

Citizenship, Race and Disability in Australia: A disastrous intersection

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In 2005 248 cases of wrongful immigration detention were referred to the Commonwealth Ombudsman for investigation. In 13 cases, the person affected had a learning difficulty, intellectual disability, acquired brain injury or a mental illness. This paper¹ arises from the authors' review of the Commonwealth Ombudsman and Palmer reports and concludes that the intersection of racist and disablist beliefs was a core feature common to 12 of the 13 cases. Two of the cases; those of Vivian Alvarez Solon and Cornelia Rau, have received extensive public attention, but few people would be aware of the extent of wrongful detention of Australian citizens or lawful residents with a disability.

Cornelia and Vivian

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 called 'Red One' (Jackson 2005). The woman was Cornelia Rau, a permanent resident of Australia who had migrated from Germany 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 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 announced a closed and limited inquiry into the matter to be conducted by Mick Palmer (Vanstone 2005).

Vivian Alvarez Solon was a Philippines-born 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 March 2001. She was taken to hospital and 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 Vivian on 3 May 2001

¹ This paper is an abridged version of a more detailed paper titled "Bodies 'Locked Up': Intersections of Disability and Race in Australian Immigration" forthcoming in *Disability & Society*. These arguments, based on the empirical evidence within the Commonwealth Ombudsman reports, are fully developed within the full paper available upon request from Karen Soldatic kazzak@bigpond.com

and assumed she had been trafficked into Australia as a sex worker. 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 database searches based on information she gave, and on 20 July 2001, Vivian was deported to the Philippines (Crowley-Cyr 2005).

Like Cornelia, Vivian had a mental illness and was from a non-English speaking background. Additionally, Vivian was Filipina, 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

The *Migration Act 1958* requires that if an officer forms a 'reasonable suspicion' that a person is unlawfully in Australia he/she must detain that person, and that when the suspicion ceases to be reasonable, the person must be released.

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)

The Ombudsman's reports identify a number of failings of the system and of officers involved in the detention of the 13 people. These failings relate primarily to the formation and maintenance of 'reasonable suspicion'.

Credibility of Disabled Voices

The Ombudsman cautioned against officers drawing adverse conclusions about a person when a person was unable to communicate her/his status to the officer's satisfaction.

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 (Commonwealth Ombudsman Report No. 7 2006, 2).

In many of these cases, if the person had been better able to self-advocate, he/she would not have been detained, but even giving a correct name and date of birth was not sufficient protection against detention.

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)

While the Ombudsman focussed on the detainees' ability to effectively communicate, questions also need to be asked of the officers' willingness to regard people with disabilities as credible sources of information. The lack of authoritative voice of people with disabilities cannot be fully explained by their medical impairment but needs to also consider societal attitudes which have a disabling effect.

The societal and personal assumptions of the many officers involved in all 13 cases were also highlighted by the Ombudsman who noted that 'false assumptions will contribute to poor decisions' (Commonwealth Ombudsman Report No. 3 2005, 47). Non-Anglo people with disabilities must overcome societal assumptions about both race and disability – the effect of which is mutually constitutive rather than simply additive (Yuval-Davis, 2007, 565).

Assumptions of Race

In all these cases it was the person's 'otherness' that first drew them to the attention of authorities. That otherness was initially 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. While the White Australia Policy has been formally discarded, the underlying framework of Australian identity continues to maintain the centrality of whiteness and rationality as the norm against which otherness is measured. This manifested in these cases in the belief that a non-Anglo person who could not explain their presence in Australia to an officer's satisfaction was assumed to be 'illegal'.

In all of the cases the detaining officer formed a ‘reasonable suspicion’ which was significantly shaped by the officers’ ‘purely subjective or personal opinion[s]’.

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, carried greater credibility in regard to Vivian’s immigration status than her own testimony. In all of these cases except one, the person was from a non-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.

Inheritance of Institutionalisation

The Australian government’s practice of detaining refugees and asylum seekers has been well supported and accepted by the Australian voting public and resonates with the historical institutionalisation of people with disabilities. We have been well groomed to accept the ‘reasonableness’ of institutionalisation as a response to protecting the integrity of the nation. It is our contention that a comprehensive examination of how people come to be wrongfully detained cannot be divorced from historical forces of race, disability and institutionalisation.

Mr G, originally from East Timor, had lived in Australia since 1975. Mr G had a mental illness and an intellectual disability, and was homeless when he was arrested by Fremantle police in 2002 for sleeping on the veranda of a private home. The police suspected that he

may be unlawfully in Australia and called the Department of Immigration who promptly detained Mr G without interviewing him. When the lawfulness of Mr G's detention came into question after a few days, email correspondence between immigration officers demonstrated a disconcerting level of comfort with 'locking up' a non-Anglo person with a disability with one officer noting that:

... 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 (cited in Commonwealth Ombudsman Report No.6 2006, 10).

The officer interpreted Mr G's intellectual disability, not as cause for increased duty of care, but rather as a protective factor against being sued. Her/his colleagues' emails reflect a similar disregard for Mr G's rights. Mr G was detained for 43 days.

Conclusion

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 these powers have been used too readily and have caused little stir amongst the broader 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.

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. While 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 historically and socially constructed. A thorough

investigation needs to also examine the often unnamed attitudes and values embedded within society and inherited across time, particularly how these homogenising forces act to silence and exclude several groups of people in similar ways, whether it be disability, race, class, sexuality or other criteria.

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