Borders, Bodies and Abuse: Exposing the Collusion of Australia and the United States in Transnational Refugee Deterrence

Kaytlin Hancock
khancock@office.usfca.edu

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Borders, Bodies and Abuse: Exposing the Collusion of the United States and Australia in Transnational Refugee Deterrence

In Partial Fulfillment of the Requirements for the Degree

MASTER IN MIGRATION STUDIES

by Kaytlin Hancock

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Under the guidance and approval of the committee, and approval by all the members, this thesis project has been accepted in partial fulfillment of the requirements for the degree.

APPROVED:

[Signature]
Advisor

[Signature]
Dean of Arts and Sciences

[Signature]
Academic Director

Date 5/27/22
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To those who are trapped in an inhumane system of asylum.
Abstract

This research explores a comparison of the use and abuse of deterrence policies, namely the externalisation of borders, and spatial control aimed to disallow entry for refugees and asylum seekers arriving by boat to both the United States and Australia. Paying particular attention to the immigration occurrences in the US from the early 1980s and present day responses in Australia, this research explores the rise in offshore detention centres and the ways in which these countries shirk their international obligations in a bid to strengthen sovereignty, by creating zones of exemption that expel refugees and asylum seekers to liminal spaces. This thesis examines spatial control and management and what happens when this tactic does not suffice in stemming flows, subsequently creating more draconian deterrence policies. In this particular case what is explored is the instalment and consequences of the 2016 Refugee Swap between Australia and the United States. Through a comparative study, this research will unpack the ways in which refugees and asylum seekers are not only dehumanised but are subsequently commodified and used as a trading pawn between the two governments.

What this case study attempts to highlight is the historical context that has primed the conditions for the collusion of both the US and Australia to erode policy, public opinion, sovereignty and human rights. In embarking on a transnational comparison, this thesis explores the similarities and differences of the two countries to expose the ways Australia mirrors and expands upon the U.S’s draconian carceral immigration policies that are harmful to human life.

Keywords: Deterrence, Excision, Externalisation, Homo Sacer, Maritime Arrival
Chapter 1.

Statement of the Problem

Emma Lazarus’ poem, The New Colossus, extends a call to avail ourselves to the huddled masses with demonstrable morality by nation states’ to preserve life through adequate systems of asylum. Since the height of refugee resettlement with the Refugee Convention in 1951, asylum management has been experiencing a slow death; despite the rise of forcibly displaced individuals worldwide (Mountz, 2017). The echoes of “give me your tired, your poor, your huddled masses yearning to breathe free” etched into the statue of liberty no longer sets the foundation for what appropriate migration management should look like, and instead, what remains are highly securitised and draconian responses that relegate asylum seekers and refugees into spaces of permanent liminality, with little hope or protections (Lazarus, 1883).

This thesis utilises a comparative case study of the United States and Australia to explore their deterrence policies towards maritime arrivals, tracking the history of border excision and externalisation with theories of spatiality to examine how physical borders change to suit the policy of the day. This namely explores the use of international interdiction and subsequent offshore detention centres. This research aims to interrogate these systems of power to expose their inhumane functionings as a mechanism to bolster sovereignty and control. By examining historical policies, what is exposed is the foundation that allows for the replication of harmful acts by both governments. This study sheds light on the patterns that have emerged in recent history which demonstrate a need for more humane approaches to asylum management. Ina looking at offshore detention centres, utilised here is the theory of Giorgio Agamben’s (1998) Homo Sacer to frame the understanding of zones of exception; spaces where refugees are expelled under the law of the state they are attempting to reach, but a space that holds little
protection or recognition of the human life it detains. Geographical lenses are used to explore the manipulation of spatiality and territory that cross over with Homo Sacer, which looks at the ways in which states utilise the “other” or the “homo sacer” as a justification of the securitisation of the state by excluding the homo sacer into the zone of exception. Homo Sacer or Sacred Man is an ancient Roman law that sees individuals stripped of their humanity to produce a “bare life”. The homo sacer is thus excluded from society, but remains subject to its laws. The production of a homo sacer is utilised to justify the interior and the policies of the sovereign. We can see modern examples of this as states label refugee arrivals as the “other” and exclude them from society, but, however, still use the momentum of their arrival and existence to securitise their borders. Homo Sacer and the zones of exception are located within the study of geography to interrogate the use of offshore detention as a means to manipulate space and territorial boundaries; creating carceral and chaotic cartographies that dislocate, detain and disorient refugees and asylum seekers attempting to reach Australian shores.

This research culminates with a Refugee Swap between the United States and Australia in 2016 after the closure of Manus Island Detention Centre in Papua New Guinea (PNG) that housed over a thousand refugees. In embarking on a transnational comparison, this research explores the similarities and differences of the two countries, to expose the ways Australia mirrors and expands upon the U.S’s draconian carceral immigration policies that are harmful to human life (Ghezelbash, 2018). The lack of condemnation for either country's behaviour provides ample ground for these countries to continue with their surreptitious practices that do not allow for transparency into their conduct, particularly in the case of Australia and its dealing with the Manus Island offshore detention centre. In examining the historical context by engaging with media discourse and policy analysis, the intent of this study is to expose the violations of
rights by both immigration systems and to call attention to the ways in which these nations are providing a blueprint for future migration management in the West. This research is a call to further inquiry about more sustainable and humane ways to navigate the burgeoning global crisis of an ever increasing forced migration (UNHCR, 2015). As a white, middle class, cis gendered, queer, Australian citizen and U.S permanent resident I come to this research with many points of privilege that inform my perspective and experience of migration. I first became aware of the dangers of irregular migration by boat from a removed position as a 10 year old in 2001, with the infamous Tampa Crisis colouring Australian television screens - an event that would forever change the way the country would manage migration to its shores. It was not until later in my life that I would realise the impact that this event had on the Australian psyche and the migration policies that followed. The theoretical lenses that inform this study are focused on philosophical perspectives, as well as geographical spatiality and border study framings. I deliberately chose to engage with the architecture of migration management, as opposed to engaging with people on the ground and refugees affected by these systems, as the uncertainty of COVID-19 disallowed for more expansive plans of travel and in-person connection.

**Background and Need**

The need for accountability and change for both Australia and the United States’ immigration systems is recognised worldwide. With the international outcry for the end of inhumane carceral tactics towards vulnerable populations fleeing persecution being well documented. Berlo (2015) examines the use of deterrence policy through the lens of crimmigration to explore the ways in which public discourse and opinion is affected by a “strong and consistent deterrence policy” (p.75). He explores how this tactic creates what he calls a
“loud panic” which in turn allows for a “quiet manoeuvring” pointing to the ways in which Australia is able to implement restrictive immigration policies. He also points out how Australia mirrors the United States offshore detention policy by underscoring the U.S’s use of Guantanamo Bay in Cuba to detain Haitan asylum seekers in 1981 (Berlo, 2015).

Gammeltoft-Hansen & Tan (2017) further explore this deterrence paradigm and the strategies that governments employ but utilising creative legal thinking to define and create loopholes to avoid being in violation of international laws and treaties. This is particularly important for this research as it lays the groundwork in understanding how both countries are able to maintain such rigid policies despite their international obligations. To unpack the carceral expansion that grew through more recent Australian immigration policies, Giannacopoulos & Loughnan (2020) explore the 2001 policy the Pacific Solution to examine the workings of offshore detention and the ways that the sovereign island nations are impacted by imperial expansion with the excision of migratory zones. This type of creative legal thinking has been demonstrated historically by the United States and replicated by Australian policies.

Menzies (2015) looks to the notions of consequentialism to examine whether the means justify the end when it comes to immigration policy and their detrimental effects to human life. Menzies' research demonstrates that the draconian policies implemented by Australia have resulted in a slowing down of boat arrivals to its shores, however, he calls into question the unethical ways in which Australia conducts itself with the negative effects these policies have on refugees and asylum seekers which do not justify the outcome enjoyed by Australia.

Whilst these examples explore the historical context, recent policies, and the creative legal thinking that goes into influencing public discourse, allowing these policies to go unchallenged, the gaps that are apparent in the literature is the examination of how both the United States and
Australia simultaneously enable and exacerbate this issue of maritime arrivals. The examination of how their policies in turn benefit the solidification of their own sovereignty and imperial reach, as well as the strengthening relationship between the two countries is needed to understand how both countries utilise asylum seekers and refugees to their benefit for a means of further control and securitisation of their borders.

To understand this in more detail the infamous Refugee Swap that was conducted in 2016 will be examined, unpacking the secrecy and lack of accountability to highlight the benefits enjoyed by both the United States and Australia with this absurd and harmful human trading agreement.

Theoretical Framework/Rationale

To frame this study, I will draw from Giorgio Agamden’s (1997) theory of Homo Sacer as well as explorations from the study of feminist geography by Alison Mountz (2017), Nancy Hiemstra (2017) and Jenna Loyd (2014) to locate Homo Sacer in a spatial context. The intersection of these two disciplines will allow for the exploration of the overarching themes of the structural militarisation of immigration policies as well the depoliticisation of the individuals impacted by them.

Homo Sacer is a theory of sovereign power that Agamden (1998) expands from ancient Roman Law which denotes a bare or naked life, or what, Kumar & Grundy-Warr (2004) explain to be “the excess of processes of political constitution that create a governable form of life” (p.32). This pertains to the way refugees and asylum seekers are viewed as an excess, depoliticised life, in turn creating a justification for the violent treatment of these individuals. Alison Mountz (2011) challenges the universality of Agamben’s Homo Sacer and zones of exception that seek to externalise refugees and asylum seekers to states of detention. She calls for
the intersection of the “sites where asylum-seekers are policed and refugee-receiving states called into accountability” utilising feminist counter-topographies (p.394). Taken together, these two theories allow for a more nuanced understanding of how nation states like Australia and the United States engage with and manage refugee and asylum seekers and the ways in which this current trajectory needs to change.

**Methodology**

This research is informed by a comparative case study of Australia and the United States utilising historical and content analysis to compare and contrast the deterrence policies employed by both countries. The case study examines the historical foundations to the infamous Refugee Swap brokered by the United States and Australia in 2016. Data collection includes media analysis from popular newspaper publications, political discourse as well as policy analysis to highlight the key themes that led to the closure of Manus Island detention centre and the installment of a trade deal. As this issue has enjoyed bipartisan support over the course of the last 20 years, there was no attempt to compare newspapers that differed on the political spectrum, as the content that was collected examined political responses and less so, public opinion. The data collected thus reveals the inner workings of this deal as well as the events and policies that laid the groundwork for the expansion of carceral and draconian practices that continue to this day.

The policy analysis data collection included an examination of the elements of both countries' historical and current immigration policies. The policies were analysed to understand the political motivations for the creation of draconian policies, what the policies reveal about power structures, as well as who is benefiting and who is being harmed. Also explored were how these policies align with the Refugee Convention to which the US and Australia are both signatories, and the ways in which these countries are able to shirk their international obligations
to protect vulnerable individuals. Through the historical analysis borders and territorial bounds of both countries were examined to expose the spatial manipulation at play to satisfy their draconian immigration policies.

**Limitations of the Study**

This study has several limitations including: (a) The accessibility of information pertaining to Australia’s gag laws and lack of transparency in dealings with detention centres; and (b) the inability to travel to destinations due to COVID, inhibiting the data collection process.

Accessibility to information is a major concern for this research, as Australia maintains strict gag laws about the day to day procedures on Manus Island and within its detention regime in general. Another inconvenience is the inability to freely travel during this time due to COVID restrictions. With these two aspects in mind, there is potential for difficulty in uncovering truth or true motivations within immigration policy and its direct impacts on refugee and asylum seekers if transparent information is not accessible.

**Significance of the Project**

This thesis may be of interest to policy makers, practitioners, as well as immigration advocates as it attempts to shed light on the ways that immigration policy and law negatively affects refugees and asylum seekers. It holds significance for both historical and current immigration situations as it seeks to understand the historical measures that inform current immigration policies and the allegiances between both the United States and Australia and how this transnational relationship influences both country’s domestic and international policies.
Finally, this research holds significance as an attempt to change current harmful policies for a more humane immigration system globally.

Chapter 2. Literature Review

Background

To locate and understand the exclusion of refugees from sovereign states, alongside the disqualification from fair treatment and justice, this thesis draws from the core theories of Homo Sacer and States of Exception by Italian philosopher Giorgio Agamben (1998), Biopolitics and Biopower by French Philosopher Michel Foucault (1976), Necropolitics by Cameroonian Philosopher Achielle Mbembe (2003) to be located in studies of Geography and Spatiality by Alison Mountz (2017), Jenna Loyd (2014) and Nancy Hiemstra (2017). These theories are used to explicate the uses of the Roman law, Homo Sacer, in situating current refugee policies into the context of sovereignty and state power, the use of zones of exception (materialised through offshore detention) and the manipulation of space and territory. In drawing comparisons between Australia and the United States and the nature of their migration management for boat arrivals, it must be noted that this research is not unique. The operations of both countries and the similarities in their policy and practice has been similarly examined through a legal lens by Daniel Ghezelbash (2018) in his comparative case study *Refuge lost: Asylum law in an interdependent world*. This thesis, however, will examine the operations of Australia and the United States through a philosophical and geographic lens.

Firstly, the foundations of statehood, sovereignty and borders must be understood. Sampson (2013) locates the beginning of the modern state in the Peace of Westphalia in Europe
in 1648. In 1933, the definition of a statehood was consolidated into international law by the Montevideo Convention on the Rights and Duties of the State (1933). Article 1 of the convention states:

The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory;
(c) government; and (d) capacity to enter into relations with the other states.

From this description we understand the creation of territory through borders and a nationality as a permanent population, as well as a government to oversee the functionality of the country and its institutions. With the final aspect of the definition we see the identification of the ability to enter into relations with other states, not, however, the responsibility to do so. State responsibility and interactions with other states as a global citizen is a theme that will be touched on later in this thesis. Adding to this perspective, we understand that a state is in complete control of who enters and leaves its territory - another aspect this literature review examines when exploring externalisation of territory and excision of migratory zones.

What will be underscored throughout this thesis is the use of the State of Exception with the understanding of Homo Sacer as applied to the plight of refugees that attempt to reach the shores of both the United States and Australia. Examined are the ways in which both countries utilise these political manoeuvrings to enable immigration reform and the creation of liminal spaces that exist both within and outside of the law to detain and punish irregular maritime arrivals; an ineffective deterrence policy that is not only harmful to human life, but disobeys the ratification of international law by both countries.
Giorgio Agamben, Homo Sacer & States of Exception

Homo Sacer and States of Exception within the framework of Thanatopolitics are concepts that Italian philosopher Giorgio Agamben is most well known for. Homo Sacer is derived from an ancient Roman law that Agamben (1998) uses to explain the application of sovereign state power and its maintenance through the use of exclusion and the reduction of persons to Bare Life. Bare life refers to a person that has been stripped of citizenship and rights with the inability to participate in social and political life (Agamben, 1998).

Within ancient Roman Law exists the qualification of two types of life - Bios and Zoē. Bios refers to qualified life, or political life, while Zoē is the natural, biological and non-political life. The reduction of a person to a bare life is what Agamben determines to be the foundation of sovereign state power, and what it relies upon to maintain control (Mountz, 2011). Agamben uses this understanding of Bare Life to refer to the plight of refugees, as well as other individuals that find themselves in a state of liminality - whether it be in detention, the disappeared and the tortured, among others (Downey 2009).

In relation to refugees and asylum seekers, this can be understood as a means to establish an “other” to legitimise draconian state actions as justifiable. This type of exclusion from political life creates a state of exception where Homo Sacer is subject to the juridical order but is not protected by it. Unlike criminals who maintain protections from law, Homo Sacer is completely vulnerable and may be killed with impunity (Heller-Roazen, 1998). Despite the fact that these individuals are referred to as sacred man, they may not be sacrificed in ritual. The existence of homo sacer therefore legitimises the political interior, juridical order and sovereign state power. The allowance of killings with impunity refers to the state of exception where Homo Sacer find themselves - a space where law is suspended (Agamben, 1998).
Agamben (1995) describes the paradox of sovereignty following Carl Schmitt (1922), to highlight the situation where the sovereign, who proclaims the state of exception, is both inside and outside of the law. Carl Schmitt (1922) describes this as how “the sovereign stands outside the juridical order and, nethertheless, belongs to it, since it is up to him [sic] to decide if the constitution is to be suspended in tot” (p.13).

It can then be understood that the state of exception is one through which the sovereign who is “outside the law” has the ultimate power to suspend juridical order in a means to invoke a state of exception or what we understand as martial law. Santis (2020) describes that states must operate in a manner of normalcy in order to maintain stability and to safeguard law and order. When, however, abnormal circumstances disallow for a stable society, state actors may suspend the juridical order in a bid to reestablish normalcy. Agamben (1998) further expands on this notion by determining that societies witness states of exception when:

- Insurrections, natural disasters, or economic emergencies render life too erratic for the law to apply. By declaring the state of exception, the sovereign assumes the unlimited authority to impose normalcy through violent means (p.87).

A recent global example of an exceptional situation that required suspension of juridical order is the COVID 19 pandemic. With restrictions to movement and in-person gathering as well as mandatory mask wearing and vaccinations, we see a state of exception in full effect, particularly in the United States when former President Trump declared a national emergency on March 13, 2020 (The United States Government, 2021). The application of the state of exception, is one of immense power that historically has its roots in the French Revolution and saw its ascension after World War 1 (Humphreys 2006). Humphreys (2006) notes the beginnings
of the state of exception to the 1789 decree of the French constituent assembly, which determined:

“a ‘state of peace’ from a ‘state of siege’ in which ‘all the functions entrusted to the civilian authority for maintaining order and internal policing pass to the military commander, who exercises them under his exclusive responsibility” (p.679).

From here, the state of exception expanded from its isolated dealings with war to focus on social and economic crises (Humphreys 2006).

This process by which social and economic disruptions warrant a state of emergency or exception is described best by Naomi Klein’s *Shock Doctrine (2007)* and *No is Not Enough (2017)* in which she describes “the brutal tactic of systematically using the public’s disorientation following a collective shock -wars, coups, terrorist attacks, market crashes or natural disasters - to push through radical pro-corporate measures, often called “shock therapy” (Guardian News and Media, 2017).

What we see above are political manoeuvrings that utilise economic and social systems to monopolise control and evade legal safeguards that disallow for blanket policy reform without the proper checks and balances. These types of extra-juridical functioning replace commonplace laws for more draconian policies.

Within the state of emergency that was enacted in the United States due to COVID-19 was the implementation of harmful policy towards refugee populations, in particular, Title 42. Title 42 is a restrictive immigration reform that since March 2020 has seen the expulsion of up to 200,000 migrants without due process alongside the paralysis of the asylum system overall (Blue et al, 2021). Under the guise of a global health crisis, Former President Trump enacted this cruel
and usual policy in an bid to expel asylum seekers to a liminal space at the border to await their court proceedings - a pertinent example of the abuse of a state of exception.

To locate the state of exception and Homo Sacer within the realm of immigration this thesis draws from Alison Mountz (2011) and her research into offshore detention centres as the physical manifestations of space occupied by Homo Sacer in today’s society. She refers to the space in between nation states, examining topographies and counter-topographies of power.

Counter-topographies are derived from the scholarship of Cindi Katz (2001) to examine and challenge the power dynamics of colonialism and imperialism within the framing of global capitalism. Mountz overlays the work of Katz’s (2001) counter-topographies and mapping of spaces in New York to examine the liminal spaces that we see with regards to immigration deterrence policies and the sites of exclusion that Agamden calls “thresholds” (Mountz, 2011).

Mountz (2011) describes Agamden’s theorising of topographies as processes involving techniques of power that materialise in physical spaces. She employs the example of refugees leaving their home countries to cross borders to other nations, only to find themselves denied entry and left in a space that is neither “here nor there”. This space renders the refugee highly vulnerable to exploitation, theft, attacks and more as they are left without legal oversight in a space that falls between or outside of jurisdiction and responsibility of national-states. She contends that other such spaces can be identified in airports, refugee camps, tunnels, detention centres and islands (Mountz, 2011).

She critiques the limitations on Agambens’ theory of the State of Exception as one that lacks analytical tools that speak to the intimacy of exclusion, in particular she uses transnational feminist scholarship to address the varying dimensions of exclusion, such as the gendered and racialised aspects of the populations deemed as Homo Sacer. Through this critique Mountz aims
“to challenge dimensions of Agamben’s zones of exception that leave the universal figure – an undifferentiated, gender-blind, unspecified body – always paradoxically outside of the state.” (p.383)

Other critiques that are brought forth by Mountz (2011) are 4-fold, including the mention that (1) Agamben is a philosopher as opposed to a social scientist, (2) there is a lack of differentiation of identity markers within homo sacer and is not just a universal figure, (3) Agamden lacks contextualisation of history, geography and location specific examinations and (4) sovereign power inextricably ties life to death. These critiques lay fertile ground for the application of feminist topographies to examine the intersections of homo sacer, and states of exception.

Mountz further expands on this last point by referring to Kafka’s parable of the dying man at a closed door, in that, homo sacer, to what Agamben believes, achieves awareness of their situation in their final hours, and has no recourse to escape.

Prem Kumar Rajaram and Carl Grundy-Warr (2004) depart from Agamens’ notion of helplessness and examine the spaces within zones of exclusion where the expelled can challenge power and find agency within their status of expulsion. As Agamben focuses more on power dictated from a top down approach, they note that he ignores the resistance of the weak, the maintenance of their humanity and the ability to subvert total control (Rajaram & Grundy-Warr, 2007). They argue that borders (geographic, political and social) are the primary mechanisms through which a nation state enacts its sovereign power. They contend that the border is not just a line drawn to define territory but a “relational practice for the construction of otherness” (Zanettino, p. 1096).
As Agamben’s work focuses heavily on the geographical and physical sites of exception through which control over homo sacer is maintained, as mentioned above, the limitations that can be observed here lack examination of the ways in which control is maintained over bodies, not simply through physical exclusion, but through biopolitical means. This understanding follows and extends Mountz’s claim that Agamben’s work lacks insight into where other boundaries are drawn, if not merely geographical, but also corporeal. In this way, we can also understand the borders themselves being drawn on the bodies of refugees.

To return to Mountz’ claim that Agamben homogenises homo sacer into one universal figure, is an important critique to acknowledge when building upon seminal works. By identifying one group as an undifferentiated body disallows for the multiplicity of identities, and the ways in which these individuals are impacted by draconian policies in relationship to their gender, class, race or sexuality. Robyn Sampson (2013) too, argues that sovereign authority is not asserted over a certain population based on territorial limits, but rather where the population is located. She further asserts that there exists a multiplicity of social, economic and geographic factors that attribute to the production of states of exception that do not merely pertain to one sovereign power. She contends that:

“Bordering is thus regarded as a process that is produced by multiple actors and culminates in highly personalised and differentiated outcomes relating to the individual and their specific context.“

Lana Zannettino (2012), and Judith Butler (2004) continue this line of inquiry of the impacts to individuals as opposed to one undifferentiated body. Zannettino (2012) highlights the effects of race and the refugee body, specific to the Australian context. Comparing Agemben’s work on concentration camps to mandatory detention in Australia she states “the biopolitical
processes of the camp create a subject within whom race becomes inevitably subsumed within and transcended by the ontology of bare-life”. (Zannettino, 2012, p.1094).

She argues that racism is the driver for the inhumane incarceration and treatment of refugees on island detention centres, and draws from Agamben’s examination of Auschwitz to highlight his thesis that concentration camps are “a fundamental biopolitical paradigm of modern Western societies” (p.1095).

For Butler (2004), racism too, strongly accounts for who is stripped to bare-life - noting that overt racial profiling arouses suspicion of dark-skinned individuals, particularly those who are Arab, creating an “objectless panic”. Her criticisms of Agamben focus on the generality of his determination of sovereign power which lacks the acknowledgement of “the systematic management and derealization of populations function to support and extend the claims of a sovereignty accountable to no law” (p.68).

Sampson (2013), Zannettino and Vaughn-Williams (2009) speak to the idea of the biopolitical border in the realm of Agamben’s understanding that biopolitics is at the crux of the state of exception, and that the “political space of modernity is in fact a biopolitical space linked to the “birth of the camps” (Esposito, 2008, p.xxiii). By situating homo sacer within biopolitics we can see the application of power that determines the liminal space rendering homo sacer vulnerable to death and yet, does not have the right to life.

**Biopolitics & Necropolitics**

The field of Biopolitics, (creating the furtherance of Necropolitics) is a broad framework conceptualised by French philosopher Michel Foucault’s theory of Biopower. This theory explores how life is administered by governmental powers; a tactic that is used by Western
democracies to regulate and administer corrective mechanisms by exerting power over people (Zylinska, 2004). Foucault (1976) states that biopolitics is “to ensure, sustain, and multiply life, to put this life in order.” (p.138) Biopower, thus contends with the ways in which this administration takes place - mainly at the level of the population and not the individual. Biopolitics follows Foucault’s observations on society with the ways in which sovereign power asserts control over and regulates the lives of a population. These mechanisms observe forecasts, statistical determinations, and overall determinations of life (Foucault & Ewald, 2003). It is argued that they do not interfere at the individual level, however they manage and regulate life and death (birth rates and the lowering of mortality). Foucault determines that the ultimate power from the sovereign consists in “making live, and letting die” (Foucault & Ewald, 2003, p.427).

Foucault (1976) relates these regulations as being a positive force on society, in a bid to maintain order. He uses Biopolitics to examine the shift from the more classical forms of governance that Agamben uses as a foundation to more modern forms of governance. Foucault (1976) states that bipower is:

“[A] power that exerts a positive influence on life, that endeavours to administer, optimize, and multiply it, subjecting it to precise controls and comprehensive regulations” (p.137)

Vernon, Cisney & Morar (2016) echo Foucault’s thoughts, however highlight the darker side of biopower as a tool that ‘exposes the structures, relations, and practises by which political subjects are constituted and deployed, along with the forces that have shaped and continue to shape modernity (p.1). The emergence of biopower, thus, demonstrates a more insidious form of power that is not merely exerted on spatial elements, but the very people themselves.
The intersection of biopower and immigration is thus utilised to determine the value of the migrant seeking asylum in a sovereign country, and the ways in which they should be ‘managed’ (Zylinska, 2004). The process through which a nation state either values or devalues the migrant body lends itself to Agamben’s (1997) theory of Homo Sacer in that the value, or lack thereof, of the outsider substantiates and justifies the interior or body politic of certain states.

Judith Butler (1993) in turn begs the question throughout her body of work, of whose life/body is valuable? Butler (1993) argues that the operation of democratic states relies upon the ‘other’, someone who is viewed as ‘non-human’ and is thus excluded from polis in a bid to protect the ‘state organism’ and to ‘distinguish what does not belong to it’ (Zylinska, 2004, p.526). Butler (1993) relates her work of the ‘other’ to marginalised groups in society, such as transgender people, transexual people and those on the fringes of society. Zylinska (2004), however intersects this idea of the ‘other’ with asylum seekers to explicate the lengths nations go to in terms of surveillance and security to weed out unwanted intruders - she states:

“The biopolitics of immigration looks after the bodies of the host community and protects it against parasites that might want to invade it, but it needs to equip itself with tools that will allow it to trace, detect and eliminate these parasites” (p.526)

The employment of technology is thus another modern example of the ways in which states have developed their capacity to administer life within their territory (or in this case outside the bounds of territory when it comes to immigration) - a form of modern governance that the theory of biopolitics bases its emergence on.

Achille Mbembe (2003) renews the discussion of “making live and letting die” (Foucault & Ewald, 2003, p.427) by expanding on the notion of biopolitics, with his theory of
Necropolitics. He encompasses the theories put forth by Giorgio Agamben in order to demonstrate how not only does the sovereign have the power to administer and “optimize a state of life” (Foucault, 2003, p. 246), but the power to put a life to death. It is this understanding of the Other, as Agemben has done with the theory of Homo Sacer, that Mbembe (2003) explicates the ways in which the sovereign uses the existence of the Other to justify their exclusion and abjection, as the other “threatens life” (Montenegro & Pujol, 2017, p.143)

Mbembe (2003) states that:

The perception of the existence of the Other as an attempt on my life, as a mortal threat or absolute danger whose biophysical elimination would strengthen my potential to life and security—this, I suggest, is one of the many imaginaries of sovereignty characteristic of both early and late modernity itself (Mbembe, 2003, p. 17).

What is exposed here and within Mbembe’s work is a “politics of death”, utilised to determine who is worthy of life and who is not (Montenegro & Pujol, 2017). The Other, who is not deemed worthy of life therefore becomes a symbol of the enemy that justifies the deployment of strategic manoeuvres that operate to relegate them to death. Mbembe (2003) defines the division of these socio-political borders and categorisations as one that determines the inside from outside. He posits that the insiders experience a soft form of control that encompasses invisible means of prevention, whilst the outsiders experience what he calls “death worlds” and “topographies of death” that exclude the outsiders from vital sources of life. In this vein, Necropolitics stands in opposition to Biopolitics, in that it exposes the gaps in classical governmentality theory which centres itself on notions of biopolitics, and the institutional responsibility of nourishment and care (Montenegro & Pujol, 2017).
Polly Pallister-Wilkins (2020) exposes the entanglements of ‘care and control’ with institutionalised violence towards populations that are deemed Other, with the example of refugee camps. Refugee camps demonstrate the spatial separation that exposes the ‘topographies of death’ as well as other forms of biopolitical technologies such state backed warfare enacted to govern refugees at sea through violent means. In order to excerpt this type of control over a population that has been ‘othered’ a state must justify such behaviour by way of a state of emergency, or what Mbembe (2003) refers to ‘a state of siege’ that creates the ‘state of exception’. Alongside the recognition of the state of emergency there must also be an identifiable enemy in order to justify the subsequent subjugation and exclusion of the Other, therefore the state of emergency relies on the other to operate. Mbembe (2003) claims that “in such instances, power (and not necessarily state power) continuously refers and appeals to exception, emergency, and a fictionalized notion of the enemy” (p.16).

Within these critiques and expansions to Carl Schmitt and Giorgio Agamben’s theories on States of Exception and Homo Sacer, what is outlined is that the State of Exception is not the norm. It is a space where normalcy is intended to be reestablished, and as noted above “through violent means” (Agamben, 1998, p.87).

This particular perspective is something that our current global and political situation in relation to the management of refugees and asylum seekers reflects may not be entirely true. Because, as one could argue, States of Exception are increasingly becoming the norm; with the onslaught of the climate crisis, war and the manufacturing of crises that plunge countries into states of emergency with the intent to manipulate national policies and geo-politics. Within the sphere of migration management in times of crisis, however, what can be witnessed is the rise of crisis situations that are treated as if they were the norm.
A clear example of a regional response that reflects a business as usual response in a situation of crisis proportions is the European Union (EU). The EU’s response to the refugee crisis in the Mediterranean as well as the Middle East have slowly become less sensationalised and more a point of normalcy in the day-to-day management of people throughout the region. At the time that this is being written, however, we are witnessing an invasion of Ukraine that is seeing millions of Ukrainians flee to a welcoming and open Europe, as they escape the tyranny of Russia’s President, Putin. What this exposes is not the inability of Europe to accept refugees into their countries, it’s their willingness to accept people of colour. This division of who is worthy of safety and who is not, is a direct reflection of the racism that is embedded into Necropolitics and migration management.

Didier Bigo (2007) argues that it is “the everyday routines of the detention camp for foreigners at the borders of the European Union” (p.4). This is to say, the abnormality of refugees and asylum seekers gathering at land borders, risking their lives to cross treacherous waters and the overall displacement of millions of people is no longer considered abnormal. Bigo (2007) extends and parallels Agamen’s theory of the State of Exception with the idea of the Banopticon. The Banopticon is a development of Michel Foucault’s “Panopticon” via Jeremy Bentham, which seeks to examine governmentality and power relations (Basilien-Gainche 2016). Bigo (2007) describes the Panopticon as something that supposes that

“Everyone in a given society is equally submitted to surveillance and control, that there exists a physical proximity between watchers and the watched, as well as an awareness of being under scrutiny” (p.6).

Jeremy Benthem, English Philosopher explores the architecture of surveillance and control, particularly within prisons, with the watch tower being the centrepoint of observation.
The watchtower has the power to see out and into the prison cells, with the inability of the prisoners to see in. The prisoners are instilled with the idea that they are constantly being surveilled, however, they do not precisely know when they are being surveilled at any given moment (Basilien-Gainche, 2017).

The Banopticon differs from the Panopticon in that the surveillance is only focused on a few - the exception, or as we come to understand asylum seekers and refugees as Homo Sacer, as “the other”. The Ban, as Didier (2007) refers to it, is built on the foundation that surveillance is only for “the others”, with the understanding that if surveillance were to happen to ordinary citizens, it would be because it was in their best interests - a premise that we can note with the State of Exception and it’s attempt to return a society to normalcy and order.

What the array of authors above have demonstrated in their critiques for Agamben's work are the gaps left in relation to spaciality, identity and resistance of those deemed to be Homo Sacer. These are important aspects to highlight, as we are dealing with human beings and not merely the systems that oppress them. That being said, if we cannot see the intersectionality of these people and the liminal spaces they occupy, we cannot make meaningful changes to the systems that oppress them without a deep understanding of the ways in which they are uniquely oppressed as individuals.

**Spatial control**

Spatial control is a key component of migration management, a tactic that is wielded in strategic and violent ways by the example of Australia and the United States. By examining maritime borders and the advantages of the control of space, we observe the tactics that are employed to control migration aim at manipulating spatial elements at sea such as the
externalisation and excision of migratory zones as well as the additional securitisation of sovereign territorial waters, with the interdiction and return of boats. Through the lens of critical geography, border studies, biopower and carceral economic studies what can be observed is the use of spatial control to immobilise, detain and capitalise off of the migrant body (Conlon, Hiemstra & Mountz, 2017).

The benefits to countries to manipulate and control territorial waters and land are complex and expansive, I have narrowed down three points that I feel are the most pertinent in relation to this work.

1) to control and maintain the spatiality of sovereign territory and surrounding areas  2) to reinforce sovereign authority in the region and on the global stage 3) to give power to the rhetoric of national security.

Border Studies

A fundamental understanding of borders is that they are unfixed; with history showing us that borders and their delineation are in constant flux. Political Scientist, Bastian Sendhardt (2014), highlights the shift in border studies from the idea that borders are fixed delinations of space and separation through physical demarcations, to varying types of socially constructed borders which have a range of effects on politics, identity and culture. He notes that physical demarcations manifest as mountains, rivers, fences and walls among others (Sendhardt, 2014). Through this idea he points to the constructivist notion of borders that look beyond the visible to the ‘social practises and discourses in which boundaries are produced and reproduced’(p.26).

Sendhart (2014) pinpoints the increased attention to the burgeoning field of border studies to the post 1989 period following the collapse of the Soviet Union in Central and Eastern
Europe - with this event leading to debordering and rebordering across the continent. With the increased interest and expansion to the multidisciplinary field, two main schools of thought emerge; border studies and border theory. In noting their differences Sampson (2014) states that “Border theory focuses on issues of personal and group identity while border studies examines the boundaries of polity, power, territory and sovereignty.” (p.47).

Whilst border theory is important to understand group identity within the context of physical territorial and socially constructed boundaries, this section will primarily focus on the field of border studies to explicate the ways in which geopolitical strategies are negotiated through and at territorial bounds.

The beginning of bordering can be traced back to the Peace of Westphalia in 1648 after over a century of internal conflicts within Europe (Yuval-Davis, Wemyss & Cassidy, 2019). The treaty enacted sovereignty over clearly defined territory with the right to make decisions and control spaces (Jones, 2017). In this vein, the state requires clearly defined boundaries to establish where their jurisdiction ends, and another begins (Der, 2019). Immigration scholar Motomura (1993) conceives this notion as one that understands that borders are “not a fixed location but rather wherever the government performs border functions” (1993, p. 712). French Philosopher, Etiene Balibar also follows this line of thinking in stating that:

Borders are vacillating [. . .] they are no longer at the border, an institutionalised site that could be materialised on the ground and inscribed on the map, where one sovereignty ends and another begins.(p.217)

Motomura (1993) & Balibar (1998) here highlight the varied and complex nature of borders and the different ways they have established themselves - in ways that are not always visible, but where sovereign and political power is entrenched. This idea of borders being
located where the ‘the government performs border functions’ is a key element that will be reviewed in this thesis as one of the ways that migration management has been shaped by manipulation of space and sovereign reach when determining who and how irregular migrants can arrive to sovereign shores.

Vaughn-Williams (2009) explores borders through the lens of International Relations to underscore the logic of spatial-temporal elements of bordering - drawing the line for both inside and outside territorial bounds, which locates the limits of sovereign power ‘as something supposedly contained within fixed territorially demarcated parameters.’ (Vaughn-Williams, 2009, p.730). As we can see from the examples of countries like Australia and the United States, the limits of sovereign power are not contained within territorial bounds. Political scientist Starr (2005) furthers the notion of looking more expansively beyond territory when examining borders stating that:

 Territory is the most obvious way to highlight the importance of geography. But when we take space and spatiality, proximity and distance, and territory together, we are identifying the need that social relations be studied within a geographic or spatial context as well as a temporal context (p.390).

Time and space are important factors to note, and as Starr (2005) points out spatial and temporal factors are critical to examine as these two factors contextualise social behaviours and interactions. I would also state that further attention needs to be paid to the geopolitical circumstances created by social factors as they impact the movement of borders at any given time, whether it be as a response to war, or the rendering of national immigration policy that has an extensive sphere of influence on surrounding regions.
This sphere of extraterritorial influence is not simply limited to physical interventions of space but also the penetration of the spatial imaginaries of sovereign states. The Australian Governments’ Overseas Public Information Campaigns (OPIC) are good examples of how sovereign nations penetrate foreign countries to shape the imagination of migration to its shores. Geographer Josh Watkins (2017) explores the use of OPICs - marketing campaigns that are released in foreign countries to deter migrants from making the journey by boat to Australia. An example of such a campaign was Australia’s use of deterrence policies in Sri Lanka by infiltrating the horoscope section in Sri Lankan newspapers to provide false futures of ill luck if they were to attempt unauthorised passage to Australia (Berger, 2019).

Alongside the spatial imaginaries of Australian territory, the country has also excised its migratory zones to limit the geographical spatiality in a bid to make the ability to reach Australian land increasingly difficult for maritime arrivals (Rajaram, 2007). Rebordering and debordering of territorial limits to both expand and retract space has been a common practice throughout the western world with geographers such as Maribel Casas-Cortes, Sebastian Cobarrubias, and John Pickle noting the externalisation of borders throughout the EU to extend their political influence and sphere of migratory control to Northern Africa (Watkins, 2017).

The externalisation of borders is an action that complicates the idea of what borders mean in relation to territory, power and sovereignty. Particularly in the case of maritime borders and territorial waters; with the overlap of international and domestic law in turn creating a grey area that requires further analysis to both jurisdiction as well as responsibility to those vulnerable at sea. This continual obscuring of where borders begin and end, who controls them and how people cross them not only serve to manipulate and confuse spatial geography, but allow for more sinister forms of border controls that ties borders to migrant bodies.
Vaughn-Williams (2009) builds on Agamben’s theory of bare life to demonstrate the spaces through which sovereignty and power is overlaid onto the migrant body. He states:

[T]he generalised bio-political border reconceptualises the limits of sovereign power as a decision on the status of life that can effectively happen anywhere: a multifaceted and decentred bio-political apparatus that is as mobile as the subjects it seeks to control. ... [B]orders are continually (re)inscribed through bodies in transit that can be categorised into politically qualified life on one hand and bare life on the other (p. 749).

What Vaughn-Williams demonstrates here with the expansion of the theory of biopolitics and Agamben’s homo sacer, is the power of sovereignty to reach outside the bounds of territory - a phenomenon that is not new when considering other aspects of foreign interference of sovereign states; such as the purchase of land, the interference in national policies, the implementation of military bases and so on. Highlighted here are those very same aspects, however, branded onto the bodies of people, demonstrating not only the political reach beyond territorial limits, but the ability to control and capitalise off of the migrant body - another aspect constituting carceral geographies that will be explored below.

Carceral Geography & Carceral Economies

Within the study of critical geography Hiemstra (2019), Loyd (2014), Martin (2020), and Mountz (2010) highlight the carceral landscapes and subsequent carceral economies that are created through the control of migration, space and temporality. Carceral geography examines the landscapes that sovereign nations create both within their territory as well as offshore locations to house and criminalise migration. These landscapes can be attributed to physical locations such as detention centres, waiting rooms, hotels and ships - all liminal spaces that seek to immobilise migrants (Martin 2020). Martin & Mitchelson (2009) underscore that the use of
migration detention is ‘fundamentally reliant on spatial tactics or the use of space to control people, objects, and their movement’ (p. 459)

According to Martin (2020), carcerality has long played a foundational role in the organisation of social problems. Within the realm of migration, it seeks to immobilise, detain and criminalise; ‘inscribing national borders onto migrants’ bodies and embedding bordering practices in everyday life’ (Martin, 2020, p.741). Martin (2020) states that “detention is a process of bordering, mobility and exclusion, rather than a closed space. In fact, geographers have argued that redirecting people, things and practices is so essential to carceral space that mobility – not enclosure – constitutes the carceral.” (p.741)

Martin (2020) digs deeper into the notion of detention by pinpointing that carcerality itself relies on the mobility of people to feed into the larger machine of the Immigration Industrial Complex. Mountz and Loyd (2014) attribute the beginning of carcel geographies to the United States with the political response to spontaneous Hatian and Cuban migration in the 1980’s. This period of time saw unauthorised arrivals transported to both onshore and offshore detention and processing centres. Mountz & Loyd (2014) underscore the use of remoteness and buffering zones as central to confined carceral spaces, which, as we have seen, have been replicated by Australia as well as other Western countries. Buffer zones refer to the offshore space that is used to intercept migrants as they attempt to reach sovereign shores (Mountz & Loyd, 2014).

Hiemstra (2016) posits that the spatiality of detention and carceral paths, as described by Mountz & Loyd (2014) are designed to create a ‘chaotic geography’. She describes this term as ‘a particular way in which chaos is spatialized and temporalized’ (p.58). Mountz (2011), Schuster (2011) and Darling (2014) also analyse the use of time as well as space within detention
centres and processing as a tactic that immobilises migrants with ‘sustained unpredictability’ whilst awaiting legal adjudication on asylum claims (Conlon, Hiemstra, & Mountz, 2017).

Hiemstra (2016) details the ways in which the use of chaotic geography is utilised to benefit the ‘detain and deport’ system (D&D) and the immigration industrial complex at large. Hiemstra (2016) uses the example of Ecuadorian migrants who are detained and transferred to multiple detention centres in the United States before eventually being deported to demonstrate chaotic geographies. This manifests as an intricate economic system that functions cyclically off of the labour and bodies of migrants from both their labour within detention centres (for a meagre $1 per day) as well as the physical location and detainment of the migrant - this inturn benefits a larger economy of food, transport, medical and communication services, among others (Hiemstra, 2016).

The transfer of migrants throughout different facilities in the United States is examined by Hiemstra (2016) as both a tactic to fill beds and increase profits for actors with stakes in the immigration industrial complex, as well as to disorient and complicate due process for migrants as they become removed from family, advocates and legal representatives with the remoteness of their location. Moran, et al (2012) reaffirm that these circuitous and chaotic routes reinforce the carceral power over Russian prisoners. Martin (2020) further expands on the notion of carceral economies as the value of the migrant life and the profitability of a permanent state of liminality.

Within Hiemstra (2016) and Martin’s (2020) work we can observe the study of chaotic and carceral geography from a national perspective, as opposed to an international perspective on the trading of refugees and migrants across transnational space. This, however, can be witnessed when examining the use of offshore detention centres in extrajudicial territories as is utilised by Australia and the United States with the example of Papua New Guinea, Nauru and Cuba.
Through these examples we come to understand that carceral economies form an international network that weave together a sinister global economy. Doty & Wheatley (2013) highlight the international web that contributes to this global economy through corporations such as the GEO Group - the second largest private prison company operating in the United States, with 107 corrections and detention facilities (Geo Group, n.d). Geo Group is also contracted by Australia, Canada, South Africa and the UK (Doty & Wheatley, 2013). Currently there are 5 Geo Group detention centres in Australian territory (ACCR, 2020).

Gammeltoft-Hansen (2011) further highlights the growing private sector of immigration control, with governments increasingly outsourcing private corporations to undertake the role of migration management through private prisons and deportation escorts. Gammeltoft-Hansen (2016) calls into question whether this expansion of the private sector within migration control has detrimental effects to a country’s sovereignty, as he notes that immigration control ‘has always been considered a core function of sovereignty’ (p.143).

For Doty & Wheatley (2013) the immigration industrial complex consists of a ‘massive, multi-faceted, and intricate economy of power, which is composed of a widespread, diverse, self-perpetuating collection of organisations, laws, ideas, and actors’(p.438). This is to say the carceral spaces and their proponents that detain, deport and control the immigration industrial complex are not only the stakeholders that benefit from migrant imprisonment, but rather further obfuscate the role between private sectors and governmental reach in determining who controls and benefits from migration control.

Whilst western democracy is best described as a janus facing coin; with the Roman god looking both inwardly and outwardly, reflecting the need for sovereign states to both manage their internal needs as well as contributing more broadly on the global stage, the practice of
bordering, however, does not reflect the ease of a Janus gateway - open in times of war, and closed in times of peace (Britannica, 2019). The historical origins of borders being a sovereign act of delineating territory and control have now been complicated by the manipulation of physical and political demarcations of power and politics - an unavoidable event with the expansion of globalisation and movement of people.

The example of the capitalisation of the migrant body demonstrates the benefits of the literal trading of refugees and asylum seekers through carceral geographies both within a sovereign state as well as the transnationally. Through a historical lens we see the profitability of extraterritorial detention demonstrating power being exerted from one dominant country over another (Australia over Papua New Guinea, and the United States over Cuba), however what is not noted in the literature is the emerging trend of dominant superpowers trading refugees amongst themselves, with this turn of events raising questions about what the benefits are to these countries and what are the consequences to the vulnerable people being traded like pawns will be.

**Chapter 3. Methodology**

**Objective of the research**

The aim of this research is to interrogate systems of power; in particular, historical approaches to refugee management and their place in a modern context in the western world where the increase of forced migration and its management is an issue that must be reassessed. By highlighting these systems and wherein lies the gaps of appropriate and human treatment of vulnerable people, this thesis aims to examine and critique the creation of new liminal spaces that have been built upon historical carceral methods of refugee management that are harmful to
human life. Examples of these kinds of tactics point to offshore detention centres as well as new approaches to deterrence, such as literal trading of refugees, which have become commonplace practises in western societies, namely Australia and the United States, as well as expanding to Europe, which is subject to further investigation.

Central to this thesis is the 2016 Refugee Swap; a deal that was brokered between Australia and the United States that saw the transfer of vulnerable refugee populations between the two countries. This specific event will be examined as a new form of liminality created as a loophole to shirk responsibility from international refugee conventions ratified by both countries. The questions that need to be asked follow along the lines of; who are these policies benefiting? Who are they hurting? In a world where forced migration sets a pace of rapid increase, how do we manage refugees in the most human way?

The main objectives within this research are laid out as follows:

1. Identify historical patterns of deterrence and interrogate their efficacy
2. Identify the ways in which these policies breach human rights with close attention paid the 2016 Refugee Swap
3. Highlighting the need for a new and more human system of refugee management

Statement of Need

Interdiction and the subsequent carceral methods of managing migration in both Australia and the United States have been principal methods in practice since the early 1980s in the United States and the early 2000s in Australia (Gutekunst, 1984; Tauman, 2002). The reason for this type of research underscores the need to interrogate these practices and highlight the treaties and conventions that both countries have signed that they are not in compliance with. Immigration
policies, like living organisms, are in constant flux, finding new ways and approaches to respond to evolving global realities. The need to constantly critique these policies is to ensure their alignment to human rights and global commitments, particularly in a world where openness to forced migration is becoming more divisive and restrictive.

**Research Design**

The main design frameworks for my methodological approach utilise an iterative approach involving case studies of the United States and Australia as well as qualitative analyses of political discourse and policies. My research has been designed to limit the interaction of vulnerable participants and the need for a fixed location to collect data. This is due in part to the unpredictability of a global pandemic, as well as the need to interrogate transnational structures of refugee management from a top down perspective, as opposed to individual experiences. The analysis of the impacts to individuals points to further research and study that will not be included in this thesis. Utilising an iterative approach allowed for the flexibility for my research to move in different directions as new information was brought to light from the data collection. The use of qualitative analysis when examining discourse and policy, allowed for the dissection of political and public narrative, deciphering what role it plays in policy creation and retention. The data collection process was undertaken in three stages:

1. Literature Review
2. Historical analysis and comparative case study
3. Discourse analysis and policy analysis
To understand the position of asylum within modern western states, a literature view was conducted to identify key themes in the following areas: (1) the creation and proliferation of Homo Sacer and how it relates to the modern day refugees and their treatment, and (2) the externalisation of borders and the spaces of liminality such as interdiction of refugee boats and the subsequent offshore detention that they create. Exploring these themes sets the stage to understand how the use of spatiality, legal frameworks and narrative play a role in the creation and proliferation of harmful deterrence tactics.

2. **Historical analysis and comparative case study**

To frame the current situation in both the United States and Australia, a historical analysis and comparative case study was conducted in two distinct time periods (70s-90s / 2000s - current) for both countries to give context to the current policies and laws that both countries employ. By contrasting and comparing historical policies from both countries helps us to understand the similarities and differences of immigration policies as well as the influence that modern western states have on one another in relation to policy and geopolitical manoeuvring.

3. **Policy analysis and content analysis**

To analyse the effects of deterrence policies on both public discourse and the structural ways in which these policies are harmful, I identified numerous media sources, such as news articles, podcasts and public commentaries to understand how public discourse was being shaped by the implementation of detrimental policies in the past, as well as current policies that have taken effect such as the refugee swap in 2016. In assessing discourse and rhetoric surrounding the current issues of migration, particular attention was paid to the language and presentation of the issue of migration management from liberal and conservative perspectives. Current rhetoric
was then compared to historical accounts of refugee management to compare the progression and retention of certain policies.

Chapter 4. Historical events and Policies

The United States

Modern migration by boat to the United States does not have one isolated origin in the region. Forced migration has been experienced by multiple countries throughout the Caribbean and Latin America as well as throughout the world. The American example of degrading the migrant body is more far reaching than maritime arrivals, however, I use this example in isolation from asylum seekers and migrants at the southern border, and refugees incoming, in order to contrast and compare the similarities between Australia. This section, however, will focus solely on the 20th century migration from Haiti to the United States.

Haitian migration to the United States saw its beginnings in the early 1950s through the 1990s, with steady flows of authorised working class migrants headed to the popular destination of New York in the 1950s (Michelle, 1994). In the postwar period in the United States, unauthorised migration was not seen as a major threat, and in most cases was treated with a policy of parole rather than detention. However, if the migrant was deemed to be a threat or flight risk by a judge, the rule of detention would apply (Lindskoog, 2018). Perceptions and attitudes towards Haitian migrants began to change in the beginning of the 1970s, with migration becoming highly politicised as large-scale arrivals of unauthorised boats reached Southern Florida shores. Despite Haitians only making up less than 2% of undocumented immigrants in the United States of which President Regan described this as "a serious national problem
detrimental to the interests of [our country]” (De Matteis, 1993,p.438). Tensions rose with the onset of rising unemployment and pressure on health and housing services in Miami, placing Haitian refugees in prime position to take the blame (Gutekunst, 1984).

Haitians were fleeing the rule of Francois “Papa Doc” Duvalier who held power from 1957 to 1971 and succeeded by his son upon his death; a period of time that saw considerable human rights violations, with the instalment of the secret police (Tonton Macoutes) and the widespread nature of torture, corruption and the abuses of foreign aid (Gutekunst, 1984). This era targeted Haitan professionals and intellectuals, viewing them as threats who were forced to reside in a life of exile, lest they be tortured and killed (Gutekunst, 1984).

This influx of migrants as a result of the political instability in the country drew national attention in the United States. In 1980, lawmakers in the United States passed the Refugee Act, following on from the ratification of the 1967 Protocol Relating to the Status of Refugees from the United Nations. The 1967 protocol was created to remove the geographic and time limits that framed the 1951 convention (of which the United States was not signatory to) which by and large only protected refugees and asylum seekers from Europe, post WWII.
The Act functioned as a broader set of relief for individuals fleeing persecution, utilising the language from the United Nations to define a refugee as an individual who is:

“Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion” (Hing, Chacon & Johnson 2021, p.979).

However, despite the instalment of this law to protect individuals fleeing from a well-founded fear of persecution, the influx of Haitian migrants coupled with an increased arrival of Cuban arrivals escalated the anxieties of the American public and lawmakers, and saw that the policy would not be implemented as intended. Any migrant that was brought to US soil would need a sponsor, such as a family member or an institution that could be responsible for the individual, or they would remain in detention (Lindskoog, 2018).

Under the Carter Administration the creation of a new category came to be; the Haitian-Cuban Entrant, which allowed most migrants to remain within the US (Mitchell, 1994). However, once the ‘crisis’ had subsided and a new government was elected in the US, much harsher deterrent policies were enacted under executive order by the new Reagan Administration (Mitchell, 1994). In September 1981 Reagan, who is famously quoted as stating that “a nation that cannot control its borders is not a nation”, announced a policy of interdiction of Haitian migrants in the high seas which involved the interception of unauthorised boats entering US waters that would be promptly returned back to Haiti (Ghezelbash, 2019, p.45, Gutekunst, 1984).
This practice, initially titled Haitain Migrant Interdiction Operations, was formed by an agreement with both the Haitian and US government of the time to permit US patrol of Haitian territorial waters (Mitchell, 1994). In defence of the policy, Reagan announced:

"The entry of undocumented aliens from the high seas is hereby suspended and shall be prevented by the interdiction of certain vessels carrying such aliens” (New York Times, 1981).

The tactic of interdiction was designed as a method of juridical arbitrage, utilising international waters to give discretionary flexibility to INS (Immigration and Naturalisation Services) agents and coast guards to process asylum claims aboard the Coast Guard cutters (Kahn 2019). Thus, the pertinent example of sovereign power beyond territorial bounds in a bid to evade judicial review was witnessed in the region.

The interception of boats outside territorial waters is a tactic employed as a legal manoeuvre that allows a country to subvert their responsibility towards non-refoulement. The principle of non-refoulement is foundational to the 1951 Refugee Convention and is also a binding component of the 1967 protocol, of which the United States is a signatory. The principle states:

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”(UNHCR, 2007, p.2)

Despite the recognition and agreement to non-refoulement, this functioning of international law does not oblige a sovereign nation state to take in everyone that reaches their shores, as nation states have always reserved the right to determine who is admissible to their country. In this vein the principle of non-refoulement remains an issue of morality and not one of duty. (Gutekunst, 1984).
Throughout Reagan’s presidency, he delivered messages that emulated cold war nationalistic ideals, fears of crime and people of colour all whilst cementing the normalisation of criminalising forced migrants (Shull, 2021). In harnessing the cross-over of crisis that was producing many forced migrants in the Caribbean as well as Latin America, he expressed that migrants fleeing Central America would create “a tidal wave of refugees. And this time, they’ll be ‘feet people’ and not ‘boat people’ swarming into our country . . . We cannot permit the Soviet- Cuban- Nicaraguan axis to take over Central America.” (Shull, 2021, p.16)

The administration responded to claims of asylum from El Salvador at the time as “frivolous” claiming that they were “economic migrants” and “line jumpers” who would only further create mass migration to the country (Shull, 2021). In October 1981, The New York Times reported on a Haitian migrant boat that had sunk and left 33 people dead. They quote the then Gov. Bob Graham of Florida who said that it was "a human tragedy which has been waiting to happen,” as well as a coast guard spokesperson who expressed that “It's just such a tragedy," emphasising that "It's what we were hoping to avoid" by intercepting vessels (Jaynes, 1981).

In the following 10 years after the birth of the interdiction policy, the US Coast Guard patrolled in close proximity to Haitian shores to intercept boats believed to be economic migrants. The vessels intercepted were boarded by INS officials with translators to substantiate the asylum claims of those aboard. In the rare case that a migrant was found to have a well founded fear of persecution upon return, they were granted entry to US soil. In the 10 years that this practice continued, only 25 out of 50,000 migrants were accepted as asylum seekers (Mitchell, 1994).

The interception and subsequent return of Haitian migrants saw a peak of cruelty in December of 1990, with the election of the Catholic Priest, Jean-Bertrand Aristide in Haiti. With
the instalment of the new democratically elected president, the country was deemed to be safe. With this, any intercepted boats of migrants were taken to Guantanamo Bay, Cuba, for offshore processing, instead of being brought to US shores (Dastyari, 2012). One year after the election of Aristide, he was overthrown by a military coup, and 1,500 of his supporters were killed. The junta’s rule was determined to be illegal by the United Nations, and sanctions were placed on the island nation by the US who also condemned the political revolt (Dastyari, 2012). In the aftermath of the coup, the largest single outpouring of asylum seekers left the country, seeing tens of thousands of Haitians flee in the weeks following the coup (Kahn 2019).

Despite condemnation of the coup and the rejection of the illegitimate government in Haiti from the United States, the George H W Bush administration (who had succeeded Reagan in the previous election) feared that the acceptance of asylum seekers from Haiti would once again open up the floodgates to mass arrivals. In order to quell the numbers of asylum seekers arriving to US shores, interdiction at sea was again used to stop boats and to detain the individuals onboard the Coast Guard cutters - transforming the ships into ‘floating camps’ to complete their cursory screenings whilst third countries were identified for transfer of the Haitian individuals - a solution that did not come to fruition at the time (Khan 2019). Although the US suspended repatriations, there was little interest in bringing asylum seekers to US shores. In June of 1992 the Bush administration defended their policy of repatriation by claiming that Hatians were fleeing "economic conditions, and that "there have been no reports of mistreatment of returnees" (De Matteis, 1993,p.453).

The following day, on November 19th 1991, a lawsuit titled *Haitian Refugee Center v. Baker* was brought against the government's use of interdiction by the Haitian Refugee Center, an advocacy group in Miami, whose complaint alleged that the cursory screenings conducted
aboard the cutters were often only 5 minutes in length, conducted by individuals who had limited if any prior knowledge of the history and current situation in Haiti which resulted in the repatriation of bona fide refugees. (Clawson, Detweiler & Ho 1993). Clawson, Detweiler & Ho (1993) contend that “these interviews resulted in the return of refugees to their persecutors in violation of the U.S government’s duty under section 243(h) of the INA (Immigration and Nationality Act) and Article 33 of the Convention Relating to the Status of Refugees” (p.2341).

The court subsequently enjoined (prohibited) the government from repatriating screened-out migrants, through which the government responded by creating a ‘temporary’ refugee camp on Guantanamo Bay (Clawson, Detweiler & Ho 1993). On appeal, the 11th circuit dissolved the injunction, and the complaint later was unsuccessful when petitioned to the supreme court for certiorari (when a higher court reviews the decision of a lower court) (Clawson, Detweiler & Ho 1993).

The camp at Guantanamo Bay housed 36,000 migrants over the next 18 months, and from that point forward, Guantanamo Bay operated exclusively for Haitian migrants between 1991 - 1994 (Dastyari, 2012). George H W Bush’s response to the Haitian Crisis saw the increase to securitisation in the region reaching operation costs at sea of $665,000 a day, alongside the transformation of Guantanamo Bay into a highly securitised prison camp (Kahn 2019).

Now that the Haitian migrants were detained at Guantanamo Bay, this allowed not only for asylum screenings but also screenings for HIV and AIDS. The decision to medically examine the detainees is entangled with a deep history of Haitain racialised and medical stigmatisation (Kahn 2019). The location and exclusion of Haitians on Guantanamo Bay subsequently allowed
for the creation of an HIV quarantine camp, which resulted in an alternative and less desirable processing track for its detainees (Kahn 2019).

After migrants had their preliminary screening and were deemed to be a candidate for political asylum due to having credible fear of returning to persecution in their country, they were then transferred to the United States for their second more in-depth interview, at which stage they were able to have access to an attorney. This, however, was not the case for migrants who had tested positive for HIV or AIDS (Konvicka 1992). At the time, US immigration policy banned all aliens who tested positive for HIV, unless deemed a political refugee, which would then grant eligibility for a waiver. Detainees in Guantanamo Bay that passed their preliminary screening were required to undertake their second interviews in the camp without access to representation (Konvicka 1991). Those that had tested positive were also required to meet a higher standard in order to prove that they had a well founded fear of persecution (Annas 1993).

In response to the HIV quarantine camp and the low standard of medical care in the camp another lawsuit was filed against the government in March 1992 titled Haitian Centers Council v. McNary. The findings of the court case determined violation of first amendments rights and due process rights. Not only were detainees not advised of their rights, they had been given erroneous legal advice from the INS and the military and deprived of legal counsel (Annas 1993). And despite the fact that the Hatians were alien citizens, their rights to due process had been violated - with the lack of medical care provided by the government in the facility. Judge Johnson found that “deliberate indifference” included “denial or delay of detainees' access to medical care, interfering with treatment once prescribed, [and] lack of response to detainees' medical needs” (Haitian Centers Council v. Sale, 1993). Annas (1992) asserts that

Specifically, the court found that military physicians had told the Immigration and Naturalization Service that detainees with CD4 cell counts of 200 per cubic millimeter or
below “should be medically evacuated to the United States because of a lack of facilities and specialists at Guantanamo” and that the government had “repeatedly failed” to act on this recommendation (p.591).

With this, the court found that detention was an unnecessary act by the US government that did not reflect any acts committed by the Haitian migrants. Upon the final decision 158 refugees were in the camp: 143 were HIV-positive adults, 2 HIV-negative adults and 13 children who had not been tested (Annas 1993). The court invoked in terms of universal human rights that

“[T]he detained Haitians are neither criminals nor national security risks. Some are pregnant women and others are children. Simply put, they are merely the unfortunate victims of a fatal disease. . . . Where detention no longer serves a legitimate purpose, the detainees must be released. The Haitian camp at Guantanamo is the only known refugee camp in the world composed entirely of HIV+ refugees. The Haitians' plight is a tragedy of immense proportion and their continued detainment is totally unacceptable to this Court” (Haitian Centers Council v. Sale, 1993).

During the court case in May 1992, President Bush issued Executive Order 12807 that saw the end of asylum screenings aboard the cutters, as well as on Guantanamo Bay, which disclaimed any legal obligation to determine economic migrant or refugee status before returning them to Haiti where Haitian military awaited them (Khan 2019). What became known as the Kennebunkport Order (after Bush issued the law whilst vacationing in his Kennebunkport home) asserted that the legal obligation to non-refoulement did not extend to persons outside of US territory or US territorial waters (Loyd & Mountz 2018). The order was described by the whitehouse as an effort to “ease the dangerous and unmanageable situation” adding that it was “necessary to protect the lives of Haitians” (Jehl, 1992).

An injunction was sought for the Kennebunkport Order in addition to the court case of Haitian Centers Council v. McNary that was already in process. The challenge to Bush’s refoulement policy eventually found that the policy was illegal and in violation of the Immigration and Nationality Act. The then presidential candidate Bill Clinton welcomed the
outcome, stating that it was the “right decision in overturning the Bush administration's cruel policy of returning Haitian refugees to a brutal dictatorship without an asylum hearing” (Koh, 1993, p.2430). Clinton, who was running against Bush exclaimed “Of course we’re gonna let Haitians in,” in order to quell the angered responses of the treatment of Haitians worldwide (Cineas, 2021).

The Haitian Centers Council v. McNary case eventually led to the closure of Guantanamo Bay as a detention camp for Haitians, with the Haitians detainees being resettled in the United States. The case however, what was left unanswered was where Guantanamo Bay sat in the cartographical jurisdiction of the United States. The carceral geography of Guantanamo Bay was determined by federal courts as “an external space within the geography of the “domestic” and the “foreign,” a juridically salient distinction on which the decision itself would turn” (Kahn 2019, p. 97). The supreme court would later revisit the question of jurisdictional cartographies in the upheaval of 9/11 (Kahn 2019).

With the election of Bill Clinton in 1992 and the subsequent reversal of Bush’s Kennebunkport Order, the policy of assessing and processing asylum claims at sea once again resumed, this time on a leased Ukrainian cruise ship, the USNS Comfort (Khan 2019). Shortly after taking office, however, boat interdictions under Clinton increased, seeing the former president backtrack on his previous criticisms of Bush’s refoulement policy, and moving to support the same operations. Thus, Operation Safe Haven saw the reopening of Guantanamo Bay for the remainder of the ‘Hatiain Crisis’. The operation saw the agreements from surrounding countries in the region such as Panama, Dominica, Suriname, Grenada, St. Lucia, Turk and Caicos and the Bahamas to provide temporary protections from those fleeing
persecution in Haiti as well as Cuba (Loyd & Mountz 2018). Clinton explained his change of heart by relying on a position of morality by saying:

“Well, we don’t want to trigger another humanitarian crisis by taking people because then more people will go out on this perilous journey across the ocean.”

However, despite the long and egregious handling of maritime arrivals from Haiti to US shores, the exclusion and detainment of Haitian migrants to the US remains commonplace. In recent years we have witnessed the abhorrent treatment of Haitian migrants first hand with the changing of migratory routes that move across the land borders through Mexico and the US.

Table 1

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**Australia**

We are victims of political propaganda and should be understood as political prisoners. Australia put [us] up in a hell prison camp under a regime of systematic torture. I wanted to show that this policy is cruel, inhumane, unjust and a modern form of slavery. We were forcibly transported from Australia to their black site on Manus Island and are subject to a regime of systemic torture. I hope that this action will encourage people to think more about Australian Guantanamo in the Pacific Ocean.

Behrouz Boochani, refugee journalist detained at Manus Island, April 2016 (Ghezelbash, 2018)

Australia, like the United States is no stranger to migration - a country that has touted a generous and open history when welcoming the world's most vulnerable people to its shores. In the post World War II period, Australia saw the influx of not only European refugees immediately following the conflict, but scores of refugees from SouthEast Asia, with some 2,000 vietnamese being being resettled by the Fraser government, despite a loud dissent from the public, and media flurries fearing gangs and exotic diseases (Manne & Corlett 2003). With the then recent dismantlement of the White Australia Policy, (a policy that was instituted in 1901 under the name Immigration Restriction Act, with the sole purpose of keeping Australia white and of british decent), any attempt to remove asylum seekers to Australian shores would be seen a step backwards for the anti-racist agenda that set forth - one as we can see from current policies largely remained on the surface (Manne & Corlett 2003). The eventual degradation of a compassionate welcome to ‘boat people’ began in 1989 with the arrival and subsequent removal...
of 23 Cambodian asylum seekers who arrived in Pender Bay, Western Australia. With the end of the cold war, empathy for those fleeing conflict was not top of mind for Australians, so when in the following year two more boats arrived from Cambodia, administrative detention on Nauru was sought whilst the country reviewed their obligations to the United Nations Refugee Convention (Manne & Corlett 2003).

With the slow degradation to its efforts of welcome and care post WWII, Australia’s immigration policies took a sharp carceral turn in 1992 with the Keating government introducing mandatory detention for unauthorised asylum seekers who would be locked up pending the process of their application (The Economist, 2015). In the late 90s, the rhetoric surrounding boat arrivals began to shift to one of blame, with Prime Minister John Howard pushing forward the agenda of “queue jumping”. He says:

There are tens of thousands of people who want to come to Australia who queue up, who wait, who fill out the form, abide by the rules, wait their turn. And if you have people queue jumping and then being allowed to stay, you're basically thumbing your nose at those people who played by the game. Now we're not going to allow that to happen and we want balance restored to this. We're not going to be an easy touch. We're going to be a fair touch. We're going to be fair where there are genuine refugees. But people who aren't genuine refugees that are simply queue jumping then they're not going to be allowed to stay. (Cordeaux, 1999)

This rhetoric would soon become an integral part of the immigration rhetoric for years to come. It was not until 2001, however, that the world would place close attention to the island nation, with the beginnings of a brutal off-shore detention regime.

In what was a tense moment for the world globally, after the events of 9/11, what manifested was a mechanism of control to manage a burgeoning crisis taking place at sea, owing in part to the example set by the United States decades earlier. This would soon highlight Australia as an actor of cruel and unusual punishment towards refugees, and would become a key
component in Australian immigration policy and practice, changing the trajectory of historical openness to the strengthening of securised borders and indefinite off-shore detention.

On August 26, 2001, a small Indonesian fishing boat was rescued at sea by the Norwegian freighter, MV Tampa, under the direction of the Australian Maritime Safety Authority. After the boat had become stranded and showed signs of distress 140 kilometres north of Christmas Island (an island of Australian territory), Tampa MV captain Arne Rinnan drew international attention with his rescue as he attempted to return the asylum seekers to the closest port in Indonesia that had the ability to dock such a large vessel. He however changed course to land and disembark on Australia shores with the 433 rescues Afghan asylum seekers after some of those aboard threatened to commit suicide if returned to Indonesia (National Museum Australia, 2021). The now infamous ‘Tampa Crisis’ or ‘Tampa Affair’ saw a stand-off between the conversative Howard government and the MV Tampa that would reach crisis proportions onboard, as the vessel lacked the resources and capacity for such a number of people (UNHCR, 2006). A struggle between Australia and Indonesia ensued, as neither country wanted to take responsibility for the asylum seekers looking for refuge - despite Australia’s international obligations to the 1951 Refugee Convention. Prime minister John Howard stated that:

‘I believe it is in Australia’s national interest that we draw a line on what is increasingly becoming an uncontrollable number of illegal arrivals in this country.’ (Mitchell, 2001)

With the conservative Liberal government gearing up for an election that same year, and facing low polls, a hard line policy was drawn in the sand; which is largely credited for the Howards re-election (Mountz, 2020). With the government's refusal to allow these refugees to land on its shores, despite being highly condemned by the international community, as well as repeated calls for assistance due to worsening health of asylum seeker aboard, Captain Rinnan crossed the Australian maritime boundary on August 29 despite warnings from Australian
authorities stating that he was in ‘flagrant breach’ of the law. Australia then dispatched 45 Special Air Services (SAS) troops to board the ship and prevent its successful passage to Christmas Island (National Museum Australia, 2021). On the same day the Howard government tabled the Border Protection Bill 2001 in parliament. If passed it would give the government the power to remove any foreign ship from its territory. The bill was retrospectively backdated allowing authority for boarding The Tampa and ensured that no Australian court could review the actions or directions of an Australian military officer. The bill was criticised for its breadth of power and was voted down by the opposition in the senate (National Museum Australia).

By September 2nd 2001, the Howard government had made swift agreements with neighbouring islands Nauru and Papua New Guinea to see the transfer of the Afghan asylum seekers to offshore processing centres; an administrative change to the asylum process that would set the stage for a decades-long policy that would significantly shift the geopolitical landscape and immigration policies in the country. The Pacific Solution, incited deep moral and political debate about the abuses of human rights, despite article 14 in the Declaration of Human Rights stating the right of individuals to seek asylum (United Nations, 1948).

An eventual and costly end to the standoff saw the transfer of a small population of 132 of the Afghan asylum seekers being resettled in New Zealand, whilst the remaining 302 were sent to Nauru to be processed over the following months, although, some remained on Nauru for three years (National Museum Australia).
The timing of this event would see the strengthening of hard line policies after the closely followed events of September 11, resulting in global paralysis and panic. This situation allowed the Australian government to bolster the narrative of securitisation to subvert terrorist attacks (Parliament of Australia).

With an environment of fear surrounding border security, a fabricated event swept the nation in November of 2001, after reports of a sinking asylum seekers boat was found throwing children overboard in a bid to be rescued (Barnes, 2021). The incident became known as the “children overboard affair” and although it was found to be false by a senate committee, the hardline politics that demonised refugees ensured Howard’s reelection in November 2001. In response to the “children overboard affair” Howard equated the incident to a tactic used by ingenuine asylum seekers to manipulate the country, stating that:
Genuine refugees don’t put their own children at risk, they become refugees in the name of the preservation of the safety of their children. There’s something to me incompatible between somebody who claims to be a refugee and somebody who would throw their own child into the sea, it offends the natural instinct of protection and delivering security and safety to your children. So I don’t accept that it’s a measure of the desperation. I think it’s more a mark of the determination of those who’ve taken advantage of people, or using the services of people smugglers, it’s the people smugglers that are taking advantage of them. But it’s a determined attempt to intimidate us and we have to understand that. (Clarke, 2001)

The extremely black white presentation of why one would flee was also incited in his policy election speech through which Howard parelled asylum seekers with terrorism inturn justifying the securitsation of borders as an act of sovereignty. He states:

National security is therefore about a proper response to terrorism. It’s also about having a far sighted, strong, well thought out defence policy. It is also about having an uncompromising view about the fundamental right of this country to protect its borders. It’s about this nation saying to the world we are a generous open hearted people taking more refugees on a per capita basis than any nation except Canada, we have a proud record of welcoming people from 140 different nations. But we will decide who comes to this country and the circumstances in which they come (Howard, 2001).

From that moment forward, the numbers of known boat arrivals began to slow for the remaining years of Howard's tenure as Prime Minister.

The transfer of asylum seekers to neighbouring islands was initially marketed as a place to temporarily await the status of their immigration claim, but instead the policy evolved, determining that refugees transferred to the extraterritorial locations would face indefinite detention without the possibility of ever being resettled in Australia.

Table 2
The deterrence policy lasted from 2001 - 2008 with bipartisan support, with 77% of Australians supporting the decision to refuse entry to the MV Tampa, and 71% believing that boat arrivals should be detained while awaiting processing (Parliament of Australia, 2014). In 2005, an amendment to the 1958 Migration Act saw the excision of thousands of islands from

<table>
<thead>
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<th>Calendar Year</th>
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</tr>
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Note. Adapted/Reprinted from Refugee Council of Australia 2021.
the Australia Migration Zone allowing for anyone who reached these areas to be removed to neighbouring islands within the scope of the Pacific Solution. Subsection 5(1) of the bill asserted the excision of the following areas:

“Excised offshore place means any of the following: (a) the Territory of Christmas Island; (b) the Territory of Ashmore and Cartier Islands; (c) the Territory of Cocos (Keeling) Islands; (d) any other external Territory that is prescribed by the regulations for the purposes of this paragraph; (e) any island that forms part of a State or Territory and is prescribed for the purposes of this paragraph; (f) an Australian sea installation; (g) an Australian resources installation.

Note: The effect of this definition is to excise the listed places and installations from the migration zone for the purposes of limiting the ability of offshore entry persons to make valid visa applications.” (Migration Amendment (Excision from Migration Zone) Act 2001).

As stated above, the purpose of this bill was to shrink the bounds of Australia’s migratory zone in order to subvert responsibility to boats entering its territorial waters. Following the election of 2008, the Howard government lost to the labour party with Kevin Rudd at the helm. Both camps included in the Pacific Solution on Nauru (housing women and families) and Manus...
Island in Papua New Guinea (housing single men) fell into disuse, and the camps were eventually closed by the Rudd government (Aljazeera, 2017). Rudd then reaffirmed his commitment to the Declaration of Human Rights by inviting rapporteurs to investigate domestic human rights in Australia. In his ministerial declaration in parliament he announced:

> In our first year in office, we have ended the inhumane, unfair and wasteful Pacific solution, ended temporary protection visas and substantially reformed Australia’s detention policy. We have restored fairness and humanity to our treatment of people seeking asylum in Australia, while also returning strong and effective border security (Rudd, 2008).

The new immigration minister Chris Evans welcomed the closure of the camps, stating that $289 million was spent between September 2001 and June 2007 to run both sites. Evans rebuked the Pacific Solution saying that “[it] was a cynical, costly and ultimately unsuccessful exercise introduced on the eve of a federal election (in 2001) by the Howard government” (Sydney Morning Herald, 2008).

Four years later, a reported influx of boats once again began to arrive, with Kevin Rudd being ousted by Julia Gilard, carceral operations on Manus Island Detention Centre and Nauru once again resumed - a move that was widely criticised for the squalid conditions; with reports that asylum seekers are subjected to frequent assaults by local Nauruans and deprivation of medical care for life threatening conditions (Neistat & Bochenek, 2020). Michael Bochenek, senior counsel on children’s rights from Human Rights Watch contends that “driving adult and even child refugees to the breaking point with sustained abuse appears to be one of Australia’s aims on Nauru” (Human Rights Watch 2016). In 2009, a newspoll survey indicated that 37% of voters believed that the government was taking appropriate measures managing the migration issue, whilst 36% believed that tougher measures were necessary to curb the flow of
unauthorised arrivals. As of 2010, however, The Scanlon Foundation survey *Mapping Social Cohesion* indicated that ‘the arrival of boats is met with a high level of negativity’ (Parliament of Australia, 2014).

The Border Crossing Observatory, a Monash University-based research centre reports that there have been 9 deaths on Manus Island since January 2014, four committed suicide, one was a suspected suide, one was the result of violence and the rest are maintained as health related incidents or accidents (Aljazeera 2017). The condemnation from the international community once again put Australia’s draconian policies and treatment of vulnerable asylum seekers in the spotlight.

This, however, did not put an end to the territorial manipulation and flagrant violation of human rights conducted by the Australian government. In fact, the securitisation and weaponisation of borders was only on the rise. After a leadership spill in March 2013, Rudd once again was sworn in as Prime Minister, changing his stance on indefinite detention by moving to curtail boats arriving to Australia shores and pledging that anyone who arrived by boat to Australia will ever be resettled in the country (Siegel, 2013). In an address to the nation he announced a new policy and a string of rhetoric that bolstered the hardline policy of his predecessor and informed much harsher punishment for individuals seeking refuge from persecution. He states that "people who come by boat now have no prospect of being resettled in Australia"; "we also have to do everything possible to protect our orderly migration system and the integrity of our borders"; "the bottom line is that we have to protect lives by dealing robustly with people smugglers"; "they’ve had enough of people smugglers profiting from death"; "your business model is over." (Rudd, 2013)
Despite the volatile change in leadership, the strong bi-partisan stance on deterrence policies prevailed, with the introduction of Operation Sovereign Borders by the newly elected conservative Prime Minister Tony Abbott and his government in 2013. Operation Sovereign Borders was evidence that the trajectory for migration management in the country was continuing to head in one direction - creating a landscape of deterrence and fear. Abbott ran on a campaign to ‘stop the boats’ with the sole intention of intercepting boats before they reached Australian waters and turning them back, which provided the baseline for his policy, Operation Sovereign Borders. In a key ad campaign from the Abbott government, a military general is pictured speaking to the camera in his army uniform echoing the words of the government in saying “the Australian government has introduced the toughest border protection measures ever”, “It is the policy and practice of the Australian government to intercept any vessel that is seeking to illegally enter Australia and safely remove it beyond our waters”, “if you travel by boat without a visa you will not make Australia home” (The Guardian, 2014). Alongside the youtube ads translated into 12 languages, the government also released comics that depict the suffering of Afghans in detention, a deterrence tactic that has been heavily criticised (The Guardian, 2014).

Table 3

<table>
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<th>Boats</th>
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</table>
In 2015, The New York Times published an op-ed underscoring the brutal treatment of migrants by the Australian government, noting that Prime Minister Abbott's policies were “inhumane, of dubious legality and strikingly at odds with the country’s tradition of welcoming people fleeing persecution and war.” (The New York Times, 2015). In response, Immigration Minister Peter Dutton responded by stating that “the Coalition government implemented strong policies to put the people smugglers out of business and end the deaths at sea,” “Our policies are lawful. They are safe. And they work” (The Guardian, 2015).

Since then, the rhetoric of stopping the boats has been a cornerstone of Australian immigration policy with the so-called hard line politics aimed at breaking the people smuggler business model in an effort to save lives (Amnesty International, 2016). Amnesty International (2016) reported an estimation of between 1,000 - 1,200 people drowned in attempts to reach Australia between 2008 and the end of 2013. In this vein, the Australian government has argued their intention is to protect human life at sea with their strict policies - a clear contradiction when witnessing the violent abuse of human rights taking place in the detention centres on Manus Island and Nauru.

Despite the assumption that stricter border enforcement measures are in fact detrimental to human life, the limitations in examining this theory boil down to the stronghold that Australia maintains on information surrounding boat interceptions and deaths at sea. The effectiveness of these kinds of deterrence policies are, however, highly contested and deemed particularly futile. Williams & Mountz (2018) state:
There exists little work tracking migrant losses at sea and enforcement operations. This gap in empirical knowledge relates to the hidden nature of these operations and to the racialized dehumanization and devaluation of migrant lives and losses of life (p.76).

It can be understood from this statement that the lack of information and transparency offered by the Australian government lies within a mechanism of control to allow for the strengthening of borders without protest. Nethery & Holman (2016) characterise the use of Australia’s offshore detention centres as having “a high degree of secrecy, low levels of transparency and accountability, and few opportunities for external oversight” (Nethery & Holman, 2016, p.1019). Exact numbers of how many arrivals and deaths occur at sea are extremely difficult to find. This does not allow for a thorough policy analysis if we cannot obtain the parameters to situate the policy within its context. Manus Island, dubbed the Guantanamo Bay of the pacific alongside Nauru, are both extremely hard to access, with Australian policies of extreme secrecy giving power to the government to imprison doctors, nurses and child welfare workers who witness the abuses in these camps. The policy, the Australian Border Force Act took effect in July 2015, which makes it a crime to record or disclose protected information (Refugee Council of Australia, 2021). Amnesty International (2016) states that many of these workers are afraid to speak out due to the threat of prison time. Alongside the gag laws that restrict the flow of information, gaining access to these sites is also extremely difficult, with reports of rampant denial of media visas for Nauru as well as the exorbitant cost of up to a $8000 non-refundable application, despite whether the visa is granted or not (Guardian News and Media, 2014). Currently, Australia spends 4.3 million a year to house its detention centre on Nauru, with an enduring agreement between the two countries into the foreseeable future (Guardian News and Media, 2021).
In 2015, a class action was brought against the Australian government, as well as the operators of the detention centre, on behalf of the detainees on Manus Island. The complaint was for the failure to take reasonable care of the detainees between 2012 - 2014, which was later amended to also include the false imprisonment of detainees between 2012 - 2016. In 2017, the Australian government agreed to settle at the cost of $70 million, reaching the settlement on September 7th of that year (Asylum Insight 2018).

The effects of these policies have created lasting damage for not only Australia’s relationships with neighbouring countries and allies, but the lives lost, and lives squandered with the untenable conditions in detention centres on these island nations. As a consequence these policies and actions have indelibly tarnished Australia’s name and commitment to preservation of life. This mounting pressure and focused attention on the detention camps led Papua New Guinea to reconsider its contract to detain Australia’s asylum seekers awaiting resettlement to a third country and to reaffirm their commitment to human rights.

In April 2016, PNG deemed the operation of the Manus Island detention centre unconstitutional and a fundamental breach of human rights, removing the remaining imprisoned individuals to hotel detentions elsewhere on the island and closing the detention centre indefinitely (Aljazeera, 2016). The removal of the some 1,250 men from the island did not solve the issue of where they would now be able to seek protection, even as verified refugees; as Australia's refusal to ease their hard line has become a central practice of the policy. Of the men detained on the island, Behrouz Boochani, an Iranian journalist, now resettled in New Zealand has been the most vocal in condemning and shedding light Australia’s violent practices - of which have largely been unknown due to gag laws (Hall, 2016). Despite the occurrences on Manus Island and its visibility in the media, as of 2016, an opinion poll by Lowy Institute
demonstrated that 69% of Australians believed that the government should turn back boats when it is safe to do so. It was also stated that 54% of Australians believed that asylum seekers should be processed offshore before deciding whether to resettle them in Australia (Lowy Institute, 2016).
Chapter 5. Swapping Refugees

With Australia’s commitment never to resettle anyone who attempts to reach the country by boat, numerous deals with third countries have been attempted to swap and resettle refugees. Three core agreements will be outlined below, with specific attention to rhetoric and details of the deal brokered between Australia and the United States in 2016. It should also be noted that other deals have taken place that are not outlined here, cementing Australia’s response to outsource the burden of refugee management to its neighbours and the rest of the world.

The Atlantic Solution, 2007

The connection between Manus Island (The Guantanamo of the Pacific) and the US controlled Guantanamo Bay in Cuba have a recent shared history that extends past the mere mirroring of policy and carcerality witnessed by both offshore detention centres. In April, 2007, Immigration Minister Kevin Andrews announced that Australia had signed a MOU (Memorandum of understanding) with the United States to swap refugees (Dastyari 2007). The agreement would see 200 refugees transferred from Nauru for resettlement in the United States, and 90 Cuban and Haitian refugees from Guantanamo Bay for resettlement in Australia (Deen, 2007). Ghezelbash (2018) asserts that the deal acts as a form of ‘refugee laundering’, despite the assertions from the Immigration Minister that the deal promoted a 'strong deterrence message to people smugglers' (p.143; Dastyari 2007). Not long after the agreement was concluded, the
newly elected Labour government in Australia abandoned the use of offshore detention centres and the deal never saw fruition (Ghezelbash 2018).

The Malaysia Solution, 2011

With the perceived softening of immigration policy and an increase to boat arrivals following the cessation of offshore detention, public opinion turned to blame this on the government's inability to secure its borders (Ghezelbash 2018). In this vein Prime Minister Julia Gillard introduced numerous measures to curb the flow of boats. Malaysia was identified as a desirable third country for resettlement, with an agreement seeing that 800 detainees in offshore detention would be traded for 4,000 UNHCR-recognised refugees from Malaysia (Ghezelbash 2018). The government relied on 198A of the Migration Act that allowed for Offshore Entry Persons (OEP) to be transferred to a ‘declared’ country (Ghezelbash 2018). The preliminary agreement with Malaysia, who is not a signatory of the Refugee Convention, determined that transfers would not be screened for protection claims, but would, however, receive temporary work permits for the duration of the four year deal (Ghezelbash 2018). The agreement Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement was signed on July 25 2011 (Human Rights Commission 2011). In order to designate a declared country according to Existing paragraph 198A(3)(a) of the Migration Act the minister may announce:

that a specified country:

- provides access, for persons seeking asylum, to effective procedures for assessing their need for protection
- provides protection for persons seeking asylum, pending determination of their refugee status
provides protection to persons who are given refugee status, pending their voluntary repatriation to their country of origin or resettlement in another country, and meets relevant human rights standards in providing that protection (Parliament of Australia, 2013).

The agreement, however, was deemed by the high court in Australian to contradict the stipulations in the Migration Act that requires the declared country to “meet[s] relevant human rights standards in providing that protection” in a decision made in Plaintiff M70/2011 and Plaintiff M106/2011 v Minister for Immigration and Citizenship on 31 August 2011 (Human Rights Commission 2011). The challenge to the agreement was brought on behalf of two Afghan asylum seekers who were to be a part of the first cohort of asylum seekers transferred to Malaysia. Their complaint required an injunction to their removal, as Malaysia, not a signatory to the Refugee Convention, did not provide protections and did not meet the criteria set forth for 198A(3)(a) of the Migration Act (Ghezelbash 2018).

With the agreement being deemed invalid by the High Court of Australia, the deal between the two countries was suspended, and the Gillard government moved to create alternative solutions - leading to the eventual reopening of offshore processing on Nauru and Manus Island. The new memorandum of understanding with Nauru and Papua New Guinea was thus signed and the continuation of the highly criticised detention centres resumed. (Ghezelbash 2018).

Atlantic Solution (The American Solution), 2016

In April 2016, the closure of Manus Island detention centre was announced by the PNG government, after the Supreme Court in PNG found the existence of the detention centre to be
unconstitutional and a fundamental breach of human rights (Aljazeera 2016). This announcement led to more alternative solutions on Australia’s behalf, as their hardline policies retained their prominence as a key feature of migration management at sea. Thus, another deal was brokered between Australia’s Turnbull Government and the Obama administration in the United States. The deal would see the transfer of an initially undisclosed number of detainees (later to be determined as almost 1,250) from Manus Island and additional numbers from Nauru to the US, in exchange for Australia to resettle a reported amount of 20 - 50 of mostly Central American refugees from the US who were fleeing gang violence and awaiting their resettlement detained in camps in Costa Rica (Davidson, 2018; Ghezelbash 2018). The architect for the deal, former US assistant secretary of state for population, refugees and migration, Anne Richard stated that “the impetus behind the US-Australia deal on our side was to get the people who were refugees off those islands, because my understanding was that conditions were bad,” (Davidson, 2018).

Richards also referred to the deal as an understanding that Australia would “do more” for other refugees by stating that “it was an expression between two close allies that Australia would make every effort to do more, to take refugees fleeing the triangle of Central America, to take refugees from outside areas it didn’t usually take refugees from, to take more from Africa, for example, where there are large numbers of refugees in the population.” (Davidson, 2018).

Thus the deal was largely demonstrating good will among the two countries and a commitment towards human rights. Within such statements by Anne Richards, however, there was a lack of condemnation towards Australia’s treatment of refugees, despite the recognition that “the conditions were bad”.
With the change of administration from Obama to Trump in 2016, the deal hit a roadblock, with Trump signalling that he would not honour the agreement. In discussing the agreement, a private call between Prime Minister Malcolm Turnbull and President Donald Trump was leaked and subsequently went viral (Miller et al., 2017). The call to review the deal was one of pushback from the Trump Administration, who was concerned that the trade a “dumb deal” that would make him look bad in his first week of his presidency (Miller et al., 2017). The deal’s revival incidentally coincided with the beginnings of the infamous ‘Muslim Ban’, a policy instituted by Trump that would see the ostracisation of individuals from 8 countries, 5 of which belonging to a muslim faith (Hing, Chacon & Johnson 2021, p.359. The Muslim Ban was purported to stop the obtainment of visas from countries that would not cooperate with the standard of information sharing the the United States had requested in order to monitor and stop terrorism (Hing, Chacon & Johnson 2021, p.569). The crux of the matter, however, was not one of securisitastion as it was presented and rolled out, but one blatant act of religious discrimination - as the campaign trail promise that Trump would stop all Muslim immigration to the United States would suggest. In addition to the Muslim Ban, Trump’s administration also suspended all refugee programs for 120 days (Washington Post). Adding to the complexity of the situation, of the 1,250 men that remained on Manus Island intended for the swap, the majority were of a Muslim faith, who now faced two countries that refused to offer them safety for two very distinct reasons; principle and racism, spearking fear among detainees of arriving to another form of persecution in the United States (The Economist, 2016).

The call between Turnbull and Trump lasted 24 minutes, in which time the Turnbull Government went to lengths to convince the new US administration that upholding the deal would be in their best interest, despite consistent rebuttals from Trump. The US president
repeated remarks stating that the deal will “make us look awfully bad” and “This is going to kill me” (Miller et al., 2017). In a bid to understand the seemingly illogical deal Trump questioned Turnbull in saying “What is the thing with boats? Why do you discriminate against boats? No, I know, they come from certain regions. I get it.” (Miller et al., 2017) In response to Trump’s pointed questions, Prime Minister Turnbull echoed Prime Minister John Howard’s words when stating “The problem with the boats it [sik] that you are basically outsourcing your immigration program to people smugglers and also you get thousands of people drowning at sea. So what we say is, we will decide which people get to come to Australia who are refugees, economic migrants, businessmen, whatever” (Miller et al., 2017) This statement has been a foundational aspect of Australia’s migration policy and one that has stood the test of time throughout the past two decades.

Despite the phone call being intended to remain between the two presidents, the conversation between the two leaders followed a similar thread of public discourse surrounding migration, using tactics of fear mongering to portray asylum in a negative light. This is demonstrated with Trump eluding to the fact that he believed he would be accepting potential terrorists to his country if he were to honour the deal. He said “Does anybody know who these people are? Who are they? Where do they come from? Are they going to become the Boston bomber in five years? Or two years? Who are these people?” And, “We have our San Bernardino’s, we have had the World Trade Center come down because of people that should not have been in our country, and now we are supposed to take 2,000. It sends such a bad signal. You have no idea. It is such a bad thing” (Miller et al., 2017).
Prime Minister Turnbull then reassured Trump by stating that “they have been under our supervision for over three years now and we know exactly everything about them”, whilst also repeatedly stating that the people within these detention centres were “economic refugees”. The deal, despite its setbacks, went ahead, with the extra vetting on the side of the US taking place in the detention centres. On September 26 2017, the first cohort of refugees from Nauru and Manus Island entered the United States - just over a month later, the detention centre on Manus Island was forcibly closed, with 700 men left with nowhere to go (Ryan et al., 2020). As of February 2022 this Australian government states that “the United States resettlement arrangement has enabled 998 individuals (401 from Nauru, 426 from PNG and 171 from Australia) to resettle in the United States” (Department of Home Affairs, 2022). According to the Australian governments’ reporting, there remain 112 individuals on Nauru awaiting resettlement processing, with the numbers of remaining men on Manus Island ceasing to be reported after the finalisation of the deal between Australia and Papua New Guinea on December 31 2021 (Department of Home Affairs, 2022).

It should be noted here, that throughout the years of resettlement deals that have been brokered by the Australian government with neighbouring countries, that New Zealand has repeatedly stated their willingness to resettle refugees from Manus Island and Nauru. This willingness has consistently been met with rejection from the Australian Government, under the guise that it would encourage more asylum seekers to attempt to reach Australia by boat. In 2018 the previous home affairs minister, Peter Dutton, stated the government's fear of opening this deal would result in being “a pull factor”. The following year, Dutton retained his stance on unauthorised immigration when being interviewed on the radio by Ray Hadley describing that refugees requiring medical evacuation from detention camps was an attempt by the labour party
to “bring these foreign terrorists into our country” (2GB, 2016). Despite the fear mongering, in March 2022 Australia took up the agreement with New Zealand nine years after the deal was struck (Butler et al., 2022). Under the deal, 450 refugees from Nauru will be resettled in New Zealand over three years, however, those that are on pathways for resettlement to the United States under their swap agreement will not have the opportunity to travel to NZ. Despite the eligibility for many New Zealanders to live, work and study in Australia under a special category visa, this option will not be available to anyone resettled under the deal, despite whether they gain New Zealand citizenship or not (Butler et al., 2022). Home Affairs Minister Karen Andrews stated to the press in March 2022 that “people who come to Australia illegally by boat will never settle in Australia”, reaffirming that the hard line approach that Australia has maintained for decades will not be weakened by the long avoided agreement between the two countries.
Chapter 6. Discussion

Over the course of the last 20 years, Australia has cemented and expanded a draconian immigration system that has become foundational to the country’s immigration policies. Despite international condemnation and the detrimental effects to human life that these policies prologate; a practice that I call deter, detain and trade, shows no indication of slowing down. This model, however, does not exist in a vacuum and closely mirrors the framework set in place by the United States and their responses to mass migration from Haiti and Cuba in the beginnings of the 1970s through to the 1990s. What is witnessed is a slow degradation of a compassionate system of asylum in both countries, while at the same time providing a blueprint for the western world to follow in order to deter migrants and create new spaces of liminality and carcerality. In Refuge Lost, Daniel Ghezelbash (2019) demonstrates (through a legal framework) how the transfer of immigration policies from the United States to Australia have progressively become known as the ‘Australian Solution’ in much of Europe, despite the policy's origins from the United States (p.16). The question I embark on here with this research is not solely how these policies are mimicked from the United States, however this contextualisation is important, but how have they been normalised and accepted by Australia’s citizens and the world despite their deathly impacts? And what are the political and geographical manoeuvres that allow for the manipulation of space and popular opinion?

What has become clear from the content analysis of the data utilising the lenses of Homo Sacer, biopolitics, spatiality and chaotic geographies is that there are five steps to creating the conditions that allow for the normalisation of the practice of detain, deter and trade. This practice relies upon political rhetoric that manipulates popular opinion through producing the following determinations of policy creation: (1) crisis, (2) creation of Homo Sacer (3) saviourism and (4)
Crisis

Through Agamben (1998) and his seminal work of Homo Sacer, the reach of sovereign power through the application of martial law is explored when a country is in crisis or a state of siege - what he refers to as a “state of exception”. He highlights that “by declaring the state of exception, the sovereign assumes the unlimited authority to impose normalcy through violent means (p.87). Naomi Klein’s (2007) work with the theory of Shock Therapy, expands on the state of exception and examines circumstances throughout history that have demonstrated this “unlimited authority” and its catastrophic effects through the book Shock Doctrine (2007). Through her work it becomes evident that in order to capture a wide breadth of control over a population, the injection of crisis to disrupt the norm is required to manipulate states of fear that reverberate among a population and subsequently influence popular opinion.

There is no denying that a country will at any given point in time experience a national crisis that requires a strong position from the government; whether it be a natural disaster, terrorist attack or other disruptions that render a population to a state of shock. What has been highlighted through Naomi Klein’s work is that the state of shock that allows for the government to take complete control over national responses and unfettered policies can be manufactured. What this tells us is that in order to create policies that would be deemed unreasonable in times of stability, a crisis is required to silence push back from a population for a government to extend its authority in its own country and region.
Examples of crisis creation are explored at length within Shock Doctrine (2007), here however, I focus on the language around the “migration crisis” that is widely referenced throughout the Western World with the intention to draw attention to the migration crisis that has been manufactured in the United States and Australia as a result. With the historical examples of boat arrivals to both countries the reaction from the two governments has been to quickly secure their borders and subsequently demonise refugees and asylum seekers. The political rhetoric from Ronald Regan in the 1980s clearly demonstrates a need to close the doors to unauthorised arrivals as he deemed the increase in boat arrivals as a "a serious national problem detrimental to the interests of [our country]” (De Matteis, 1993, p.438), whilst also positioning himself as the ‘sovereign’ who controls the boundaries of his country by stating that “a nation that cannot control its borders is not a nation”(Mettler, 2018). This response demonstrates nationalist ideologies that pander to fears of invasion, giving rise to already heightened anxieties during the cold war period.

This rhetoric was mirrored by the Howard government in Australia, when the ‘Tampa Crisis’ stirred fears of porous borders in late August of the year 2001. The event, alongside the securitisation of borders and the introduction of offshore detention garnered a favourable response from the public and is touted with the re-election of the government later that same year, with 77% of Australians agreeing with the Prime Minister’s tough responses on immigration (Sydney Morning Herald, 2001). In Prime Minister Howard’s election run launch speech he famously states that “we will decide who comes to this country and the circumstances in which they come”. This statement closely resembles Reagan's declaration of national control of borders, reiterating the power of the sovereign to determine who has access to the sovereign state. The attempted passage of the Border Protection Bill in 2001, demonstrates the use of crisis
to institute sweeping reforms, as demonstrated by Klein (2007). The breadth of power and uncertainty that this policy would have created in future circumstances was recognised at the time by the opposition and voted down.

It is evident here that the introduction of crisis and fear is a cornerstone of bolstering political affinities in countries like Australia and the United States. The ‘creation of crisis’ in Australia was witnessed in the Children Overboard Affair utilising the momentum from the demonisation of refugees and asylum seekers to ensure the Howard government's win in the federal election. Prime Minister Howard stated that “Genuine refugees don’t put their own children at risk, they become refugees in the name of the preservation of the safety of their children” (PM Transcripts, 2001). Within this statement he simultaneously portrays these individuals as immoral and to be feared whilst stripping them of refugee status despite not having processed any individuals. It later became known that the entire event of refugees throwing their children overboard that was touted as a tactic to ‘manipulate the government’ was fabricated.

The ‘migration crisis’ in Australia has not solely relied upon historic immigration policies by the Howard government, however, but has enjoyed bipartisan support from every subsequent government in the last 20 years, despite a short lived effort from Prime Minister Kevin Rudd with his closure of Manus Island detention centre. Rudd’s brief foray with humane approaches to shift the narrative to a more a humanitarian stance was replaced quickly with more entrenched and draconian policies that expanded on the carcerality of detention. In reopening the Manus Island detention centre after an increase of arrivals he declared that "people who come by boat now have no prospect of being resettled in Australia.” Cementing what once was an offshore ‘processing centre’ to a full fledged carceral detention centre. The tactic of purporting a
humanitarian stance but subsequently repeating the actions of the previous government was also enacted by the Clinton administration. When running for office former President Bill Clinton said “Of course we’re gonna let Haitians in” in response to the Reagan administration’s approach to arrivals. However, upon taking office decidedly continued the policies of the previous government.

At a time when the world is experiencing the largest forced migration event in history, with the UNHCR reporting that more than 65.5 million people had been forcibly displaced in 2016, the crisis of how to manage this global issue has slowly framed this issues as the norm - further grounding the policies enacted as a response to crisis as the new normal for migration management (Ghezelbash, 2018, p.17). To return to Agamben (1997) and his statement of a government’s “unlimited authority to impose normalcy through violent means (p.87)” what we witness is that even when the immediate ‘crisis’ has subdued, the hardline policies that were enacted in a state of siege have remained, and have only increased in their brutality.

Homo Sacer

In order to sustain a crisis there must be an ‘other’ or an enemy. Within Australia, the attempts to degrade those arriving by boat, are consistent and deeply entrenched in political life. The figure of Homo Sacer which is applied to the refugee boat arrival is described by Zannettino (2012) as:

The detained refugee [who] is homo sacer in that she/ he is all at once naked of the legal and civil rights of the state in which she/he has sought refuge yet is simultaneously subject to the power and control of that state, which can ‘legally’ do whatever it wants with her/him” (p.1099)
The production of Homo Sacer in Australian society has consisted of a slow burning gas light that has been fuelled over the past 20 years, utilising situations of crisis to allow the rhetoric to retain its power. Ronald Regan in the 1980s set the stage for fear mongering with regards to refugees, creating a clear path for rhetoric such as “line jumpers” and “economic migrations” to be mimicked by Australia. He stated that there is “a tidal wave of refugees. And this time, they’ll be ‘feet people’ and not ‘boat people’ swarming into our country . . . ” (Shull, 2021, p.16). The pervasive use of language likening refugees to deadly natural disasters or a plague of locus is by design, not only to stoke fear, but creating a target that in turn legitimises the states power to eliminate the ‘threat’. John Howard similarly insinuates the immorality of refugees who refuse to wait by stating that “there are tens of thousands of people who want to come to Australia who queue up, who wait, who fill out the form, abide by the rules, wait their turn.” These claims of queue or line jumping by both governments have been disproven, and are non-existent, as the refugee council states that if there were a queue it would take 180 years from the back of the line (Australian Red Cross, 2022).

The process of demonisation of refugees has shown that the Australian publics’ attitudes have been less sympathetic if the political rhetoric relies on the use of ‘illegal immigrants’ rather than ‘asylum seekers’ (Augoustinos & Quinn, 2003). Mbembe (2003) claims that “in such instances, power (and not necessarily state power) continuously refers and appeals to exception, emergency, and a fictionalized notion of the enemy” (p.16). This tactic is also used to liken refugees to terrorists, which promotes fear, dehumanises refugees and bolsters negative popular opinion of refugee arrivals in the Australian public. Prime Minister Howard, alongside Peter Dutton and President Trump use the casual reference of terrorism to fictionise the ‘notion of the enemy’ by stating such things as:
Howard: “National security is therefore about a proper response to terrorism. It’s also about having a far sighted, strong, well thought out defence policy. It is also about having an uncompromising view about the fundamental right of this country to protect its borders.” (Howard, 2001).

Dutton: “she wants to bring these foreign terrorists into our country” (2GB, 2016)

Trump: “Does anybody know who these people are? Who are they? Where do they come from? Are they going to become the Boston bomber in five years? Or two years? Who are these people?” (Miller et al., 2017).

This political rhetoric allows the sovereign to strip the homo sacer to bare life and relegate them to a state of exception (detention camps), as it is in the interest of national security to protect and preserve the life of its constituents. What has been demonstrated throughout the Australian experience is that through these events and hardline policies, the legitimacy and power that has been maintained by the Prime Minister (the sovereign) has resulted in election wins and an agreeable public to tough measures on immigration.

Savourism

The demonisation of foreigners coming to Australian shores is a deeply entrenched ideology in the Australian psyche, seen through policy and practice over the last century. As is underscored within this research, the Australian government has made concerted efforts to strip refugees of their humanity, causing uproar among human rights organisations and the global public; condemning the country for its severe policies. The rhetoric surrounding refugees in media across the country demonstrates how the government both demonises refugees and asylum seekers, yet at the same time plays saviour to them by diminishing them to victims of people smugglers, and enacting hard measures to “save lives”. Here the rhetoric simultaneously combines the narrative of victim and enemy for refugees and asylum seekers and condemns
people smugglers to the position of enemy. This creates a paradox of human rights, where we witness the contradiction of the government who abuses human rights in a bid to ‘preserve life’.

This tactic not only dehumanises refugees and asylum seekers, but also disempowers them as they are stripped of agency and are required to be saved by the Australian government. This position of hero also helps to subdue the Australian population by deflecting harsh criticism from the global stage and convincing the population of its inherent goodness. The smuggler, however, is not visible in the media as a particular individual or group, but rather a phantom enemy that justifies the strict policies set in place. The demonstration of the rhetoric here is simply to understand the ways in which the government weaponises people smuggling to justify their policies, and does not highlight a moral or philosophical debate around aiding the passage of asylum.

Following the Tampa Crisis in 2001, Prime Minister Howard set the tone and responses towards people smuggling by stating that:

“I think it’s more a mark of the determination of those who’ve taken advantage of people, or using the services of people smugglers, it’s the people smugglers that are taking advantage of them. But it’s a determined attempt to intimidate us and we have to understand that.”

Kevin Rudd similarly followed the narrative of “saving lives at sea” in saying:

"The bottom line is that we have to protect lives by dealing robustly with people smugglers" and that "they’ve had enough of people smugglers profiting from death."

Within both of these statements from opposing governments, what is clear is that the message set forth is a compassionate and concerned response for victims of smuggling and their potential loss of life at sea. Kevin Rudd provides a staunch warning to people smugglers that their "business model is over", however, one particular business model has not been identified. As acknowledged by the government, the practice of smuggling manifests in multiple ways and
transit routes among numerous actors (Parliament of Australia, 2013). The ambiguity of who people smugglers are, ultimately works in the governments favour, as the entire issue of boat arrivals relies upon a lack of transparency in order to continue utilising policies that have been proven to harm life. The rhetoric that justifies the government practice of intercepting and turning back boats has also been used in the United States debate over the same issue. During the Reagan administration, Florida Governor Bob Graham also lamented the dangerous passage of Haitians to the United States saying that it was "a human tragedy which has been waiting to happen,” his comments were bolstered by a coast guard spokesperson who expressed that “It's just such a tragedy," emphasising that "It's what we were hoping to avoid" by intercepting vessels. What these statements demonstrate is that the government intercepts boats for the good of humanity, positioning itself in the position of saviour and ultimately hero. This rhetoric factors conveniently alongside the discourse of ‘crisis’ as it provides a way to neatly package the problem as being resolved, and thus, not the central topic of political debate or everything life for Australians. In this vein, the issue of boat arrivals becomes business as usual, with the normalisation of the crisis and return to “stability”. The statement by Immigration Minister Peter Dutton reinforces this idea of stability and normalcy when stating that

“The Coalition government implemented strong policies to put the people smugglers out of business and end the deaths at sea,” “Our policies are lawful. They are safe. And they work."

Gordon Menzies (2015) examines the efficacy of the policy of stopping the boats in *Stop the Boats: Do the Ends Justify the Means?* Through this research he demonstrates that the policy of stopping and returning boats did in fact reach the goal of slowing future arrivals, as acknowledged in Table 3.
What Menzies (2015) questions, however, is do deterrence policies used against boat arrivals allow for such abhorrent policies in the first place, and what will happen to Australia’s reputation on the global stage? Despite these criticisms, the rhetoric and practice remains unchanged, and seemingly stable in its position as a foundation policy. This is most recently illustrated by former Prime minister Malcolm Turnbull on his call with President Trump in 2016. He says that “the problem with the boats it that [sik] you are basically outsourcing your immigration program to people smugglers and also you get thousands of people drowning at sea” (Miller et al., 2017) From a humanitarian perspective, one could argue that it’s not the boats that are the problem as duly noted above, but the governments that play a role in their forced migration.

Spatial disorientation & Zones of exception

The carceral use of space and territory have been key components of both the United States and Australia’s immigration responses to mass arrivals - with externalisation and interdiction being pertinent examples. The use of offshore detention centres such as Guantanamo Bay, Nauru and Manus Island work not solely to distance refugees from society through zones of exception, but allow for the unobstructed political narrative to justify them as criminals and thus deserving of incarceration. The manipulation of space through the shrinkage of migratory zones with amendments to the 1958 Migration Act in Australia, alongside the physical interception and return of boats demonstrated with the Pacific Solution and Operation Sovereign Borders is described by Alison Mountz (2020) as “the genealogy of externalization [that] shows the port of entry as a moving threshold where migrants either enter sovereign territory, traditionally along
land and sea borders and in airports, or find that they are excluded (p.31). Externalisation in its practice is not limited to the physical space surrounding both countries, but has transformed to move the threshold onto the bodies of migrants themselves. Not only do refugees who are transported to offshore detention centres exist within the judicial order of the sovereign states who incarcerate them, they in turn become property that allows both countries to engage in trade using the bodies of refugees who are relegated to spaces of liminality and forcibly displaced once more through these deals. The Refugee Swap of 2016 is a prime example of forced displacement at the hands of the refugee receiving state, as many detainees of muslim faith were reluctant to engage in resettlement to the United States - where muslims were being actively banned and discriminated against. The Australian government maintained that all detainees chose whether or not to accept the deal, despite the choices being future persecution or indefinite detention - leaving no real room for a humane resolution. The narrative given for these exchanges refugees boils down to political exchange and gain, not the preservation of human life, as demonstrated by the phone call between President Trump and Prime Minister Malcom Turnbull, where Turnbull justifies the reason for the trade relying solely on the fact that Australia maintains a position of never resettling anyone who arrives by boat, as it exists as a ‘pull factor’ for others. What lies within these dog whistle tactics and codification of ‘pull factors’ is the intention to break migration chains, disorient refugees through the use of chaotic geography, and bolster a relationship with the most powerful country in the world who will not condemn a practice if they too engage in the same conduct. This in turn strengthens the positions that both countries take to continue these practices and provide a model for the rest of the western world. Despite the opaqueness of the policy and practice of the two countries, what we are left with is the intangible
representation of the border that is tattooed on the bodies of those that are victimised by the state and traded with zero regard to their agency or humanity.

**Conclusion**

The similarities between the United States and Australia rests on a history of colonialism, racism and xenophobia towards immigrants - a narrative that has been building for hundreds of years and one that is perpetually stoked to remain active (Zelnik, 2016). The endless migration crisis that is represented through mass media and political rhetoric has been enlivened in the past two decades through the upheaval of global events that has produced the most forcibly displaced persons throughout our history. Yet, despite an ever increasing need to find humane solutions to a global issue, two of the most powerful countries in the world, Australia and the United States, who remain only symbolically committed to the issue of refugee resettlement, are demonstrating a destructive and cruel system of migration management that not only seeks to deter migrants, but to actively strip them of humanity and thus undeserving of refuge. The power of this crisis has been harnessed by both governments as a political tactic to bolster sovereign state power and control of regional politics perpetuating harmful practices around the world. This research has examined the historical policies and approaches from the United States and determines that the same rhetoric and process of spatial manipulation and externalisation has been closely replicated by Australia.

Not only has Australia mimicked the US’s approaches, they have expanded on them, by creating a system of indefinite detention for refugees who flee their home countries by boat - an arbitrary policy that's sole purpose is to vilify refugees and conflate their existence with terrorism. This political manipulation of the events provides grounds for Australia to justify the
securitisation and militarism of its border under the guise of national security. Australia’s engagement with the United States migration management is not limited to the replication of policy as both countries actively collude to deter arrivals of refugees to their shores by demonstrating how they will be treated if they attempt the journey through incarceration, violence and eventual forced displacement once more through trade. These systems of immigration management have been continuously condemned on the global stage, and yet demonstrate that they are only strengthened by the support of the United States and its expansion through Europe.

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