%20any%20other%20country>.

¹⁴ "The Forgotten Children: National Inquiry into Children in Immigration Detention," Australian Human Rights Commission, November 2014, https://humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf.

¹⁵ Anna Henderson, "Scott Morrison clashes with Human Rights Commission head amid defence of child detention on Christmas Island," ABC News, 22 August 2014, <https://www.abc.net.au/news/2014-08-22/moral-burden-will-not-impede-border-policies:-morrison/5687820?nw=0&r=HtmlFragment>.

¹⁶ "Concluding Observations on the Sixth Periodic Report of Australia," United Nations Human Rights Committee, 9 November 2017, 6–8, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT_CCPR_COC_AUS_29445_E.pdf.

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²⁰ "Concluding Observations on the Sixth Periodic Report of Australia."