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'Closure' at Manus Island and carceral expansion in the open air prison

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ABSTRACT

Manus prison was officially closed in 2017 following Papua New Guinea's (PNG) Supreme Court decision that the existence of the camp breached the PNG Constitution. The 'Namah' decision was significant in signalling and seeking to curb the imperial reach of Australian law but insufficient in resolving the question of refugee imprisonment. Far from ending the imprisonment of refugees, the closure following the judicial ruling has facilitated the expansion of the imperial carcerality that has characterized Australia's immigration detention policy since 1992. By revealing how refugee incarceration has been extended and offshore processing instantiated following the closure of Woomera camp in 2003, we argue that official closures of refugee camps Woomera and Manus have been constitutive of carceral expansion that is imperial in form and that reiterates patterns of colonial violence. After tracking imperial expansion, we make a call for prison abolition in the refugee incarceration arena as this is a critical decolonizing strategy.

KEYWORDS

Carceral expansion; *terra nullius*; immigration detention camps; imperialism; Woomera; decolonization

Introduction

Between 2013 and 2017, under an agreement between the Australian and Papua New Guinea (PNG) Governments (Department of Foreign Affairs and Trade, 2013), over 1000 refugees were detained at the PNG Naval Base at Lombrom, on Los Negros Island in Manus Province, while awaiting the outcomes of their claims for refugee protection. From 2013, the centre housed only single adult males.[1] This 'regional processing centre' was first opened in 2001, closed in 2008, and then reopened late in 2012. It has been used to further the Australian Government's stated intention of stopping asylum seekers from attempting to come to Australia by boat, because they have no prior authority from the Australian Government to seek refugee protection in Australia (Phillips & Spinks, 2013). The plan for the removal (transfer) of the 833 men who still remained in the Lombrom camp by 2017 was triggered by the PNG Supreme Court of Justice decision, in *Belden Norman Namah, MP Leader of the Opposition and Ors v The Independent State of Papua New Guinea* (hereafter *Namah)*, that the detention of asylum seekers in the camp was 'unconstitutional' and 'ultra vires the powers under the *Migration Act*' (para. 74, 27). The Australian Government framed this development as signalling the end of 'closed' regional offshore detention on Manus. All refugees would move to alternative 'open' accommodation near the main town of Lorengau in Manus Province, at the East Lorengau 'transit centre'. It was claimed that, at the new site, the men would be 'free' to move

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without restriction in the community, thereby complying with the *Namah* judgement, which, while prohibiting the confined detention of refugees, does not demonstrate a prohibition on detention more broadly.

This is illustrated by two subsequent shifts in the exercise of control over the refugee men in Papua New Guinea. In August 2019 the men at East Lorengau camp were issued with notices giving them a 'choice' to transfer to Port Moresby, but with no clear details on what that move might entail. (Davidson, 2019). This 'choice' to be transferred out of the 'open' centre at East Lorengau has resulted in the imprisonment of 50 men in Bomana prison, in Port Moresby with the remaining men housed in hotel style accommodation, which is controlled by guards, and heavily surveilled. More recently, in October 2019, these men were notified of a further 'choice' to be transferred into community. However, those thus far transferred into community have had their weekly allowance cut, forcing them into poverty, and many have been put at further risk A comment by the Refugee Action Coalition in October 2019 stated that

> [a]t present, the hotels accommodating the refugees are guarded. But in the suburbs there is no security. The refugees who tried to live in one residential district, Morata, are now destitute and have all been bashed and robbed more than once by locals armed with guns or knives. (Baker, 2019)

In this article, we examine the effects of the closure of Lombrom prison at Manus Island as primarily declarative. The experience of punishment for the men at Manus continues, despite the demolition of the Lombrom camp, their forcible transfer to an 'open' site at East Lorengau and most recently through relocation to Port Moresby (Amnesty International, 2017). While a statement of 'closure' implies an ending to incarceration, Manus camp at Lombrom and immigration detention in Australia more generally are embedded in a reiterative pattern of openings and closures which mark the persistence, and indeed *expansion*, of confinement and punishment, rather than its 'end'. This closure also aligns with an historical and contemporary pattern of prior closures and openings that that includes Manus Island in the Pacific Ocean and one of its predecessors, Woomera detention centre, on the Australian mainland. This pattern indicates the expansionary and imperializing function of closures within the complex histories of violence in these spaces. While our analysis is locally situated in Australia, it has wider implications. Australia's externalization of responsibility for refugees through extraterritorial control not only affects the sovereignty of states like Nauru and PNG but has also been increasingly used as a model for adoption by other Western states.[2] Our focus here is on the way in which declarations of closures (endings) conceal the expansion of carceral power through the creation of new openings which preserve the experience of punishment, notwithstanding the absence of formal walls and *en*closures. This crucial characteristic both masks the *expansion* of control that such closings enable while revealing the persistence of *terra nullius* and of the 'open air' prison. Importantly, our analysis shows that this expansion reveals a prior orientation both towards carceral control and the construction of specific sites as 'remote', which is embedded in Australia's settler colonial past and present.

We build this position by moving back in time and place to reveal Woomera camp as the onshore precursor of and precedent for offshore and extraterritorial incarceration at Manus camp. We also foreground more recent developments in the exercise of control over refugee men held in PNG at the wishes of the Australian government. In order to track the expanding reach of Australian law and, indeed, to interrogate the imperial features of this phenomenon, we examine the legal tensions articulated in the PNG *Namah* decision which led to the 'closure' of the camp at Lombrom, as well as the subsequent discrediting of that decision by the Australian High Court in *Plaintiff S195/2016 v. Minister for Immigration and Border Protection (Cth) & Ors*

(hereafter *Plaintiff S195*). By tracking the patterns of penal closures and openings which are utilized by the state to expand the boundaries of refugee punishment we draw from and build on a significant body of literature that has for at least two decades connected border violence of the Australian state with the imperial control of subjugated populations (see for example Birch, 2001; Giannacopoulos, 2007, 2013; Jackson, 2011; Perera, 2002, 2009, 2015; Perera & Pugliese, 2017; Pugliese, 2002, 2004, 2015). Since his incarceration on Manus Prison since 2013 Behrouz Boochani has been committed to documenting and theorizing in a myriad of ways the dynamics driving the incarceration of refugees by Australia. More recently he has been advocating for an understanding of these violent practices as being tied to colonial power through his concept of kyriarchal power (2017c, 2018b). Boochani's conceptualization is that kyriarchal power and his Manus prison theory apply much more widely than to immigration detention: they are 'about exposing Australia's colonialism and its historical and political layers' (2018b, 2018c see also Tofighian, 2019). This paper thus contributes to the interdisciplinary body of literature as well as literature emerging from Manus prison itself arguing for colonial power and imperial control to become visible as that which animates border violence. The original contribution made here is to reveal the centrality of the ideology of *terra nullius* to refugee incarceration and to the contemporary exercise of imperial power, through tracing the practices of openings and closings of sites of incarceration which conceal imperial expansion.

Acting *as though* the spaces used as camps are empty of people, culture and law is the basis for the extension of Australia's colonial law and sovereignty through refugee incarceration. The colonial state extends its power through the creation of carceral zones premised on an ideology of emptiness, *terra nullius*. Following Irene Watson and Antony Anghie, we show how *terra nullius*, as with international law more generally, is active in the contemporary exercise of colonial power (Anghie, 2004, p. 114; Watson, 2002). While *terra nullius* itself was declared dead and closed in 1992 by the *Mabo v Queensland* (No 2) judgement (hereafter *Mabo*),[3] it continues to underwrite the actions of the Australian state, including its imprisonment of refugees on Manus Island despite the purported closure of the detention camp there. The 'range of spatial tactics' have

> included the use of remoteness both within the nation – the construction of detention centres in remote desert locations – and beyond – the "Pacific Solution" whereby asylum seekers were moved to detention centres constructed in the Pacific Island states of Nauru and PNG. (Instone, 2010, p. 360)

We take care not to make 'remoteness' a synonym for 'emptiness'. The strategic use of countries like Nauru and PNG for immigration detention by Australia is inextricably tied to imperial expansion. These countries may be classified as 'remote' if viewed in terms of distance from the imprisoning state; but they are not remote places for those who live there and whose land is exploited for the imperial priorities of another state. The claim of remoteness *as* emptiness is, at its core, a colonial claim. It can only appear true to those not impacted directly by incarceration or colonial control at the various detention zones opened and closed by the imprisoning state. Further, for those inside detention zones and for those whose land is treated as empty and available, 'remoteness' is far from accurate; the countries used for incarceration are not *terra nullius*.

Internal externality: Woomera as precedent for offshore incarceration

Before Woomera or Woomera Protected Area (WPA) was chosen in the 1990s as a site for refugee detention, it had a complex history as an extraterritorial space, despite sitting at the very heart of the Australian continent. Instone (2010, p. 364) writes that

> Woomera has always had a controversial history and is a pivotal place in definitional struggles over security, protection, borders and identity in Australia. It has always been an "exception", established in an extensive prohibited zone to support transnational military purposes.

The WPA, a prohibited area established by the Department of Defence in the 1950s for the purposes of 'testing war material' (Instone, 2010, p. 365), occupies 127,000 km^2 of South Australia (twice the size of Tasmania); most of it is 'off limits to all without multiple permits' (Eastwood, 2010). Mining is allowed for those granted permits in the place 'that's home to secret military testing, joint defence projects, sheep stations, a controversial detention centre, more than 4000 rocket launches and nine devastating atomic-bomb trials' (Eastwood, 2010).

When the WPA was selected in the 1950s 'as a top spot for the British to do their next round of nuclear bomb testing, nobody checked if that was all right with the locals' (Eastwood, 2010). The area was considered an ideal location for nuclear testing because, according to the British, it was a 'waterless wasteland six times the size of the British Isles, more or less unpopulated except for a few nomadic Aborigines' (Morton quoted in Instone, 2010, p. 364). Hughie Windlass, community Elder and Chairperson of the Oak Valley Council, who remembers the army trucks moving Aboriginal people out of the area before the nuclear testing, says that most of his people were moved to missions in South and Western Australia at this time (Eastwood, 2010). But 'people were still there, hidden out of the way. They were still there, I remember, I seen it with my own eyes' (quoted in Eastwood, 2010, n.p.). Windlass recalls that, after the blasts, kangaroos caught could not be eaten because they were yellow inside (Eastwood, 2010, n.p.). Indigenous peoples 'were walking and living in the prohibited area (although officially declared not present) and military personnel assigned to the tests were shocked to find their bodies, along with the land, poisoned by radioactive fallout' (Instone, 2010, p. 367).

Over 8000 military personnel worked at Maralinga, which was part of the WPA, before, during and after the atomic testing. One of these was Ric Johnstone, who worked at Maralinga and saw many of his colleagues pass away from what are considered to be 'radiogenic diseases' (Eastwood, 2010, n.p.). He left after working there for less than 12 months, suffering from conditions such as diarrhoea, vomiting, the shakes and a 'white blood cell count that left doctors reeling' – all of which rendered him medically unfit for service (Eastwood, 2010, n.p.). When Johnstone shared his story with a treating doctor in Sydney, he was not believed. When the doctor rang the Defence Department to ask whether there had been nuclear tests conducted in Australia, the department denied it. According to Johnstone, 'the reason the testing was top secret wasn't to keep the information from the enemy, it was to keep it from the public. When they let that first bomb off, they really didn't know what they were doing' (quoted in Eastwood, 2010, n.p.). He recounted: 'when we were told we were going to Maralinga, we thought "great we're going overseas – Malaysia or somewhere" and then were taken secretly by train and dropped in the middle of the desert'. 'See we were soldiers. We were expendable', he said (quoted in Eastwood, 2010, no.p.). Effectively hidden from view, Woomera is symptomatic of the expansion of imperial power, informed by a logic of emptiness and characterized by the absence of external checks. The 'remoteness' of zones of exclusion, such as Woomera and Manus, from public view facilitates this carceral expansion by obscuring the processes that accompany it (Mountz, 2011, p. 122).

According to Instone (2010, p. 360),

> the demise of the Cold War, shifting geopolitical and national interests, rendered Woomera largely forgotten until the 1990s when it was chosen as the site for an immigration detention facility to incarcerate asylum seekers arriving by boat thousands of kilometres away off Australia's north west coast.

This increasing concern about 'boat people' arriving in Australia led to a government decision to use a former mine workers' camp at Port Hedland in northern Western Australia for detention, instead of Villawood and Maribyrnong, which were located within the boundaries of Sydney and Melbourne respectively (Instone, 2010, p. 367). At that time, Port Hedland was seen as an appropriate location because it was closer to the place of arrival of asylum seekers coming by boat; but, as the numbers of 'unauthorised' boat arrivals rose, a detention facility was proposed for Woomera, a long way from the arrival sites (Instone, 2010, p. 367). Locating the centre here sustained a practice of 'coerced isolation', highlighting the predominance of 'national defence and security' agenda that, Instone demonstrates, have been operationalized many times against different peoples in the WPA since colonization. The WPA was opened as an immigration detention site in 1999, before the clean-ups to remove contamination from nuclear testing had been finalized. One of the clean-ups saw 350,000 cubic metres of contaminated topsoil scraped from 225 hectares by modified earth-moving equipment and then buried and 'finished' in 2000, costing around AU$100 million (Eastwood, 2010). Although the government claimed that only 'low level risk' remains and that this risk is within international guidelines, a whistleblower on the clean-up campaign, Alan Parkinson, says that he was 'disgusted' with what occurred: 'they just dug up everything, and dropped it in a shallow bare hole in totally unsustainable geology, and called that world's best practice – that's not even best practice for disposal of human corpses' (Eastwood, 2010, n.p.). That this was seen by the Australian Government as an appropriate place for asylum seekers to be housed reveals an official view of asylum seekers as expendable humans synonymous with waste (Bauman, 2003). The contaminated earth of Woomera was thus returned to *terra nullius*, or empty ground, to enable the opening of this infamous detention centre.

Woomera has been extensively written about and theorized as an *internal externality*: a place of barbed-wire fences, lip-stitching protests by refugees, in, but not of, Australia (Instone, 2010; Perera, 2002; Pugliese, 2002). At one point, the centre housed up to 1500 people in a space designed for 400 (Whitmont, 2003). In its four years of operation as an immigration detention camp, it was 'marred by riots, hunger strikes, protests and fires. Asylum seekers, despairing and dejected by long processing times and overcrowding, burnt down buildings, burnt themselves, sewed their lips together and resorted to hunger strikes' (Instone, 2010, p. 368). The closure of the centre in 2003 was prompted by reports of extensive violence, overcrowding and riots at the centre, but also facilitated by a new opening. From 2001, after which the majority of new 'boat arrivals' were sent to Manus and Nauru for the processing of refugee claims under the 'Pacific Solution' offshore processing regime, the intake of refugees at Woomera slowed down. At the time of its closure, two years after the first iteration of offshore processing implemented by the Australian Government, six men remained at the centre; they were transferred to Baxter Detention Centre (Fickling, 2003).

While the closure of Woomera was prompted by the violence that occurred there, we argue that it must also be understood as an effect of other openings. The closure of Woomera camp founded a new phase of the externalization process and offshore detention regime that remains in place today (see Loughnan, 2017). The six men who were transferred from Woomera to Baxter detention centre were purportedly being moved to a more 'humane' centre; yet, some described the conditions at Baxter as worse than those at Woomera (Fickling, 2003). The introduction of offshore processing by the Australian Government in 2001 created the possibility for carceral expansion, both enabled by, and enabling, closures on the Australian mainland. Australia's migration zone was also contracted in 2001, through new laws to 'excise' the territories of Christmas Island, Ashmore and Cartier Islands, Cocos (Keeling) Islands and 'any other external Territory' or 'island that forms part of a State of Territory and is prescribed … for the purposes of this paragraph' including any sea installations

and resources installation (*Migration Amendment (Excision from Migration Zone) Act 2001*).[4] These excisions were introduced to prevent the application of migration law to asylum seekers, should they arrive without prior authority on Australian territory, thereby narrowing the field of responsibility for refugee protection for those arriving 'by boat'. Subsequently, after the closure of Woomera in 2003, the Australian Government attempted to extend excisions from Australia's migration zone to almost 4000 islands, in order to prevent 14 people who had reached Melville Island, just north of Darwin, from applying for asylum (Instone, 2010, p. 369).

Woomera acted as the *internal externality* where imperial technologies could be refined; under the externalization of responsibility marking offshore processing, Manus and Nauru have become the *external internal* zones of Australian law and its expansion. Although this highlights the inverted territorial configuration of these sites, we emphasize the continuities between Manus and Woomera as places of distinct, yet recurring, historical violence, control and dispossession.

External internality: military, administrative and financial control of Manus Island

Manus Province is part of the Admiralty Islands, located in the Bismarck Sea, 817 km northeast of the mainland PNG capital, Port Moresby. Manus Island has been subjected to extensive external sovereign domination and intervention over the past century. It was a German protectorate from 1880 until 1920, when it became a mandated territory under Australian control after the First World War. In 1942, the Admiralty Islands were occupied by Japanese forces and were the scene of intense conflict between the Japanese and United States (US) and Australian soldiers. Lombrom was established as a naval base by the US at the time and became a significant post for the US for its naval and other operations. When US forces withdrew from the island in 1948, it was returned to Australian administrative control and, later, used as a refuelling base for transport during the Korean War (Fitzpatrick, 2013).

In 1945, Japanese officers who were charged for war crimes were held prisoner on Manus Island, with trials conducted there under the Australian *War Crimes Act 1945* (Department of Veterans' Affairs, n.d.). Ninety-six Japanese soldiers were then taken to Los Negros to await a death sentence, although most were acquitted (Brennan, 2016; The Mercury, 1951). During this time, many of the suspects imprisoned under Australia's *War Crimes Act 1945* were held without trial for up to four years. A Government communication in 1948, a SCAP Diplomatic Section letter, remarked that such 'continued incarceration without specific charges and without even a certain prospect of eventual trial can scarcely be reconciled with fundamental concepts of justice' (Deathscapes, n.d.).

When initially

> seeking sites for its detention centres and hosts for resettlement of refugees, the Australian Government scoured the Pacific Islands and South East Asia. It settled on Manus Island and Nauru, two islands that were formerly administered under Australia through United Nations trusteeship arrangements. (Fraenkel, 2016, p. 285)

The Manus Regional Processing Centre was established under the Howard Coalition Government during the first phase of offshore processing of Australia's unwanted asylum seekers, also known as the Pacific Solution (Fraenkel, 2016, p. 279; Wallis & Dalsgaard, 2016, p. 301). This much-criticised and not so aptly named policy (Perera, 2009) was a response to the Tampa stand-off of 2001, where 438 asylum seekers were rescued by a Norwegian freighter vessel (the *Tampa*) in the Pacific Ocean and subsequently detained on the ship at the command of the Australian Government. The oceanic detention of the refugees on the *Tampa* signalled the exclusion from Australia that was

legalised through the execution of the Pacific Solution (Giannacopoulos, 2005). This shift towards offshore processing of refugees communicated the clear intention of the Australian Government to diminish opportunities for boat arrivals to be resettled in Australia. As part of its persistent retreat from its responsibilities towards refugees over several decades (Loughnan, 2017, 2019), Australia sought to establish itself as a fortress island state whose border integrity would be protected with the full range of state force: military, legislative and juridical (Giannacopoulos, 2013).

The centre at Manus was subsequently dismantled by Australia's Rudd Labor Government in 2008 as part of a policy to adopt more humane border protection practices, which saw the 'end' of offshore processing. The 2008 Port Moresby declaration was framed as a 'recasting' of the relationship between the two nations. However, although the Port Moresby declaration claimed recognition of PNG sovereignty, such recognition was also bound up in increased aid funding, aimed at ensuring that PNG would lift 'its own contribution to improving governance, economic infrastructure and education' (Giannacopoulos, 2013, p. 178).

The arrival of refugees by boat increased following the termination of the 2001 Pacific Solution. Amid increasing reports of drownings of refugees at sea, the Australian Government determined that a 'new' approach was needed. The Pacific Solution was resurrected in 2012 with the reopening of the Manus Regional Processing Centre (RPC) by the Gillard Labor Government, following negotiations with PNG (Wallis & Dalsgaard, 2016, p. 302). The recommendations of the Houston Report – a report commissioned by the Australian Government to develop policy alternatives, ostensibly aimed at preventing deaths at sea by refugees using people smugglers to travel by boat to Australia – led to a fresh agreement being signed with the PNG Government. The agreement stated: 'no matter where an asylum seeker arrives in Australia by boat – they are subject to transfer to Papua New Guinea and if they are found to be a genuine refugee, they will be permanently settled in PNG' (cited by Grewcock, 2014, p. 72). In 2013, the entire Australian mainland was excised under the terms of provisions of the *Migration Act 1958* in relation to 'irregular maritime arrivals'. The election of the Abbott Liberal Government in 2013 saw the introduction of a new, militarized border protection policy, titled 'Operation Sovereign Borders' (Grewcock, 2014, p. 72). Importantly, this new policy has been characterized by secrecy over what came to be termed 'on water matters', in which naval interdiction and interception of boats carrying asylum seekers (including a 'turn back' policy aimed at boats carrying asylum seekers) by Australian officers were deemed matters of state security and, therefore, not available for public scrutiny (Hirsch, 2017, p. 66, 69).

The reintroduction of offshore processing at Manus Island (and indeed at Nauru) reflects a pattern of prior violence against Indigenous communities, through appropriation of their land without authority, which cannot be underestimated. Behrouz Boochani has remarked:

> all over Manus and its tiny islands, there are dozens of signs, marking the bitter history of colonisation and war. … During the past 100 years, Manus has been a theatre of war in two separate conflicts. … This is one of the bitter realities of our planet. People of an island at the furthest part of the globe have become victims of a battle between the world's super powers. (Boochani, 2017a)

Here, Boochani is also repeating the idea of 'remoteness' when he narrates Manus as the 'furthest part of the globe'. From the perspective of those detained, it *feels like and is meant to feel like* Manus is at the furthest point of the earth. This internalization of Manus as remote is the internalization of the colonial idea of remoteness, which is critical to its power as punishment.

As part of its offshore processing regime – and also during the war crimes process in 1945- the Australian Government has worked with (and funded) the PNG Government to deploy military-style mobile police forces with a history of brutality on Manus Island, brought in from other

parts of PNG, notably the capital, Port Moresby. In 2014, it was noted that these 'mobile squads, which have been stationed on the island to secure the facility, have a documented history of "solving problems" through extreme violence', violence which has been experienced both by asylum seekers and the local community (New Matilda, 2014). In 2013, media reports described it as 'Papua New Guinea's most thuggish paramilitary police unit – allegedly responsible for rapes, murders and other serious human rights abuses [which] is being discreetly funded by the Australian Immigration Department to secure the Manus Island detention centre' (Callinan, 2013).

Where the Woomera detention centre was an *internal externality*, Manus detention centre, and indeed Manus Island, functions as an *external internality*: a place not 'of' Australia, but one that brings Australia *into* this site. The 'offshoring of hospitality' of refugees is what Maria Giannacopoulos (2013) said occurred when PNG was offered up to AU$1 billion in foreign aid and AU$29 million to fund the processing and construction of the centres 'under the guise of regional cooperation and burden sharing' (Hirsch, 2017, pp. 78–79). This exploitation of place, Claire Loughnan argues, 'not only recalls a pattern of colonialism: it is a regional response to refugees which inflicts a necessary experience of poverty (or suffering) upon those deemed "unlawful" arrivals' (2019, p. 170). On Manus, this exploitation also has a historical precursor, with the island 'marked by 800 shipwrecks left around the island, along with explosives and toxic materials. Those materials not only pollute and harm the environment, but also the economy of an island that is completely dependent on nature and seafood' (Boochani, 2017a). Concerns about the threat to local jobs and resources have fuelled community antagonism to the refugees on Manus, resulting in violence against, and deaths of, refugees (Grewcock, 2017, p. 71). Such tensions within the community at Manus (Chandler, 2014) are specifically 'rooted in the socio-economic impacts of locating the centre in one of the poorer regions of PNG' (Grewcock, 2017, p. 78). A local Manusian reflected on the refugees detained there (Boochani & Sarvestani, 2017):

> it's in our culture to look after them, but then we are scared because they are too many of them and they have their own profession. So, if they are being processed and they come out, and they live on Manus Island especially, we don't have enough jobs, as I said, and we don't have enough economy where we can boost us up … so we don't have enough jobs. I want to apply for this too. No, there's no more space to work in here. That's one thing that we are afraid of.

However, the refugees at Manus also fear for their safety and have experienced violence from the Manusian community, and also from detention and PNG security guards and police, as noted above (Boochani, Doherty, & Evershed, 2017; Cornall, 2014; Doherty & Davidson, 2016; Gordon, 2017). During an outburst of violence amid riots and protests at the centre in 2014, an Iranian refugee, Reza Berati, was killed, and two local men were subsequently charged with his murder. Australian individuals and the government and agencies they worked for, were not subject to criminal charges. The significance of this event and the trauma it produced for the men held at Manus exemplifies the way that violence functions as an 'essential feature', not only of the enclosed camp, but also of Manus itself (Boochani, 2018a).

The expectation that Manus exhibit 'offshore hospitality' (Giannacopoulos, 2013) on Australia's behalf uncovers another facet of imperial expansion. Rather than simply absorbing the demands of hosting refugee populations as the effect of proximity to refugee transit routes, client states are now having responsibility for refugee protection forced upon them with responsibility for refugee protection falling 'disproportionately on States ill-equipped to meet it' (Wall, 2017 cited in Loughnan, 2019, p. 171). The control over Manus and PNG exercised by Australia imposes an imperative for Manusians to offer the hospitality that Australia refuses to grant. Giannacopoulos has argued that

this is the presence of an 'imperialising will' that 'seeks to use excess populations as productive "agents of development" in areas that are in need of being transformed to conform to neo-liberal imperatives' (2013, pp. 179–180). It was the Leader of the Opposition in PNG, Belden Norman Namah, who took 'serious issue' with the governmental arrangements between Australia and PNG, which he claimed were 'a serious violation of the asylum seekers [*sic*] fundamental human rights and in particular their liberty guaranteed under s. 42 of the Constitution' (*Namah*, p. 9). The centre consisted of four separate 'prisons', including isolation units. Describing the four separate 'prisons' within the centre in 2016, Boochani (2016) wrote:

> Refugees live in claustrophobic rooms with no windows at all … Sleeping in them is torture … But the Manus prison also has secret corners with solitary confinements. In those rooms, many captive refugees have been harassed and tortured …

On 31 October 2017, Australia closed the detention centre at Lombrom camp to comply with an order by the PNG Supreme Court that the centre breached human rights and was illegal.

Law's empire and refugee imprisonment: the *Namah* judgement

In *Namah* the PNG Supreme Court of Justice found that,

> despite the opposition, the two Governments proceeded to bring the asylum seekers who consist of men, women and children, under the Federal Police escort and have them held at the MIPC [Manus Island Processing Centre] against their will. The MIPC is enclosed with razor wire and manned by security officers to prevent asylum seekers from leaving the centre. All costs are paid for by the Australian Government. (*Namah*, p. 9)

The significance of this decision, beyond being the impetus for the official 'closure' of Manus camp, is that it examined the legality, as defined by the PNG Constitution, of the bilateral arrangement between Australia and PNG to enclose human beings behind barbed wire against their will. In so doing, the judgement adds to an expanding number of judicial decisions globally that reveal the charged yet central role of the relationship between executives and judiciaries in determining migration matters, a development identified by Marmo and Giannacopoulos (2017). More specifically, it reveals how an appeal to human rights norms is one of the few ways remaining for judiciaries to push back against the executive will to expand its power over asylum seekers, both within and outside their official jurisdictions (Marmo & Giannacopoulos, 2017). The *Namah* decision was very clear in stating that the 'enclosure' of Manus camp, created by the bilateral arrangement between Australia and PNG, was not constitutional. The PNG Court reasoned that the PNG Constitution contains protections that do not discriminate on the basis of citizen or asylum seeker status. In line with this, the PNG Supreme Court stated that the most important test to be passed in order for a law to be found to be constitutionally valid is:

> the need to demonstrate that the law is one which is reasonably justifiable in a democratic society having a proper respect for the rights and dignity of mankind … Hence, the imperative is there to protect the rights and freedoms of persons under the various international law conventions and protocols and many domestic laws, such as the PNG Constitution. (*Namah*: para 52, 20)

The order handed down by Court, that both the Australian and PNG Governments

> take all steps necessary to cease and prevent the continued unconstitutional and illegal detention of the asylum seekers or transferees at the relocation centre on Manus Island and the continued breach of the asylum seekers' or transferees' Constitutional and human rights. (para. 74, 28)

reflects the ongoing cyclical tension between the judicial and executive will on migration questions (Marmo & Giannacopoulos, 2017). While this tension resulted in a judicial pronouncement that the detention camp at Manus should close, and it did, the broader effect has not produced any real liberation or significant improvement in conditions for refugees on Manus Island. In 2017, the Australian legal machinery handed down its own pronouncement regarding the PNG Supreme Court decision in *Plaintiff S195-2016 v Minister for Immigration and Border Protection* (*Plaintiff* S195), which demonstrated a judicial imperial intention to control PNG.

In 2017, the High Court of Australia had the opportunity to speak back to the *Namah* decision and in doing so denigrated the plaintiff, an Iranian national who sought to use the decision to seek relief. Plaintiff S195 brought an action to the High Court which required consideration of the following question:

> Was the designation of [PNG] as a regional processing country on 9 October 2012 beyond the power conferred by s 198 AB(1) of the [Migration Act 1958 (Cth)] by reason of the [*decision in* Namah v Pato (2016) SC1497]? (*Plaintiff S195*, para. 1)

The High Court found that the Plaintiff advanced a 'novel and sweeping proposition that the Constitution denies to the Commonwealth any legislative or executive power to authorise or take part in activity in another country which is unlawful according to the domestic law of that country' (*Plaintiff S195*). The Court also stated that the propositions made by the Plaintiff were premised on a 'misunderstanding of the Namah Decision' (*Plaintiff S195*, para. 22). The Australian High Court explained that the ruling in *Namah*

> plainly held that the treatment of the UMAs [unauthorised maritime arrivals] at the Manus RPC as at 26 April 2016 contravened the provisions of the Constitution of PNG and was unsupported by PNG law … what the Supreme Court plainly did not hold was that entry into the Regional Resettlement Arrangement, the 2013 Memorandum of Understanding or the 2014 Administrative Arrangement was beyond the power of the PNG Minister, the National Executive Council or PNG or contravened any provision of the PNG Constitution. (*Plaintiff S195*, para. 25)

So, while the PNG Court judgement compelled the 'closure' of Manus camp, the Australian High Court deems that judgement ineffectual in shifting Australia's continual refusal to allow refugees to penetrate its borders. Together, these decisions have highlighted two key interrelated issues that speak directly to the power of Australia to assert imperial control over the region and refugees. Australian colonial sovereignty extends itself through contractual arrangements with neighbouring countries. Its legislative and executive power to intrude into the sovereign territory of PNG could not be judicially curbed in order to conform to the law of that country. Despite the human rights judgement of *Namah*, the extraterritorial prison effect remains: for those refugees, left without even the basic resources provided by the detention camp; and for Australia, in continuing to use PNG as an island prison. The persistence of punishment of refugee men, despite the *Namah* judgement, exemplifies the observations by Maillet, Mountz, & Williams that contemporary border controls reveal how 'jurisdiction and territory become uncoupled, and *imperio* becomes possible' (2018, p. 146). The effect, they highlight, is that law is not just exercised over geographical space, but also over particular bodies in that space (Maillet, Mountz, & Williams, 2018, pp. 143, 146). Carceral expansion is accordingly achieved through control over the movement of bodies, not simply control over fixed territorial boundaries, though expansion beyond territorial limits is also key. This renders the notion of the camp at East Lorengau (and indeed of the accommodation in Port Moresby) as 'open' a fiction: the movement of the men is still monitored and controlled. For example, the East Lorengau camp was said to be was 'open'; yet, no-one was able to visit it without prior authority,

refugees required approval to venture outside the camp, and the men were often been monitored closely by guards when they do so.[5] As Nethery and Holman (2016) have observed, the suffering accompanying detention is both hidden from view and designed to control the men held there. This does not cease with the end of *en*closure. The recent offer, in August 2019 of 'voluntary relocations' to Port Moresby; are similarly not, according to human rights lawyer David Manne, resettlement for the men and will not end 'the cruel limbo they've suffered for the last six years' (ABC, 2019). For some, it has resulted in their 'voluntary' (forcible) removal to Bomana Prison. While it appears that Australia has acceded to PNG legal sovereignty, the persistence of the confinement and punishment of particular bodies in these specific spaces of exclusion reveals the endurance of Australia's extraterritorial expansion and indeed, the persistence of punishment as a key element of its border security policies.

Legal pronouncements like those in *Namah*, while necessary to signal major human rights violations against refugees, are nowhere near sufficient to address the impacts of imperialism, because they are inextricably bound up with attempts to 'redirect' and *refoule* refugee populations. Judicial law, including the *Namah* judgement, may be at odds with executive authority, but it remains instrumental in the machinery that allows 'closures' to be achieved as formality, while governmental responsibility for human suffering is avoided and refugee suffering is amplified. The 'opening' of the camps on Nauru and Manus 'has had no effect other than to extend the boundaries of their prisons' (Deathscapes, n.d.). In the light of the declaration of the 'closure' of the detention camp at Lombrom and the persistence of confinement and suffering at Manus, we ask: how can we understand the meaning of closure?

Closure

In the months preceding the closure of the Lombrom centre on 31 October 2017, notices were distributed to refugees warning them that the centre would be demolished and advising them that they needed to exercise their 'choice' to relocate to the camp at East Lorengau (Bazzi, 2017). Refugees (and those not yet formally granted refugee status) were advised that:

> all power and water will cease. There will be no food supplied – and no dinner service this evening. All ICSA [Immigration and Citizenship Advisory Service] personnel will depart. … From tomorrow, arrangements will be underway for the return of this site to the PNGDF [Papua New Guinea Defence Forces]. Anyone choosing to remain here will be liable for removal from an active PNG military base. This is the last communication you will receive at this location. (PNG Immigration and Citizenship Service, 2017)

Using the word 'choice' was deliberate and misleading: it dislocated responsibility for any violence accompanying the use of force against refugees who refused to take that 'choice'. Importantly, the notices were issued in the name of the PNG authorities, and not in the name of the Australian Government, even though Australian political leaders reiterated the framing of this as a choice available to refugees. Yet, the statement below highlights the contradictions between a ministerial refusal to grant refugees agency by allowing them to exercise their 'right' to remain, and the language of 'choice' being deployed in the notices of closure: in reality, there is only one 'choice' available. Australian Minister for Immigration Peter Dutton announced in a media release on 31 October 2017:

> The Coalition Government has had a clear and consistent policy since coming to office: no-one who attempts to enter Australia illegally by boat will ever settle here. Six hundred men at the Manus Regional Processing Centre in Papua New Guinea who attempted to enter Australia illegally via people smuggler's

> [*sic*] boats … are trying to force a change to that policy. They will not. … They have long claimed the Manus RPC was a "hellhole" – but the moment it was to be closed, they demanded it be kept open. (Dutton, 2017)

The men's desire to remain illustrates the complex ramifications of 'closure'. Refugees held on Manus consistently expressed fears for their safety against a backdrop of threats and reports of violence by local Manusians against them, and this has been borne out by the catalogue of attacks and deaths at Manus, and subsequently in Port Moresby.[6] So, ironically, the *en*closure of the centre at Lombrom had generally functioned as a bulwark against the riskiness and violence of life outside. This is not to endorse the continuation of closed detention, but rather to emphasize the way in which the closure of one gives rise to new forms in its place. At the same time, Dutton's statement implies that the Australian Government had simply granted the men's wish to be released from the conditions and confinement at Lombrom detention centre. Dutton seeks to convey the conclusion that the men's demands to keep it open confirm their desire to manipulate the Australian Government. Here, Dutton preserves the image of Australian sovereign authority, while concealing the reality: that the centre would have remained, were it not for the PNG Supreme Court ruling in *Namah*.

For Behrouz Boochani (2017b), the lead-up to the closure was like being in a war zone, with those refugees 'choosing' to remain at the Lombrom centre increasingly subjected to external forces, through the destruction of the site and the threatening presence of police. Fences were dismantled, taps, toilet and bath facilities, lighting and energy were all disconnected. Food services ceased. Contractors, PNG staff and Australian officers left the camp. The centre, and the remaining 600 men inside, were deserted. The men stayed in the camp for 23 days without protection, as an act of resistance, using makeshift methods to collect water and drawing on their collective resources to survive following the closure. For a short moment in time, Boochani reports, the men enjoyed the experience of authentic freedom as they resisted their removal (2018a).

Importantly, the official closure of Manus camp was achieved through a strategy of infrastructural destruction designed to diminish the basic conditions of life available to the imprisoned men, despite official claims that no direct physical 'force' was used (McCulloch, 2017; see also Munro, 2017). The violation, then, lay not so much in the use of direct violence, but in the violence marked by the withdrawal of services which support life. After 23 days, the men were forcibly relocated to an 'open' camp at Lorengau, where they would be free to move as they wished. But what kind of freedom is this?

The 'empty' spaces of carceral expansion: openings and closings

The legal fiction of *terra nullius* is not dead as an imperial technology of Australian law simply because it was declared to be so by the Australian High Court in the landmark decision of *Mabo*. In that judgement, the Court said that Australia was not empty when the colonizers arrived. Despite this ruling, more than 200 years after the fact, Indigenous land continues to be imagined as empty and as available to be filled at the colonizer's will (Watson, 2002). The claim that *terra nullius* is overturned is now a legal fiction not unlike the Australian Government claim that it is no longer detaining people on Manus in closed conditions (Grewcock, 2017, p. 77; Perera & Pugliese, 2017). But there is another connection here: the colonial state now also imagines immigration detention zones as empty and waiting to be filled through the *terra nullifying* strategies of carceral expansion. Key sites used by the Australian state for immigration detention – Manus, Nauru and Christmas Island – have been effectively rendered as empty – geographically, physically and legally.

The dismantling of the Manus detention centre at Lombrom and the associated and implicit assertions that this closure was equivalent to the end of incarceration produced a legal fiction which aids Australia's extended imperial reach over the region. It reveals the way that 'sovereign power moves farther offshore, extending physically and socially outward' (Maillet et al., 2018, p. 145) accompanied by boundlessness and the absence of limit and external scrutiny. The isolation of Woomera and Manus from access to legal advice, human rights monitoring and the (Australian) public view (Nethery and Holman) is critical to their use as sites of enforcement and *imperio*, because key characteristics of this imperial mode are its administrative form and the limited checks on its power (Maillet et al., 2018).

The apparent absence of the state, which in this case is most marked in the Australian Government's framing of its withdrawal from Manus Island, enables 'silence and concealment of certain moves along the peripheral zones of sovereign territory' (Mountz, 2011, p. 122). Declarations of 'closures' are, therefore, critical to the concealment of this expansion, as well as to a historical and contemporary experience of carcerality that is not contingent upon *en*closure. 'Stone walls do not a prison make'[7]: the claim that the men are no longer being held within a prison belies their ongoing experience of being punished through surveillance, policing and the loss of personal liberty, agency and autonomy that critically informs the lives of men living in 'open' accommodation in Port Moresby Declarations of closure have transformed the carceral conditions endured by refugees and asylum seekers while preserving the experience of punishment.

The declaration of closure also works to support the claim that Australia's deterrent strategies have worked to halt the movement of refugees by boat: the boats appear to have been 'turned back', there are no new arrivals, and the centre is no longer needed. This dispersal of responsibility for incarceration and punishment does not eliminate the suffering of refugees in 'a big open air prison' (Chomsky, 2012, referring to Gaza). In 2001, the *Migration Act 1958* was used to excise over 4000 islands; in 2013, *all* Australian territory was excised from the migration zone. The shrinking migration zone was the basis for imperial expansion via the technologies of extra-territorialisation, through which Australian law rules over the domestic zones of other countries.[8] The idea of excision brings the territorial border to the fore (Vogl, 2015, p. 115) and functions as the foundation for the imperial appropriation of Manus Island by Australia. Openings and closings are crucial to this dynamic of sovereign expansionism.

Following the closure of the camp at Lombrom, the men at Manus, theoretically at least, have not been subjected to punishment: they were given apparent freedom to move and offers of 'voluntary relocations'. The closure apparently complies with the PNG Supreme Court's finding, in 2016, that confining the men to the prison camp was unconstitutional. It declaratively reinforces the Australian Government's claim that it has done its work in stopping the boats. However such a declaration of 'closure' works to facilitate new openings, openings which are premised on a persistent notion of erasure or *nullius*.[9]

The use of place as confinement in the Manus case is intimately connected to Australia's settlement as a penal island colony. Further, it reveals that the closure of the Manus Island detention centre has simply reconfigured the carceral structure of the detention centre/prison for refugees into one that is now territorially/geospatially defined, thus mirroring the settlement and dispossession of Australia by British colonists, and indeed returning to its original form. The call for prison abolition, being made by Indigenous peoples and critical criminologists (Agozino, 2003, 2018; Cunneen & Tauri, 2016) as a decolonizing strategy, is crucial in the refugee incarceration space. It offers a way of moving beyond colonial 'closures' to a decolonizing abolition of punishment against peoples seeking asylum. This article has foregrounded the foundational criminality of

the Australian imperial state and its use of the technology of *terra nullius* to reveal the necessity for border scholars across disciplinary fields to incorporate a decolonizing mindset when seeking to understand and indeed to resolve border controversies. And yet more questions emerge around the constitutive power of openings and closings. How are we to understand the call for the abolition of refugee prisons when the closure of Manus, at least, generates profound further loss of freedom for those detained within the open-air prison? This is especially pertinent in light of recent events 'voluntarily' transferring refugees from an open camp to prison conditions in Port Moresby and to impoverished conditions in community. These patterns indicate the persistence of the very structures of colonialism and practices of control that are said to be erased with the declaration that *terra nullius* no longer operates in Australian law. In the 'open air prison' exclusion is also enacted on the body in increasingly sophisticated ways which diminish accountability and scrutiny of sovereign power while reproducing colonial power in ways that both replicate and amplify its earlier forms. Importantly, the call to end refugee incarceration must come alongside the call to end the criminalization, punishment and over-incarceration of Indigenous peoples by criminal states upon their own lands. Without this insistence the colonial analysis of refugee incarceration is empty theory.

Notes

1. In 2014, it was reported that the centre at Lombrom held 1340 men. See the report by Cornall (2014).
2. The practices of punishment, control and reiterative expansion in carceral sites characterizing Australian sites have been used to model migration control in other western states. See Polakow-Suransky (2017). See Mountz (2013).
3. *Mabo v Queensland* (No 2) [1992] HCA 23 This was a landmark Australian High Court decision that is popularly said to have 'overturned' the legal fiction of *terra nullius*, the doctrine justifying dispossession on the grounds that the land 'discovered' was deemed empty. In June 1992, there was recognition that Aborigines and Torres Strait Islanders were in Australia during British invasion.
4. There were a number of legislative amendments to enforce a policy of offshore processing, including the *Border Protection (Validation and Enforcement Powers) Act 2001* (Cth), the *Migration Amendment (Excision from Migration Zone) Act 2001* (Cth) and the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* (Cth) which led to the excision of territory, Schedule 1, subsection 5.
5. We note that at the time of writing, the camp at East Lorengau has now been 'closed'. 46 men are being held, essentially incommunicado, in Bomana prison in Port Moresby. https://www.theguardian.com/world/2019/nov/16/behrouz-boochani-manus-says-simply-i-did-my-best.
6. This is not to say that there are not many Manusians and others in Port Moresby who support and assist the men. Rather, as Behrouz Boochani has highlighted in his book *No Friend but the Mountains*, the system has been designed to create hostility between refugee and local communities.
7. This phrase is taken from the poem 'To Althea, from prison' by Richard Lovelace in 1642.
8. For more discussion on the contraction/expansion dynamic, see Giannacopoulos (2017).
9. We note that, at the time of writing, the centre at East Lorengau has now been 'closed'. Behrouz Boochani has left Manus and is currently in New Zealand, with his long term residency still in question. 46 men still remain on Manus Island. https://www.theguardian.com/world/2019/nov/16/behrouz-boochani-manus-says-simply-i-did-my-best.

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