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Suffering to Save Lives: Torture, Cruelty, and Moral Disengagement in Australia's Offshore Detention Centres

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Since Australia re-established offshore processing on Manus Island and Nauru in 2012, there have been ongoing reports that asylum seekers and refugees are being subjected to torture and cruel, inhuman or degrading treatment or punishment (CIDT). People in detention have endured indefinite detention, inadequate provision of health care, and sexual, physical, and mental harm as the government attempts to 'stop the boats' and prevent deaths at sea. How can Australia continue to violate the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, while at the same time, promote its offshore detention policies worldwide? This article explores how Australia has engaged in moral disengagement from the pain and suffering of people in detention. Examining self-deception strategies such as denial of torture, denial of responsibility, and denial of wrongdoing, it shows not only how Australia privileged migration deterrence goals over human rights considerations, but utilized legal and humanitarian arguments to evade accountability and deny the existence of, and responsibility and wrongdoing for, torture and CIDT. This article explores the under-examined issue of moral disengagement to show how it is exacerbating the vulnerability of asylum seekers and refugees to torture and CIDT along their migration journeys.

Keywords: refugees, Australia, offshore detention, moral disengagement, torture and cruel, inhuman or degrading treatment

Introduction

In 2012, Australia re-opened its offshore processing centres on Manus Island (Papua New Guinea (PNG)), and Nauru in response to an increase in irregular boat arrivals on Australian shores. Under 'Operation Sovereign Borders', Australia intercepts migrant vessels and either pushes them back to Indonesia, their country of departure, or takes them to its offshore detention centres, where they are indefinitely detained and prohibited from ever settling in Australia. This

policy has received extensive criticism from human rights authorities. Refugees are arbitrarily detained in inhumane conditions, lack adequate health care, and experience severe pain and suffering that rises to the level of cruel, inhuman or degrading treatment (CIDT) or torture[1] (Amnesty International 2013).

However, despite these human rights violations, Australia has not only evaded accountability for torture and CIDT, but it actively promotes its offshore programme as an example for other states to follow (Lowenstein 2018). How can Australia promote itself as an actor that abides by human rights (see Payne 2019), while simultaneously, implement a policy that has resulted in the torture and CIDT of refugees? This article argues that the Australian government has adopted a number of strategies that have produced moral disengagement in regards to its treatment of refugees in detention. According to the UN Special Rapporteur on Torture, 'the function of moral disengagement is to leave the moral condemnation of torture and ill-treatment formally intact while at the same time creating "blind spots" where such abuse can be practiced without blame' (United Nations 2020: 10). Australia has adopted legal strategies and humanitarian arguments to not only deny the occurrence of, and responsibility for, torture and CIDT, but it has also denied wrongdoing by arguing that any suffering occurring in offshore detention is necessary to deter future boat arrivals and save lives at sea (Henderson 2014). These strategies have helped Australia evade legal liability, but also produced a disengagement from the pain and suffering experienced by refugees.

Australia's moral disengagement should be understood not only within its colonial past of dispossession and state violence against Indigenous peoples (Boochani 2018), but also within the wider context of the securitization and accompanying externalization of immigration policies at the global level, seen in particular in Europe, the US and Canada, as well as Australia (Fitzgerald 2019). These migration deterrence policies that block entry and pushback refugees not only frame refugees as security threats, but exacerbate their vulnerability to harm along migration journeys (see Mountz 2020; Barnes 2022). Australia has privileged and prioritized migration deterrence goals over human rights considerations, and moral disengagement has been crucial in helping the Australian government distance itself from the suffering occurring within detention.

Understanding how Australia has constructed moral disengagement builds upon, and advances, the existing literature on Australian immigration detention. Scholars and human rights organizations have examined how Australia's offshore detention programme violates international refugee and human rights law (Amnesty International 2013), how treatment within the camps violates the UN Convention against Torture (Morales 2016), the challenges of attempting to hold Australia accountable for its treatment of refugees (van Berlo 2017; Tan 2018; Holly 2020), and how humanitarian and security practices have helped to justify ongoing offshore detention (Little and Vaughan-Williams 2017). However, the creation of moral disengagement from torture and CIDT in offshore detention, and how efforts to mitigate it can be incorporated into global rules, norms, and institutions to help uphold the torture prohibition (United Nations 2020), remains underexplored. Moreover, although it is recognized that people on the move face

violence as a result of migration deterrence policies (Jones 2017), how migrants and refugees become vulnerable to torture and CIDT along their journeys continues to remain understudied (Pérez-Sales 2018; United Nations 2018b). Examining moral disengagement sheds light on how moral dilemmas that arise from breaches of the torture prohibition have been ameliorated, and how this lack of concern for the pain and suffering of people in detention has enabled Australia to promote its offshore detention as a policy to emulate worldwide.

The first section of this article outlines the torture and CIDT that has occurred on Manus Island and Nauru since offshore detention was re-established in 2012. The second section explores how Australia constructed moral disengagement, and the third section analyses the different forms of denial Australia employed in the face of allegations of torture and CIDT. The fourth section examines the ways to challenge Australia's moral disengagement before concluding with the implications this argument has for protecting asylum seekers and refugees from torture and CIDT.

Torture and CIDT on Manus Island and Nauru

In September and November 2012, the Nauru and Manus Island detention centres were re-opened respectively (Australian Senate 2016: 2). Memorandums of Understanding (MoUs) were signed in 2012 and 2013 between Australia and the host nations establishing processing and settlement of refugees (DFAT 2013a, 2013b; Australian Senate 2014: 8–9; Australian Senate 2015: 6). The re-establishment of offshore detention discriminated against people depending on how they arrived in Australia. For those that arrived by boat, they would be sent to Manus Island and Nauru and would never be allowed to settle in Australia. Those that arrived by plane and with a valid visa would be processed within Australia (see for example, McAdam and Chong 2019: 36–49).

Despite the MoUs stating that people will be treated 'with dignity and respect and in accordance with relevant human rights standards' (DFAT 2013a, 2013b) asylum seekers and refugees faced significant human rights violations, including torture and CIDT. Although the population in the detention centres were different (Manus Island consisted of single adult males only as of 15 June 2013 (Australian Senate 2014: 6)) the conditions they endured were similar. People faced overcrowding and a lack of privacy in their accommodation. On Manus Island, for example, people were kept in World War II-era tin sheds that often reached 40 degrees (Australian Senate 2014: 40–41). In one shed, 'P Dorm', 112 people were put into a space with only 56 bunk beds that measured '40 meters long and four to five metres wide' (Amnesty International 2013: 39). P Dorm contained no windows, little air flow, and only two 'free-standing fans' to try and cool the shed (Amnesty International 2013: 39). On Nauru, mould on the tents was extensive and contributed to eye and skin infections (Australian Senate 2015: 64). The overcrowding and lack of privacy not only led to a deterioration of mental health, but also to security concerns among refugees as they could not lock up their accommodation. On both islands, there was inadequate healthcare and

clothing, limited drinking water, and because of the heat, food would spoil quickly and be infested with insects (see Australian Senate 2014: 43; Australian Senate 2015: 66–67, 69–73; Australian Senate 2017: 40, 26–34).

Alongside inhumane detention conditions, asylum seekers and refugees also faced ongoing violence. People in detention were often propositioned by guards for sexual favours in exchange for benefits in detention, and women, children, and men were sexually assaulted and raped (Australian Senate 2017). In one case reported by the Stanford Human Rights Clinic, a man 'had been forced to masturbate a guard in a shower while another guard sodomized him. He stated that he had "no choice," stating, "I came here to save my life . . . and I got another horrible one"' (Stanford International Human Rights and Conflict Resolution Clinic 2017: 30). In 2016, *The Guardian* released over 2000 leaked incident reports from staff on Nauru. Over half of them involved children, and detailed incidents of self-harm, abuse, and sexual and physical violence (Farrell *et al.* 2016). Allegations of sexual violence have not only been documented by human rights groups (Amnesty International 2013), but also by the Moss Report (Moss 2015) commissioned by the Australian government, as well as the Australian Senate (2017).

As a result of poor conditions and uncertainty over the future, detention conditions have been a major contributing factor to the deterioration of refugees' mental health. According to Human Rights Watch and Amnesty International (Bochenek 2016), 'Refugees and asylum seekers interviewed said they have developed severe anxiety, inability to sleep, mood swings, prolonged depression, and short-term memory loss on the island. Children have begun to wet their beds, suffered from nightmares, and engaged in disruptive and other troubling behavior. Adults and children spoke openly of having wanted to end their lives.' Médecins Sans Frontières (MSF) (2018: 22, 27) reported that of the 208 refugees it aided on Nauru between 2017 and 2018, 62 per cent had 'moderate to severe depression' with 65 per cent having 'suicidal ideation and/or engaged in self-harm or suicidal acts' and 'children as young as nine were found to have suicidal ideation, had committed acts of self-harm or attempted suicide'. MSF also reported cases of 'resignation syndrome', which it found in 2 adults and 10 children. Resignation syndrome is where people withdraw from social interactions due to 'a very severe form of depressive disorder' that can then eventually lead to people being 'unconscious or in a comatose state' (MSF 2018: 24). MSF (2018: 20) stated, 'During the migration journey, detention was the most common cause of trauma, reported as a traumatising event by more than half of the refugee and asylum seeker patients seen by MSF.' These detention conditions made it very hard for mental health professionals to provide support to people as refugees could not leave detention (MSF 2018: 36).

The adverse impacts of Australia's arbitrary detention have been known before Operation Sovereign Borders came into force. It was documented by a Senate Committee in 2001 (Joint Standing Committee on Foreign Affairs, Defence and Trade 2001), the UN Working Group on Arbitrary Detention (United Nations 2002) in 2002, human rights groups (Amnesty International 2005), and the UN

Committee against Torture in 2008 (United Nations 2008). There is sufficient evidence to suggest that these conditions were part of a deliberate campaign to inflict pain and suffering to deter future boats arrivals to Australia. The UNHCR (2013a: 12) and also the Working Group on Arbitrary Detention (United Nations 2002) have reported that deterrence has shaped the detention environment, something they documented as far back as 2002 (United Nations 2002: 18). The former mental health Director of the International Health and Medical Services (IHMS), the medical services provider for Australian immigration detention, Dr Peter Young, stated that within detention centres, '[e]verything became subservient to "stopping the boats"' (Amnesty International 2016: 48). Children were detained to show the harshness of offshore detention (Stanford International Human Rights And Conflict Resolution Clinic 2017: 14–15) and conditions have been created 'that appear to serve no purpose but to break people's spirits' (Amnesty International 2016: 29).

The lack of adequate food, drinking water and health care, the physical and mental infliction of suffering from physical violence, sexual violence, indefinite detention, prolonged uncertainty about one's future, overcrowding, and the lack of a hygienic environment has resulted in severe pain and suffering to the point human rights authorities have argued conditions constitute CIDT and, in some situations, torture (Stanford International Human Rights And Conflict Resolution Clinic 2017: 74–87). Nils Melzer, the UN Special Rapporteur on Torture, has stated that when detention is imposed on asylum seekers with the intention to deter arrivals, it can constitute torture (United Nations 2018b). The former IHMS mental health Director Dr Peter Young has called Australia's treatment of people as constituting torture (Marr and Laughland 2014), and the UN Special Rapporteur found a violation of article 1 (torture) and article 16 (CIDT) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) (United Nations 2015b). The Association for the Prevention of Torture (2014: 9) also stated in its submission to the UN Committee against Torture, 'It is our considered view that Australia's offshore detention of asylum seekers is likely to constitute a *prima facie* regime of cruel, inhuman or degrading treatment, and may even constitute torture. This assessment is based on the deliberate provision of only extremely basic conditions as part of a systematic policy in order to deter others, and the severity of suffering caused to detainees.' CIDT has also been found by Save the Children and UNICEF (2016: 29), the UNHCR (2013b), the UN Special Rapporteur on the Human Rights of Migrants (BBC News 2016a), the UN Committee against Torture (United Nations 2014b), and Amnesty International and Human Rights Watch (Bochenek 2016).

Despite these UNCAT violations, people still remain on these islands at the time of writing. Since offshore processing was re-established in 2012, just under 4200 people have been detained (Australian Senate 2020). 124 people remain in PNG and 107 people on Nauru, with 166 of them determined to be refugees (Australian Government 2021). On both islands, people face threats of violence from local communities, and continue to have uncertainty about their future

(Amnesty International 2016, 2018). Although Australia has now closed Manus Island detention centre (Galloway 2021), it announced in 2021 that offshore detention on Nauru would remain indefinitely (Doherty 2021).

Moral Disengagement from Torture and Cruel and Inhuman Treatment

Despite these human rights violations, the Australian government has not been held to account for its torture and CIDT on Manus Island and Nauru. Not only has the Australian government ignored reports from human rights groups and institutions, but when federal politician Andrew Wilkie made a submission to the International Criminal Court (ICC) in 2014, alleging that Australia was committing crimes against humanity, the ICC declined to pursue an investigation. Although the ICC prosecutor stated that Australia was committing 'cruel, inhuman, or degrading treatment', the prosecutor argued that conditions did not constitute crimes against humanity, and therefore, fell outside of the ICC's jurisdiction (Mochochoko 2020).

Integral to this evasion of accountability—and the maintenance of an offshore detention programme—has been the construction of moral disengagement from the suffering occurring in immigration detention camps. Because of the widespread support for the absolute prohibition against torture worldwide, moral disengagement is crucial in maintaining the prevalence of torture and CIDT because it helps to remove uncomfortable moral dilemmas that can come from violating moral norms. As the UN Special Rapporteur on Torture argues,

> Where self-interested decisions contradict predominant moral values, for example when resorting to torture in an attempt to counter a perceived security threat, both perpetrators and bystanders tend to suppress the resulting moral dilemma through behavioural and perceptual strategies known as "moral disengagement". Given the universal, absolute and non-derogable prohibition of torture and ill-treatment, as well as the inability of the human psyche to sustain persistent moral dilemmas without harmful effects on mental health and emotional stability, it would be impossible for torture and ill-treatment to take place on any significant scale without the enabling effect of moral disengagement. (United Nations 2020: 9)

Integral to constructing moral disengagement has been implementing self-deceptive strategies. To quote the UN Special Rapporteur on Torture again, 'Moral disengagement always involves the self-deceptive denial of reality, which enables perpetrators and bystanders to engage in, participate in or acquiesce to morally wrongful conduct while at the same time denying either its occurrence (denial of fact), its wrongfulness (denial of wrongfulness) or personal or collective responsibility for its occurrence (denial of responsibility)' (United Nations 2020: 10). Cohen (2001) argues that denials have been used by countries worldwide to evade accountability for human rights violations. But denial strategies have also helped to create physical and psychological distance between the policy makers and torture on the ground, enabling them to continue to implement harmful policies without the moral dilemmas that come with it (Cohen 2001).

When human rights authorities and the media exposed UNCAT violations in Australia's offshore detention, Australia engaged in all three types of denial identified above: denial of responsibility, denial of fact, and denial of wrongdoing. In terms of denial of responsibility, Australia strategically used the law to deny that it exercised responsibility over refugees detained in offshore detention, arguing that legally, they are Nauru and PNG's responsibility. It has been well documented that states have strategically used the law to evade their international legal obligations (Veitch 2007; Hurd 2017; Kennedy 2018; Barnes 2019), including obligations to refugees (see Gammeltoft-Hansen 2011, 2014; Fitzgerald 2019). The Australian government has not operated outside of the law in a type of state of exception (see Agamben 2005), but rather within the law. This includes interpreting international law to deny jurisdiction on Manus Island and Nauru and using confidentiality agreements and laws to prevent detention staff from publicly speaking about human rights violations. This not only makes it difficult to detect torture and CIDT, but by excluding refugees from Australia's jurisdiction, it makes them someone else's responsibility, distancing the Australian government from the suffering occurring in the detention centres.

The second form of denial is denial of fact. Despite strong evidence from human rights organizations, the UN, and the media of human rights abuses, the Australian government denied that it had breached the UNCAT. Both torture and CIDT are absolutely prohibited under international law (see United Nations 1984), and denial of torture and CIDT is common worldwide (see Cohen 2001). Because torture has such a powerful stigma attached to it, states always try to hide, deny, redefine, or outsource their torture because they want to avoid criticism, prosecutions, or stigmatization as a torturing state (see Barnes 2017). Denial of fact allowed the Australian government to continue to proclaim it was upholding its human rights obligations, while at the same time, maintain detention centres that were inflicting harm upon refugees.

The third type of denial is denial of wrongdoing. Like other international actors, such as the European Union, Australia has justified its migration deterrence policies as a means to save lives at sea (Little and Vaughan-Williams 2017). It has argued that a 'tough' migration deterrence approach is necessary to prevent people from drowning at sea as they try to make it to Australia (see Australian Government, n.d.). The use of humanitarian arguments builds upon the work of refugee and migration scholars that have shown that humanitarianism is not just associated with care and the amelioration of suffering, but it can also be used as a means of control (Pallister-Wilkins 2015). Humanitarianism has become intertwined with the policing of migrants (Pallister-Wilkins 2015), border security (Williams 2015; Little and Vaughan-Williams 2017; Pallister-Wilkins 2017), and the preservation of life through biopolitical practices (Mavelli 2017). In Australian offshore detention, humanitarian arguments have not only been used to legitimize the violence that occurs there (Little and Vaughan-Williams 2017), but it also provides a means to ameliorate the moral dilemmas that come from engaging in torture and CIDT, helping the Australian government absolve itself of any wrongdoing.

Why did Australia pursue these moral disengagement strategies? Boochani (2018) and Tofighian (2020) have argued that Australia's immigration policies represent a system of 'systematic torture', the roots of which are embedded in Australia's colonial dispossession and violence against Aboriginal and Torres Strait Islander people. Alongside this historical factor, however, is the broader global environment that has seen Europe, North America, as well as Australia, embrace strict immigration policies that aim to deter asylum arrivals on their shores (Davergne 2016; Little and Vaughan-Williams 2017; Fitzgerald 2019; Mountz 2020). These countries have used a variety of measures, including visa restrictions, pushbacks on land and at sea, offshore detention, and erection of physical barriers to prevent asylum seekers and refugees from reaching destination states (Fitzgerald 2019). These policies have made migration journeys more dangerous (Jones 2017), exposing people to brutal forms of violence, including torture (Barnes 2022). By denying responsibility and wrongdoing for this violence, moral disengagement strategies help ameliorate moral dilemmas and enable states to privilege migration deterrence goals over the human rights of asylum seekers and refugees.

The adoption of strict immigration policies worldwide has given Australia confidence to promote its offshore policies in a norm entrepreneur-style manner. In 2016 Prime Minister Turnbull (2016), and former Prime Minister Abbott (2016), delivered presentations at the UN and to a conference in Prague respectively, advocating and promoting Australia's immigration policies. In the same year, the Australian Ambassador for Human Trafficking travelled across Europe promoting Australia's deterrence policies (Lowenstein 2018). And in 2017, Morrison stated that 'we are the envy of the world when it comes to strong border protection policies' (Murphy 2017). Alongside public promotion, Australia has also been in confidential discussions with European countries and the European Union about Operation Sovereign Borders (Lowenstein 2018). This norm entrepreneurship is having an effect, and is influencing policy makers around the world. Australia's offshore migration policies have been praised by former US President Donald Trump (ABC News 2017), sparked interest in Denmark (Magnay 2021) and Austria (Eder 2016), and provided inspiration for the UK's policy of sending people that have arrived to the UK by boat to Rwanda for processing and resettlement (Gallardo 2022).

By focusing on strategies of self-deception, moral disengagement reinforces studies that have shown how torture and CIDT is not just inflicted by 'monsters' but by 'ordinary' people. Whether this be implementing bureaucratic policies to help carry out the holocaust (Bauman 1989; Arendt 2006), or giving someone what they believed to be an electric shock in a lab setting when told to do so by an authority figure (Milgram 1974), it is recognized that everyday individuals can engage in widespread cruelties. This is because an individual's social environment can help to physically or psychologically distance someone from the pain they are inflicting upon others (Milgram 1974; Bauman 1989; Cohen 2001). As states have externalized immigration policies, it has created physical and psychological distance between refugees and state policy makers. The moral dilemmas that

normally arise from the infliction of suffering have been cancelled out by moral disengagement as the occurrence of, and responsibility for, torture and CIDT is removed 'out of sight, out of mind' (United Nations 2020: 15). As the next section shows, the result of moral disengagement is that it becomes easier to carry out widespread violence as responsibility for that harm is absolved and victims are removed from moral concern (see Barnes 2022).

Creating Moral Disengagement from Torture and CIDT in Offshore Detention

Denial of Responsibility One key strategy that Australia has utilized to construct moral disengagement from torture and CIDT has been to deny that it is exercising jurisdiction over offshore detention centres. The concept of 'jurisdiction' is different from 'sovereignty.' The latter concerns the exercise of supreme authority and power over a territory. Jurisdiction, however, is a legal term related to 'legal competence or regulatory authority' (Gammeltoft-Hansen 2011: 104). Although jurisdiction is 'essentially territorial', a state can exercise jurisdiction extra-territorially, that is, outside of its territory (see *Hirsi Jamaa and Others v. Italy)*. In relation to human rights law, responsibility for human rights violations is not linked with the territory in which they occurred, but whether the state exercised 'effective control' over others (see *Hirsi Jamaa and Others v. Italy*). This 'functional' understanding of jurisdiction means that a state can be held liable under international human rights law for violations against an individual or people if that state authority carried out the harm outside of its territory. This could be on the high seas, or even in another state's territory (Gammeltoft-Hansen 2011).

The UN Committee against Torture (United Nations 2018a), the UNHCR (2007), as well as regional human rights bodies, such as the ECtHR (*Hirsi Jamaa and Others v. Italy*) and Inter-American Commission on Human Rights (*The Haitian Centre for Human Rights et al. v. United States*), among others, have recognized that jurisdiction can be exercised extra-territorially. In doing so, it closes a gap under international human rights law by not permitting states to disavow responsibility for human rights abuses outside of their territory. Recognizing Australia's exercise of extra-territorial jurisdiction is therefore important. If it is shown that Australia exercised effective or joint control over the refugees on Manus Island and Nauru, then it can be held responsible for human rights violations that happened in detention.

However, from the beginning of Operation Sovereign Borders, the Australian government has consistently denied that it exercises jurisdiction or effective control over the detention centres. Instead, Australia characterizes its relationship with the island nations as a form of support (Australian Senate 2015: 11). In regards to Manus Island, an officer from the immigration department told the Australian Senate (2014: 134) in 2014,

> [T]here has been a lot of focus and significant claims made that Australia runs this centre and has 'effective control'. It is a legal context; it is a legal term. We are very clear that we do not have 'effective control': we do not run the centre, we do not set

> the legal framework, we do not own the buildings, we do not employ the staff, we do not set the policy framework, we do not outline the labour laws under which people are employed, we do not have control over the occupational health and safety legislation, and we do not have control over the environmental legislation. What we do have is a contracting arrangement for service delivery consistent with the regional resettlement agreement … [It] needed to be clarified that the Australian government, through its arrangements there, does not exercise effective control. It manages contracts consistent with an agreement struck between the government of PNG and the government of Australia in July and August of 2013.

Australia's position on jurisdiction over offshore detention has been heavily criticized. A number of actors have argued that Australia does exercise effective control, or at a minimum, shares jurisdiction. This includes the UN Committee against Torture (United Nations 2014b), the UN Human Rights Committee (United Nations 2017: 7), the UNHCR (2015: 4), Human Rights Watch and Amnesty International (Bochenek 2016), the Australian Senate (2015: 121–122), and the Stanford International Human Rights And Conflict Resolution Clinic (2017). Australia has an important role in policy implementation and direction. For example, when Human Rights Watch tried to enter Manus Island detention centre, it was asked if it 'had "got permission from Australian Border Force"' (Australian Senate 2017: 101). Moreover, the Prime Minister of Nauru would often seek the approval from Australia before implementing policy changes (Australian Senate 2015: 13–14). As the Director of Legal Advocacy at the Human Rights Law Centre told the Senate Committee in 2014 when asked about Manus Island, 'Australia designed the arrangements, Australia built and funds the detention centre, Australia contracts service providers to provide services at the centre and Australia is involved in the processing of claims within the centre. So not only is Australia a link in the causal chain, Australia built the chain and underwrites the chain and is involved very closely in every link of that chain' (Australian Senate 2014: 135).

The fact Australia built 'the chain' of responsibility that has led to the establishment of the offshore centres that have resulted in human rights violations suggests it is in breach of the principles of State Responsibility. Even if Australia is found not to have effective control, it could have joint responsibility, where Australia, PNG, and Nauru are all responsible for refugees in detention (Australian Senate 2014: 137). Moreover, under Article 16 of the Responsibility of States for Internationally Wrongful Acts (United Nations 2001), if a state aids another state in committing a violation of international law, they can also be held responsible.

Australia is not the first country to narrowly define jurisdiction in order to evade its obligations to refugees. The United States and Italy, for example, have denied that they exercise jurisdiction over asylum seekers on the high seas when engaging in boat pushbacks (see Gammeltoft-Hansen 2011; Barnes 2022). The Senate Committee condemned the government's position, stating, 'In the committee's view, the Government of Australia's purported reliance on the sovereignty and legal system of Nauru in the face of allegations of human rights abuses and

serious crimes at the RPC is a cynical and unjustifiable attempt to avoid accountability for a situation created by this country' (Australian Senate 2015: 122).

By using international law to disavow its responsibilities, Australia helped to create moral disengagement from torture and CIDT in offshore detention. Australia could argue that even if violations of human rights occurred offshore, it was the responsibility of PNG, Nauruan authorities, or private contractors working within the detention centres to respond to the violations. By moving responsibility onto other actors, Australia has been able to exclude refugees from moral concern and distance itself from the harm inflicted upon them. As a result, the pain and suffering inflicted upon refugees becomes 'out of sight, out of mind' as 'each participant tends to focus on the technicalities of their contribution rather than the abusive nature of the overall process' (United Nations 2020: 13, 15). Everything Australia was doing was perfectly legal, and therefore acceptable, according to this argument. This strategy complemented a second denial strategy, namely, denial of fact.

Denial of Fact When criticized by human rights authorities for breaching the prohibition against torture, the government denied all allegations. When Amnesty International called the treatment of asylum seekers on Nauru 'torture', Former Prime Minister Turnbull stated, 'I reject that claim totally' and that the allegations are 'absolutely false' (BBC News 2016b). When the Nauru files were released, both the Nauruan and Australian governments claimed that asylum seekers were making false allegations and that people were self-harming to get sent to Australia (Calvo 2016).

Instead, conditions were determined to be legal. According to Minister Dutton, 'Australia is meeting all its international obligations and with other regional nations provides a range of services to people who have attempted to enter Australia illegally' and denied that it had breached international law (Cox 2015). Furthermore, the former Prime Minister Tony Abbott stated in response to criticisms by the UN that Australia's offshore detention violated the UNCAT, 'The conditions on Manus Island are reasonable under all the circumstances. All of the basic needs of the people on Manus Island are being met and, as I said, I think the UN would be much better served by giving credit to the Australian government for what has been achieved in terms of stopping the boats' (Cox 2015). However, although denying that torture and CIDT took place, what was not denied was that human suffering was part of the policy. Malcolm Turnbull stated in 2014, 'We have harsh measures (and) some would say cruel measures . . . [but] the fact is if you want to stop the people-smuggling business you have to be very, very tough' (Amnesty International 2016: 48). Offshore detention is 'cruel', but not cruel enough to constitute a violation of the UNCAT.

An integral part of denying torture and CIDT has been to restrict the type of information made about the suffering endured in offshore detention. This allowed the Australian government, as well as governments of PNG and Nauru, to challenge allegations of torture and CIDT. But it has also reinforced moral disengagement by generating self-deception and creating psychological distance between

responsibilities for offshore detention and the suffering resulting from these policies. One way the government has restricted publicly available information is by utilizing domestic laws that punish detention staff that speak publicly about conditions in offshore detention. Staff were required to sign confidentiality agreements in their contracts between the Australian immigration department and the service provider. The Australian government also passed the *Australian Border Force Act 2015,* which states that a person could face two years in prison if they record or disclose 'protected information.' Although an exemption was later included for medical professionals (Stanford International Human Rights And Conflict Resolution Clinic 2017: 17–18), this Act has had a serious impact on stifling public statements. Not only were staff warned that breaches of confidentiality agreements could result in prosecution under the *Crimes Act 1914* (Australian Senate 2014: 25), but along with the *Border Force Act,* it created 'a "chilling effect" on the capacity and willingness of people to share information' (Australian Senate 2016: 16). It also encouraged an environment where managers asked detention staff to spy on their colleagues to see who was discussing 'negative' issues within the centres (Australian Senate 2017: 98).

This environment made human rights monitoring difficult. When the UN Special Rapporteur on the human rights of migrants postponed his visit to offshore detention in 2015, one of the reasons he cited was the refusal of the Australian government to offer him assurances that employees in the detention centre that speak to him about human rights conditions would not be prosecuted. The Rapporteur stated that the *Border Force Act* would not only 'discourage people from fully disclosing information relevant to my mandate' but that 'This threat of reprisals with persons who would want to cooperate with me on the occasion of this official visit is unacceptable [. . .] The Act prevents me from fully and freely carrying out my duties during the visit, as required by the UN guidelines for independent experts carrying out their country visits' (United Nations 2015a).

These laws and confidentiality agreements supported a broader effort of preventing information about Operation Sovereign Borders being made accessible to the public. As Dr Peter Young stated, 'You can't allow transparency, if what you're trying to do is inflict suffering. Secrecy is necessary because these places are designed to damage' (Amnesty International 2016: 50). The Australian government asked medical professionals not to include statements from internal reports that recognized the adverse impact detention itself was having on the wellbeing of refugees (Marr and Laughland 2014). The Immigration Minister, Scott Morrison, often refused to answer questions at media briefings about Operation Sovereign Borders, invoking 'national security' or 'operational matters' as an excuse (Tranter 2014). The Minister also stopped delivering media briefings about Operation Sovereign Borders in 2014 (Swan 2014). Moreover, the government frequently refused to adequately answer Senate Committee questions leading the Committee to state in 2017 that the government was being 'deliberately obstructive' (Australian Senate 2017: 103). When the Senate Committee also sought access from the Australian Government to the offshore detention centre on Manus Island, its request was ignored (Australian Senate 2014: 2).

In addition, both PNG and Nauru played a role in maintaining secrecy. Nauru has blocked journalists' access to detention facilities (Bochenek 2016), restricted access to Facebook for persons in detention, and in 2014, increased the cost of a visa from $200 to $8000 (ABC News 2014; Human Rights Watch 2015; Bochenek 2016; Meade 2016). This increase has inhibited journalists from visiting the island (Australian Senate 2015: 90) as refunds are not provided if their application is unsuccessful (ABC News 2014). In 2014, it cancelled the visit by the UN Working Group on Arbitrary Detention (United Nations 2014a). And in 2016, when six Danish parliamentarians applied for entry to Nauru detention centre, only three were permitted visas, with those that had been critical of the detention centres refused a visa. As a result, the delegation cancelled their visit (Hasham 2016). On Manus Island, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has been denied entry as well (United Nations 2014c). Moreover, when Human Rights Watch and the Human Rights Law Centre were denied entry in 2015, they were told by PNG officials that they were not allowed in 'Because we thought you would criticise conditions' (Australian Senate 2017: 101).

This secrecy has been condemned by human rights groups (Bochenek 2016), international lawyers (Stanford International Human Rights And Conflict Resolution Clinic 2017), the United Nations (2015a), and parliamentary committees (Australian Senate 2017: 180–181) but dismissed by the Australian government. Former Prime Minister Tony Abbott stated in 2014, 'If stopping the boats means being criticised because I'm not giving information that would be of use to people smugglers, so be it' (Swan 2014). This lack of transparency significantly impacted the ability to uphold accountability (van Berlo 2017) by adversely impacting on both judicial accountability, and non-judicial accountability provided through, for example, media reporting (United Nations 2021). As the Australian Senate Committee noted, 'The committee strongly believes that greater transparency is an important prerequisite to improving accountability of all involved for the welfare and safety of persons at the RPC' (Australian Senate 2015: 126). The denial of fact helped to reinforce secrecy and maintain the ongoing human rights abuses by breeding moral disengagement about the conditions in the detention centres.

Denial of Wrongfulness The third strategy that has helped create moral disengagement is denial of wrongfulness. The government has not tried to justify torture or CIDT, as it has denied violations of the UNCAT. Rather, it has argued that 'tough' detention conditions are needed to act as a deterrent and save lives at sea (Amnesty International 2016: 48). As part of a 2014 inquiry by the Australian Human Rights Commission into children in immigration detention, the then Immigration Minister, Scott Morrison, invoked saving lives at sea as a justification for ongoing detention of children. Morrison stated, 'As a parent of two young children, the emotional challenges of working in this policy portfolio are just as real and just as great as they would be for any other parent in my position' (Henderson 2014). However, despite these challenges, 'The Government is not going to allow a set of policies to be weakened that would see [an] Australian

staring into the face of child corpse in the water again' (Henderson 2014). The government's position is that offshore detention is a difficult decision to make, but a necessary one. Although it may be resulting in suffering, the cost is worth it to save lives (Henderson 2014).

The humanitarian justification was also utilized to challenge allegations of torture and CIDT. In response to the UN Special Rapporteur on Torture's 2015 finding that conditions in Australia's offshore programme violated the 1984 UNCAT, then Prime Minister Abbott stated, 'I really think Australians are sick of being lectured to by the United Nations, particularly, particularly given that we have stopped the boats, and by stopping the boats, we have ended the deaths at sea' (Cox 2015). Abbott further stated, 'The most humanitarian, the most decent, the most compassionate thing you can do is stop these boats because hundreds, we think about 1200 in fact, drowned at sea during the flourishing of the people smuggling trade under the former government' (Cox 2015). The saving of lives was privileged above any suffering that refugees were enduring in detention. To criticize the government for breaches of the UNCAT neglected the important role these policies have played in saving lives.

Using the argument of saving lives not only helped to legitimize offshore detention and the conditions within it, but it also served the important function of ameliorating moral dilemmas that come from inflicting pain upon refugees. The Australian government recognized its offshore programme resulted in suffering. However, Australia was absolved from any wrongdoing because its deterrence programme served a broader humanitarian purpose of saving lives and resettling people living in refugee camps overseas. As Morrison argued in the 2014 inquiry into children in immigration detention, 'The voiceless in this debate are the ones that are at the bottom of the ocean and who are in camps all around the world, [who] I am very pleased are now getting under our program' (Henderson 2014). This self-deception has been crucial in producing moral disengagement. By arguing that offshore detention serves a broader positive purpose, it draws attention away from the suffering of refugees in detention, and places them beyond moral concern. Not only does this harm human dignity, but it produces an environment that tolerates torture and CIDT. As wrongdoing is denied, moral dilemmas are ameliorated, allowing for the ongoing use of torture and CIDT.

Undermining Moral Disengagement

The fact that moral dilemmas have been absolved through self-deceptive strategies has had the dangerous side-effect of tolerating human suffering. How, then, can moral disengagement be challenged? The UN Special Rapporteur on Torture has argued that preventing and stopping torture requires that international norms, rules and institutions mitigate against factors that are contributing to moral disengagement. At the state level, states should establish monitoring mechanisms, abolish secrecy regarding administrative, government or judicial decisions with only restrictive exceptions, and support media and civil society in helping keep government accountable (United Nations 2020). Doing so will aim to bring torture and CIDT to

light, and make it much more difficult for governments to engage in self-deceptive strategies.

Integral to challenging moral disengagement in Australia is undermining the denials of fact and wrongdoing, the secrecy, and the legal strategies that are enabling it in the first place. Human rights groups, religious organizations, politicians, and refugees themselves have protested against Australia's refugee policies to expose the harm it is inflicting on refugees (Banham and Anantharajah 2019: 98–101), challenging both the denials of fact and of wrongdoing. There has also been a number of legal challenges to offshore detention. According to the Kaldor Centre, 'Australia has been referred to the ICC at least six times since 2014' (Kaldor Centre for International Refugee Law 2021: 10). Strategic litigation has also been used to help provide financial compensation to refugees who have endured harm in immigration detention (Holly 2020). And in 2016, the Supreme Court of Papua New Guinea ruled that holding people in indefinite detention on Manus Island was unconstitutional (see Tan 2018; Tan and Gammeltoft-Hansen 2020), forcing the Australian government to close the existing centre and create a new 'open' centre (Amnesty International 2018).

The protests, domestic and international legal challenges, as well as international condemnation have made it difficult for the government to maintain existing policy settings. These protests and constant legal challenges, which in some cases resulted in the Australian government paying refugees $70 million (AUD) in compensation (see Holly 2020), have helped undermine the legitimacy of offshore detention in the eyes of human rights authorities. But it has also helped undermine the secrecy surrounding offshore detention and attempts by the government to evade legal accountability. However, despite these successes, there continues to remain a number of barriers that will make it hard to undermine offshore detention, and the moral disengagement that maintains it.

First, Australia's political and legal system creates barriers to protecting international human rights. Australia is the only liberal democracy without a federal bill or charter of human rights. Instead, it relies on parliamentary sovereignty and responsible government to uphold rights. This has resulted in a system of executive dominance that has tied the hands of courts, making it difficult to uphold international human rights obligations (Williams and Reynolds 2017). Australian governments have utilized parliamentary sovereignty to change laws or settle class actions to short circuit legal cases (see Holly 2020), and they have also implemented prohibited practices, such as indefinite immigration detention, which the courts have endorsed (see Curtin 2005).

Second, legal challenges to offshore detention have had only limited effect. Australia is not within the jurisdiction of any regional human rights court, reducing opportunities for judicial interventions. Moreover, although strategic litigation has had some successes, it has not been able to bring offshore detention to an end (Holly 2020: 566). And even though the PNG Supreme Court ruling helped to close the detention centre there, it did not undermine Australia's broader offshore programme. People in PNG still have restrictions on their movement (Amnesty International 2018), and as the Stanford International Human Rights And

Conflict Resolution Clinic (2017: 21–23) point out, neither Nauruan nor PNG courts have prosecuted human rights abuses in detention.

And finally, there is little domestic political appetite in Australia to dismantle offshore detention. When the Rudd Labor government came to power in the 2007 election, it pledged to abolish Australia's offshore programme, calling it 'a cynical, costly and ultimately unsuccessful exercise' (Evans 2008). Even though Labor did close the Manus Island and Nauru detention centres the following year, it was the Labor party that also re-established them again in 2012. Despite offshore detention being controversial within Australia, both major political parties and a majority of Australians continue to support it (Murphy 2019). And, despite immense criticism from international human rights authorities, the government has not changed its position. In fact, it has done the opposite and promoted its policies.

Just because there are barriers to dismantling offshore detention and moral disengagement does not mean efforts to protect refugee rights are futile. Efforts to challenge offshore detention have produced some successes, which demonstrates that change is possible. Integral to undermining moral disengagement is to dismantle those barriers and self-deceptive strategies that are reducing empathy for the suffering of others. Doing so will make it harder to deny torture and CIDT as well as harder to absolve the moral dilemmas that come with the infliction of harm upon others.

Conclusion

A key factor that has contributed to the ongoing torture and CIDT in Australian offshore detention has been moral disengagement. Utilizing legal strategies and humanitarian arguments, Australia denied responsibility for the treatment of refugees in offshore detention, denied the presence of torture and CIDT, and promoted its migration deterrence policies as necessary to save lives. By ameliorating moral dilemmas that come from violating the UNCAT, moral disengagement has enabled Australia to proclaim that it is upholding the torture prohibition, while at the same time, violating it to achieve migration deterrence goals.

Moral disengagement to torture and CIDT of refugees is an underexplored issue that needs to be understood to help protect refugees worldwide. In a global environment where states are increasingly securitizing and externalizing immigration policies (Davergne 2016; Fitzgerald 2019; Mountz 2020), moral disengagement further excludes refugees from moral concern, reducing the ability to empathize with their suffering. Despite Australia ratifying the UNCAT and Refugee Convention, it engaged in a policy that inflicted torture and CIDT upon asylum seekers and refugees with impunity. Focusing on how moral disengagement is constructed can generate new research about how to challenge these self-deceptive strategies as well as how to shape international norms, laws and institutions in a direction that better protects people from torture and CIDT.

Failure to deal with moral disengagement threatens to both undermine the international torture prohibition, but also produce a global climate where indifference to the suffering of people on the move becomes the norm. Identifying and responding to the factors that are making refugees and migrants vulnerable to

torture and CIDT is an urgent issue with an estimated 7 million asylum seekers and refugees having been exposed to torture (United Nations 2018b: 4). As more states adopt migration deterrence policies, and follow in Australia's footsteps, it risks increasing vulnerability to torture and CIDT even further. Developing strategies to mitigate moral disengagement is necessary to not only help strengthen protections for refugees and asylum seekers, but to also challenge the disengagement that is inhibiting the recognition of, and empathy for, human suffering.

NOTE

1. This article defines torture and CIDT in accordance with article 1 and article 16 of the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) respectively.

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