

Submission to the Parliament of Victoria's *Inquiry into Extremism in Victoria*

International Law, Populism and Right-Wing Extremism

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The authors are investigators and researchers on an Australian Research Council Discovery Project: *International Law and the Challenge of Populism*. This submission was supported with funding from that grant. The views expressed here are submitted in our capacities as academic researchers and do not necessarily reflect the views of our institutions.

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1. Background

The authors note the timeliness of this Inquiry as global tensions rise and domestic right-wing extremism becomes more prevalent, and welcome the opportunity to make this submission.¹

The rise of right-wing extremism is one aspect of a broader political phenomenon linked to the rise of populist politics in Australia and in many other parts of the world. Not all right-wing populists are extremists. But a political environment which accommodates right-wing populism provides fertile ground for such extremism.

The authors of this submission have, since 2020, been conducting research into the relationship between international law and institutions, and the rise of populism.² This research is supported by an Australian Research Council Discovery Project grant. This submission seeks to draw on that research such as it relates to the terms of reference of the present Inquiry. Although responsibility for international relations falls to the Commonwealth, the authors of this submission consider that understanding international legal arrangements and their relationship to right-wing populism is important. This contributes towards understanding the phenomenon of extremism generally, and coming up with national, state-based and local measures to address it.

Specifically, the authors' research indicates that commonalities and connections between right-wing populist and extremist movements around the world are in part a reaction to a common international legal and economic system, and the growing economic insecurity the global economy has engendered (TOR A(i)). This is not a new observation. Perhaps more surprisingly, our research reveals that the international institutional architecture and governance of these systems have contributed to the rise of right-wing populism, and indirectly, to right-wing extremism.³ This forms an important backdrop to the other forms of connection and commonality between right-wing populism and extremism, especially those fostered by online communities and social media (TOR A(iii)). Understanding the nexus between the national and international, may also help the Committee to come up with creative and effective means to tackle the local dimensions and manifestations of the problems identified by the Inquiry.

¹ 'In Geneva, UN Urges Upholding Human Rights Amid Rising Populism and Extremism' *UN News* (online, 27 February 2017), at <https://news.un.org/en/story/2017/02/552222-geneva-un-urges-upholding-human-rights-amid-rising-populism-and-extremism>; *Resolution Adopted by the General Assembly on 22 December 2018*, GA Res 73/262 UN Doc A/73/587 (19 January 2019), 2: 'Alarmed at the spread in many parts of the world of various racist extremist movements based on ideologies that seek to promote populist, nationalist, right-wing agendas and racial superiority, and stressing that these practices fuel racism, racial discrimination, xenophobia and related intolerance'.

² The project builds on earlier work conducted since 2013 by Dr Rose Parfitt on the relationship between international law and fascism, including through an ARC Discovery Early Career Research Award: 'International Law and the Legacies of Fascist Internationalism' (2016-18) DE160100314. See, e.g., Rose Parfitt, 'Fascism, Imperialism and International Law: An Arch Met a Motorway and the Rest is History...' (2018) 31 *Leiden Journal of International Law* 509, Rose Parfitt, 'The Anti-Neutral Suit: International Legal Futurists, 1914-2017' (2017) 5 *London Review of International Law* 87, Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press, 2019), Rose Parfitt, 'Fascism and the International: The Global South, the Far-Right and the Global Legal Order' *TWAILR: Reflections* (30 August 2019), at <https://twailr.com/series-introduction-fascism-and-the-international-the-global-south-the-far-right-and-the-international-legal-order/>, Rose Parfitt, 'Is Fascism Making a Comeback?' (Blog post, 5 December 2017, *Verso Books*), <https://www.versobooks.com/blogs/3514-is-fascism-making-a-comeback>.

³ Even more surprising, but connected, are the direct links between international law and fascism, which have been detailed by Dr Rose Parfitt. See *ibid*.

2. Submission

2.1 Introduction

There are important affinities between extremism and right-wing populism. There is no single definition of ‘populism’, or even ‘right-wing populism’, nor consensus of opinion on their various features. However, common elements considered by many to characterise populism, include a distrust of elites (including governments, experts, and parts of the media), and a hostility toward people who are ‘different’. Right-wing populism generally involves the rhetorical identification of a true and singular ‘people’ – often described in national terms. The ‘nation’ in this rhetoric is often mythic, and/or nostalgic for a mythic past. These ‘pure’ people are described as having been let down or betrayed by ‘elites’ and threatened by those who are ‘different’. Political leaders who mobilise and/or respond to this rhetoric generally claim to directly represent the pure ‘people’ in their struggle against elites and minorities.⁴ Right-wing populism is not new, but this variant is on the rise globally. The timeline is less clear. We will say more about that below (see 2.4).

The phenomenon of right-wing populism links to international law and institutions in three ways. First, international law and institutions are often targets of populist hostility.⁵ However, we cannot dismiss all opposition to international legal ordering as misguided. It is important to understand and distinguish those aspects of international law and institutions that may give rise to genuine concerns about material well-being and democratic control of policy, from those which function as a screen upon which both real resentment and paranoia about global conspiracies are projected. Second, populists rely on assertions of national sovereignty. This is a fundamental – but complex – ground of international authority. The populist version is radically simplified, but aided by rhetorical usages of ‘sovereignty’ and ‘reclaiming sovereignty’ by mainstream politicians in several countries. Third, there are important affinities between right-wing populism (including its extremist variants) and international legal ordering. Below we address these three points in more detail.

We note that the problems of right-wing extremism in Australia are, in general, less pronounced than in other Western democracies such as the United Kingdom, the United States of America, and France. This is good news. But as the terms of reference point out, far-right extremism is growing in Australia and these differences are questions of degree rather than form. Unlike the UK, we have not yet had a centre-right government work in lock-step with a far-right party (Nigel Farage’s Brexit party & UKIP) to fundamentally re-structure its international relationships (as in the case of Brexit). But we do have sitting members of the government (e.g. Fraser Anning, George Christensen and Craig Kelly) who regularly attend far-right rallies.⁶

⁴ Jan-Werner Müller, *What is Populism?* (Penguin, 2017); Jan-Werner Müller, ‘Populism and Constitutionalism in Cristóbal Rovira Kaltwasser, Paul Taggart, Paulina Ochoa Espejo and Pierre Ostiguy (eds) *The Oxford Handbook of Populism* (Oxford University Press, 2017). See further Chantal Mouffe, *For A Left Populism* (Verso, 2018) for a discussion of the distinction between left and right populism.

⁵ Obiora Chinedu Okafor, Independent Expert, *Human Rights and International Solidarity*, UN GA A/75/180 (20 July 2020).

⁶ See e.g. David Wroe, ‘Politicians Unite Against Racism as Neo-Nazis and Senator Fraser Anning Condemned’ *Sydney Morning Herald* (online, 6 January 2019) at <https://www.smh.com.au/politics/federal/politicians-unite-against-racism-as-neo-nazis-and-independent-senator-condemned-20190106-p50pw5.html>; Tobi Loftus, ‘George Christensen Appears at Anti-Lockdown Rally Alongside QAnon Supporters’ *ABC News* (Online, 27 July 2021), at <https://www.abc.net.au/news/2021-07-26/george-christensen-qanon-supporters-mackay-rally/100324330>.

Our system of major parties choosing their leaders (as opposed to direct election), together with compulsory and preferential voting, helps to avoid some of the institutional factors contributing to the rise of Donald Trump in the US. But we have managed to import various conspiracy theories and culture-war topics that animate Trump supporters and the far-right in the US. Opposition to mask and vaccine mandates to address COVID-19 risks is one example.⁷ Another is the rise of a version of the ‘free-speech’ debate highly influenced by the US version of free speech,⁸ evident in the Prime Minister’s response to criticism of the pre-selection of an LNP candidate in Warringah (NSW) who has employed violent rhetoric about transgender people.⁹ Her remarks have been characterised by the Prime Minister as ‘insensitive’ but otherwise best understood as ‘standing up for women and girls’.¹⁰ His overall position has been that the candidate should not ‘be silenced’, underpinned by a version of free speech which encourages irresponsibility.¹¹

We have not yet had a far-right party achieve 42% of the vote in a major national poll, as in France. But, like France, we do have a political and media culture in which the demonisation and scapegoating of minorities has frequently entered the mainstream.¹² Such a culture normalises extremist and anti-social views and works against the idea that right-wing extremism is ‘beyond the pale of normal politics’. This tendency to normalise hateful views is enhanced by the rhetorical creation of, and opposition to, so-called ‘cancel culture’ and ‘wokeism’ – a feature of both major Australian political parties.

Further to these structural similarities, the links between right-wing populist and extremist movements in Australia and other Western democracies are formed directly through social media and misinformation networks. We hope and anticipate that these will be the subject of other submissions to this Inquiry. What we hope to contribute is an understanding of how the broader international legal and institutional framework influences these movements.

⁷ Daniel Hurst, ‘Scott Morrison Insists Mask Mandates Not Needed Despite Health Advice to Make Them Compulsory Indoors’ *The Guardian* (online, 22 December 2021), at <https://www.theguardian.com/australia-news/2021/dec/22/scott-morrison-insists-mask-mandates-not-needed-despite-health-advice-to-make-them-compulsory-indoors>; Stephanie Dalzell, ‘Senior Government Figures Refuse to Condemn Craig Kelly for Spreading Misleading Coronavirus Information’ *ABC News* (Online, 12 January 2021), at <https://www.abc.net.au/news/2021-01-12/craig-kelly-covid-online-information-michael-mccormack-greg-hunt/13051490>.

⁸ Tim Soutphommasane, ‘Trumpism Wreaked Destruction in the US – and Made its Way into Australian Political Culture’, *The Guardian* (online, 21 Jan 2021), at <https://www.theguardian.com/commentisfree/2021/jan/21/trumpism-wreaked-destruction-in-the-us-and-made-its-way-into-australian-political-culture>; Jeff Sparrow, ‘Australian Conservatives Go To Extraordinary Lengths to Deny the Reality of Rightwing Extremism’, *The Guardian* (online, 12 Jan 2021), at <https://www.theguardian.com/commentisfree/2021/jan/12/australian-conservatives-go-to-extraordinary-lengths-to-deny-the-reality-of-rightwing-extremism>.

⁹ Katharine Murphy and Elias Visontay, ‘Scott Morrison Faces Liberal Mutiny Over Warringah Candidate Katherine Deves’ Trans Views’, *The Guardian* (online, 16 April 2022), at <https://www.theguardian.com/australia-news/2022/apr/16/scott-morrison-faces-liberal-mutiny-over-warringah-candidate-katherine-deves-trans-views>.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² See e.g. Tom Plevy, ‘One Nation Has Changed, Says Barnaby Joyce, As He Preferences Them Second On How-To-Vote Card’, *The Guardian* (online, 10 May 2022), at https://www.theguardian.com/australia-news/2022/may/10/barnaby-joyce-one-nation-preferences-pauline-hanson-how-to-vote-card-australia-election-2022?CMP=share_btn_tw; Sparrow (n 6).

2.2 *International law as a source of resentment and reaction in right wing populist and extremist movements*

International law and institutions are seen by populists as the province of cosmopolitan experts, detached from the concerns of ‘real’ people, and a source of restriction on the sovereignty of the nation. Countering this perception depends on more than better explaining the benefits of international ordering to the broader population which is affected by it. The perception may be over-stated by right-wing populists and extremists. It may also be the subject of an empty rhetorical expression of resentment without any actual plan or desire to change those arrangements. But there is a genuine issue about the extent to which democratic politics in any one state can influence policy over a wide range of economic issues.

Other submissions to this Inquiry will no doubt detail the specific ways in which economic insecurity within Victoria impacts on the rise of far-right extremist movements in Victoria. More broadly, it should be understood that under conditions of economic globalisation, economic insecurity in any one part of the world is a phenomenon which is linked to economic and legal arrangements that span the globe. The rise of precarious work, casualisation and outsourcing are features of the global economy in which corporations are able to structure their operations to minimise local taxation, move operations to low-wage jurisdictions and work to undermine the power of workers to bargain collectively. These ‘features’ are not the product of the invisible hand of market forces which legal regimes are only able to affect at the margins. Rather, they are the product of a carefully constructed system of liberalisation of capital flows and the creation of tax incentives, deregulation, privatisation, tariff reduction and protection of foreign investment at the international level, which have intensified since the mid to late 1980s, building on institutional architecture dating from the end of WWII.¹³

That is not to say that all features of this system are contrary to Australia’s national interest, or the interests of Victorians (or, more precisely, certain parts of the Australian and Victorian communities). It is also the case that these constraints detrimentally affect so-called ‘developing’ countries much more than ‘advanced economies’. Nevertheless, one particularly significant driver of right-wing discontent is that people in advanced economies are now experiencing levels of economic inequality previously more common to export-capital oriented economies in the developing world.¹⁴ The complexity of these arrangements and the difficulty of influencing them produces, in right-wing movements, empty assertions of sovereignty rather than nuanced debate.¹⁵

The perception that the range of policy options available to local representatives is limited by broader parameters set at the global level may be misused and exploited by populist and extremist movements, but it has a basis in fact.¹⁶ It invites careful consideration of these

¹³ See for example Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso, 2019); Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2012); Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press, 2019).

¹⁴ See Kojo Koram, *Uncommon Wealth: Britain and the Aftermath of Empire* (Hachette, 2022).

¹⁵ For similarities in the US see for example Tucker Carlson’s extreme right rhetoric which defends the US border as sovereign against migrants from the global south but argues Russia’s invasion of the Ukraine is justified. See further Nicholas Confessore, ‘How Tucker Carlson Stoked White Fear to Conquer Cable’, *The New York Times* (online, 30 April 2022), at <https://www.nytimes.com/2022/04/30/us/tucker-carlson-gop-republican-party.html>.

¹⁶ See Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press, 2018).

constraints and their impact. However, our political culture does not cultivate careful consideration of the division of responsibility and authority between the international and national levels. Rather, the perception of constraint is amplified by a national political culture which seeks to deflect rather than accept responsibility, and in which international arrangements provide a convenient scapegoat for domestic policy failings (TOR A(ii) and D).¹⁷

Accordingly, when the Committee considers the questions of economic insecurity and distrust of governments and politicians (TOR A, (i) and (iv)), it should do so:

- aware of the nature of the constraints on policy – particularly economic policy – at the state and national levels, in light of international arrangements;
- aware of the impact of those international policy constraints which contribute to increasing inequality and precarious employment;
- aware of the perception (and misperception) of those constraints amongst citizens, including those with right-wing populist or extremist views;
- prepared to consider ways of transparently communicating the nature of those constraints to the Victorian and Australian communities, the reasons why they have been undertaken, and their limits; and
- considering how governments at state and federal level can properly articulate the range of policy freedoms they have in light of these constraints against which their responsibility can be accurately assessed.

2.3 National sovereignty as a populist and extremist trope

A misunderstanding of international (and national constitutional) legal arrangements often forms part of the rhetorical content of extremist movements in Australia. This is particularly evident in the so-called ‘Sovereign Citizens’ or ‘SovCits’ movement.¹⁸ Many of the propositions held by such groups are without legal foundation, such as the apparent authority of the Magna Carta, and the significance of the Australian Merchant Navy flag.¹⁹ They also partake in a simplistic, empty, nationalist rhetoric of ‘sovereignty’. This is furthered by the impact of social media which promotes short, sharp messages, lacking in content, which fail afford any meaningful level of interaction, discourse or challenge (TOR A(iii)).

¹⁷ Adam Morton, ‘Australia ‘Lagging at the Back of the Pact’ of OECD Countries on Climate Action, Analysis Finds’ *The Guardian* (online, 9 August 2021), at <https://www.theguardian.com/environment/2021/aug/09/australia-lagging-at-the-back-of-the-pack-of-oecd-countries-on-climate-action-analysis-finds>. Morton challenges the Morrison government’s assertions of emissions reductions vis-à-vis other countries. See also, Tony Blair, ‘Doctrine of the International Community’ (Speech, Economic Club, 24 April 1999), stating: ‘We are all internationalists now, whether we like it or not’, at <http://www.britishpoliticalspeech.org/speech-archive.htm?speech=279>.

¹⁸ See e.g. Kaz Ross, ‘Why do ‘living people’ believe they have immunity from the law?’, *University of Tasmania*, Blog Post, 28 July 2020), at <https://www.utas.edu.au/news/2020/7/28/1038-why-do-living-people-believe-they-have-immunity-from-the-law/>.

¹⁹ See Joe McIntyre, ‘What is the Australian Merchant Navy Flag, the Red Ensign and Why do Anti-government Groups Use It?’ *The Conversation*, (Online, 12 November 2021), at <https://theconversation.com/what-is-the-australian-merchant-navy-flag-the-red-ensign-and-why-do-anti-government-groups-use-it-170270>; Eden Gillespie, ‘The Rise of “Sovereign People” and Why They Argue Laws Don’t Apply to Them’, *The Feed: SBS News*, (Online, 13 August 2020), at <https://www.sbs.com.au/news/the-feed/article/the-rise-of-sovereign-people-and-why-they-argue-laws-dont-apply-to-them/i2g9jjj7g>.

Unfortunately, simplistic assertions of national sovereignty are something that mainstream politicians have also drawn on and continue to use, both in Australia and elsewhere.²⁰ This is especially prevalent in the case of migration law, border protection and the environment.²¹ Routinely, this kind of assertion has been used to deflect criticism from international bodies about Australia’s treatment of refugees and environmental policies, indicating that there is perceived domestic mileage for national politicians to be seen as ‘standing up’ to international legal authorities on such issues.²² This feeds into another aspect of populist and extremist movements, most pronounced in relation to climate change: the refusal to recognise international expertise. Repeatedly, we hear from political leaders that ‘Australians will set our own path... by Australians for Australians’.²³ The rhetoric is both simplistic and nation-centric, suggesting that Australia knows better than international experts and needs leaders who can stand up for the national interest against international interference. This rhetoric feeds directly into a hyper-nationalistic sentiment and affirms a vision of Australia against the world, which impacts upon reception of diversity (TOR D) and imbues a distrust of those perceived as friendly towards international institutions (TOR A(iv)).

Further, Australia’s migration system has long been a site of racist scapegoating (TOR A(ii)) and used for electoral advantage by politicians and broader social movements (TOR D). Again, this contributes towards distrust of political leaders who are perceived as pro-immigration or pro-refugee (TOR A(ii)) and pushes the debate towards right-leaning, anti-immigration policy.

Australia’s position migration creates opportunities for right-wing populist and extremist actors to present their views as consistent with mainstream positions, and blurs the lines of what kind of rhetoric and action is acceptable in relation to race and migration, contributing to risks for multicultural communities (TOR D).²⁴ This blurring needs to be read in light of the long history of racist policy in Australia, from the historical and continuing dispossession, marginalisation and disproportionate incarceration of Indigenous peoples, to the White Australia Policy, offshore processing and mandatory detention of asylum seekers.²⁵ There is

²⁰ Tim Soutphommasane, ‘Tempers Are Frayed, We’ve Become a Nation Divided Over Fortress Australia and the Covid-19 Response’, *The Guardian* (online, 2 July 2021), at <https://www.theguardian.com/world/commentisfree/2021/jul/02/tempers-are-frayed-weve-become-a-nation-divided-over-fortress-australia-and-the-covid-19-response>.

²¹ See e.g. John Howard’s statement that ‘we will decide and nobody else who comes into this country’ cited in John Howard, ‘Federal Liberal Party Campaign Launch’ (Speech, Sydney, 28 October 2001); Tom Stayner, ‘Scott Morrison Unveils Australia’s Plan to Achieve New Zero Emissions by 2050’, *SBS News* (Online, 26 October, 2021), at <https://www.sbs.com.au/news/article/scott-morrison-unveils-australias-plan-to-achieve-net-zero-emissions-by-2050/nhr1u316h>. See further Rayane Tamer, ‘Australia’s Border Policies Under Scrutiny as Labor ‘Will Turn Boats Back’, Keep Offshore Detention’ *SBS News* (Web Article, 14 April 2022), at <https://www.sbs.com.au/news/article/australias-border-policies-under-scrutiny-as-labor-will-turn-boats-back-keep-offshore-detention/bepvjhe51>.

²² See Stayner (n 19) citing Scott Morrison: ‘Australia will set our own path by 2050 and we’ll set it here by Australians for Australians’ and it will be ‘uniquely Australian’.

²³ Ibid.

²⁴ See Eddy Jokovich, ‘Scott Morrison and Racism’ (Online, 18 March 2019), at <https://newpolitics.com.au/2019/03/18/scott-morrison-racism/> where Jokovich writes that ‘Morrison has tried to rehabilitate his political image, again with the support of a compliant and absent-minded media, as if all the things he has said about asylum seekers, refugees and the Islamic community never happened’, noting ‘Morrison’s coded words and racist dog whistling’. For racist social structures see Antoinette Lattouf, ‘Racism in Australia is about the Structures which Ensure that Non-White People Don’t Get a Fair Go’ *The Guardian* (online, 10 April 2022), at <https://www.theguardian.com/commentisfree/2022/apr/10/racism-in-australia-is-about-the-structures-that-ensure-non-white-people-dont-get-a-fair-go>.

²⁵ See e.g. Tim Soutphommasane, ‘English Test for Australian Partner Visas Reveals Coalition’s True Nationalist Colours’, *The Guardian* (online, 14 October 2020), at

plenty of material in mainstream policy positions over the course of modern Australian history for right-wing populists and extremists to draw on. Further, when racist ideas lead to violence, as they did in the Cronulla Riots in 2005, the tendency (at least federally) is to minimise rather than acknowledge underlying causes. In relation to the Cronulla riots, the then federal leaders of both major political parties described the riots as un-Australian while denying that racism exists, or is problematic, in Australia.²⁶ This makes it appear as though mainstream politicians empathise with right-wing extremist positions.²⁷

Compounding these underlying sentiments, the advent of Covid-19 has contributed to an increase in racist incidents, both nationally and internationally, reinforcing nativist discourse and local populist movements.²⁸ This has corresponded with a direct spike in right-wing race-based violence.²⁹ In such circumstances, the responsibility of political leaders to avoid flirting with racist positions and groups is especially clear and essential to avoid the scapegoating which marks extremist movements (TOR A(ii), G). To avoid fanning such movements or increasing the risk to multicultural communities (TOR D), mainstream politicians must take clear anti-racist stances, both in rhetoric and policy.

Affirming Australia’s position vis-à-vis international legal obligations and the country’s commitment to global principles of human rights is an important part of addressing extremism and racism locally. Although Australia is a party to the Refugee Convention and other human rights instruments,³⁰ the current migration system falls well short of compliance with Australia’s legal obligations – as numerous reports noted have found.³¹ An opportunity exists

<https://www.theguardian.com/commentisfree/2020/oct/14/english-test-for-australian-partner-visas-reveals-coalitions-true-nationalist-colours>.

²⁶ Anne Davis and Stephanie Peatling, ‘Australians Racist? No Way, Says Howard’, *Sydney Morning Herald* (online, 13 December 2005), at <https://www.smh.com.au/national/australians-racist-no-way-says-howard-20051213-gdmmg5.html>.

²⁷ See further (n 22).

²⁸ Soutphommassane (n 18); Samuel Yang, ‘COVID-19 Exacerbates Existing Racial Hatred Experienced by Australian Asian Communities, Report Finds’, *ABC News* (Online, 23 July 2021), at <https://www.abc.net.au/news/2021-07-23/covid-19-racism-australia-report-racial-hatred-pandemic/100316184>. See also, Karin M. Frod , ‘“All in this Together”: Similarity, Difference or None of the Above?’ (Blog Post, 20 December 2021, *Castan Centre for Human Rights Law*), at <https://castancentre.com/2021/12/20/all-in-this-together-similarity-difference-or-none-of-the-above/>.

²⁹ Samaya Borom, ‘Increasing Visibility of Far-Right Movements in Australia During the COVID-19 Pandemic’ *Global Network on Extremism and Technology* (Blog Post, 24 September 2020), at <https://gnet-research.org/2020/09/24/increased-visibility-of-far-right-movements-in-australia-during-the-covid-19-pandemic/>.

³⁰ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954). See further *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) regarding rights to a fair trial and the prohibition of arbitrary detention. For comments on the Refugee Convention see Harriet Spinks and Ian McCluskey, ‘Asylum Seekers and the Refugee Convention’, *Parliament of Australia*, (Online), at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/AsylumSeekers#:~:text=Australia%20is%20a%20party%20to,social%20group%20or%20political%20opinion.

³¹ United Nations Office of the High Commissioner on Human Rights, ‘Australia’s Detention of 46 Refugees ‘Cruel and Degrading,’ UN Rights Experts Find: Refugees’ Detention ‘Arbitrary’ (Press Release, 22 August 2013), at <https://www.ohchr.org/en/press-releases/2013/08/australias-detention-46-refugees-cruel-and-degrading-un-rights-experts-find?LangID=E&NewsID=13648>; Khalid Koser, ‘Australia and the 1951 Refugee Convention’ *Lowy Institute* (Online Analysis, 30 April 2015), at <https://www.lowyinstitute.org/publications/australia-and-1951-refugee-convention#:~:text=Key%20Findings,placed%20to%20lead%20that%20effort>; Jane McAdam, ‘Australia Tears Up UN Treaty with Treatment of Asylum Seekers’, *Sydney Morning Herald* (online, 7 July 2014), at

for Australia to marginalise extremist positions further by adopting a more respectful attitude towards Australia’s international legal obligations and its human rights institutions.

However, the international legal system should not be understood as standing in simple opposition to the tropes and forms by which racist migration policies combine with simplistic assertions of national sovereignty. There is much within the international legal system that operates to support states (including those with a purported commitment to liberal democracy and human rights) to engage in simplistic assertions of sovereignty and to militarise borders. Australia’s off-shore detention regime depends on treaties with Papua New Guinea and Nauru³² (treaties which ought to be read in light of Australia’s earlier colonisation of those territories),³³ as did its attempted ‘Malaysia Solution’.³⁴

Not only is international law implicated in these arrangements, but Australia’s policies of boat turn-backs and off-shore processing are now influencing (or being mirrored by) policies in Europe and the UK. This has the potential to produce new international norms which conflict with those established immediately following WWII. Racist anti-immigration platforms are not the sole province of extreme right-wing movements and politicians that one observes in Hungary and Poland.³⁵ European nations have argued for, and adopted, origin-country ‘pullbacks’ despite internationally enshrined rights of non-refoulement and associated guarantees.³⁶ The UK has sought to implement ‘pushbacks’ for boats crossing the English Channel (thus far unsuccessfully though the idea remains in circulation).³⁷ Most recently, the United Kingdom has cited Australia’s policy as an inspiration for its treaty with Rwanda, under which asylum seekers will be moved there for processing – a position which has been heavily criticised by human rights organisations.³⁸

It is important to remember that both practically, and in accordance with international law, sovereignty is not a trump card. It is a balancing exercise. Rather than being used as a means to fan division, sovereignty should be understood as mediating the complex interaction

<https://www.smh.com.au/opinion/australia-tears-up-un-treaty-with-treatment-of-asylum-seekers-20140707-zsz5j.html>.

³² Azadeh Dastyari and Maria O’Sullivan, ‘Not for Export: The Failure of Australia’s Extraterritorial Processing Regime in Papua New Guinea and the Decision of the PNG Supreme Court in Namah (2016)’ (2016) 42(2) *Monash University Law Review* 307.

³³ See Cait Storr, *International Status in the Shadow of Empire* (Cambridge University Press, 2020).

³⁴ Michelle Foster, ‘The Implications of the Failed ‘Malaysia Solution’: The Australian High Court and Refugee Responsibility Sharing at International Law’ 2012(13) *Melbourne Journal of International Law* 1.

³⁵ See Nicholas Mudler, ‘The Revolt Against Liberalism: What’s Driving Poland and Hungary’s Nativist Turn?’ *The Guardian* (online, 24 June 2021), at <https://www.theguardian.com/world/2021/jun/24/revolt-against-liberalism-eastern-europe-poland-hungary-nativist-politics>.

³⁶ Both Italy (separately) and the EU (as a bloc) have negotiated with Libya and Turkey respectively to ‘pullback’ refugees and asylum seekers leaving their territories via sea despite non-refoulement and related guarantees. See Azadeh Dastyari, ‘The Ring of Steel: Extraterritorial Migration Controls in Indonesia and Libya and the Complicity of Australia and Italy’ (2019) 19(3) *Human Rights Law Review* 435; Violeta Moreno-Lax, *The Interdiction of Asylum Seekers at Sea: Law and (mal)practice in Europe and Australia* (Kaldor Centre of International Refugee Law Policy Brief No 4, 2 May 2017).

³⁷ Rajeev Syal, ‘Priti Patel’s Refugee Pushback Policy Withdrawn Days Before Legal Review’, *The Guardian* (online, 26 April 2022), at <https://www.theguardian.com/uk-news/2022/apr/25/uk-refugee-pushback-policy-withdrawn-judicial-review-priti-patel>; Yasmine Ahmed and Emilie McDonnell, ‘UK Pushbacks are ‘Morally Reprehensible’: House of Lords Should Safeguard Life and Rights in the Channel’, *Human Rights Watch* (Online, 8 February 2022), at <https://www.hrw.org/news/2022/02/08/uk-pushbacks-are-morally-reprehensible>.

³⁸ Yasmine Ahmed and Emilie McDonnell, ‘UK Plan to Ship Asylum Seekers to Rwanda is Cruelty Itself: Government Continues to Rip Up its Duties to Asylum Seekers’, *Human Rights Watch* (Blog Post, 14 April 2022), at <https://www.hrw.org/news/2022/04/14/uk-plan-ship-asylum-seekers-rwanda-cruelty-itself>.

between different sites of authority at the local, national and international levels.³⁹ Facilitating a better understanding of the limits of national sovereignty, and our obligations to communities beyond our borders, would help to distance extreme assertions of sovereignty from mainstream governance.

Accordingly, when the Committee considers TORs A(ii), (iv), D, G and H it should do so:

- Aware that an active, sustained and consistent commitment to multiculturalism and diversity is required to counter right-wing extremist views. This is not an area where politicians can safely court nativist positions;
- Acknowledging mainstream political leaders' responsibility to openly support Australia's international commitments to protect and promote human rights and global environmental protection, regardless of the nationalities of those whose rights and environments are at stake. Political leaders should promote confidence in international legal mechanisms which seek to achieve those aims (TOR G). A failure to do so speaks directly to right-wing nationalist movements;
- Acknowledging political leaders' responsibility to publicly acknowledge and unequivocally decry acts of racism;
- Recognising that international law does not always stand on the side of the marginalised and oppressed. International legal standards and procedures can be used by states to infringe human rights and promote policies which blur the line between 'mainstream' and extremist right-wing positions. Political leaders should refrain from using international law and relations with other countries in ways that promote and reinforce racist and discriminatory policies.

2.4 *Affinities between right-wing populism, extremism and international law*

Despite many issues upon which right-wing populists and extremists appear in opposition to international law and institutions, there are also affinities between the kinds of politics pursued by populist groups and leaders, and the structure of the international legal and economic order. As noted above, international law both facilitates and opposes the mistreatment of asylum seekers – a key question around which extremist and mainstream political movements converge. Similarly, internationalism more generally both unites and divides the extreme right.

More broadly, right-wing populism does not, in general, seek to overcome the material sources of discontent that international legal arrangements make possible and which fuels populists and extremists into action (TOR A(i)). Right-wing populism does not seek to challenge the priority given in international law and institutions to privatisation of public assets, austerity, and the protection of foreign investment. While it superficially opposes 'outsourcing' and supports some tariffs, it does not challenge the economic inequality (both domestic and international) that results from the international order.⁴⁰ Right-wing populism does not challenge the militarism nor great power competition which our present international system enables and supports. It does not challenge the racism upon which the law on the use of force has developed in the so-called War on Terror and especially in the recent 'development' of the doctrine of the law of self-defence and the increased use of drones by the United States.⁴¹ There is an

³⁹ Richard Joyce, *Competing Sovereignties* (Routledge, 2012).

⁴⁰ On the connections between international ordering and inequality, see Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press, 2019), especially 397-403.

⁴¹ See Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press, 2020), 167-211.

asymmetry between the sources of disaffection (often, economic inequality) and the targets of right-wing populist and extremist action (minorities and foreigners). But the international system is also predicated on exclusion, inequality and the prioritisation of wealthy states over poorer ones, with racism a core component of its structures. International law and institutions, therefore, ought to be understood as having contributed, both materially and by way of conceptual foundation, to right-wing extremist and populist politics.

Further, it is important to note that the attempted creation of new standards of ‘self-defence’ by the ‘Coalition of the Willing’ occurred in the context of deliberate misinformation and reliance on false intelligence to justify the invasion of Iraq.⁴² This was an important part of the development of a media ecosystem conducive to populist and extremist activity, characterised by claims to ‘alternative facts’ and the cynical denials of ‘fake news’ by populist politicians and extremist networks (TOR A(iii)). The discrediting, cynical manipulation and transformation of international legal standards and facts cannot be confined to one area (migration, for example) or one region (Iraq or Afghanistan). Such activities have effects which are hard to contain, and are now being deployed, if even more cynically, by Russia in the invasion of Ukraine.

Additionally, when considering the role of links between extremist networks in the United States and Australia, it is important to consider the racial biases and increased militarisation of public life in the United States during the War on Terror (TOR A(ii) and D). While there are significant differences in the political cultures between the US and Australia, the January 6th 2021 insurrection was marked by the activities of veterans of the Iraq and Afghanistan conflicts acting as self-styled patriots (TOR B). That is, when considering right-wing movements, we should be aware that this militarisation occurs in the context of support for US dominance while simultaneously rejecting the international system which the US dominates.

The January 6th riots show us the importance of recognising extreme right-wing ideologies within mainstream political discourses, and the risk of importing such extremism to Australia. Many of the rioters understood themselves as acting in defence of democracy and within the law, precisely because of what their leaders told them.⁴³ The most concerning example connecting the riots to Australian politics is the symbolic use of gallows in protests (designated by the protesters for Vice-President Pence in Washington and Victorian Premier Daniel Andrews in Melbourne).⁴⁴ The threat posed by the use of catch-phrases and dog whistle terms should not be under-estimated or sidelined as jokes, empty-talk or merely larrikin-isms. January 6th serves as a palpable demonstration of the very real consequences of mainstream leaders courting extremist groups. Both the general and specific threats posed to individuals through the imagery and declarations of those wielding gallows for Pence and Andrews should be taken seriously. The role of social and mainstream media (TOR A(iii)) in trumpeting explicit and implicit violence should also be acknowledged (TOR E). At the Capitol Riots, ‘code

⁴² See for example John Chilcot, *The Report of the Iraq Enquiry* (Report, July 2016); see also The People’s Tribunal on the Iraq War (Online), at <https://www.iraqtribunal.org/>. For analysis of the People’s Tribunal, see Ayça Çubukçu, *For the Love of Humanity: The World Tribunal on Iraq* (University of Pennsylvania Press, 2018). For a discussion of the role of international law in public debates on the invasion of Iraq, see Madeleine Chiam, *International Law in Public Debate* (Cambridge University Press, 2021).

⁴³ See Rose Parfitt, ‘Mob Constitutionalism: The Riot in the Rights’, (Blog post, 21 January 2021, *Critical Legal Thinking*), at <https://criticallegalthinking.com/2021/01/12/mob-constitutionalism-the-riot-in-the-rights/>.

⁴⁴ Tony Wright, ‘A Gallows and Words of Menace Imported From the (Dis)United States’, *The Age* (online, 19 November 2021), at <https://www.theage.com.au/politics/victoria/a-gallows-and-words-of-menace-imported-from-the-dis-united-states-20211118-p59a0p.html>.

words' and phrases were used by leaders and participants in plain view (for example 'it's going to be wild'⁴⁵). This has been observed locally and internationally with experts noting that 'effective solutions to the problem will likely involve attention from both tech platforms and civil society more broadly'.⁴⁶ All this in the context of growing cultures of violence generally, with groups banned in other countries (e.g. Canada and UK) not banned in Australia (TOR E).⁴⁷

In terms of violence (TOR E) we should also be aware that Covid-19 (TOR C) impacted the events of January 6th, where a range of grievances with state intervention and policy were snowballed into a claim to reject the outcome of the election. As discussed in Section 2.2, distrust of international mechanisms (e.g. WHO) is reflected nationally where Covid-19 has become an international conspiracy. Increasing distrust of institutions and support for conspiracy theories (including QAnon)⁴⁸ have grown symbiotically with increased state presence and increased frustration with the state.⁴⁹

We should also be attentive to the ironically international nature of nationalist movements. The situation in Victoria should be read in light of extremist trends across the world. These trends pose a threat to democratic institutions where a lack of faith in international institutions can be linked to a lack of faith in local and national institutions (TOR D).

Finally, we should be aware that the extreme right is neither homogenous nor always organised. Predicting connections between groups and positions with the potential to coalesce into action, including violent action, may be difficult (TOR F). Groups long occupying the very margins of society can quickly take on prominence if conditions are conducive, and are able to exploit issues (such as medical freedom) which have never been central to their platforms previously.⁵⁰ For this reason it is important to continue to attempt to understand (TOR G) the broader implications of the radical right as links between January 6th (an extreme-right flash point) and the war in Ukraine (a crisis of international law, national sovereignty and diplomacy) begin to become apparent.⁵¹

Accordingly, when the Committee considers TORs A(ii), (iii), B, D - G, it should do so aware that:

- International law and international institutions both counter and perpetuate populist movements, working simultaneous as a source of grievance and inspiration;
- International alliances feed into nationalist sentiments;

⁴⁵ Dan Barry and Sheera Frenkel, "'Be There. Will be Wild!': Trump All but Circled the Date' *The New York Times* (online, 27 July 2021), at <https://www.nytimes.com/2021/01/06/us/politics/capitol-mob-trump-supporters.html>.

⁴⁶ Alexis Henshaw, 'Communication Technologies, Conspiracies, and Disinformation in Latin America: COVID-19 and Beyond', *Global Network on Extremism and Technology* (Blog Post, 24 February 2022), at <https://gnet-research.org/2022/02/24/communication-technologies-conspiracies-and-disinformation-in-latin-america-covid-19-and-beyond/>.

⁴⁷ Gerard Gill, 'Racism, Extremism and the Battle Over Sacred Values', *Global Network on Extremism and Technology* (Blog Post, 8 September 2021), at <https://gnet-research.org/2021/09/08/conspiracism-extremism-and-the-battle-over-sacred-values/>.

⁴⁸ Kaz Ross, 'Why QAnon is Attracting So Many Followers in Australia – and How it Can Be Countered', *The Conversation* (Online, 25 August 2020), at <https://theconversation.com/why-qanon-is-attracting-so-many-followers-in-australia-and-how-it-can-be-countered-144865>.

⁴⁹ Borom (n 27).

⁵⁰ Ibid.

⁵¹ See for example Robert Draper, 'This Was Trump Pulling a Putin', *The New York Times* (online 11 April 2022), at <https://www.nytimes.com/2022/04/11/magazine/trump-putin-ukraine-fiona-hill.html>.

- The international context of the formation and expression of grievances may carry broad similarities but manifest in peculiar local ways;
- International ties have played a role in the growth of local right-wing extremists.

3. Conclusion

This submission urges the Committee to consider the links between domestic right-wing extremism and international law. It seeks to illuminate the connections between the international legal order and the current climate of right-wing extremism. While the State of Victoria does not have direct responsibility for Australia's international policy, there are nonetheless areas of international-domestic relations to which it is important to be attentive.

The kinds of disaffection emerging and producing circumstances which favour conspiracies are fostered by international legal rules. Protests in Melbourne are linked to those elsewhere not just because of shared ideologies or direct communication between members, but because they both respond to discontent with the international legal order.⁵² In this sense, grievances with international law and its institutions must also be considered, as well as the ways in which international law and institutions contribute to an environment in which right-wing extremism can flourish. Both phenomena impact on the manifestation of right-wing extremist groups in the state of Victoria.⁵³

Right-wing extremism in Victoria should not be viewed in isolation. Rather this movement needs to be considered in light of growing discontent with the international legal order on a global scale. This is not merely through the commonalities of formation, operation and manifestation of extremist and populist groups, but also due to their common heritage, shared grievances and causal factors.

Taken as a whole, the international institutional architecture we currently have promotes the free movement of capital whilst enabling highly regulated borders and differentialised regimes of movement in which some may move freely, others may move to serve the needs of large companies and globalised supply chains, and others may not move across national borders at all. At the same time, many political figures have sought to secure their leadership by fomenting hatred and insecurity, blaming rival communities for the dislocations this pattern has caused. This has happened in wealthy countries in the so called 'Global North' as well as in the rising economic powerhouses of the 'Global South'.⁵⁴ Through this twin process, forms of racist nationalism have arisen or re-emerged, as well as new forms of racist *trans*-nationalism. This forms an important backdrop to the other forms of connection and commonality, especially those fostered by online communities and social media. It also invites considerations of more creative means to tackle the local dimensions and manifestations of the problem through practices which encourage and build on local forms of solidaristic transnationalism rather than racist forms of transnationalism.

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⁵² See Gill (n 43).

⁵³ Luis Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge University Press, 2015).

⁵⁴ See Parfitt, 'Rose Parfitt, 'Fascism and the International'', above n 2.

The authors hope the above comments are useful to the Committee. Should any Committee member have any questions arising from our submission, please contact Dr Richard Joyce at richard.joyce@monash.edu.

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