

REVIEW ARTICLE

Bodies ‘Locked Up’’: Intersections of Disability and Race in Australian Immigration

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Abstract

Between 2005 and 2006 it came to be known that over 200 people had been wrongfully detained in Australian immigration detention centres, of whom, 13 were people with a disability. A review of the subsequent Commonwealth Ombudsman Reports into the wrongful detentions exposed an organizational culture in which othered voices were discredited and disregarded, an over-willingness to detain a person and a lack of proper oversight of these powers. This paper explores these reports and argues that proper investigation needs to go beyond organizational culture and to look also at historical, social, political and cultural forces shaping Australia’s use of immigration detention. The authors propose that the intersection of disability and race leaves people vulnerable to human rights violations primarily because this is also the intersection of both racial and rational prejudices of the dominant hegemony.

Keywords: disability, race, immigration, Australia

Prologue

On Wednesday evening 28 August 2002 a middle-aged man originally from East Timor known as Mr G was arrested by Fremantle Police as he was sleeping on the verandah of a private home. Mr G had lived in Fremantle, Western Australia for 25 years and was well known amongst the Fremantle community and the East Timorese community. He had chronic schizophrenia and had been on a disability pension on the basis of an 'intellectual disability' since 1996.

When questioned by police Mr G was unable to give clear and consistent information about his identity, and although he was carrying a Commonwealth Bank book with his correct name, the police were unable to satisfy themselves of his correct identity. They called the afterhours immigration officer at Perth international airport who conducted a database search under an incorrect name and, without interviewing Mr G either in person or by telephone, formed a 'reasonable suspicion' that Mr G was an unlawful non-citizen and ordered his detention.

In spite of several interventions from the East Timorese community Mr G was held in detention for 43 days. He was released on 9 October 2002 when the Immigration Department¹ determined that he was in fact a lawful permanent resident.

Introduction

¹ The Australian Immigration Department has undergone several name changes during the period of time that this paper addresses. For ease of reading, the authors use the generic 'Immigration Department' or 'Department of Immigration' throughout the paper. It appears in direct quotes from reports as DIMA (Department of Immigration and Multicultural Affairs), DIMIA (Department of Immigration and Multicultural and Indigenous Affairs) and DIC (Department of Immigration and Citizenship) – its current name.

In 1992, Australia implemented a policy of mandatory detention for all on-shore asylum seekers (Mares & Jureidini 2004) and in the same year, exempted the *Migration Act 1958* from the passage of the *Disability Discrimination Act 1992* (Goggin & Newell 2005). Whilst promising an end to discrimination to the internal Australian disability population, discrimination against disabled people wishing to migrate remained protected in law. All immigration applicants, including asylum seekers, undergo substantial health checks as part of the qualification process. On-shore asylum seekers can be detained indefinitely while their refugee applications are determined, a process which may take from a few months to several years. The disabling effects of detention on adult asylum seekers have been well documented (Goggin & Newell 2005; Silove & Steel 1998; Steel & Silove 2001). The effects of detention on children have been extensively examined, including by Australia's Human Rights Commission (HREOC 2004). A recent paper by psychiatrists Mares & Jureidini noted that almost all incarcerated children develop major depressive disorders including 'recurrent thoughts of death and dying' and that many 'fulfilled the criteria for major depression with suicidal ideation' (2004, 532). Little research, however, has been undertaken into the impact of Australia's immigration policy on people with disabilities (Newell & Goggin 2005; Jakubowicz & Meekosha 2003) and even less, on lawful residents with a disability who have been held in Australia's immigration detention centres.

In this paper we draw on the findings of four Commonwealth Reports (Commonwealth Ombudsman Reports No. 3 2005; Commonwealth Ombudsman Reports No. 6 & 7 2006; Palmer 2005), to outline and discuss recent cases of wrongful detention and deportation of lawful Australian residents and citizens with disabilities. We then discuss Australian immigration policies and practices, bringing to the fore the intersection of disability and race discourses in reinforcing marginalisation and increasing the risk of serious human rights violations against people with disabilities from non-Anglo backgrounds. The data is drawn from several case studies to demonstrate that the issues raised by Mr G's wrongful detention are neither isolated nor

idiosyncratic errors, but rather are the result of deep systemic, institutional and politico-cultural problems and argue that they need to be analysed in this broader context.

Cornelia and Vivian: two stories

In January 2005, a story appeared in *The Age* newspaper claiming that a woman called 'Anna', detained in Baxter Immigration detention centre had a severe mental illness and was being held in a high security compound of the Baxter, South Australian immigration detention centre called 'Red One' (Jackson 2005). The woman was Cornelia Rau, a permanent resident of Australia who had migrated to Australia when she was 18 months old. Cornelia was only released from detention into a psychiatric ward in Adelaide, South Australia when her family recognised her from the newspaper article and identified her as a lawful resident.

Cornelia Rau had been held as an 'unlawful entrant' for 10 months. The general public was shocked that a permanent resident with a mental illness could be incarcerated for such a long time leading to extensive public pressure for an inquiry. The government was reluctant to hold an inquiry and instead tried to swing the tide of public criticism through a series of public statements and press releases that placed the blame for Cornelia's detention on Cornelia herself, not the immigration system, department or individual officers. These efforts to diffuse concern largely failed, and on 8 February 2005, the government announced a closed and limited inquiry into the matter to be conducted by former Australian Federal Police commissioner Mick Palmer (Vanstone 2005b). Palmer was given 6 weeks to conduct the inquiry and to report back to the Immigration Minister.

During this time Australians learnt of the deportation of Vivian Alvarez Solon who had lived in Australia for 18 years. Vivian Alvarez was an Australian citizen who had a mental illness and additionally sustained a head

injury and memory loss probably in an accident shortly before being found in a park at midnight. She was taken to Lismore Hospital, New South Wales on 30 March 2001 and was later transferred to a psychiatric clinic, where a social worker called the Immigration Department and said she suspected Vivian was an ‘illegal immigrant’. Immigration officers interviewed her on 3 May 2001 and assumed she had been trafficked into Australia as a sex worker. They did not complete comprehensive database searches for her name and instead began deportation proceedings. Vivian stated on a number of occasions that she was an Australian citizen, that she held an Australian passport and gave her correct name and date of birth, however, immigration officers persisted in their opinion that she was an unlawful non-citizen without conducting adequate searches based on information she gave, and on 20 July 2001, Vivian was deported to the Philippines (Crowley-Cyr 2005).

Two years later Immigration Department officials, including senior officers both in Brisbane (Queensland) and Canberra (Australian Capital Territory) became aware of the wrongful deportation following enquiries from Queensland Missing Persons Unit. Officers took no action to assist Missing Persons to locate Vivian, to inform the Immigration Minister’s office, to seek to understand how such an error had been made or to rectify the situation.

The failings of the Immigration Department were again front page news; how could an Australian citizen be deported? Like Cornelia, Vivian had a mental illness and was from a non-English speaking background. Additionally, Vivian was Filipino, an ethnic group stereotypically in Australia associated with mail order brides and sex workers (Cunneen and Stubbs 1996, Pettman 1997). Indeed first the social worker, and then the Immigration officers formed assumptions about Vivian’s illegal status in Australia, assumptions held so strongly that it caused the officers to fail in executing proper identity and status checks.

Intersections of disability and race in determining immigration detention

In 2005 the Australian government referred a total of 248 cases of people found to have been wrongfully detained to the Commonwealth Ombudsman for investigation. Thirteen of the people had a disability. All 13 cases were investigated and the findings were reported in five reports. The Palmer Inquiry (2005) addressed the circumstances of Cornelia's detention. The Commonwealth Ombudsman reported individually on the circumstances of Vivian's detention and deportation (2005, No 3) and the detention of Mr T (2006, No 4) and Mr G (2006, No 6) before deciding to report on the other cases in a single report titled 'Report into Referred Immigration Cases: Mental health and incapacity' (2006, No 7). The disabled people detained all had a learning difficulty, intellectual disability, acquired brain injury or a mental illness. Only one was from an Anglo-Celtic background (he was actually born in Australia and had never travelled out of the country). In most cases, the individuals concerned were unable to self-identify...

The danger to be avoided is that an immigration officer will form a suspicion that a person is an unlawful non-citizen, when in fact the person is an Australian citizen or lawful resident who is *unable to effectively communicate their status* [emphasis added] (Commonwealth Ombudsman Report No. 7 2006, 2)

... and in some cases such as Vivian, who did correctly identify herself, officials disregarded or disbelieved her testimony:

Among the varied accounts Vivian gave about herself, there were two facts about which she was consistently accurate: all questions about her first name and her date of birth elicited the same correct responses—Vivian, born on 30 October 1962. (Commonwealth Ombudsman Report No. 3 2005, 48- 49)

Personal assumptions and exercise of administrative powers

The Inquiry recommends that in the training program for compliance and investigations officers there be a focus on objectivity in decision making and a strong warning that false assumptions will contribute to poor decisions. (Commonwealth Ombudsman Report No. 3 2005, 47)

In all these cases it was the person's 'otherness' that first drew them to the attention of authorities. That otherness was primarily about race; in 11 of 13 cases reported on by the Ombudsman 'their different ethnicity was apparent' (Ombudsman Report No. 7 2006, 2-3), combined with mental illness or intellectual disability. Whilst the White Australia Policy and associated slogans such as 'Australia for the White man' have been formally discarded, the underlying framework of Australian identity continues to maintain the centrality of whiteness as the norm against which otherness is measured.

The *Migration Act 1958* charges immigration officers with the responsibility of maintaining demographic border control and provides them with extensive administrative powers to enable them to perform their duties. Section 189 of the *Act* states that:

If an officer knows or reasonably suspects that a person in the migration zone (other than an excised offshore place) is an unlawful non-citizen, the officer must detain the person. (*Migration Act 1958* s.189[1])

A 'reasonable suspicion' is one that is objectively reasonable: it cannot be founded on purely subjective or personal opinion. (Commonwealth Ombudsman Report No. 4 2006, 17)

In all of the cases the detaining immigration officer formed a ‘reasonable suspicion’ which was significantly shaped by the officers’ ‘purely subjective or personal opinion[s]’. In the case of Vivian, one immigration officer made the assumption that she was a sex worker trafficked into Australia, an assumption which fellow officers shared and acted upon without any positive evidence to support the assumption and in fact, in the face of conflicting evidence.

In relation to Vivian, one officer opined—without any supporting evidence—that Vivian might have been a ‘sex slave’. This opinion was repeated by other officers in subsequent reports and, in the Inquiry’s view, probably influenced to some extent the decisions made about Vivian. (Commonwealth Ombudsman Report No. 3 2005, 47)

With each repetition of this assumption, it gained credibility and was soon taken as a ‘fact’. The words of immigration officers, though speculative, were given greater credibility in regard to Vivian’s immigration status than was her own testimony. This differential weighting of verbal testimony and the disregard of voices of disabled people was common across many of the cases examined.

‘Reasonable suspicion’ to detain...

Under the *Migration Act 1958* a person is to be considered lawful until there is evidence to support an officer actively forming a ‘reasonable suspicion’ of unlawfulness. One of the primary reasons for this is that Australian born citizens who have not travelled outside Australia, do not appear on immigration data bases. Government departments are permitted to collect and maintain information about citizens only where that data is essential for the lawful functioning of that particular department. This is a cornerstone of liberal democracies based upon respect for the right of individuals to freedom from government intrusions upon their privacy (Nowak 2000). This places the onus on the immigration officer to prove that it is reasonable to

suspect that a person is unlawful and therefore subject to detention. In the absence of evidence of unlawfulness, a person is to remain free. As the Ombudsman noted in Vivian's report 'A properly based decision as to "reasonable suspicion" constitutes the only protection in the section against arbitrary detention.' (Commonwealth Ombudsman Report No.3 2006, 47)

In practice however, the operational culture of the Immigration Department has undermined this principle and reversed the onus of proof so that a person is considered to be unlawful unless they can positively prove otherwise. In all of these cases except one the person was not from an English speaking background and with the exception of Cornelia, was non-white and was unable to present full coherent and consistent information about their immigration status. Even though there was no actual evidence to suggest illegality, each person was assumed to be unlawful and was detained upon this assumption.

The Ombudsman noted in Mr G's report that:

...some officers within DIMA held the view that if a person could not be conclusively identified and located on DIMA systems, the person had to be detained and kept in detention.
(Commonwealth Ombudsman Report No.6 2006, 10)

It is important to question the basis of the assumptions which lead to wrongful detention. We contend that the officers' initial suspicions were raised due primarily to the person's racial otherness. These suspicions may have been allayed earlier if the person had greater capacity to self-advocate. Their lawfulness was questioned due to their race whilst their ability to argue lawfulness was undermined by both the person's ability to self-advocate and by the officers' assessment that their testimony was not credible as it did not sit comfortably within a Western rational 'norm'. Had the detaining officers listened to each person and conducted further

investigations based upon this, the person's proper identity and lawful status could have been discovered much sooner. Racism (in the initial formation of suspicion) and disability discrimination (in the maintenance of suspicion and silencing of disabled voices) were critical aspects of all these cases, aspects so far not adequately investigated.

Immigration officers demonstrated significant subjectivity in the interpretation of evidence. Where that evidence supported their suspicion, the evidence was treated as credible. Mr A was left at a police station with a note pinned to his clothing alleging that he was an 'illegal immigrant'. The police took him to hospital where he was treated for a suspected overdose and diagnosed with Post Traumatic Stress Disorder and major depression. Immigration officers interviewed him while he was recovering in hospital the following day and detained him (Commonwealth Ombudsman Report No. 7 2006, 6). This 'evidence' (the note pinned to his clothes) was in their minds, sufficient to warrant his detention.

Evidence which countered the officers' suspicion of unlawfulness was either disregarded or discredited. Mr G held a Commonwealth Bank book in his correct name, and several East Timorese community members vouched that he was a permanent resident. This information was not sufficient to gain his release. The Ombudsman identified this as a serious concern in his report on Mr G:

.... [t]here is also evidence of a view prevailing at that time that DIMA could only release a person from detention if their identity had been proven and their lawfulness had been positively evidenced. ... *only a reasonable suspicion is required to detain a person but that absolute proof is required to release them.*[emphasis added] (Commonwealth Ombudsman Report No.6 2006, 10)

... Absolute proof for release

Section 191 of the *Migration Act 1958* provides that a person must be released if there is evidence or it is reasonably believed that she/he is lawful. Mr G was detained on 28 August 2002. Six days later, on 3 September 2002, 3 members of the East Timorese community attended Perth detention centre and identified Mr G as a permanent resident. The following day, the detention centre manager who lived in Fremantle also recognised Mr G and informed immigration officers in an email that he believed Mr G to be a lawful resident and therefore wrongly detained. Immigration officers did not reply to his email but did discuss amongst themselves the possibility that a lawful resident was being detained. On 4 September 2002 one officer wrote:

... fortunately, Mr G is not educated enough to consider suing us for unjustified detention however, I think we need to be very careful in regard to how long we continue to detain him. If released he will be easy enough to find if it is found that he is unlawful. (cited in Commonwealth Ombudsman Report No.6 2006, 10)

Another replied:

We have lawfully in the past detained Australian citizens until their status has been proven. The duration is not an aspect. The legality of the detention has been proven in the courts. (cited in Commonwealth Ombudsman Report No.6 2006, 10)

The first officer interpreted Mr G's intellectual disability, not as cause for increased duty of care, but rather as a protective factor against the department being sued. The second officer's email demonstrates a profound lack of concern about a potentially wrongful detention and reflects the 'deep-seated' culture of the department. This exchange also highlights the operational culture that people were detained not until the 'reasonableness' of the initial suspicion was called into question, but until their status had been proven. This

departmental culture demonstrates the need for external scrutiny of the exercise of administrative statutory power. The Palmer Report highlighted similar concerns arising from Cornelia's detention noting that:

DIMIA officers are authorised to exercise exceptional, even extraordinary powers. That they should be permitted and expected to do so without adequate... constraints on the exercise of these powers is of concern. (Palmer 2005, ix)

Responding to Unruly Bodies

There are many prisms through which human behaviour can be read. We have identified three categories of reading Cornelia's (and by extension, other wrongly detained people's) behavior: a punitive response; a medical response, and; a compassionate humanist response. The state, in all instances, acted in a punitive manner, enforcing and prolonging the individuals' incarceration.

Punitive: Deploying a criminal discourse

Incomplete or inconsistent testimony, rather than being understood as an aspect of mental illness, was instead explained as 'bad behaviour' or 'bad character' and a punitive rather than compassionate response was evoked. The officers directly involved in each case were operating within a departmental and national culture obsessed with control and conformity (Grattan 2006 and Stratton 1998). The language used by Senator Vanstone, then Minister for Immigration, when responding to media inquiries about Cornelia highlight this discourse:

I would urge those commenting and reporting on this case to consider the difficulties facing authorities in establishing the identity of someone who provides false information, provides no documentation and is either unwilling or unable to assist in confirming identity.

This is a tragic case, but one that has been resolved, giving comfort to the woman's family, which has been concerned for her welfare since she absconded from a Sydney psychiatric ward last March. (Vanstone 2005a)

During a prolonged episode of psychosis Cornelia used the name Anna. She displayed several behaviours which demonstrated her severe level of distress. Fellow detainees who witnessed these behaviours sent messages to supporters outside detention about their concerns that Cornelia was unwell and needed help rather than isolation. Senator Vanstone's media comments however, present the explanation for Cornelia's actions as bad behavior. By using terms such as 'false information', unwilling to assist' and 'abscond' the Minister is drawing on a language of criminality, and thereby encouraging the public to see Cornelia's detention as the fair and reasonable consequence of her (mis)behaviour.

Given such comments made at the Ministerial level, it is little wonder that echoes are heard at the operational level. The interpreter for Mr G told immigration officers that she believed he 'was lying and that he was born on an island off the West coast of Africa' (Commonwealth Ombudsman Report No. 6 2006, 3). The immigration officer was prepared to believe this assertion and order the detention of Mr G without directly interviewing him either in person or by telephone. The pervasive culture of the Immigration Department was to see detainees as mischievous people of 'bad character' and given to lying. Again, Mr G's inconsistent and incomplete testimony was invoked to explain his wrongful detention.

Medical Authority: Pathologising or protecting?

People working within Australia's immigration system, particularly in the compliance and detention sections, are all too often trapped in didactic thinking and tend to read behaviour through either a pathologising medical

paradigm or through a criminal paradigm as discussed above. These two paradigms also interplay in complex and inconsistent ways. At times, medical pathology can function to support the criminalising of 'misbehaviour'. Notes from fellow detainees to refugee supporters highlight this coercive interplay:

While Cornelia was in the Compound (sic) they brainwashed everyone to make them believe that she had no mental problem. They said that according to the psychologists report she plays her game very well. And she's a good actress and she just pretended to be crazy because she didn't want to be deported. (Immigration detainees cited in Smit 2005)

Medical authority was deployed to give credibility to the guards' assertions that Cornelia's behaviour was manipulative and justified her incarceration in an isolation cell; it was no cause for concern or compassion.

A medical discourse carries great authority as it draws upon a claimed 'objective' knowledge base with its associated acceptance of scientific 'Truth'. However, the use of a medical discourse needs to be read alongside the ideological aims of the speaker. Just as politicians, immigration officers and guards have used the medical paradigm to support their assertions of criminality and the need for incarceration, so too have refugee activists used a medical discourse to argue for the dismantling of the detention system. Psychiatrists and other health professionals opposed to mandatory detention have researched, documented and argued that detention causes a range of disabling conditions (Mares and Jureidini 2004, Steel and Silove 2001, Sultan and O'Sullivan 2001). This has been one of the more powerful arguments against detention. The contradictory functions of medical authority in relation to detention demonstrate the problematic nature of objective truth claims and highlight the need to read 'scientific facts' in conjunction with the ideological position and purpose of the speaker. In one case, the state mobilises the power of medical discourses to further its ideological aims for achieving and maintaining racial and bodily homogeneity of the nation-state, whilst civil

society actors attempt to mobilise the authority of medical scientific discourses to counter the hegemonic dominance of the state. .

Being Human: When oppressed meeting oppressed

The recognition of Cornelia's humanity and a compassionate response came from two oppressed groups – Aboriginal community members in far North Queensland and her fellow detainees; mostly asylum seekers from Iran, Iraq and Afghanistan also locked up in Baxter (Watkinson, Briskman and Fiske 2006). The asylum seekers recognised Cornelia's need for help to get out of detention and were distressed by the treatment she was receiving. They sent out repeated calls for her help writing:

I write this letter with shocking mind. I just return from Church service. There I met Anna. Initially I scared to talk to her hoping that she would ignore and misbehave due to her condition. In the Church service, she behaves very strangely very similar to downed mentally. I was worried that no one wanted to consult her or need to company her. Lately, I went and introduce myself and talk to her. She very gently asked to sit down in a bench and talk to me. Actually, she very nicely welcomed me. Then I understood that she need friends to talk and pass time. This treatment makes her situation worse... When we return from Church service, Van has come to bring her back to compound. She restricted to get in saying that she too need to walk like others and with them. I felt it is very fair and genuine request as human. We do the same when GSL restricted our moments (sic). That was the point I understood she need company. I don't know what to do but felt very bad as human. We also not in good mentality but when we see worsen than us hard to bear. Still feel sympathy on them, which has remained with us yet (Immigration detainee cited in Project Safecom 2005).

The immediacy and humanity of the language used by fellow detainees stands in stark contrast to the complex, scientific and hyper-rational language of the medical and immigration systems. Professional language here functions to dehumanise both ‘us’, the speakers, and ‘them’ the subjects, with our shared humanity and capacity for an emotional, direct ‘human to human’ response obscured through rationality.

Standardising and homogenising the white able-bodied nation

Historically within Australia, race and disability have been exclusionary categories (Gothard 1998). Non-white people, along with people deemed disabled were both physically and morally removed from the *demos*; those people who are accepted as citizens with full political rights and freedoms within the nation state. The Australian *demos*, like other Western nations, was initially constructed around the white, property owning rational male body. European settlers in Australia viewed Indigenous Australians as a ‘backward race’ doomed to ‘die out’ (Jupp 1995). This belief was significantly informed by social Darwinism with its accompanying biological, moral and intellectual hierarchy of race, gender and ability. George Barton was a leading proponent of these ideas in Australia leading up to the time of Federation in 1901. He made ‘the much quoted suggestion that whites should “smooth the dying pillow” of the Aboriginal race’ (Wyndham 2003, 9). He was also the brother of Australia’s first Prime Minister, Edmond Barton, who presided over the passage of the *Immigration Restriction Act 1901* which codified in law the formal exclusion of non-white and disabled people.

The first act of Australia’s new Federal parliament was to pass the *Immigration Restriction Act 1901* which was specifically designed to build and protect the racially and physically ‘pure’ ideal of the new nation (Bashford 2004). The *Act* while well known for its exclusion of non-white peoples, is less known for its exclusion of ‘any idiot or insane person’ and ‘any person suffering from an infectious or contagious disease of

a loathsome or dangerous character' (*Immigration Restriction Act 1901*, Section 3 (e) (d), 1). Inclusion into the Australian demos was to be controlled; to create a nation built on a 'desired' up-standing citizen free from contagion (Gothard 1998; Meekosha and Dowse 1997). This desired citizen would be rational, white, able-bodied, healthy and of 'good moral character'. The criteria for assessing desirability were informed by both modern medicine and morality (Bashford 2004).

Modern medicine was based upon pseudo-scientific constructions of biological superiority and inferiority, providing the rational framework for a hierarchy both of race and of able-bodiedness (Soldatic 2007). This paradigm was accepted uncritically as rational 'objective truth' and provided the 'objective' means for excluding certain people from the demos. The framework however was incomplete in itself and operated in conjunction with a discourse of morality rooted in Christianity. Christian morality was used to justify the exclusion of those who might meet the scientific criteria but who were nonetheless undesirable due to madness, idiocy, disease or 'loathesome character'. This blatantly subjective framework gave discretion to individual officers to exclude people at the border.

Groups have struggled for the broadening of the demos: women fought for suffrage and equal rights; Indigenous Australians continue to fight for recognition and equality; immigrant groups have also struggled for many years for their rights. People with disabilities have been excluded from the demos both through prohibition of immigration and, for those born here, through institutionalisation. Whilst the disability movement has made small gains in accessing citizenship rights, much remains to be achieved for people with disabilities to enjoy substantive equality with their able-bodied fellow citizens (Goggin and Newell 2005).

The *Immigration Restriction Act* has now been replaced with the *Migration Act 1958*. This has meant some significant changes to racial criteria for entering Australia, and much of the racist and disablist language of the *1901 Act* has been removed. The *1958 Act* however, maintains the notion of a ‘desirable’ citizen and excludes a range of bodies (Goggin and Newell 2005; Gothard 1998; Jakubowicz and Meekosha 2002; Meekosha and Dowse 1997). The *Migration Act* is formally exempt from the *Disability Discrimination Act 1992* and discrimination against people on the basis of disability continues unabated. Medical checks are used to screen for a range of disabilities and a pseudo-scientific formula of the prospective financial cost to the Australian public is applied to determine entry (Goggin and Newell 2005; Jakubowicz and Meekosha 2002; Meekosha and Dowse 1997). These considerations over-ride humanist concerns such as keeping families together or protecting vulnerable peoples². Medical science is still used as a primary foundation for exclusion, however it is now coupled with the new ‘science’ of economics, replacing Christian morality which has been exposed as overtly subjective. The primacy of ‘rational decision-making’ remains unexamined and unchallenged.

Although the *Migration Act* replaced the *Immigration Restriction Act* in 1958, the White Australia Policy continued until the early 1970s when it was officially replaced with multiculturalism as the political framework informing immigration policy. Through the legislative changes, prevailing attitudes towards race and white superiority became divorced from the overtly racist language of the founding days of the Australian Federation, but the rationality underpinning notions of biological hierarchy remains. This rationality reverberates through policy and practice in the area of immigration for both disabled and non-white or non-Christian people.

² Sadly, there are several high profile cases of families being offered visas for all able-bodied family members but a disabled child for instance, being refused entry. One such case is the Kayani family which culminated in Mr Kayani committing suicide through self-immolation outside Parliament House in Canberra in protest at his forced separation from his daughter who had cerebral palsy (for more on this see Jakubowicz and Meekosha 2002). The second area where this policy has a major impact is in the area of refugee resettlement. The guiding principle is that resettling countries offer protection to those most vulnerable. However, Australia exclude prospective refugees with disabilities from consideration for resettlement though it is likely that a disability would increase their vulnerability in a temporary country or refugee camp.

Locked-out or locked-up: Concluding discussion

The control of bodies is integral to constructing the nation state (Davies 2002). While immigration controls function to 'lock-out' people deemed undesirable, Australia uses policies of 'locking-up' people already within the geographical boundary who are deemed not desirable. Most Australians do not question the practice of detaining refugees and asylum seekers which resonates with the historical institutionalisation of people with disabilities. We have been well groomed to accept the sensibility of institutionalisation as a response to protecting the integrity of the demos.

The *Migration Act 1958* gives extraordinary powers to individual officers to deprive a person of her/his liberty with little administrative and no judicial oversight. In each of the cases discussed here, and arguably in many more beyond the scope of this paper, these powers have been used too readily and has caused little stir amongst the broader Australian community. The Ombudsman's investigations to date focus almost exclusively on the operational application of migration regulations without examining the broader context in which they are shaped. Palmer noted his concern at the extraordinary powers given to immigration officers, the lack of protections against their misuse and that this misuse sat within a broader departmental culture that supported and perhaps encouraged street-level officers to zealously exercise detention powers.

These cases raise important questions about both the laws and regulations of immigration and the political and socio-cultural environment which produces and reproduces these laws. Are we too willing to lock up people 'not like us' and remove them from the demos? To what extent does the historically explicit desire for a 'perfect' nation continue to shape decision-making today?

Whilst we need a rigorous analysis of systems and powers that these systems delegate to individuals, we contend that the analysis needs to go further and recognise that Australia's immigration, medical and other systems are products of Western society. A thorough investigation then, needs also to examine the often unnamed attitudes and values embedded within society, particularly how these homogenising forces act to exclude several groups of people in similar ways, whether it be disability, race, class, sexuality or other criteria. This investigation would include the socio-historical context of our political institutions with an aim to rectify the disconnect between the racist and disablist language of the past and the racist and disablist attitudes and practices of the present, thereby exposing the continuum of values embedded in Australian society.

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