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Grey networks: The contradictory dimensions of Australia's immigration detention system

David A. Neil

University of Wollongong, dneil@uow.edu.au

Michelle A. Peterie

University of Sydney, mpeterie@uow.edu.au

Publication Details

Neil, D. & Peterie, M. (2018). Grey networks: The contradictory dimensions of Australia's immigration detention system. *Asia Pacific Viewpoint*, 59 (1), 132-144.

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Disciplines

Arts and Humanities | Law

Publication Details

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**Grey Networks: The Contradictory Dimensions of Australia's Immigration Detention
System**

Dr David Neil | University of Wollongong | dneil@uow.edu.au

Dr Michelle Peterie (corresponding author) | University of Sydney |
michelle.peterie@sydney.edu.au

Abstract

The notion of dark networks has recently received attention in the literature on policy network analysis. Dark networks are defined as illegal and covert, in contrast to bright networks which are legal and overt. In this article, we suggest a third category – grey networks – which are characterised by their use of secrecy and concealment despite their ostensibly legal status. These networks are subject to contradictory imperatives. They employ methods that cannot be openly acknowledged within the larger legal and social framework in which they function. In this article, we illustrate this concept through an interview-based study of Australia’s immigration detention network. This network enacts a deterrence policy which has been widely condemned as breaching Australia’s obligations under international law. At the same time, it is required to maintain a façade of lawfulness and respect for human rights.

Keywords

asylum seeker, Australia, dark networks, grey networks, human rights, immigration policy, mandatory detention, refugee

Grey Networks: The Contradictory Dimensions of Australia's Immigration Detention System

'The gatekeeper gives him a stool and allows him to sit down at the side in front of the gate. There he sits for days and years. He makes many attempts to be let in, and he wears the gatekeeper out with his requests. The gatekeeper often interrogates him briefly, questioning him about his homeland and many other things, but they are indifferent questions, the kind great men put, and at the end he always tells him once more that he cannot let him inside yet. The man, who has equipped himself with many things for his journey, spends everything, no matter how valuable, to win over the gatekeeper. The latter takes it all but, as he does so, says, "I am taking this only so that you do not think you have failed to do anything."'

(Kafka, 1915: 5)

Introduction

'Policy network analysis' is an umbrella term for a large and fragmented literature, beginning in the early 1980s. According to Rhodes, the term 'policy network analysis' has been used in three main ways within this scholarship, 'as a description of governments at work, as a theory for analysing government policy making, and as a prescription for reforming public management' (Rhodes, 2008: 426). In these literatures, policy networks are typically characterised as assemblages of nodes, linkages and relationships, both formal and

informal, between governmental agencies and other organisations such as business groups, interest groups and civil society associations (Rhodes, 2008: 426). In general, policy network analysis has focused on collaborative networks which are 'seen as appropriate devices to tackle public management problems and to successfully coordinate political, social, and economic action' (Raab and Milward, 2003: 413).

We take as our starting point a problem delineated by Milward and Raab (2006); in a series of papers, Raab and Milward have sought to develop an account of 'dark networks'. This research is concerned with networks as problems rather than networks as means of addressing social needs. As the authors note, 'one of the basic features of research on networks, which repeatedly appears in almost all studies, is the statement that networks are often the only governance form that is able to deal with today's complex problems' (2003: 418). In exploring this function, however, this literature has tended to overlook what Raab and Milward characterise as the 'darker' side of networks, primarily the role of networks in organised crime and terrorism. They thus introduce a distinction between 'dark' and 'bright' networks, that is, between systems of illicit association that are characterised by their secretive nature, and the more commonly studied legal networks that permeate all of society.

Bright and dark networks are delineated along two axes: legal/illegal and overt/covert (Raab and Milward, 2003: 413). The authors acknowledge that the distinction is not clear cut, and that dark and bright networks can come together in a 'grey zone', for example in the political arm of a terrorist organisation (such as Sinn Fein and the IRA) (Milward and Raab, 2006: 334). In this paper, we draw attention to a kind of network which cannot be straightforwardly located on these axes and which thus highlights a limitation of this

taxonomic framework. Essentially, our point is that the degree of legality or transparency of a network is sometimes a contested question. For Milward and Raab, legality 'refers to the laws of the state, any state' (Milward and Raab, 2006: 334). Legality, in their framework, is relativised to a specified jurisdiction. For example, they describe networks organised by the Third Reich as 'bright' because they were legal under that regime. However, networks often operate across jurisdictions and in contested legal spaces where different sources of law and legal authority come into conflict. Most importantly for this article – domestic law and policy may come into conflict with a state's obligations under international law.

Networks have been characterised as overt or covert based primarily on whether the nodes in the network are readily visible, or whether the network is hidden and can only be mapped with considerable investigative effort. However, it is possible for a network to be transparent in one sense and opaque in another. The network that we are concerned with in this paper is overt in that it is an instrument of government policy whose nodes and connections are visible. Nonetheless, aspects of the operation and function of this network are, by design, opaque. The term 'grey networks' in this paper is intended to describe networks that appear to have ambiguous properties with respect to both lawfulness and transparency.

What we are calling 'grey networks' are networks that have to manage internal contradictions. They occupy a legal grey zone in that they may be legal under domestic law but illegal under international law, or they may abrogate rights which are recognised elsewhere in the legal system. Grey networks also have a Janus-faced character, in that they present as operating within legal and social norms, according to fair procedures, while at the same time enabling activities that must be officially disavowed. Grey networks may

develop in contexts where an institutional framework is placed under discordant pressures and where it is, for example, subject to political demands that are not straightforwardly realisable within the overarching legal and social framework.

While we would argue that this phenomenon can be observed in a number of contexts, this article is specifically concerned with Australia's immigration detention network.ⁱ It is based on an empirical study of the experiences of volunteer visitors to detention facilities. Raab and Milward have pointed out that the concept of a 'network' is used in a variety of ways within the social sciences literature (2003: 417). For the purposes of this discussion, the detention network is understood as the web of individuals and organisations who make and enact decisions affecting asylum seekers held in Australia's immigration detention facilities. As this article will demonstrate, such decisions concern not only the processing of the asylum seekers' refugee claims, but also the control and management of their daily lives.

The mandatory detention of unauthorised maritime arrivals has been a cornerstone of Australia's immigration policy since 1992 (Phillips and Spinks, 2013: 5). In its most recent incarnation, this policy has seen asylum seekers detained and processed offshore on Manus Island or Nauru, but a system of prison-like facilities continues to operate on the Australian mainland. It is these facilities and their governance that are the focus of this paper. Unlike the offshore facilities, Australia's onshore detention facilities fall entirely under the jurisdiction of Australian courts. The enactment of electorally-popular immigration policies such as mandatory detention thus places contradictory pressures on the system. On one hand, the network is answerable to the policy goal of deterring asylum seekers. On the other hand, the pursuit of these goals threatens to violate long-established norms of due

process, owed to any person on Australian soil, as well as breaching Australia's obligations under international law.

Australia's processing of asylum claims has been notoriously slow, and both the on- and offshore facilities have been plagued with cases of neglect, mistreatment and abuse. If it is understood as a 'bright' or conventional network, much of what happens within Australia's detention system can only be attributed to mismanagement, inefficiency and/or structural flaws. While we certainly would not deny that such failings exist, there is a useful explanatory perspective that is not available under the bright network assumption. A more satisfactory explanation of this apparent dysfunction needs to pay attention to the discordant imperatives that this system is answerable to.

When fieldwork for this study was conducted, nine onshore immigration detention facilities were operational in Australia. These facilities were Maribyrnong Immigration Detention Centre (IDC),ⁱⁱ Villawood IDC, Christmas Island IDC, Yongah Hill IDC, Perth IDC, Brisbane Immigration Transit Accommodation (ITA), Melbourne ITA, Adelaide ITA, and Wickham Point Alternative Place of Detention (APOD)ⁱⁱⁱ. The testimonial evidence in this paper derives from in-depth, semi-structured, face-to-face interviews, conducted in 2015 and 2016 with 32 visitors to these facilities. Collectively, the participants in this study were visitors at all of the above detention facilities, with the exception of Adelaide ITA. Interviews were conducted by Peterie as part of a larger study concerning the experiences of volunteers who support asylum seekers in Australia. The testimonial nature of this dataset is important because policy documentation and press releases conceal the lived reality of daily practice within these facilities. These testimonies also reveal the extent to which opacity and

confusion are operational principles that serve to make the system unnavigable for those subject to its authority.

This paper begins with a discussion of the legal tensions that surround Australia's treatment of unauthorised maritime arrivals. It examines the extraordinary statutory measures that have been taken to make policies legal under domestic law. The paper then turns to consider the means by which the reality of Australia's mandatory detention policy is made simultaneously visible and deniable, and examines the discursive strategies that help to make that possible. A deterrence policy requires violence, but that violence must also be rendered legally and socially palatable. The final section of this paper examines the use of 'soft violence' within the system, arguing that control, arbitrariness and opacity can achieve torture-like effects while maintaining a façade of humaneness. These ambiguities, we argue, should not be understood as problems to be resolved. A grey network is not a dysfunctional bright network. Rather, a grey network presents as a bright network, but performs functions that would not be sustainable in a straightforwardly law-abiding and transparent system.

The Tension between Domestic and International Law

The onshore detention facilities exist to realise Australia's policy of mandatory detention. As indicated above, the system consists of ten facilities. The operation of these facilities has been outsourced to a private contractor, SERCO, who manages the centres on behalf of the Department of Immigration and Border Protection.

The United Nations has found that Australia's policies of mandatory detention and offshore processing violate its obligations under international law (20 August 2013a, 20 August

2013b). The Australian Human Rights Commission has made a similar claim, particularly with regard to children in detention (2014). In some countries, international laws are automatically incorporated into the domestic legal system. In Australia, however, this is not the case. International laws cannot be enforced by Australian courts unless these laws have been incorporated into domestic laws. As such, policies that are consistent with Australian law can withstand legal challenge, even when these laws constitute clear violations of Australia's international human rights obligations.

This feature of Australian law has been exploited in order to deny asylum seekers the legal rights that Australia has committed to upholding. There are two mechanisms of particular note here. First, offshore processing – a policy which sees asylum seekers processed outside the jurisdiction of Australia's courts – has been introduced. Second, successive governments have passed laws which ensure that treaty obligations are not enforceable by Australian courts. By stripping refugee protections from domestic law, the government has circumscribed asylum seekers' rights. Far from enshrining Australia's commitment to abide by The 1951 Convention relating to the Status of Refugees ('the Refugee Convention'), the Australian government has removed all references to the Refugee Convention from the Migration Act 1958 (McAdam, 3 December 2014).

Furthermore, the government has often legislated to bolster the legal standing of its policies when challenges have been mounted (McAdam and Chong, 2014: 172-173). For example, in June 2015 the government introduced emergency legislation which was allegedly designed to head-off a challenge to the legality of Australia's offshore detention system (Conifer and Doran, 24 June 2015). Faced with questions about the timing of the Bill, Attorney-General Brandis disingenuously claimed that the government was not acting to protect itself, and

that Australia's offshore processing arrangements had always been lawful. "The legal advice to the Government and to the previous Labor government was that the scheme was within the law" (Brandis in Conifer and Doran, 24 June 2015). More importantly, however, this defence trades on a narrow and technical conception of lawfulness, which evades disquestions about respect for human dignity and fundamental rights. It should also be noted that despite legislative efforts to make Australia's asylum policies lawful, issues of domestic lawfulness remain. This was seen in 2017 when the government settled a compensation claim for AU\$70 million. The complainants – a group of current and former detainees – had claimed damages for "consequences arising out of [their] transfer and subsequent confinement [...] at Manus Island" (Macaulay, 2017).

With respect to international law, Australia has repeatedly failed to meet its obligations as a signatory to the Refugee Convention and the 1967 Protocol relating to the Status of Refugees. Human rights experts around the world have condemned Australia's asylum seeker policies as a violation of these treaties, as well as a breach of several other international agreements. The Refugee Convention formally recognises that the very nature of the refugee experience means that it is often impossible for forced migrants to secure passports and visas as they flee persecution (Phillips, 2011: 2-3). The cornerstone of Australia's asylum seeker policy, however, is indefinite mandatory detention. This policy sees all maritime asylum seekers who arrive in Australia without prior authorisation placed in immigration detention until their asylum claims have been determined, or until the Minister has granted them permission to reside in the community. This policy applies only to 'illegal' (unauthorised) arrivals; those who arrive with valid documentation and go on to claim asylum are not subject to mandatory detention (Phillips and Spinks, 2013: 1-2).

Australia's detention policy has also been seen as a breach of article 9 of the International Covenant on Civil and Political Rights (ICCPR). This article provides that '[n]o one shall be subjected to arbitrary arrest or detention' (UN General Assembly, 1966). Australia's detention regime has been described as 'arbitrary'. The Australian Human Rights Commission acknowledges that short-term detention may be necessary in some circumstances, but notes that 'in order to avoid detention being arbitrary, there must be an individual assessment of the necessity of detention for each person, taking into consideration their individual circumstances' (1 January 2014). The blanket and default application of Australia's detention policy renders it arbitrary.

In addition to these concerns, the conditions in which Australia holds asylum seekers have been widely denounced (Phillips and Spinks, 2013). The United National Human Rights Committee (20 August 2013a, 20 August 2013b) and the Australian Human Rights Commission (2013) have both suggested that in some circumstances Australia's detention regime constitutes 'cruel, inhuman or degrading treatment', placing it in violation of article 10 of the ICCPR. At times centres have been overcrowded, and housing arrangements (including the accommodation of asylum seekers with convicted criminals, or young children with mentally ill adults) have raised concern. Australia's offshore processing facilities have received particular criticism. Refugees and whistle blowers have described horrific conditions and endemic levels of physical and sexual violence (Nethery and Holman, 2016, Hoang and Gleeson, 10 August 2016), including incidents involving children. Within the Nauru Files (a cache of 2,116 leaked incident reports from Australia's processing centre on Nauru), there were seven reports of sexual assaults involving children, 59 reports of assault on children and 30 reports of self-harm involving children (Farrell et al., 10 August 2016).

For many, the most concerning aspect of Australia's detention regime is the fact that Australia's mandatory detention policy also applies to minors. A 2014 Australian Human Rights Commission Inquiry into Children in Immigration Detention found that prolonged detention had '[profound] negative impacts on the mental and emotional health and development of children', with 34 percent of detained children suffering from serious mental health disorders (29). The Commission also expressed concern that children in detention were regularly exposed to physical danger. The Commission was particularly condemnatory regarding the detention of children in offshore facilities, where physical and sexual violence are rife.^{iv} The Convention on the Rights of the Child enshrines the overarching legal principle that 'in any actions concerning children, the best interests of the child shall be a primary consideration' (McAdam and Chong, 2014: 101, see also Human Rights and Equal Opportunity Commission, April 2004). The application of Australia's mandatory detention policy to children violates this principle.

It is clear from this chorus of indictment that Australia is pursuing a policy that breaches its obligations under international law. Nevertheless, the legal manoeuvres outlined earlier have rendered these laws domestically unenforceable. What is striking here is the effort to maintain the appearance of respect for international law and human rights. Australia has responded to these charges by insisting that its policies do comply with its legal obligations, and claiming that the issue reduces to a question of difference in interpretation (see, for example, Conifer and Doran, 24 June 2015). If the international lawfulness of Australia's detention practices was not in question, however, it would be difficult to explain the veil of secrecy that covers the system. Staff at offshore processing centres have been required to sign non-disclosure agreements, and journalists and human rights organisations are

routinely denied access (Fleay, 2015, Nethery and Holman, 2016). Although the offshore facilities are more isolated than the onshore network, there is significantly less formal oversight within the onshore network than within Australia's prison system (Briskman et al., 2008: 343). Restrictions on media access and the obstacles faced by external visitors suggest the intention to make these centres, as far as possible, closed institutions. Many scholars have highlighted the centrality of secrecy and inaccessibility to Australia's detention strategy, noting that asylum seekers are often kept 'out of sight, out of mind'. As Fleay notes, '[t]here is limited independent monitoring of these facilities by formal state and non-state bodies. There are also few civil society groups and individuals with the capacity to visit and provide a monitoring role' (2015: 22).

Discursive Manoeuvres

In the last two decades, Australia has seen the bipartisan endorsement of policies explicitly intended to deter asylum seekers from seeking protection in Australia. These escalating measures and the dehumanising discourses that have accompanied them respond to the political reality that Australian politicians are rewarded at the polls for 'tough' asylum policies. The 2001 election is often described as a turning point in Australia's treatment of asylum seekers (see, for example, Suhnan et al., 2012: 80). The conservative government – led by Prime Minister John Howard – entered the campaign trailing in the polls but went on to win a decisive victory. Howard exploited public fears regarding terrorism and 'Islamic extremism' in the aftermath of the September 11 terrorist attacks in the US, and projected these fears onto maritime asylum seekers (Poynting et al., 2004, Marr and Wilkinson, 2003, Poynting and Noble, 2003, Devetak, 2007). Howard's stance was cast as a display of national

strength. This successful electoral strategy provided a template for subsequent governments, and began what has been widely described as a 'race to the bottom' on the treatment of boat arrivals. While public antipathy to asylum seekers has been identified as a decisive electoral issue (McMaster, 2002: 280), it is manifestly clear that these policy objectives are in tension with Australia's self-understanding as a 'generous' country with an exemplary record of respect for human rights.

Discourse analysts have drawn attention to a number of key narratives which have come to structure Australia's asylum seeker debate and justify the government's policies. These narratives include stories about the threat that asylum seekers pose to Australian values (Gale, 2004, Gelber, 2003, Every and Augoustinos, 2007, Randell-Moon, 2006, Dunn et al., 2007); to the maintenance of law, order and domestic security (McCulloch, 2004, Poynting et al., 2004, Brookes, 2010); and to national resources (Columbus, 2002, Green, 2003).

While research confirms that these messages resonate with the electorate (McKay et al., 2011), Australians have also expressed concern regarding the human costs of deterrence. As such, governments have increasingly employed humanitarian language to frame their policies, suggesting that hardline deterrence policies are 'compassionate' (in that they purportedly save lives at sea and curb people-smuggling) and 'fair' (in that they ensure maritime asylum seekers derive no advantage from 'jumping the queue') (Peterie 2017; see also Dauvergne, 2015). These discursive strategies present deterrence policies as compatible with Australia's self-image as a decent and law-abiding country.

In reality, however, the realisation of these policies involves attempting to repel people who are already at the limit of human desperation. As a consequence, deterrence necessarily requires harsh and draconian measures. The political effectiveness of deterrence thus

depends on an acute form of bad faith in the popular discourse. While this tension can be sidestepped at the level of campaign slogans, its practical consequences impose contradictory demands on the detention network itself. The issue here is that the detention system is required to function as an instrument of deterrence. It has to be seen by both the voting public and the would-be asylum seeker as harsh and punitive. At the same time, however, asylum seekers in Australia's onshore system are rights-bearers who have committed no crime and whose treatment is governed by legal norms. Notwithstanding the legislative erosion of rights for onshore asylum seekers, those who are processed within the onshore system have different prospects to those who have been sent offshore.

Soft Violence

To negotiate the contradiction between Australia's deterrence policy and its international obligations, the legal and discursive strategies described above require the supplement of an additional set of techniques at the institutional level. These techniques are applied to detainees whose legal claims are already in process within the onshore network, for the purpose of realising Australia's deterrence policy while retaining the appearance of due process. We refer to these techniques collectively as 'soft violence'. 'Soft' here does not mean gentle. Rather it refers to a means of breaking people which operates at a psychological level. Since the 1971 Stanford Prison Experiment (Zimbardo, 2007), it has been understood that people can be psychologically broken through techniques of dehumanisation and disempowerment. Scholars have drawn attention to the centrality of 'deprivations' and 'frustrations' to the incarceration experience, noting that these systems of institutional disempowerment in fact constitute a 'threat to the life goals of the

individual, to his defensive system, to his self-esteem, or to his feelings of security' (Maslow in Skyes, 1958). For scholars in this tradition the psychological pain of institutionalisation and incarceration is best understood as non-accidental (Goffman, 1961, Brookes, 2001, Pizarro and Stenius, 2004, DeVeaux, 2013, Foucault, 1995 [1975]). The accounts presented in the interviews on which this article draws point to three main operational principles – control, arbitrariness and opacity – that can be interpreted as modes of soft violence. These principles, we argue, should also be seen as non-accidental.

Soft violence is a means by which the detention system fulfils its contradictory imperatives. It perpetrates an effective deterrent violence in a manner which maintains at least a superficial respect for law, due-process and human rights norms. Opacity is a strategy deployed both outside and *within* the system. On one hand, the network hides abuses from public view. On the other, opacity renders even the ordinary details of daily life unpredictable. This lack of transparency is a powerful means for breaking people without appearing to break the law.

Control

The onshore network is an all-encompassing system. Control is exercised over not just the physical movements of asylum seekers in time and space, but also over the smallest choices of everyday life. It is significant, given the detainees are not criminals, that the forms of control that we see in detention go far beyond that which is necessary to fulfil their custodial function.

The most obvious form of control that asylum seekers are subjected to is restrictions on their movements. What detention means, in practice, is that almost all aspects of an asylum seeker's life take place within the closed confines of a detention facility. As one interviewee explained,

'These people that you visited last week, they have not moved. They've gone to their room to the community area to maybe the sporting oval to the community area back to their room to the internet area but they haven't moved outside a space of 100 square metres of whatever it is'.

Within the facilities themselves, asylum seekers' movements are also restricted. One interviewee noted that the asylum seekers were not permitted to use the same bathroom as their visitors. Another described being rebuked when she tried to take a child to look at the garden.

'I actually tried to take one of the little kids in there to walk around and have a look at the flowers, and one of the guards said 'you're not allowed in there' [...] I suppose I just thought why do we deprive people of something so basic as having your toes in the grass and bending down and picking a petunia and looking at the colours on it? And feeling, you know, touching stuff? Whereas back in there all that they could touch were hard things – like the climbing frame and the slippery slide'.

When asylum seekers are permitted to leave detention facilities – for example, when they need medical attention – they are accompanied by security personnel and sometimes handcuffed. One interviewee noted that his friend had refused to wear handcuffs during a

trip to the doctor because he did not wish to be perceived as a criminal. The medical appointment was subsequently cancelled.

Interviewees also noted that institutional life saw asylum seekers denied agency over the most basic areas of their lives. This reality was particularly pronounced for asylum seekers who had children. As one interviewee reflected, detained parents could not choose where their children lived or went to school. They could not buy their clothes, attend their parent-teacher interviews, or decide what they ate.

‘All those things that you take for granted when you've got freedom are not there for those parents. That their lives are – their everyday life is dictated. Choosing what their kids can take to school for lunch. They sound like really silly things but they're the things that you can control as a parent and those mums and dads can't do that.’

Being unable to fulfil a parent's responsibilities towards their children – through, for example, the provision of food and clothing – effects an ongoing humiliation and infantilisation. When combined with the negative impacts of detention-related mental health deterioration on parenting and parent-child bonding, these harms are compounded.

The psychological effect of denying asylum seekers even the most mundane acts of choice and decision undermines their sense of agency. The erosion of agential capacities leads to what is termed, in the psychological literature, ‘learned helplessness’.

‘Learned helplessness, the failure to escape shock induced by uncontrollable aversive events, was discovered half a century ago. Seligman and Maier (1967) theorized that animals learned that outcomes were independent of their

responses—that nothing they did mattered—and that this learning undermined trying to escape’. (Maier and Seligman, 2016: 349)

While contemporary neuroscientific research suggests that the theory of learned helplessness ‘got it backward’ – that is, that passivity is not learned but ‘the default, unlearned response to prolonged aversive events’ (Maier and Seligman, 2016: 349) – Seligman and Maier’s core insight regarding the relationships between prolonged and uncontrollable negative stimulation and helplessness has endured. Behavioural research has repeatedly demonstrated that when individuals are simultaneously exposed to stressors and denied control over their circumstances, passivity and anxiety will result. This effect can be prevented by giving individuals control (Maier and Seligman, 2016: 361).

The message continuously reiterated and reinforced by techniques of control in immigration detention facilities is that the detainee is powerless. If a person cannot exercise choice in inconsequential matters, then *a fortiori* they lack agency with respect to their asylum claim. The point of control mechanisms that penetrate down to minute details of daily life is to manufacture passivity and despair. Whether this response is learned or innate, it is nonetheless a predictable result of this technology of control.

We argued above that a grey network is a network that is subject to internal contradictions. We noted that grey networks present as operating within legal and social norms, but pursue outcomes that must be officially disavowed. The rules and prohibitions described here are a powerful technique that disempower detainees, producing psychological distress without having to make that intention explicit.

Arbitrariness

Arbitrariness functions to assert a radical asymmetry of power. Arbitrariness here refers to the permanent possibility of a decision that is both sudden and incontestable. Shifting and unpredictable prohibitions and reinterpretations of rules demonstrate to the asylum seekers the extent of their powerlessness. A recurring theme in the interviews concerned arbitrariness in the small details of institutional life, for example, in the management of leisure activities. One interviewee described her confusion when, during her first visit to a detention facility, she saw Muslim adult asylum seekers colouring in what she described as 'pre-school level' pictures of Easter bunnies and Easter eggs.

'I couldn't understand – why are they doing it? Why are they cooperating? I just said to [one asylum seeker], 'do you like colouring in?' you know. And she said 'no'. And I said 'oh, why are you doing it then?' And then she explained that it was for the points that they get [...] So they do an activity for half an hour they get two points. So with three or six points they can buy some shampoo or nicer soap or whatever, chocolate. So that's why they do it, to get the points. [...] I just thought 'this is really demeaning. This is *really* demeaning. These grown adult people doing anything just to get a few points.'

Several weeks later, with no notice or explanation, all colouring in at the centre was banned. Another interviewee explained that his asylum seeker friend had derived great joy from occasional trips out of detention to visit the beach. During these supervised excursions, the asylum seeker would chat with the locals and enjoy a few moments of 'normality' in the open air. Without notice or explanation, these trips were cancelled. As one interviewee noted,

‘I don't know if it is necessarily the government or SERCO doing it to create hopelessness, but they certainly don't do anything to give sense of reason. [...] People start to create their own reasons as to why it's happening, and it happens a lot. And that's the first conclusion they'll jump to, that they're doing it to disadvantage them or to damage them. To make them not feel good.’

Interviewees thus reported that detainees interpret the system's capriciousness as a deliberate cruelty.

Within Australia's detention regime, arbitrariness is discernible in the small details of institutional life, but it is perhaps communicated most dramatically in forced relocations. It is common for asylum seekers to be moved from one detention facility to another. Often asylum seekers are moved to other facilities within the onshore network; for those who had previously been transferred from offshore to onshore detention (usually for medical attention), these relocations may also involve being transferred to Manus Island or Nauru. When a detainee is moved from one centre to another this removal typically happens with little warning or explanation, often at night. Other asylum seekers see their friends dragged away but may not be told where they are being taken or why. These scenes constantly remind detainees of the Damoclean sword under which they live.

Another form of arbitrariness, crucial to this dispiriting effect, is arbitrariness with respect to time. Here the network produces a kind of stasis in which a case is in process but the asylum seeker is given no timeline for when a decision will be reached. One asylum seeker told her visitor, ‘every day we see our case manager, and every day they tell us ‘not today’, and we don't know more’; another described her elderly mother telling her ‘we're going to die here’. In January 2017, the average number of days that detainees spent in Australia's

onshore detention facilities was 493, a number that has been steadily rising since 2013 (RCOA, 1 March 2017). A 2016 report by the Commonwealth Ombudsman also noted that 42 people had been in detention for five years or more, with no foreseeable possibility of release (Commonwealth and Immigration Ombudsman, July 2016).

Unlike a prisoner serving a fixed sentence, the detainee is unable to make any plans for a future that may not eventuate. What is particularly cruel about this situation is that even the ordinary strategies by which people maintain hope are rendered untenable. As one interviewee, a youth worker, explained, youth work usually involves working with young people to 'build hopes and dreams'. Within detention environments, however, any aspirations are purely hypothetical. The young asylum seekers that this interviewee visited were thus unable to build, commit to or sustain themselves with any real goals because their futures were so uncertain.

We argue that this regime of unstable rules and arbitrary practices should be understood primarily in terms of its psychological function, which is to amplify the sense of helplessness that the detainees experience. The individual actions required by this technique of 'a thousand cuts' can be represented as largely innocuous, insulating individual actors from moral and legal responsibility for the aggregate effects achieved by the network as a whole.

Opacity

A third theme in these testimonies concerns the opaque way in which power is exercised within the detention facilities. Interviewees emphasised the complex nature of the bureaucratic processes that the asylum seekers were required to go through, noting that

many detainees had minimal understanding of the legal and administrative mechanisms that governed their detention. One interviewee recalled asking the asylum seeker he visited, whose protection claim had just been rejected for the third time, 'do they ever tell you why you're rejected?' The man answered, 'oh, they give me a bit of paper. I don't understand it.' Another described lodging freedom of information requests so that the detainees she visited would have access to their own files. While several interviewees emphasised that language barriers made these processes particularly opaque for asylum seekers, others suggested that even legal experts found the system confounding.

'I was sitting in a court case [...] where judges who were experts on administration but not on immigration were trying to get their head around how this whole thing worked and why the delays [...] And at one stage the presiding judge said "I think I'm in Alice in Wonderland". And we all just laughed.'

In a bright network, opacity is regarded as problematic. It can be a cause of inefficiency and dysfunction. Ideally, the hierarchical organisation and lines of responsibility are transparent, such that sites of decision and the nodes subject to those decisions are visible in the network structure. By contrast, in dark networks opacity can be functional. For example, the cellular structure of a criminal or terrorist organisation means that when members of one cell are captured, their lack of knowledge regarding other cells protects the larger network from attack. In grey networks, such as the detention network described here, opacity is also functional, but in a different way. Opacity here means the obfuscation of procedures and decisional hierarchies in ways that make it difficult to act. It serves to paralyse by rendering the operations of the network uninterpretable and non-negotiable to both detainees and those who would help them. The problem of making a request or complaint, or of even

accessing information about one's own asylum claim, is multiplied by the difficulty of finding out *how* to do these things.

Opacity also enables plausible deniability in that a policy can be implemented without being officially acknowledged. In this context, the outsourcing of operations is a method of increasing opacity in the network. As noted, the running of all detention centres in Australia has been contracted to a private company. This enables the classification of operational information as 'commercial in confidence'. Similarly, employees of a private contractor can be more easily made subject to confidentiality and non-disclosure agreements. Outsourcing creates another layer of separation between government and the daily operation of detention facilities. When detainees suffer serious harm in detention facilities, blame can be diverted away from the government to the contractor and its employees. Furthermore, as McPhail, Ochoki Nyamori and Taylor have pointed out, 'head contractors are allowed to sub-contract out the work, which creates huge gaps in accountability. It is unclear who will be held accountable in the event that one of the subcontractors fails to discharge their part of the contractual obligations' (2016, 962).

This opacity also functions to protect the network from challenges and to make it difficult for detainees or their representatives to assert their rights. Within detention centres, decisions are often delivered without explanation or attribution to an authority. It is unclear which rules originate with site personnel and which demands devolve from higher levels of management, either within SERCO or in the government. Protests, complaints and requests for reconsideration are short circuited by the difficulty of even knowing where to address an effective challenge. Those who execute decisions are also able to represent themselves as

‘just following orders’ and as having no more understanding of the justification of these orders as those subject to them.

Conclusion

Australia imagines itself to be a liberal democracy and a good international citizen, with stable institutions enshrining principles of fairness and equality. In the last two decades, both of Australia’s major political parties have promised to stem the flow of unauthorised boat arrivals requesting asylum. The realisation of these policies cannot be and has not been achieved without inflicting damage on the rule of law and Australia’s international standing. The implementation of Australia’s deterrence policies requires, in practice, the deployment of techniques calculated to produce helplessness and desperation, and thus to break people. This institutionalised cruelty must be visible to the public who voted to ‘stop the boats’. At the same time, however, these measures and procedures must be undertaken in such a way as to maintain a façade of lawfulness and respect for human rights.

What we have called a grey network is a network that is subject to contradictions of this type. Grey networks implement methods that cannot be fully or officially acknowledged within the legal and institutional structure in which they operate. Imprisonment, oppressive controls, arbitrariness, endless delay, and the dangerous hothouse effects of closed institutions are not techniques that can be openly acknowledged. As MacBeth, in bad faith, wills the hand to do what the eye fears, so too does Australia’s detention network allow Australia to disavow the cruelty that its asylum policies demand.

One contribution of this article, we hope, is to demonstrate the limitation of the dark/bright network taxonomy by demonstrating that networks can occupy ambiguous and contested spaces with respect to both legality and transparency. The distinction between bright and dark networks connects brightness with legality and darkness with illegality. A grey network, in our metaphor, is one subject to contradictory imperatives. A grey network is a network that occupies, and to an extent creates, a zone of legal ambiguity. It enables policies that are at odds with other legal obligations and institutional norms. At the level of representation, the grey network maintains the possibility of paying lip service to legal principles and ideals while simultaneously skirting these constraints. At the level of operations, it both realises and conceals the means necessary to achieve its policy goals. The grey network manufactures a zone of inaccessibility. It aims to place its subjects' rights beyond their own reach.

Bibliography

- Australian Human Rights Commission. (2014). *The Forgotten Children: National Inquiry into Children in Immigration Detention*. Retrieved from https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf
- Australian Human Rights Commission. (1 January 2014). Immigration Detention and Human Rights. Retrieved from <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights>
- Australian Human Rights Commission. (2013). *Ince v Commonwealth of Australia: Report into Arbitrary Detention, the Right to be Treated with Humanity and Respect for the Inherent Dignity of the Human Person and the Right to be Free from Arbitrary Interference with the Family*. Retrieved from <https://www.humanrights.gov.au/sites/default/files/document/publication/Ince%20v%20Cth%202013%20AusHRC%2062.pdf>
- Briskman, L., Latham, S., and Goddard, C. (2008). *Human Rights Overboard: Seeking Asylum in Australia*. Australia: Scribe.
- Brookes, D. R. (2001). The Possibility of a Correctional Ethic, in J. Kleinig and M. Leland Smith (eds.), *Discretion, Community, and Correctional Ethics* (pp. 39-68). USA: Rowman and Littlefield Publishers, Inc.
- Brookes, S. Y. (2010). *Exclusion and National Identity: The Language of Immigration and Border Control in Australian Federal Election Campaigns, 1903 and 2001*. Paper presented at the Australian Political Science Association Conference. http://apsa2010.com.au/full-papers/pdf/APSA2010_0178.pdf
- Columbus, S. (2002). Irregular asylum seekers: rhetoric vs reality. *Australian Rationalist* 61(60): 23-29.
- Commonwealth and Immigration Ombudsman. (July 2016). *An analysis of reports by the Ombudsman under s 486O of the Migration Act 1958 sent to the Minister for Immigration and Border Protection in 2015-16*. Retrieved from http://www.ombudsman.gov.au/data/assets/pdf_file/0016/40174/486O-analysis-2015-16.pdf
- Conifer, D., and Doran, M. (24 June 2015). Federal Government Scrambles to Close Loophole Making Offshore Immigration Detention 'Illegal'. Retrieved from <http://www.abc.net.au/news/2015-06-24/government-scrambles-to-close-immigration-detention-loophole/6569856>
- Dauvergne, C. (2015). *Humanitarianism, Identity and Nation: Migration Laws of Australia and Canada*. Vancouver and Toronto: UBC Press.
- DeVeaux, M. I. (2013). The Trauma of the Incarceration Experience. *Harvard Civil Rights - Civil Liberties Law Review* 48(1): 257-277.

- Devetak, R. (2007). In Fear of Refugees: the Politics of Border Protection in Australia. *The International Journal of Human Rights* 8(1): 101-109.
- Dunn, K. M., Klocker, N., and Salabay, T. (2007). Contemporary racism and Islamophobia in Australia: Racializing religion. *Ethnicities* 7(4): 564-589.
doi:10.1177/1468796807084017
- Every, D., and Augoustinos, M. (2007). Constructions of racism in the Australian parliamentary debates on asylum seekers. *Discourse and Society* 18(4): 411-436.
doi:10.1177/0957926507077427
- Farrell, P., Evershed, N., and Davidson, H. (10 August 2016). The Nauru Files: The Lives of Asylum Seekers in Detention Detailed in a Unique Database. Retrieved from <https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention>
- Fleay, C. (2015). The Limitations of Monitoring Immigration Detention in Australia. *Australian Journal of Human Rights* 21(1): 21-46.
- Foucault, M. (1995 (originally published 1975)). *Discipline and Punish: the Birth of the Prison*. USA: Vintage Books.
- Gale, P. (2004). The refugee crisis and fear: Populist politics and media discourse. *Journal of Sociology* 40(4): 321-340. doi:10.1177/1440783304048378
- Gelber, K. (2003). A Fair Queue? Australian Public Discourse on Refugees and Immigration. *Sojourners and Strangers*: 19-30.
- Goffman, E. (1961). *Asylums: Essays on the Social Situations of Mental Patients and Other Inmates*. New York: Anchor Books.
- Green, L. (2003). The New 'Others': Media and Society Post-September 11. *Media International Australia, Incorporating Culture and Policy*, 109, 7-13.
- Hoang, K., and Gleeson, M. (10 August 2016). Nauru Abuse Reports Warrant Urgent Action to Protect Children in Offshore Detention. Retrieved from <https://theconversation.com/nauru-abuse-reports-warrant-urgent-action-to-protect-children-in-offshore-detention-63756>
- Human Rights and Equal Opportunity Commission. (April 2004). *A Last Resort? National Inquiry into Children in Immigration Detention*. Retrieved from https://www.humanrights.gov.au/sites/default/files/document/publication/alr_complete.pdf
- Kafka, F. (2009 (originally published 1915)). Before the Law, in I. J. (Translator) (ed.), *Metamorphosis, A Hunger Artist, In the Penal Colony and Other Stories* (pp. 5-6). USA: Richer Resource Publications.
- Macaulay (2017) 'Majid Karami Kamasae v The Commonwealth of Australia and Ors. Settlement Approval'. *Supreme Court of Victoria*. Retrieved from

<https://www.streaming.scvwebcast1.com/kamasae-v-the-comm-of-aust-ors-6sep17/>

- Maier, S. F., and Seligman, M. E. (2016). Learned Helplessness at Fifty: Insights from Neuroscience. *Psychology Review* 123(4): 349-367.
- Marr, D., and Wilkinson, M. (2003). *Dark Victory*. Sydney: Allen and Unwin.
- McAdam, J. (3 December 2014). One Step Forward, Many Steps Back for Refugees. *The Drum*. Retrieved from <http://www.abc.net.au/news/2014-12-03/mcadam-one-step-forward-many-steps-back-for-refugees/5936960>
- McAdam, J., and Chong, F. (2014). *Refugees: why seeking asylum is legal and Australia's policies are not*. Australia: UNSW Press.
- McCulloch, J. (2004). National (In)Security Politics in Australia: Fear and the Federal Election. *Alternative LJ* 29(2): 87-91.
- McKay, F. H., Thomas, S. L., and Kneebone, S. (2011). 'It Would be Okay if they Came through the Proper Channels': Community Perceptions and Attitudes towards Asylum Seekers in Australia. *Journal of Refugee Studies* 25(1): 113-133.
- McPhail, K., Ochoki Nyamori, R., and Taylor S. (2016) Escaping Accountability: A Case of Australia's Asylum Seeker Policy. *Accounting, Auditing and Accountability Journal* 29(6): 947-984.
- McMaster, D. (2002). Asylum Seekers and the Insecurity of a Nation. *Australian Journal of International Affairs* 56(2): 279-290.
- Milward, H. B., and Raab, J. (2006). Dark Networks as Organizational Problems: Elements of Theory. *International Public Management Journal* 9(3): 333-360.
- Nethery, A., and Holman, R. (2016). Secrecy and Human Rights Abuses in Australia's Offshore Immigration Detention Centres. *The International Journal of Human Rights* 20(7): 1018-1038.
- Peterie, M. (2017). Docility and Desert: Government Discourses of Compassion in Australia's Asylum Seeker Debate. *Journal of Sociology* 53(2): 351-366.
- Phillips, J. (2011). Asylum seekers and refugees: what are the facts? *Parliamentary Library of Australia*: 1-15.
- Phillips, J., and Spinks, H. (2013). Immigration Detention in Australia. *Parliamentary Library of Australia*.
- Pizarro, J., and Stenius, V. M. K. (2004). Supermax Prisons: Their Rise, Current Practices, and Effect on Inmates. *The Prison Journal* 84(2): 248-264.
- Poynting, S., and Noble, G. (2003). 'Dog-whistle' Journalism and Muslim Australians Since 2001. *Media International Australia, Incorporating Culture and Policy*, 109, 41-49.

- Poynting, S., Noble, G., Tabar, P., and Collins, J. (2004). *Bin Laden in the suburbs: Criminalising the Arab other*. Sydney: Sydney Institute of Criminology Series.
- Raab, J., and Milward, H. B. (2003). Dark Networks as Problems. *Journal of Public Administration Research and Theory* 13(4): 413-439.
- Randell-Moon, H. (2006). 'Common Values': Whiteness, Christianity, Asylum Seekers and the Howard Government. *Australian Critical Race and Whiteness Studies Association e-Journal* 2(1): 1-14.
- Refugee Council of Australia. (1 March 2017). Statistics on People in Australia's Onshore Detention System. Retrieved from <http://www.refugeecouncil.org.au/getfacts/statistics/aust/asylum-stats/detention-australia-statistics/>
- Rhodes, R. A. W. (2008). Public Network Analysis, in R. E. Goodwin, M. Moran, and M. Rein (eds.), *The Oxford Handbook of Public Policy* (pp. 425-447). New York: Oxford University Press.
- Skyles, G. M. (1958). *The Society of Captives: A Study of a Maximum Security Prison*. New Jersey: Princeton University Press.
- Suhnan, A., Pedersen, A., and Hartley, L. (2012). Re-examining Prejudice Against Asylum Seekers in Australia: The Role of People Smugglers, the Perception of Threat, and Acceptance of False Beliefs. *The Australian Community Psychologist* 24(2): 79-97.
- United Nations General Assembly. (16 December 1966). *International Covenant on Civil and Political Rights*. Retrieved from <http://www.refworld.org/docid/3ae6b3aa0.html>
- United Nations General Assembly. (28 July 1951). *Convention Relating to the Status of Refugees*. Retrieved from <http://www.refworld.org/docid/3be01b964.html>
- United Nations Human Rights Committee. (20 August 2013a). *Communication No 2094/2011: Views Adopted by the Committee at its 108th Session (8-26 July 2013)*. Retrieved from <http://www.refworld.org/docid/52270fe44.html>
- United Nations Human Rights Committee. (20 August 2013b). *Communication No 2136/2012: Views Adopted by the Committee at its 108th Session (8-26 July 2013)*. Retrieved from <http://www.refworld.org/docid/52270d1d4.html>
- Vogl, A. (2015). Over the Borderline: A Critical Inquiry into the Geography of Territorial Excision and Securitisation of the Australian Border. *University of New South Wales Law Journal, The* 38(1).
- Zimbardo, P. (2007). *The Lucifer Effect: Understanding How Good People Turn Evil*. New York: Random House.

ⁱ Not all detainees in Australian detention facilities are asylum seekers, and not all asylum seekers are in closed detention. The primary focus of this article, however, is the detention of asylum seekers.

ⁱⁱ Closure of this facility is immanent.

ⁱⁱⁱ This facility was closed in November 2016.

^{iv} 'The Commission has serious concerns that the conditions in which children are detained on Nauru are in breach of the Convention on the Rights of the Child, articles 19(1), 20(1), 24(1), 27(1), 27(3), 28, 31 and:
16(1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.
37(a): No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age' (AHRC, 2014).