

**Centre for Human Rights Education
Faculty of Humanities**

**Insider Resistance:
Understanding Refugee Protest Against Immigration
Detention in Australia, 1999 – 2005**

Lucy Fiske

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Declaration

To the best of my knowledge and belief this thesis contains no material previously published by any other person except where due acknowledgment has been made.

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university.

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Abstract

Protests by detainees in Australia's immigration detention centres made regular headline news between 1999 and 2005. Journalists interviewed government ministers, senior departmental officials, refugee advocates, mental health experts and many others. Only rarely were detainees able to speak directly for themselves and explain their own actions. The primary task of this research has been to reunite the words of former detainees with their actions. Through interviews with former detainees, alongside a broad range of secondary sources, such as government media releases, news reports, inquiry reports and court transcripts, this thesis presents an alternative record of protests and other events inside detention centres. Detainees' thoughts, words and actions are outlined in thematic chapters addressing human rights and the human subject of human rights, power and resistance in detention, escapes and breakouts, hunger strike and riot.

Testimony from former detainees confirms that despair was widespread within immigration detention centres. However, it also reveals a discursive struggle for reinstatement as rights bearing human beings. Detainees engaged in collective and individual critique of their position within Australian and global politics, of the flow of power within detention centres, of their public representation and of the risks and potential benefits of possible protest actions. Interviews with former detainees revealed a diverse political consciousness and both strategic and principled thinking which drove protest action. The interviews also uncovered important insights into the interplay of reason and emotion in resistance undertaken by those directly experiencing injustice.

Hannah Arendt argued that becoming a refugee entails a loss of 'the right to have rights,' which amounts to an expulsion, not only from a political community, but from humanity itself. In this research, the work of Hannah Arendt is used to expose the ways in which Australia's regime for responding to asylum seekers who arrive by boat strips people of their status as 'full' human beings and is therefore fundamentally dehumanising. The words and deeds of detainees however, extend Arendt's work on human rights and support the argument that certain characteristics of 'naked humanity,' including thought, speech and action, cannot be removed and

that detainees remained discursive agents throughout their period of detention. Detainees used critical and strategic understandings of power to engage in a struggle for restoration as rights bearing human beings.

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List of Acronyms

ACM	Australasian Correctional Management
AFP	Australian Federal Police
AHRC	Australian Human Rights Commission (see also HREOC)
ASIO	Australian Security and Intelligence Organisation
CERT	Critical Emergency Response Team
DIMIA	Department of Immigration, Multicultural and Indigenous Affairs
DIMA	Department of Immigration and Multicultural Affairs
DIAC	Department of Immigration and Citizenship
GSL	Global Security Ltd
HREOC	Human Rights and Equal Opportunity Commission
IAAAS	Immigration Advice and Assistance Scheme
IDC	Immigration Detention Centre
IDF	Immigration Detention Facility
IRPC	Immigration Reception and Processing Centre
JSCFADT	Joint Standing Committee on Foreign Affairs, Defence and Trade
JSCM	Joint Standing Committee on Migration
NAACD	National Association for the Advancement of Coloured People
PV	Protection Visa
RHP	Refugee and Humanitarian Program
RRT	Refugee Review Tribunal
UNHCR	United Nations High Commission for Refugees
UNWGAD	United Nations Working Group on Arbitrary Detention
WAICS	Western Australian Inspector of Custodial Services

Chapter 1: Introduction

Background to the Study

Between 1999 and 2005 protests and critical incidents in Australia's immigration detention centres were almost daily news. In June 2000 several hundred asylum seekers broke out from Port Hedland, Curtin and Woomera detention centres in a coordinated protest. The action was timed to coincide with the arrival of the Olympic Torch in Australia and designed to highlight the distance between the internationalism and friendship of the Olympic Games and the unfriendly reception that the detainees were enduring. In August of that year Woomera Immigration Reception and Processing Centre (IRPC) was set alight by protesting detainees. Detainees and specialist CERT guards (Critical Emergency Response Team – the private security company equivalent of a riot squad) engaged in three days of hand to hand combat, dawn raids, forced 'extractions', rock throwing and property damage. Water cannons and tear gas were used for the first time in Australia against asylum seekers. Several more riots occurred in Woomera, Port Hedland, Curtin, Villawood and Christmas Island detention centres over the ensuing years, most recently in March and April 2011, when Australian Federal Police took over the detention centre on Christmas Island and used beanbag bullets and tear gas against protesting detainees. In January 2002 several hundred detainees in Woomera participated in a protracted hunger strike, with approximately 70 people sewing their lips shut and one man throwing himself into the razor wire topping on the perimeter fence.

A great many inquiries have been held into immigration detention in Australia by Australia's Human Rights Commission, the United Nations Working Group on Arbitrary Detention (UNWGAD), several Joint Parliamentary Committees, the Commonwealth Ombudsman and one national citizen's inquiry. All have documented extensive and serious problems with detention centres. Self-harm and suicide attempts were daily occurrences in detention centres during this period (HREOC 2002). Asylum seekers cut themselves, drank shampoo, bleach and other poisons, hanged themselves and leapt off trees and buildings. Australian of the Year, psychiatrist Pat McGorry used his acceptance speech on Australia Day 2010 to condemn Australia's detention centres as 'factories for mental illness' (Cresswell 2010). Twenty eight people have died in immigration detention centres between

2000 and 2011 (Keneally 2011; Ting 2010). Aamer Sultan, a medical doctor and former long term detainee, believes the number would have been much higher but for the use by detention centre operators of isolation cells, stripped of hanging points and under twenty four hour surveillance. Sultan says, ‘that’s the worst thing you can do to someone who is suicidal, but physically they are preventing it which is probably why the incidence of suicide in detention centre is low. So they physically prevent it... without trying to actually solve the problem.’

Between 1999 and 2001 approximately 13,000 asylum seekers arrived by boat on the northern coast of Australia. This number is very small in comparison to other OECD nations and highly insignificant in global terms, but this rate of arrival marked a dramatic increase for Australia. Australia had introduced mandatory indefinite detention for unauthorised arrivals in 1992 and the detention centres, designed for hundreds, were soon operating well beyond capacity.¹ New detention centres were hastily erected, often on old military bases in remote locations and with inadequate facilities and newly recruited, inexperienced and poorly trained staff. Unsurprisingly, problems quickly developed. Asylum seeker protests in immigration detention became the fare of daily news. Hunger strikes, lip-sewing, self-harm, suicide attempts, fights, escape, break outs, arson and riots were commonplace. Media reports were dominated by government voices which entirely blamed the detainees, narrating their actions as criminal, destructive and barbaric. ‘Those sorts of people’ were not welcome in Australia and the protests were used by the government to underline its position that detention was necessary to protect the Australian public. When alternative voices were heard through the media, they tended to be refugee supporters and health professionals who explained detainee protests as evidence of their despair and deteriorating mental health. I couldn’t help but wonder whether protests were not an understandable and rational response to injustice, and whatever the reasons for the protests, where were the voices of the actors themselves? The central focus of this study is how protester-detainees narrate their own actions.

My interest in immigration detention did not start there however. After working with community based asylum seekers for some time, I was invited to join a small group

¹ For example, Woomera IRPC was opened in late November 1999 with a capacity of 400 detainees. By April 2000 it held 1500 detainees.

of Amnesty International Australia activists who were beginning a campaign to get four Somali asylum seekers out of detention in 1998. I knew little about detention centres at that time, but readily agreed. After being briefed on the backgrounds of the four men, and on the situation in Somalia, I was confident that there had simply been an oversight or an individual act of incompetence which led to the refusal of their applications for refugee status and that once we brought the situation to the attention of the Minister, all would be rectified and they would be released. Eighteen months later, after many meetings with government officials, parliamentarians, religious and community leaders, writing letters, speaking with media, nightly phone calls with one of the men and even driving up to Port Hedland, over 1600km north of my home in Perth, to meet the three men detained at that centre, I realised that this refusal was no oversight. So too, did the three men in Port Hedland (the fourth man was detained in Perth, he received a refugee visa in July 2000 and is now a citizen). The men at Port Hedland decided that there was no hope left for them in Australia, they were slowly but surely deteriorating in both their physical and mental health (for instance, one man stood at 180cm tall and weighed just 47kg). They decided to withdraw all claims to stay in Australia and ‘voluntarily’ depart to Somalia, but only after a personal meeting with the Minister who was visiting the detention centre at the time and who told them directly that he would *never* agree to their release into the Australian community.

The men were well liked and well regarded by detainees and guards alike. On the day of their departure, they were taken into a van to travel to the airport. It was shift change-over time and guards had not been advised in advance of the removal. One of the guards ran beside the van as it was leaving the detention centre, calling out to the incoming shift ‘The SSs are leaving! The SSs are leaving!’ He wanted his colleagues to have the chance at least to wave good-bye to three men they had guarded and come to like over several years. The men told me of this farewell, smiling sadly in Perth detention centre en route to South Africa, Kenya and, ultimately, Mogadishu, Somalia. Even in a moment of affection on the part of the guards, they remained ‘the SSs’; the first two letters of their detention identification numbers.

The years that followed were difficult ones for asylum seekers, refugees and their supporters. Conditions in detention became steadily worse, the rhetoric from the

government more vitriolic, and community anxiety, fear and anger towards asylum seekers followed in close step. The Pacific Solution, introduced in the immediate aftermath of the 2001 terrorist attacks in New York and Washington, meant that any asylum seekers reaching Australian waters by boat were intercepted and taken to Nauru or Papua New Guinea, where they were detained while their refugee claims were assessed. Claimants had no right to legal advice or representation, no right to appeal a negative decision and those found to be refugees had no right to be granted a visa to Australia. The Pacific Solution essentially removed the possibility of entering Australia by boat.

The minority of Australians who were opposed to detention worked hard to bring about change. There were breakthroughs in 2005 when Liberal Party backbenchers Petro Giorgio, Judith Moylan, Russell Broadbent and Bruce Baird threatened to cross the floor and vote against the government on yet another bill designed to further erode asylum seekers' rights. The bill was withdrawn and the government agreed to move children out of detention centres and give the Commonwealth Ombudsman greater powers in investigating cases of long term detention. The boats had long since stopped following the Pacific Solution. Then, in November 2007, after almost twelve years of rule, the conservative Coalition government was voted out and a Labor government installed. The new government promised a more humane approach to asylum, the dismantling of the Pacific Solution, an end to Temporary Protection Visas, a statutory ninety day limit on the length of detention and a re-centring of human rights in asylum policy considerations. Refugee supporters around the country, most of whom were physically and emotionally exhausted, breathed a collective sigh of relief. It was over.

Our relief however, has proved to be misplaced and short lived. As I write this in November 2011, there are 5,454 people in immigration detention centres around the country (DIAC 2011a). Seven people have died in immigration detention in the last fourteen months, six of them suicides (AHRC 2011; Keneally 2011). There have been riots and fires in detention centres on Christmas Island and at Villawood in Sydney. Detention centres are back in the headlines and asylum seekers are again hanging banners for the outside world to see, which declare that they are human and ask for their rights to be respected and enforced. There have been more hunger

strikes around the country and in November 2010 up to twenty asylum seekers on Christmas Island sewed their lips shut (Guest 2010). On my last visit to Christmas Island in April 2010 I could only visit detainees if I cited their detainee identification numbers and I twice witnessed guards address asylum seekers by their identification numbers and not their names. When I reported this to the most senior Department of Immigration official on the island I was told that it does not happen.

I have visited detention centres only occasionally throughout the process of preparing this PhD, but I am in close communication with people who regularly visit. Detention centres remain in remote locations that are expensive to access, the procedures for entry remain obstructive, intimidating and arbitrary, and communication with detainees is very difficult and not particularly private. In short, detention centres remain places where there is a profound imbalance of power, with poorly trained and poorly supervised guards, systems of public scrutiny are inadequate and the conditions for abuse and injustice are ideal.

Research Paradigm

This research explores refugees' explanations of resistance to immigration detention in Australia and does not seek to provide any generalisable claims of 'truth' or definitive 'answers' to why refugees protested against their detention. Rather, it seeks to uncover and re-present previously subjugated knowledges; 'knowledges which have been disqualified as non-conceptual knowledges, as insufficiently elaborated knowledges: naive knowledges, hierarchically inferior knowledges . . . the knowledge of the psychiatrised, the patient . . . the knowledge of the delinquent' (Foucault 1997, 7). Foucault suggests that totalising unitary theories, a strategy of the elite to establish, renew and maintain the hierarchy which underpins their privilege can be challenged through the excavation of subjugated knowledges, and the drawing together of disparate, unique and particular voices through the tools of scholarship. This thesis is a small contribution to that project.

The dominant hegemony surrounding refugees and asylum seekers in Australia and the Western world, is one in which the refugee is viewed either as a victim or a threat. The possible responses are consequently narrowed to charity or hostility. However, this hegemony must be challenged and unsettled, as it has philosophical,

ideological and moral limitations and, further, it is a world view which results in material disadvantage and injustice. The dominant hegemony provides only a simplistic binary for understanding a complex and dynamic phenomenon involving real people. In this context, the current research is not objective. Rather, it stands on the side of the subjugated and against a hierarchy which produces and reproduces injustice. It stands on the side of the refugees who have been previously incarcerated in Australian detention centres, as well as those currently detained and those who are yet to come.

The aim of this research is relatively straight forward: to uncover the voices of asylum seekers who participated in protests against their detention and to hear how they narrate their own actions. The cry, variously formulated, ‘We are human! We need our rights’ was made over and over in detainee correspondence from detention, through emails, letters, protest banners and phone calls. So too, the asylum seekers who participated in this research frequently expressed their critique using a language of human rights. Similarly, Australian governments have repeatedly assured the Australian and international community that they adhere to their human rights obligations. As this research has progressed, the disputed terrain of ‘human rights’ became more important and human rights consequently provides the primary theoretical framework for reading asylum seeker protest.

The method used in this research is qualitative grounded phenomenology, drawing on primary sources (interviews) and secondary sources, including government and non-government reports, media stories, judicial decisions and academic literature, in order to build a compelling picture of life in detention, as well as to give voice to the critiques made by the subjects of this research and ultimately, to propose that asylum seeker protest in detention is legitimate social action against a serious wrong.

Theoretical Framework

This research is a grounded (bottom up) study and thus, a range of theoretical frameworks have been drawn upon that are useful in making sense of the interview material and each identified theme within that material: resistance, escape, hunger strike and riot. For example, the work of Foucault was particularly useful in understanding the flow of power through and between asylum seekers, detainees,

officials and politicians. The work of sociologists and criminologists was of great assistance in understanding riots. Disciplines and theories are, according to Foucault (1997, 6), tools to be used to help understand the world, not masters to be followed. Further, Hannah Arendt's work on human rights and her thoughts on 'the human condition' resonate with a great deal of the words of the people interviewed for this research and forms a continuing theoretical thread throughout the thesis.

Foucault would likely argue against a phrase such as 'the human condition'. His life was spent unmasking and unsettling essentialising discourses and 'regimes of truth'. 'The human condition' could imply a human 'nature', fixed and pre-determined, a natural norm against which deviance can be measured and a denial of the social constitution and contextual contingency of human beings. Arendt's conception of 'the human condition' however, does not seek (nor function) to homogenise, but rather, to articulate the very aspects of humanity which Foucault worked to protect: diversity, agency and contingency. Arendt's work on human rights is grounded in her experience as a Jewish refugee who fled Nazi Germany. She argues against essentialising discourses which fix people into immutable categories – Jew, Black, Woman, Muslim – and which sees people hand over responsibility for human relations to impersonal mechanisms of bureaucracy. Human rights are, for Arendt, not to be found in nature, god or 'man', but are the result only of human decisions, a decision to mutually guarantee one another certain rights as equal, distinct and interdependent individuals. It is Arendt's insistence that actual human beings remain at the centre of human rights (rather than nature, an abstract man, legal implementation and protection frameworks or national sovereignty and jurisdictional concerns) that makes her work so useful in understanding the language of human rights used by asylum seekers in detention, including those interviewed in this study.

While a 'right' is interpreted in legal discourses as a claim of an individual made against a state, 'right' has layers of meaning. 'Right' makes an appeal to conscience, each person's capacity to make judgements and discern ethical actions (Parekh 2008a). In this sense, human rights are the responsibility of us all, and one does not need a law degree to form a significant opinion and participate in public debate. Philosophical and ethical discourses of human rights are particularly appealing to refugees and other marginalised or excluded groups. Because human rights exist

beyond legal frameworks in philosophical and moral domains, human rights claims can continue to exist even where there are no legally encoded rights protected. Through a language of human rights, it may be possible for refugees to lay their claims not only at the feet of the state, but also to fellow humans through an appeal to conscience. A language of human rights can appeal for political, legal and human responses all at the same time. Arendt's work recognises the pragmatics, the limitations and the potentialities of human rights as a legal framework, political discourse and ethical conversation between people and so has proved helpful in unmasking and legitimising the voices of discredited asylum seekers; a Foucauldian project.

It is difficult to conceive of a world in which there are no refugees and no one crossing borders without prior authorisation and proper travel documents. Therefore, the issues associated with the treatment of refugees and asylum seekers remain important. In Australia, mandatory detention of asylum seekers arriving without prior authorisation continues to receive bipartisan support from the two biggest political parties. The dominant orthodoxy, espoused by these parties, claims that detention is essential for Australia's national security and for 'fair' processing of refugees, however detention continues to violate fundamental human rights of asylum seekers, causing physical, emotional and ethical harm. Opposition to mandatory detention remains strong. Much research has investigated various aspects of detention, such as mental health impacts, lawfulness, significance for Australia's national identity, research into activism by supporters outside detention, effects on children and more. But little, if any, research has investigated protest in immigration detention that is based (as much as possible for an outsider) on insider perspectives. This research highlights the need for ending mandatory indefinite detention and, failing this, for the need for much greater independent scrutiny of detention centres, improved systems for all areas of management of the centres (recruitment, training and oversight of staff, procedures for making and responding to detainee requests, increased detainee autonomy and control), physical infrastructure of the centres, services within detention (food, education, recreation, communication, health, mental health), 'critical incident management' (in particular managing hunger strikes, pre-empting and avoiding riots, reducing suicidality), increasing and facilitating opportunities for contact with visitors, supporters and others not related

to formal asylum processes, and introducing legislation which compels release from detention regardless of mode or place of arrival after a set maximum period of time. More importantly, this research provides a platform for former detainees to narrate their own actions and provide an alternate historical record of the events in detention centres between 1999 and 2005. Continuing to see refugees in two-dimensional archetypes is both clumsy and unhelpful. This research makes a contribution to broadening the public construction of refugees and to understanding that they are, and always remain, people.

Terms and Definitions

The use of language is critically important. Through the careful use of words and positioning of ideas, subjects are constructed and positioned and meanings and values are conveyed. Some key terms are explained here.

Identifying Participants

Most participants in this research are identified by pseudonyms, rather than a code. The reason for this is that the central purpose of this thesis is to re-humanise detainees. Everyone interviewed in this work has spent some time in a detention centre in which they were addressed always and only by their Detainee Identification Number. The effects and offensiveness of this practice was raised and discussed in some depth by most participants here. Several participants said they are attempting to reclaim the dehumanising practice by using their ID numbers as passwords for email and other accounts. I have no desire to replicate the process here in pursuit of protecting a participant's identity or privacy. Two participants are identified by their real names: Shahin Shafaei and Aamer Sultan. Shahin is a playwright, actor and college lecturer. Upon his release from detention he wrote and performed *Refugitive*, a play about hunger strike in detention centres (See Chapter 6 for more on this story). Shahin has spoken publicly about his journey as a refugee, about detention and as an activist for other refugees' rights. A quick internet search of his name will quickly uncover many of his post-detention activities. He could not be de-identified and nor did he have any wish to be. Similarly, Aamer Sultan is a medical doctor who has also spoken publicly about detention. He is most well known for co-authoring a journal article published in the *Australian Medical Journal* while he was still in detention. The article identifies and outlines the progressive deterioration of a large

sample of detainees over a long period of time and proposes a depressive disorder called ‘Immigration Detention Stress Syndrome’. He is also well known for his role in smuggling out of detention footage of a young boy, Shayan Badraie, which was aired on national television and proved to be a catalyst in challenging the detention of children. Aamer has also spoken frequently with media, community groups and in other public fora since his release. Again, it would not be possible to talk about Aamer’s activism without identifying him. Both men agreed to have their real names used.

Refugee, Asylum Seeker or Detainee?

The UNHCR, in its *Handbook on Procedures and Criteria for Determining Refugee Status* makes it clear that a refugee is made by events in their home countries and not by receiving governments’ decisions;

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee. (UNHCR 1992, para 28)

The term *asylum seeker* is a relatively recent invention of Western governments. It refers to the status of a person who has applied to a government for protection under the *Refugees Convention* and who is awaiting a determination of that application. It is a term which creates a layer of suspicion around refugees. Until verified by a government body, even if a person already holds a refugee card issued by the United Nations High Commission for Refugees (UNHCR), the person is placed in the unstable category of ‘asylum seeker’. This enables governments to cast the arrival of refugees (needing protection) as a security threat and is essential for the many regressive policies employed by western governments to deter and repel refugees from their nations.

Initially I wanted to use the term *refugee*, not only because almost everyone interviewed in this work had been found to be a refugee by the Australian

government, but also as a political statement. However, the use of *refugee* to refer to people at various stages of the refugee journey and at various stages of government processing of claims became confusing and cumbersome. Consequently, I have used both the terms *refugee* and *asylum seeker*, according to the context.

The term *detainee* is used to refer to asylum seekers and refugees held in detention throughout most of this thesis. In the fieldwork chapters of the thesis I use the term *detainee* most frequently. This seemed a less pejorative term than *asylum seeker*, and a less confusing term than *refugee*, it is a descriptor of the situation that people were in. It was also the fact and conditions of people's detention which underpinned much of the protest. *Detainee* proved to be a mobilising identity, one which could, in particular moments, transcend other identities (such as linguistic, religious, political, ethnic or gender identities) and unite people in protest against detention. The power of being *detainee* is evident in Osman's pledge to help any detainee who needed it: 'Anyone! Anyone who are detainee. It doesn't matter if you are Iraqi, Afghan, No No. We are detainee. We are detainee!' *Detainee* can carry multiple meanings. It can refer to an imprisoned criminal (a representation the government sought to promote), but it can also evoke comparisons with people who have been imprisoned unjustly. For these reasons, I chose to use *detainee* as a collective descriptor in preference to *refugee* or *asylum seeker*.

Gendered Pronouns

Another difficulty in writing was deciding how to use gendered pronouns. In Chapter 2, gendered pronouns are used throughout to mark the semiotic movement from feminised images of needy and passive refugees far away to masculine images of proactive, threatening asylum seekers at Western borders. With a few exceptions, I have used the feminine when speaking of refugees in theoretical terms to emphasise the gendered enforced passivity and gratitude required of 'genuine' refugees, and the masculine when speaking of refugees arriving by boat in Australia – both because they have been represented in a threatening hyper-masculine discourse in Australia and because the majority of people arriving by boat, and everyone interviewed in this study, are male.

Bureaucratic Terms

The Department of Immigration has undergone several name changes over the period covered by this thesis. For ease of reading, *Department of Immigration* is used throughout. Publications by the Department are referred to using the Department's proper name at that time.

There are a range of classifications of immigration detention centres in Australia, such as *Immigration Detention Centre (IDC)*, *Immigration Reception and Processing Centre*, *Alternative Place of Detention*, *Immigration Detention Facility (IDF)* and more. Each facility is classified differently by the Department of Immigration and has particular features. When referring to a specific detention centre I use the correct classification for it, and when referring to multiple centres or detention in general I use the term 'detention centre' or 'immigration detention centre'. I am unable to discern any meaningful differences between different classifications of detention centres and as participant Mohammed said after being moved to a 'better' detention centre, 'doesn't matter golden cage, it's cage.'

Thesis Map

The thesis is divided into two sections. The first section contextualises refugee issues, introduces the human rights framework used in the interpretation and analysis of fieldwork material and outlines the research methodology. The second section addresses specific types of protest and detainee critiques arising from interviews. It is in this second section that the voices of former detainees are central, forming the heart of the thesis.

Chapter 1 has introduced the overall thesis. Chapter 2 looks at dominant Western discourses surrounding refugees and in particular how refugees are forced into a gendered/feminised role of the passive, grateful victim, awaiting rescue by the wealthier, more intelligent and benevolent Westerner. Refugees who resist the passivity of this role and rely upon their own resources and resourcefulness to resolve their problems by crossing borders are then quickly recast as masculine, aggressive criminals, as threats to order, safety and fairness. It is against this semiotic backdrop that detainees struggle to make their individual and collective voices heard.

Chapter 3 focuses on the specific history and politics of asylum seeking and detention in Australia. It looks at the numbers arriving, political contexts over time and the policy responses to boat arrivals over the last three decades. It then draws upon official inquiries and reports on immigration detention, as well as some detainee testimony, to build a picture of life in detention that provides the immediate context in which detainee protest was launched.

Chapter 4 considers the detainee plea, 'We are human,' and discusses Hannah Arendt's theoretical framework of human rights and the human condition. In doing so, it proposes that ontological paradoxes within contemporary human rights theories need to be addressed and that refugee experiences and opinions are vital in this project. The argument is made that, post World War Two, attention to the juridical development of human rights has institutionalised and buried these important paradoxes and that greater attention needs to be paid to the human subject of human rights.

Chapter 5 outlines the research paradigm, method and significance of the research and concludes the first section.

The second section is organised according to themes which were identified from interviews. This section addresses the forms of protest taken, the underlying causes of protests, as well as detainees' analyses of their situation and the merits, ethics and efficacy of various protest actions.

Chapter 6 explores Foucault's concepts of power and resistance and argues against detainees being seen as powerless. It then documents a range of analytical perspectives presented by detainees, some of the multiple ways in which detainees resisted the omnipotent power of detention on a daily basis, as well as the material, semiotic and existential effects of resistance.

Chapter 7 looks at escapes and breakouts from detention, delineating between escape on the one hand, and break-out on the other, the latter which may be seen as an act of civil disobedience. It also looks at the responses of Australian courts and the increase

in recognition and rights that occurred when detainees were brought before the courts.

Chapter 8 examines detainees' uses of their bodies in protesting. In places of detention where almost every aspect of life is controlled, detainee bodies became sites for contestation of power and expression of agency. It focuses primarily on hunger strike with some consideration of self-harm and suicide as acts of resistance.

Chapter 9 is the final substantive chapter of the thesis and examines riots in detention centres. This chapter uses both personal accounts of riots and sociological and criminological theories to argue that Australian immigration detention centres were incubators for riots and that such events are predictable, preventable and a damning indictment on the poor management of detention centres and government policy.

Chapter 10 concludes the thesis and argues for an end to mandatory detention in Australia and a sharp departure from simplistic and stereotyped views of refugees and asylum seekers.

PART ONE

THEORISING

Chapter 2: Representations of Refugees in Public Discourse

‘We are refugees, not criminals.’ (Baban 2000, quoted in APCHASC 2002. Heman Baban made this comment as a former detainee during a hunger strike in Port Hedland detention centre)

‘Genuine refugees don't do that...’ (then Prime Minister of Australia, John Howard, 11 October 2001, quoted in Clyne 2002, para 3)

The term refugee has many meanings and significations. A refugee is defined in the 1951 United Nations *Convention Relating to the Status of Refugees* as a person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (United Nations 1951, Article 1)

This is the definition of a refugee applied by the legal fraternity and against which claims for asylum in Australia are assessed. However, when people in Australia's immigration detention centres called for help with the often repeated, ‘we are refugees, not animals,’ they were calling for more than legal recognition of their ‘well-founded fear of persecution.’ These pleas functioned on many levels: they were cries from one human being to another for recognition of their humanity; a shared humanity that transcends any mechanistic or legalistic definition of *refugee*.

Extralegally, the term *refugee* is highly contextual (See, in particular, Haddad 2004). While held in immigration detention centres, refugees were keen to assert their ‘refugeeness’ and to invoke the label to legitimise their presence in Australia. Indeed, formal recognition as a refugee carries with it material benefits such as the right to be freed from detention, to access certain economic, social, civil and political rights and the possibility of acquiring a new citizenship. Once released from

detention however, the label became limiting, constraining the refugee to a two-dimensional humanity and constructing her as an outsider who does not belong. A full life became reduced to the refugee experience. Once labelled as a refugee, people ceased to be a skilled hydro-engineer, baker or journalist. As a Kurdish former client of mine once asked, ‘when do I stop to be a refugee?’ Paradoxically, the recognition as a refugee which had been so important for freedom and for reclaiming a sense of humanity when in detention, functioned in a reductive and restrictive manner once outside and became a label to be hidden or discarded as soon as possible (Harrell-Bond 1999, 143; Malkki 1996, 379-380). It is an instrumental term with significant social, political and material power. *Refugee*, when used by non-refugees, marks her difference, although the differing context conveys whether this difference is viewed with empathy or hostility. The term *refugee* must be read within its context. While it does have a clear and specific legal meaning, to understand it only in this sense is narrow and omits historic, political, cultural and social meanings. It is those extralegal meanings and functions with which this thesis is primarily concerned.

Refugees are rarely accorded a voice of their own. The refugee is typically a two-dimensional character, a blank screen upon which others’ agendas and narratives can be projected. The actions of refugees are narrated for the general public of the Global North by charities, refugee advocates, health professionals, politicians and others, but rarely are they narrated by refugees themselves. Three paradigms for ‘reading refugees’ are dominant in Australian and Western discourses: psychological, criminal and humanitarian: mad, bad or sad. This chapter will outline how each of these constructions of refugees has been built and maintained, the political agenda or function of each construction and their appeal to a consuming public. It will ultimately be argued that each acts to dehumanise refugees, to limit their full human recognition and, therefore, also limits opportunities to fulfil their human potential. While the focus here is on Australia, this is not a uniquely Australian phenomenon; similar representations are pervasive in Europe, Canada, the USA and the UK.

Humanitarian Dehistoricisation: From Political Subject to Political Object

When a refugee crosses the national border and enters a refugee camp (which may have been hastily constructed moments earlier, or which may have been operating

for decades), she will be provided with basic physical needs such as shelter and emergency rations by aid workers. Her physical wounds will be assessed and treated by medical professionals, and she will be registered and allocated an identity document by bureaucrats responsible for imposing and maintaining order in the chaos of a refugee camp. She may also be photographed by a media or NGO photographer and her image may appear in a New York, London or Sydney newspaper, or a UNHCR or international NGO fundraising brochure.

She will probably not be asked for her narrative of how and why she came to flee, for her perspective on the political and historical forces which led to her presence here in this strange land. Our political identities are constructed within the framework of the nation-state and so, when the relationship with one's nation is severed, so too is one's political agency (Haddad 2004; Rajaram 2002, 251). Refugee flight is not only a physical movement; it is also a process of depoliticisation and dehistoricisation. As the refugee steps out of her nation state, she is stripped of her status as a political subject and becomes instead a political object of other nations and organisations. The movement across a national border may be a movement into relative physical safety and away from the immediate danger of persecution, but it is also a political journey and one in which the refugee is stripped of her citizenship and of her power to self-represent. She is instead reduced to her physical being and the representations of others. Her physical presence in another national territory becomes the primary aspect of her being and so reduces her to a corporeal state in which she must display her needs, and her physical wounds are looked to for an objective and credible account of the violence she has fled; any stories she may tell of that violence are likely to be interpreted as exaggerated, partial and subjective, effectively rendering her speechless and subject to the expertise of the professional (Harrell-Bond 1999; Malkki 1996, 384 – 385).

Rajaram (2002, 251) identifies that refugees' bodies become 'site(s) where certain forms of knowledge are reproduced and justified.' This production of knowledge is a continuation of the colonial enterprise in which Western expertise, rationality and order is to be imposed upon the 'natives'' primordiality, emotion and disorder (Said 1978) 'for their own good'. The 'native' under colonial rule was understood by European colonisers as either child-like, ignorant and in need of care and protection,

or as a dangerous threat, a person with little or no moral capacity and impulsively driven; unable to resist base urges (Crenshaw 1991, 1271). Echoing this binary logic, refugees are seen as passive victims, and any display of agency or assertion of political identity which rejects the role of victim risks recasting the refugee as the suspect; the ‘cheating, conniving, manipulative, dishonest person out to subvert the aid system’ (Harrell-Bond 1999, 153). Historical expectations of gratitude, passivity and compliance in exchange for aid from a more powerful and benevolent patron have endured throughout the centuries.

The concept of the ‘universal human’ is deeply embedded within Western Enlightenment thought and forms the often invisible or obscured foundation of modern Western ‘common sense’ and expertise. Universal humanity lies at the heart of both legal and extralegal human rights discourses and results in a,

tendency to try to identify and fix the ‘real’ refugee on extralegal grounds . . . one key terrain where this took place was that of the visual image of the refugee, making it possible to claim that given people were not real refugees because they did not look (or conduct themselves) like real refugees. (Malkki 1996, 384)

The Western expert takes on the power and responsibility to identify the ‘real’ refugees and to determine the best solution to their problem. The same expertise also constructs and maintains the power of representation of the refugee and has produced an enduring and pervasive image of the ‘real’ refugee.

‘Real’ (Ideal) Refugees

The ideal refugee is a victim. She is, as the familiar images above represent, far away, child-like, female (or feminised by his helplessness and powerlessness), helpless, brown-skinned, dependent, needy, and above all, passive. The idealised refugee is deserving of ‘our’ care and concern,



Figure 1: Photo of refugees. From UNHCR fundraising website.

she is a universal victim and an object for ‘our’ expertise and charity. While it may be argued that most of the world’s refugees are women and children and that the wide distribution of images of women and children is an effort to ensure that the needs of women and children are met, Malkki (1996) and Rajaram (2002) propose that women and children represent a particular kind of powerlessness and helplessness in the Western imaginary, one which sits more comfortably with ‘the institutional, international expectation of a certain kind of *helplessness* as a refugee characteristic’ (Malkki 1996, 388, emphasis in original). Malkki (1996, 384) identifies a ‘performative element’ to extralegal recognition of refugeehood. It is insufficient to need assistance, this need must also be displayed. The performance of need has significant impact on human dignity, leaving the refugee with the unenviable ‘choice’ of meeting one’s physical need for aid *or* maintaining one’s dignity.



Figure 2: Photo of refugees. From UNHCR fundraising website.

spectacles and neckties... “With all these I will be sure to appear like a man and a living man. Not a statue or a picture” (Harrell-Bond 1999, 141). In other research, Harrell-Bond quotes Ararat Ayoub, an Eritrean woman then living as a refugee in Sudan;

She said, ‘You cannot be a refugee.’ But I told her ‘I am one.’ It is because I can speak English. This changes the image of a refugee from . . . the starving children posters to real people who used to manage their own affairs and then became displaced. This image . . . is so

Through her work with Ugandan refugees, Harrell-Bond (1999) tells the story of one man who, having been ‘accused’ by a UNHCR worker of being ‘mad’, sought and obtained a report from a psychiatrist confirming his sanity. He then wrote to the UNHCR both threatening to sue for libel and offering to ‘settle out of court’ in exchange for ‘clothing, shoes,

worldwide that I decided not to get angry . . . The fact that our status has changed does not mean that our abilities have gone down.
(Harrell-Bond 1985, 3)

Western expectations of the universal refugee insist upon a docile and grateful recipient of aid and, having been helped by a benevolent Western expert, she must also display her gratitude.



Figure 3: Photo of refugees, with the caption, 'We Want to Thank You.' From Australia for UNHCR website.

The ideal refugee is denied individuality, agency and voice, replaced instead with a distant, passive image representative of an indistinguishable mass of humanity (Rajaram 2002). The first two images above were used in multiple locations. Both were used in a 2008 appeal for funds for 'Malnutrition in Kenya and Darfur' and in a separate appeal for funds for

Somalia in the same year, the second image was also used in the 2006 annual report of *Australia for UNHCR*. No individuating information about the woman or children is given in any use of the images – they may be Somali, Kenyan, Sudanese, Ethiopian or another nationality. This use and re-use of images of the refugee supports the argument that the refugee is a universal victim. She can be any person, at anytime and anywhere, and who she actually is, is largely irrelevant. She is representative of the universal victim. Universals, however, have a tendency to breakdown in the specific. For example, 'all humans need love' is a universally held truth, until, when discussing the specific, the concepts of homosexual love or polygamous love are raised, at which point the universal consensus begins to fracture. 'Love' becomes redefined in an effort to specify and restrict the recognition of particular historically and ideologically constructed types of love. So too for the 'real' refugee. Her suffering, while captured in a still photograph or a short edited film, is easily and unproblematically recognised from afar, but this idealised image

of the 'real' refugee is inevitably one of 'which any actual refugees (are) always imperfect instantiations' (Malkki 1996, 385). Media and politicians of the Global North do not challenge the accuracy of the use of the label 'refugee' when used in a fundraising drive or to raise awareness of the plight of refugees in camps in distant lands. The same media and politicians are however, most protective of the integrity of the term 'refugee' when she arrives upon 'our' shores. The term 'refugee' is being redefined in the public domain by politicians in an effort to restrict its application and to exclude those who would step out from the fundraising poster and into a fuller and therefore more problematic humanity (Chimni 2000, 12-13; Clyne 2006).

Purpose and Function of the 'Ideal' Refugee

The ideal refugee is a pervasive image and serves a number of purposes in a world dominated by neoliberal market ideology and a growing disparity in wealth between the Global North and South. Liisa Malkki (1996, 385-386) identifies 'a substantially standardised way of talking about (refugees) among national governments and refugee agencies' that has silenced refugees themselves as narrators of their histories and needs. Refugees have been reduced to visual representations which are a universally 'translatable and mobile mode of knowledge about them . . .' and that 'a vigorous, transnational, largely philanthropic traffic in images and visual signs of refugeehood has gradually emerged' (Malkki, 1996, 386).



Figure 4: Photo of refugees, with caption, "We thank you for helping us . . . providing us with food, shelter, medicines etc but the best that you have done for us was to provide our children with education. The other things, we will finish them, but education will remain with us, wherever we go . . ." Somali refugee to UNHCR officer in Kebribeyah, Ethiopia.' From Australia for UNHCR website.

Since the end of the Cold War, refugees have lost their geopolitical value, forcing non-government organisations that run refugee camps to a greater dependence on private donations. This need to generate income through private donations has

resulted in the philanthropic commodification of the ideal refugee. ‘Humanitarian agencies are in a straightjacket with little else than human misery upon which to base their appeals’ (Harrell-Bond 1985, 4). And so, in a global context that is dominated by neoliberal ideology, refugees must be ‘marketed’ if they are to be helped.

In addition to raising funds for the provision of aid, the wide dissemination of the image of the universal refugee has also enabled governments of wealthy Global North nations to present themselves as humanitarian and compassionate, while actually eroding the rights of refugees. The ‘ideal’ refugee is a useful (and silent) backdrop against which to contrast refugees who directly and actively seek to engage legal protection obligations that governments do not want to meet. Governments are able to point to the displayed suffering and need of the distant female refugee whose passivity and dependence is so compellingly conveyed. Refugees who proactively seek their own solutions fracture the compliant image of the ‘real’ refugee and so, in public discourses, his very mode of arrival (using his own agency) negates his own refugeehood. The reality that most people arriving in Australia by boat between 1995 and 2000 were young single men provided a stark contrast with the dominance of the female image representing the ‘real’ refugee, and cast further doubt on his refugeehood. ‘Real’ refugees are not supposed to get tired of waiting and find a smuggler and pay for a voyage to arrive in Australian territory by boat. Once here, ‘real’ refugees are not supposed to hunger strike, talk back, tear down fences or protest against their detention. ‘Political activism and refugee status (are) mutually exclusive’ (Malkki 1996, 385). The sustained passivity and compliance expected of refugees is unrealistic. It both denies the agency and resourcefulness of refugees in camps, idealising them into two-dimensional projections and, serves to undermine the legitimacy of refugees who attempt to shape their own destinies or narrate their own histories.

With the archetype of the victim shattered, the refugee arriving by boat remains silenced through his loss of citizenship, and his subsequent depoliticisation is now in sharp contrast with the ‘genuine’ refugee. The government of Australia (or Britain, USA, Canada, Germany, France, Italy, etc..) takes over from the UNHCR or international NGO as the narrator of the refugee’s life. He becomes re-labelled an ‘asylum seeker’, ‘bogus refugee’, ‘economic migrant’, ‘criminal’, ‘illegal’, ‘forum

shopper', 'queue jumper', 'secondary mover' and 'unauthorised arrival' (Chimni 2000, 12-13; Clyne 2006).

Criminalising Refugees: A Global Shift

Asylum seekers have in many respects become populations one needs to be protected *from*, rather than people who need protection. (Aas 2007, 289)

During the Cold War, refugees from the Communist East to the Capitalist West served a useful purpose in the West as proof of the economic, political and moral superiority of the West's capitalist, liberal democratic system. Refugees embodied the failings of communism and reaffirmed that the liberal capitalist ideal of the autonomous rational and enterprising individual who needed simply liberty and a 'fair go' was a universal human who, when presented with a free choice, chose the capitalist West (Harrell-Bond 1999; Troeller 2003). Today, in a post-Cold War era in which the ideological battle is considered to have been won and a world in which refugee movements are primarily from south to north, rather than east to west; and refugees themselves are more likely to be African, Middle Eastern or Asian and Muslim, rather than European and Christian, forced migration has diverged from the ideological and geo-political agendas of wealthy nations of the Global North. Contemporary refugee flows are often a result of the impact of neoliberal globalisation on countries emerging from centuries of colonial domination. In this reading, refugees are better understood as a product of the Global North's domination and are a physical critique of the structures, systems and processes of unfettered capitalism which privilege a small white elite and subjugate the vast majority of the non-white world (Chimni 2000; Marfleet 2006). Refugees no longer serve any useful purpose for receiving states' own national interests and refugee movements are understood as a 'problem' which needs to be combated (Pickering 2005, 22). As such, the discourse constructing refugees has changed from one of foreign policy and ideological supremacy (leading to a response at least cloaked in humanitarian or rights based guise), to one of security, crime and deviance.

While in practice the West's 'welcome' of refugees during the Cold War was at best hesitant and was marked by racism and suspicion of the newcomer, governments

nonetheless used the acceptance of refugees as a vehicle for constructing and projecting their own self-image as humanitarian, liberal and superior. As the Soviet Bloc crumbled towards the end of the 1980s and the Berlin Wall came down in 1989, the West considered the ideological battle won and there was little foreign policy or state-craft currency to be gained by admitting refugees. Throughout the 1980s and 1990s Western nations began to gradually reconstruct the public image of the refugee; from a humanitarian concern, to a problem of global organised crime and a threat to global order. Refugees began to be a concern of the United Nations Office on Drugs and Crime as well as the UN High Commission for Refugees, culminating in the drafting of the UN *Convention against Transnational Organised Crime* (United Nations 2001) and the supplementary *Protocol Against the Smuggling of Migrants by Land, Sea and Air* (United Nations 2000a; the protocol was drafted in 2000 and entered into force in 2003). This Convention and Protocol require signatory states to pass laws criminalising the smuggling of people across borders for profit, whether or not the people smuggled cross an international border for the purpose of seeking asylum and are subsequently found to be refugees. The Convention and Protocol construct assisting someone to cross an international border as a crime and the state as the victim of that crime (Iselin and Adams 2003). Australia is a signatory to both the Convention and Protocol, the provisions of which were entered into Australian criminal law through the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002*. This reconstruction of forced migration as a matter of smuggling and transnational crime can be understood as a reflection that there is now more political currency to be gained by states in appearing to be 'tough on crime' and 'tough on border security' than the foreign policy imperatives of earlier decades.

Crisis of Legitimacy of the State

Shifting international relations and foreign policy imperatives however, go only part of the way to explaining the criminalisation of refugees in state discourse. The same period of time also witnessed the rise of neoliberal economic theory, championed by neoconservative politicians, along with what has been termed the crisis of legitimacy of the state (Clarke 1988). Seizing the momentum of the liberal capitalist victory in the Cold War, neoconservative politicians, aided by free market economists and corporate leaders, pursued an agenda of rapid economic deregulation and

repositioning of the market as the primary organisational and distributory mechanism of society. Neoconservative ideologies saw a diminishing role for governments, leading to the privatisation of health, education, utilities, banking and many other previously public social institutions. Transnational corporations, global institutions (such as the IMF and World Bank) and supranational governmental organisations (in particular the European Union) took on more responsibilities for managing and facilitating international and regional trade. Together, these developments risked obscuring the importance of the nation state and contributed to a number of actions by states designed to demonstrate their powers domestically and reaffirm sovereign borders while still proactively pursuing the path of globalisation (McNevin 2007).

Australia was not immune to the economic changes of the time and undertook 'radical changes in the neoliberal direction' (McNevin 2007, 613) during the 1980s and 1990s. Changes to the structure of the Australian economy in turn led to social and technological changes. Primary production and manufacturing industries, which could be performed in developing nations much more cheaply, became less central, while information and service industries gained greater significance. Like many developed nations, Australia internationalised its economy through reduced trade tariffs and ideological and political shifts in support of globalisation and greater ease of movement of goods and capital. These political and economic changes resulted in average Australian incomes increasing significantly, however, this new wealth was not evenly distributed (McNevin, 2007). Globalisation came to popularly represent anxieties about job security and economic wellbeing and about national identity and sovereignty. Border protection was presented by the government as essential for the protection of 'Australia's national interest' and for the protection of Australian citizens (Pickering 2004). Against this backdrop, state performances of sovereignty through tough border protection in the late 1990s and 2000s were widely welcomed by the Australian public (Gosden 2006, 77). While successive Australian governments opened borders to flows of investment and trade, they vigorously enforced their territorial borders and sovereign power through tightened immigration controls. These controls particularly affected refugees arriving by boat.

Within the global nation-based system, national governments maintain unchallenged legitimacy in the role as the keeper of law and order within their sovereign territory.

Crime, both its prevention and its remedy, is legitimate business for the state. Politicians have found substantial political currency in being ‘tough on crime’, which has led to ‘zero-tolerance policing’, increased rates of incarceration, and to social problems being increasingly addressed through a criminological rather than sociological lens (Simon 2007). In fact, applying such law and order politics to asylum seekers functions to reassure nervous national citizenry of the protective power of the state in a globalised world. This reassurance is enhanced because this criminological response to refugees builds on an existing framework of familiar language and logic established through the criminalisation of homelessness, poverty, welfare dependency and a range of social problems. It is necessary to first look briefly at the mechanics and ideological underpinnings of ‘law and order’ politics before examining in some detail how this has been so effectively applied to asylum seekers.

Domestic Law and Order Politics

‘Law and Order’ has become a powerful political language in at least the last two decades, with politicians of both major political parties jostling for position as ‘tough on crime’. This is an inherently conservative approach to crime, in which structural explanations for crime are obscured or denied and explanations which rest upon the deviance or poor moral character of the individual are emphasised. The reality that most crimes are committed by people from economically, socially and politically marginalised groups in society is understood not as a cause for concern about growing inequality and division, but instead is reinterpreted as evidence of ‘their’ personal failings. Neoconservative ideology rests upon understanding human beings as autonomous individuals with ‘free choice’. Individuals make a series of ‘choices’ throughout their lives and it is the cumulative effect of these choices which is the prime determinant of one’s position in society. British Opposition Leader (now Prime Minister), David Cameron echoed this approach in a public speech in Glasgow in 2008. He stated that ‘. . . social problems are often the consequences of the choices people make’ and that ‘society had been too sensitive in failing to judge the behaviour of others as good or bad, right or wrong, and that it was time . . . to speak out against “moral neutrality”’ (Elliot and Riddell 2008, 12). Unemployment then becomes a function of individual lack of merit, of laziness or some other character flaw. This logic is self-referential and self-reinforcing. The cause of

unemployment rests within the unemployed person who is therefore 'undeserving' of anything other than the barest minimum of assistance from the state. The link between unemployment and crime is not explored within a structural analysis of intersecting disadvantage and exclusion. Rather, unemployment is further proof of the poor choices and poor moral character of the individual and it is precisely these qualities which cause both crime and unemployment. These characteristics are essentialised and pathologised within the criminal or deviant individual, and punitive rather than compassionate measures are the 'common sense' responses: society needs to be protected from such deviant individuals.

This neoconservative response to crime requires that the state maintains exclusive control over public discourses that explain the causes, the consequences of, and the 'natural' or 'common sense' response to, crime. Divergent voices that challenge or unsettle the logic of 'law and order' must be discredited or silenced. The 'zero tolerance' approach to crime is extended to public debates about crime. Even moderately conservative positions, such as those that maintain a focus on the individual, but that understand criminal behaviour as a result of psychological maladjustment (which can, presumably be treated and which also may stir feelings of compassion among those who hear the personal life story of the person), are swept aside. The neoconservative explanation of crime provides a complete and accessible answer and guides a clear and purportedly just state and civic response. 'Criminals are basically evil and the responsibility for this lies with themselves and their families who failed to install basic decency and morals' (Brake and Hale, quoted in Pickering 2005, 2).

Such explanations of crime meld readily with existing discourses on culture and race which see certain racialised groups and cultures as having either few moral structures to proscribe criminal behaviours (for more see Cunneen 2003 or Chambliss 2001) or as being fundamentally incompatible with Western cultures (Flecha 1999). This latter discourse is evident in many public debates addressing crime committed by Muslims living in Western societies, in which Islamic cultures are purported to be irreconcilably incompatible with foundational values such as 'the rule of law' (Humphrey 2007) and Muslim men are presented as primal and as a 'threat' to Western society and values (Grewal 2007). In both discourses, the causes of crime

are located exclusively in the criminal and structural examinations of Western societies remain unexamined.

Alongside the repudiation of the social or structural causes of crime is an increased focus on the consequences of crime (Welch and Schuster 2005, 334). Victim narratives are amplified and humanised, and then become generalised to represent all 'innocents' in society. The monstrosity of the criminal is juxtaposed against the innocence of the victim. This denial of any shared humanity of both victim and offender (or that the two categories are not mutually exclusive) creates a necessary polarisation of views and sympathies, and supports strong state action as an 'obvious' and 'just' response. Public discourse around crime is starkly dualistic: 'good/bad', 'right/wrong', 'innocent/ guilty'. The state may then demonstrate its compassion through measures to protect the innocent: increased policing and surveillance, increased use of prison as punishment and longer prison sentences.

Pickering (2005, 2) states that law and order politics operates within a system of binary logic that may be summarised as possessing the following features:

- Crime is caused by evil or bad individuals, structural explanations are either rejected or marginalised as irrelevant.
- Individuals make (free and informed) choices and therefore 'deserve' the consequences of their own actions.
- Punishment and retribution are essential and central to 'justice.'
- Crime prevention is best achieved through increased levels of policing, zero tolerance policing and increased use of imprisonment.

A Federal Turn

This simple and conservative approach has proven to be politically powerful and popular. It is used by both major parties in Australia throughout the electoral cycle, with a particular emphasis during election campaigns. As crime is primarily an issue falling within state² jurisdictions it is typically a feature of state politics; however this model of understanding crime has now been adopted by federal politicians and applied to asylum seekers. The federal Australian Labor Party began this trend when

² The term *state* here refers to a domestic jurisdiction and administrative zone (province or region) rather than nation-state).

it introduced the policy of mandatory immigration detention in the early 1990s. The Liberal-National coalition supported and furthered this shift during its time in government from 1996 to 2007. Criminalising asylum seekers proved equally if not more popular than criminalising marginalised domestic communities, with opinion polls in 2001 regularly showing between 75 and 85 percent popular support for the Coalition government's 'tough stance' on refugees (Gosden 2006) and with so called 'illegal immigration' roundly accepted as a primary reason for the return of the Coalition government in the federal election in November 2001 (Goot and Watson 2007; MacCallum 2002; Mares 2002; Minns 2005).

The manner in which law and order politics has been transferred to unauthorised refugee arrivals may be summarised thus:

- Crime is caused by evil or bad individuals. Asylum seeking is a crime and the criminal action is to be kept in central focus, structural explanations focussing on the conditions leading to the fleeing of asylum seekers are to be rejected or marginalised as irrelevant.
- Individuals make free and informed choices to break Australia's immigration laws and therefore deserve the consequences of their own actions (detention).
- Detention, Temporary Protection Visas, interdiction and off-shore processing are essential and central to 'justice.'
- Crime (asylum seeking) prevention is best achieved through increased border protection, zero tolerance of resistance and increased use of detention.

Criminalising refugees who arrive by boat is a relatively straight-forward task. Like domestic law and order politics it requires binary logic as the organising framework and the careful state control of images and narratives of refugees. The importance of this control can be read through an examination of actions and public statements of Ministers and senior bureaucrats during the Howard government (1996-2007).

Binary logic enables social phenomena to be categorised. These categories are rarely benign, and are used not only to facilitate understanding and mastery of our world, but also to ascribe value and maintain order (Bauman 1991). People, actions and events are 'good' or 'bad', 'right' or 'wrong', 'offender' or 'victim'. The logic also

requires a high degree of congruence across and between categories, so if one is 'right' and 'good' one cannot also be 'unfair' or 'unjust' (Every 2008, 212). Further, for each binary to exist, it requires its alternate, so when a 'victim' is discovered (or constructed) an 'offender' must also be found. In this dualistic system, only one party or person can be right, compassionate, decent and good. The other must therefore be wrong, uncaring, hostile and bad.

Language and images are primary vehicles through which categorisation is achieved. Australian governments have controlled the capture of images of asylum seekers arriving by boat, and later in detention, and have selectively released these images alongside their own narrative. In this way, government deploys both images and language to establish and maintain either the essential 'wrongness' of the asylum seeker or 'rightness' of the state and the Australian people. The binary system functions in such a way that language directly aimed at reinforcing the position of one of these binary options, acts simultaneously to reinforce the position of the other.

Refugee as Offender

Refugees arriving in Australia are constructed as offenders through a number of state strategies.

Original Criminal Act of 'Illegal Arrival'

Australian governments have constructed and maintained asylum seekers as criminals and undeserving of compassion in a systematic manner. Firstly the mode of arrival is constructed as 'illegal' (Mares 2003; Pickering 2007). Australia is a signatory to the United Nations *1951 Refugees Convention* and *1967 Optional Protocol* (United Nations 1951, 1967), which provides for asylum seekers to enter a territory without prior authorisation when fleeing persecution. This provision has been incorporated into Australian domestic law through the *Migration Act 1958 (Cth)* (Commonwealth of Australia 1958). Asylum seekers, according to both international and Australian law, are *not* illegal. The *Migration Act* refers to people who enter Australia without proper documentation as 'unauthorised arrivals' or 'unlawful arrivals'. Regardless of their actual legal status, Australian politicians repeatedly referred to asylum seekers arriving by boat as 'illegals' or 'illegal immigrants' (Grewcock 2009, 148). Constructing the mode of arrival as 'illegal' is

essential, as it is the original criminal act upon which all other acts and their consequences rest (Grewcock 2009, 196; Pickering 2005). This is achieved through repeated referral to the mode of arrival of refugees as 'illegal' by politicians and most major news outlets. For example,

what we are seeking to guarantee, though, is that if you come to Australia illegally, you will not end up in Australia. The central core feature of this policy is, 'How do we deter people from coming to this country illegally?' (then Immigration Minister Kevin Andrews, quoted in McManus 2007)

The Pacific solution has been an outstanding success; (it) has been integral to stopping the flow of illegal immigration to Australia. (then Prime Minister John Howard, quoted in AAP 2005)

The avalanche of people crossing our borders illegally was not a problem when we were in office; we were tough enough to deal with it. (then opposition leader Kim Beazley, 2002)

This original criminal act marks the asylum seeker as criminal and justifies a punitive response. The fact that asylum seekers do not actually break any law in arriving in Australia without a visa is largely irrelevant in the public and political arena. Further, focusing on the mode of arrival and terming this 'illegal' serves to separate public discussion of refugee arrivals from the conditions of refugee flight. Discussion of the persecution that refugees have fled risks the reconstruction of the refugee as 'victim,' which would unsettle the certainty of the binary system, in which the refugee is 'offender,' and would therefore weaken the moral basis for punitive action from the government.

Criminal by Association with Organised Crime Networks

To reinforce the criminality of the asylum seeker, the government has also directly linked asylum seekers to transnational organised crime. Their arrival is not only a matter of criminality and the rule of law, but also a matter of national security, escalating the threat posed (Grewcock 2009, 148). Within a discourse of national security and law and order, the link created between asylum seekers and people smugglers allows the government to build a connection with transnational organised

crime gangs, placing asylum seeking on a criminal continuum with acts of people smuggling, drug smuggling and gun smuggling (Pickering 2007, 48). This repositioning calls for a police and security response, rather than a humanitarian one. However, left out from public discussion of asylum seekers' engagements with people smugglers is the fact that lawful methods of arrival are denied to those most likely to seek asylum. These obstructions to entry to territory operate throughout most of the Global North (Marfleet 2006, 9-10, 249-251) and make lawful arrival extremely difficult. Australia has escalated restrictions on eligibility for a visa (whether tourist, business, student or other visa categories), and introduced heavy financial penalties for carriers which bring someone without a lawful visa to Australia. Australia has also placed Australian immigration officials in transit locations such as Indonesia and Malaysia. These officials are charged with screening intended arrivals and have the power to revoke a visa if the official determines that a passenger's likely purpose for travel to Australia does not accord with the visa held. The closing of lawful means of entry has inevitably led to the increased use of people smugglers by refugees, which in turn assists the government in its project to present asylum seekers as inherently criminal, thereby supporting a law and order response of policing and incarceration (Kundnani 2001, 44).

Pickering (2007, 49) contends that governments of the Global North have 'invested heavily in the depiction of asylum seekers as acting upon legitimate society from outside the state.' Presenting asylum seekers as 'outside' of legitimate society renders them illegitimate and, therefore, illegal within the didactic framework of law and order or security narratives. The asylum seeker is characterised as outside of legitimate society and collaborating with illegal people smugglers who are part of organised crime syndicates. The criminality of organised crime networks reinscribes the asylum seeker as criminal; the asylum seeker has made a 'choice' to pay money to criminals to assist him in his determination to enter Australia 'illegally'. The asylum seeker becomes constructed as a 'partner' of the smuggler, as the following two examples, stated by former Immigration Minister Philip Ruddock, show;

What we're dealing with is a situation in which you've got something like four million people smuggled around the world for a business, an

organised crime business [emphasis added] of something of the order of \$7 billion. (Ruddock, quoted in ABC 2000b)

People smuggling must first be recognised for what it is: a profitable and *direct attack on a State's sovereign right* [emphasis added] to determine who may enter and remain in its territory . . . Such persons have frequently and deliberately bypassed further places of safety, in order to seek both a protection and a migration outcome in a *chosen destination* [emphasis added] . . . States' resources are finite. Therefore, refugees who have been able to pay for their *self-selected or smuggler-selected resettlement outcome* [emphasis added] will impact on a State's willingness and capacity to voluntarily resettle them. Those disadvantaged are refugees for whom resettlement has been determined to be the only appropriate solution by the Office of the United Nations High Commissioner for Refugees (UNHCR). This is currently the case in Australia. (Ruddock 2001)

These quotes from then Minister for Immigration Ruddock cast asylum seekers and people smugglers as co-offenders, and both the state and 'real' refugees as co-victims. The asylum seeker has chosen to collude with the smuggler, and this constitutes a 'direct attack' on Australia's sovereignty. By casting the action as choice, the asylum seeker is seen to be complicit in transnational crime and has 'selected' Australia in the hope of a 'better life' (Pickering 2005, 6), echoing the individual choice narratives of 'tough on crime' politics. In this schema, it is the choices made by the asylum seeker which lead the criminal act and therefore to the asylum seeker's detention.

Criminal-Detention Nexus

Once asylum seekers have been 'caught' at the border the Australian government detains them until their claims for recognition of refugee status are processed. Australian immigration detention centres look very much like maximum security prisons which is both supported by the 'illegal' narrative surrounding asylum seekers and tautologically serves to reaffirm their criminality: the asylum seeker is criminal

and so is imprisoned; the asylum seeker is imprisoned and so must be a criminal (Story 2005, 20-21).



Figure 5: Woomera detention Centre, February 2003 (Independent Media Centre, 2003).

Imprisoning the asylum seeker in detention centres that look like prisons assists in maintaining the criminality of asylum seekers. It also enables the government to maintain almost total control of the public narrative around detained asylum seekers. The detainee is separated physically from the population and prohibited from any self-representations by a range of government measures including restricted media access

to detention centres (Curtin and Woomera have both had enforced exclusion zones), centrally controlled communications, restricted detainee access to telephones, fax and internet, and the location of the centres hundreds or thousands of kilometres from major towns or cities. The government has regularly issued media releases using language of crime to talk about detainee actions in detention centres, particularly when detainees have protested against their incarceration and have attempted to send an unedited message to the outside world.

From February 1998 to February 2004 Australia's immigration detention centres, purportedly reception centres for (non-punitive) administrative detention, were run under contract by Australasian Correctional Management, a subsidiary of Whackenhut Corporation, which runs privatised prisons in the United States of America (Roche 2006). This further conflated detention centres with prisons and, therefore, refugees with criminals.

The Nation State and 'Real' Refugees as Victims

While much of the state narrative was directed towards constructing and maintaining the criminality of refugees, it was also important to provide the corresponding 'victim' narratives. The Australian government portrayed the Australian nation and 'real' refugees waiting in camps as the victims of asylum seekers' 'crime' of arriving without prior authorisation (Grewcock 2009, 140).

Asylum seekers who have arrived without a visa have been portrayed as hostile, selfish and with no regard for an orderly process. The federal government passed legislation in 2001 to link Australia's onshore and offshore visa programs, which meant that each visa issued onshore reduced the number of refugee and humanitarian visas available offshore by one. Prior to this, any visas issued onshore were additional to the offshore program (King 2001, 76). Refugees arriving onshore were labelled 'queue-jumpers' by politicians and most media outlets. It was a term which resonated with a majority of Australians and cast asylum seekers arriving onshore as 'stealing' a visa (and hence a chance for safety) from a 'real' refugee more deserving of compassion. Both the 'illegal' act of the criminal asylum seeker and the suffering of the 'real' refugee were emphasised in several public statements by government ministers;

Look, I am of this view, Kerry, that my sympathy ought to be for those people who are refugees in the most vulnerable situations in the world who don't have the money to pay people smugglers, who do the right thing and go to the UNHCR, put claims forward and wait until a place is found in the program that Australia has for refugees... So that's where my compassion, that's where my understanding of need arises. (Philip Ruddock, quoted in ABC 2000a)

Every time someone coming here illegally seeking asylum is granted refugee status it means that someone in greater need overseas who does not have the money to pay a people smuggler misses out. Australia's priority is to help those most in need – those people languishing in intolerable conditions in refugee camps, not those who have the substantial amounts of money to pay a people smuggler and who often live in relative safety and comfort outside their country of origin. (Phillip Ruddock, quoted in Oxfam Australia, 2003)

We're very happy to take refugees and on a per capita basis we take more refugees than any country except Canada, but if you allow illegal immigration of that type to interrupt the refugee flow, you really are allowing those people to go ahead of others who may be

assessed by the UNHCR [United Nations High Commissioner for Refugees] as being more in need of refugee acceptance into Australia. (John Howard, quoted in Suarez 2001)

The use of the term ‘queue jumper’ implies that there is an orderly queue that, if one waits patiently, will result in a refugee’s ‘turn’ coming up and a resettlement place found. This belies the reality that ‘voluntary return’ is the preferred durable solution for refugees and that most refugees, unable to return safely to their homelands are ‘warehoused’ for decades in refugee camps in some of the poorest countries in the world (UNHCR 2003). Waiting patiently results in resettlement in only a very small minority of instances. In fact, less than one percent of the world’s refugees are resettled in any given year (UNHCR 2010, 30). Many refugees are from minority groups who still face persecution in the camps just over the border from their home countries, such as the Hazaras from Afghanistan (DIAC 2011b). Waiting is simply not an option. The quotes given above imply that objective and fair criteria can be applied to refugee situations, leading to the identification of the ‘most deserving’ refugees, and that asylum seekers who arrive by boat are ‘cheating’ and undermining a fair decision-making process. However, all refugees, by definition, have met the criteria for refugee status and any ranking of their claims must rely considerably on a subjectivity obscured in these and similar statements.

Australia is portrayed as a ‘humanitarian’ country and Australian people as compassionate. This discussion of Australia as humanitarian takes public discussion of refugee protection out of the realm of international humanitarian law – Australia, as a signatory to the *1951 Refugees Convention*, has a legal obligation to not return a person to a situation of danger and to provide protection to people on Australian territory who meet the definition of a refugee. Any protection offered is reframed as an act of charity and benevolence and as evidence of Australia’s compassion and generosity. This reframing also changes the rights holder. In a human rights framework, humans hold rights and states hold responsibilities, but by moving refugee protection out of a human rights framework, the state becomes the rights holder, including the right to choose whom to bestow charity upon. Asylum seekers arriving by boat infringe upon state rights and any demands made are therefore

unreasonable and excessive (Every 2008). As former Prime Minister John Howard stated in 2001;

What I am asserting is the right of this country to decide who comes here. (Howard, quoted in ABC 2001)

In this way, the state becomes the victim who suffers a violation of its rights by the arrival of asylum seekers by boat (Grewcock 2009, 154). Its rights to decide both who will come here and who should receive its charity have been violated. The actions of the government are then cast as protective of Australia (and by implication, Australians) and of ‘real’ refugees in camps.

Conclusion

The process of becoming a refugee involves more than physical displacement and the loss of possessions, family and friends and social status. It is also a process of political and human reduction whereby refugees are stripped of their nationality, citizenship and political agency. The archetypal refugee is a victim who passively waits for the aid of Western expertise. Any effort to step outside of this two-dimensional docile role by exercising agency, will or defiance shatters the Western audience’s semiotic expectations of the refugee. The process of becoming a refugee is, however, real as well as semiotic, and refugees are stripped of their political voices, voices deeply rooted in citizenship and the nation state. Refugees who reject the passivity expected of them remain politically silenced and their actions are therefore narrated for them by another. For those who arrive in Australia by boat the narration is provided by politicians who see more political capital in being ‘tough on borders’ and ‘tough on security,’ and who introduce refugees in boats to the consuming Australian public as ‘illegals’, that is, criminals and terrorists from whom Australia and Australians need protecting.

Refugee protection is removed from a rights discourse and relocated into a charitable humanitarian paradigm in which the government has no legal (or moral) obligation to accept refugees, but does so annually as a gesture of kindness and generosity. Refugees ought then to be grateful recipients of this charity. Any protest by asylum seekers against their detention is easily portrayed as rude (it is breaking deeply held social norms and customs around giving and receiving), as destabilising any claim to

refugee status in the public eye, for ‘real’ refugees are passive and grateful) and as evidence of their criminality and lack of respect for the rule of law.

It is against this backdrop of powerful archetypes and historically, socially and politically embedded discourses that refugees in Australia’s immigration detention centres worked to build a political voice and to make their opinions heard. Detained asylum seekers engaged in a range of protests including hunger strikes, work strikes, sit-ins, civil disobedience campaigns and sometimes violent confrontations and riots in an effort to force open a space in the public sphere in which they could participate as active subjects rather than passive recipients of sovereign power. The discourses outlined here are not unique to Australia, but are common throughout the Western world and underpin refugee and asylum seeker policy in many countries that are signatories to the *Refugees Convention*. I will now turn to look in greater detail at the history of boat arrivals to Australia, political and public responses to boat people and then at Australia’s system for processing asylum seekers arriving by boat. The following chapter builds a picture of daily life in detention and of the difficulties in navigating the refugee status determination procedures to contextualise the immediate environment (as well as the semiotic and political environment) against which detained asylum seekers protested.

Chapter 3: Detention History in the Australian Context

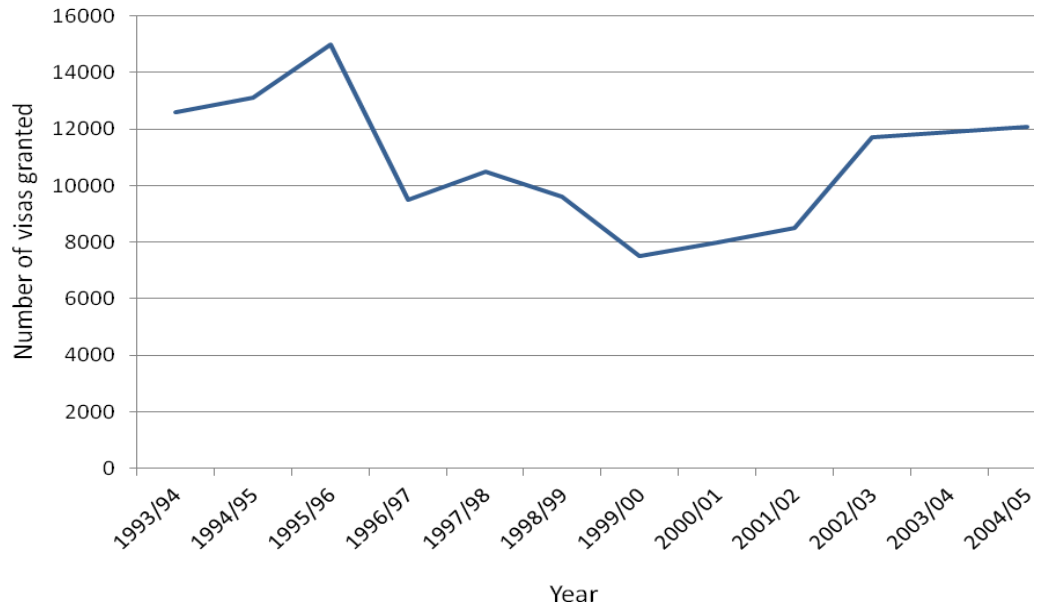
History of Refugee Resettlement in Australia

In 1947, Australia agreed to settle 12,000 displaced persons per year (DIMIA 2001a). This initial program became the predecessor of the current Refugee and Humanitarian Program (RHP), under which Australia settles up to 13,750 people annually. The RHP consists of off-shore and on-shore categories. The off-shore category is further divided into ‘refugee’ and ‘humanitarian’ components, with many more visa sub-categories in each. Visas issued through the off-shore program are directed either towards refugees that have been determined by the UNHCR or Australian Embassy officials as most in need of resettlement for protection from persecution in their countries of origin, or towards people suffering significant discrimination and with strong family or other links in Australia. The number of visas available under each of these categories is planned each year and may be targeted to different regions of the world or to different population groups in accordance with Australia’s priorities and in consultation with the UNHCR and refugee interest and support groups in Australia. The on-shore program is responsive rather than planned and allocates visas to people arriving in Australia and subsequently applying for and being granted refugee status. There is an annual quota of visas available under the off-shore program while the numbers of visas issued through the onshore program varies each year depending on the number of successful applicants.

In the years from 1993/94³ to 2004/05, between 12,600 and 15,000 visas were issued annually under the off-shore program (DIMA 2000a; DIMIA 2006; see figure 6). These numbers were significantly reduced in 1999/2000 (7,500), 2000/01 (8,000) and 2001/02 (8,500), due to a government policy decision to link the on-shore and off-shore programs. This policy meant that each on-shore visa that was granted was subtracted from the number of available off-shore visas (DIMIA 2003a, 30; DIMIA 2006), making the total number of RHP visas granted fall within the quota set for a particular year.

³ Department of Immigration statistics are most often reported according to the Australian financial year (that is, 1 July to 30 June). Occasionally the calendar year is used (January to December), making precise numbers difficult to determine. Where a split year is used (i.e. 1994/95) the statistic refers to the financial year.

Figure 6: Off-shore Refugee and Humanitarian Program visas granted 1993/94 - 2004/05 (DIMIA,2000; 2006)



The on-shore component of the RHP has, in recent years, been highly controversial. It consists of people who have arrived in Australia either with or without a valid travel document and visa and who lodge a Protection Visa application. A person who arrives with a travel document and visa and enters Australia through customs and immigration, usually at an airport in a major city, is considered to be ‘immigration cleared’ and is permitted to reside lawfully in Australia while his/her application is assessed (Kenny and Fiske 2009, 304; *Migration Act 1958 (Cth)* Section 172). On the other hand, a person who is not immigration cleared is held in an immigration detention centre while their refugee claim is assessed. Those not immigration cleared are usually people who have entered Australia with false documents that have been detected at the point of arrival, or people who have entered with no documents, most commonly arriving by boat on Australia’s northern coastline and outlying islands such as Ashmore Reef and Christmas Island (Briskman and Fiske 2009). Historically there have been a series of peaks and troughs of unauthorised boat arrivals in Australia (Betts 2001, 34). These peaks may be mapped alongside global events causing refugee displacement, such as the Vietnam War, atrocities committed by the Khmer Rouge in Cambodia, the Tiananmen Square massacre and other crackdowns

in China, or the movement of the Taliban through the Hazarajat in central Afghanistan.

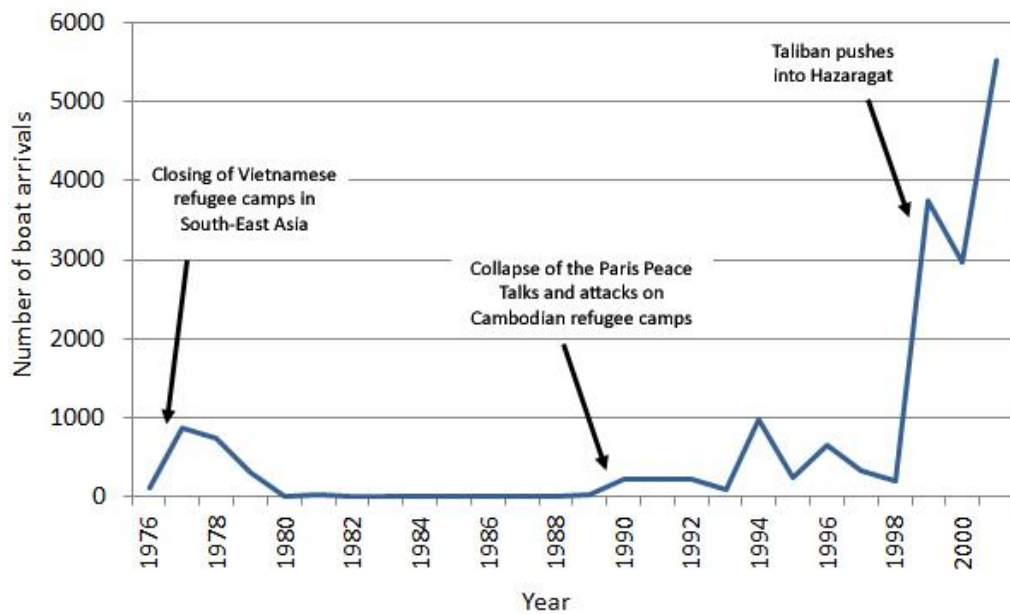
According to the Department of Immigration the first boat carrying refugees arrived in Australia in April 1976 carrying five Vietnamese refugees fleeing the Vietnam War (DIMA 2001, 9). This was the first of a total of 26 boats carrying 2,059 people that arrived between 1976 and 1981 (Millbank 2001a), and all of these people were granted refugee status. Boat arrivals dropped following the introduction of the 'Orderly Departure Program,' which assisted Vietnamese people to leave refugee camps in Hong Kong, Singapore, Indonesia and elsewhere in South-East Asia and arrive in Australia without needing to risk dangerous voyages on small boats (Jupp 2002, 884; Millbank 2001a). In late 1989, a boat carrying mostly Cambodian refugees arrived following the collapse of the 'Paris Conference' and forcible evacuation of refugee camps by the Khmer People's National Liberation Front (Keirnan 1990). This marked the beginning of the next period of boat arrivals which lasted until 1993, during which eighteen boats arrived, carrying a total of 775 people (Betts 2001, 35).

Numbers of arrivals by boat were sustained throughout the 1990s, fluctuating from a peak of 977 people in 1994 to a low of 200 people in 1998 (Betts 2001, 34), and most people arriving during this time were Chinese or Vietnamese (Millbank 2001b). Arrivals increased again in 1999, when 3,740 people arrived, and this increase lasted until the instigation of Operation Relex and the Pacific Solution in September 2001 (Betts 2001, 35; Parliament of Australia 2002). During the period ending in 2001, a total of 179 boats carrying 10,395 people arrived in Australian territory (Betts 2001, 35). Most people were from Afghanistan and Iraq, with smaller numbers from Iran, Palestine, Sri Lanka and other countries. The majority were found to be refugees and were granted Australian residency (Betts 2001, 38; DIMIA 2003a).

The arrival of refugees in boats is shown as a graph in figure 7, with global events explaining the rises and falls since the first boat arrival in 1976. This graph demonstrates the 'push factor' of forced migration. Decisions made by refugees during escape from persecution are centred significantly on danger in the country of

origin and finding immediate refuge (Jupp 2003, 886). Further, this graph points to a clear distinction between refugees and migrants. Migrants are able to more carefully weigh the ‘pull factors’ of the country of destination against conditions of the country of origin and to make a decision to remain, migrate or return accordingly. Refugees do not have the option of remaining safely in their country of origin and cannot safely return.

Figure 7: Number of people arriving in Australia by boat, 1976-2001 (Betts 2001).



The Vietnamese boat people of the late 1970s were held in open detention facilities and were required to report daily⁴. A similar arrangement was put in place for the mostly Cambodian arrivals in the late 1980s (Millbank 2001b). In 1992 Australia introduced mandatory detention for all unauthorised arrivals (Jupp 2002).⁵ This meant that all people in Australia without a lawful visa were to be detained until their visa application was resolved. This policy, which remains in place today, made no distinction according to individual circumstances such as health, trauma, age, gender or character assessments. Following the increase in boat arrivals in 1999, the

⁴ For detailed accounts of the experiences of Vietnamese asylum seekers to Australia and government policy frameworks at that time see Viviani 1985 and Viviani 1997.

⁵ Mandatory detention was first introduced as policy in 1991, but became law in 1992 when legislation was passed to counter a pending court challenge against the new policy. The legislation confirmed mandatory detention of all unlawful non-citizens. Texts refer variously to 1991 or 1992 as the start date of mandatory detention.

numbers of people held in immigration detention centres increased correspondingly. Existing detention centres in Perth, Sydney, Melbourne and Port Hedland were soon filled beyond capacity and the federal government opened new centres in Woomera, Derby (Curtin IDC), Christmas Island and Port Augusta (Baxter IDC).

People were held in immigration detention until their refugee claims had been finalised, which could range from a few months to several years. At the time of writing, Peter Qasim was the longest serving detainee in Australia. He was held in immigration detention for seven years before being released on a Return Pending Bridging Visa (Kerr 2005). Many others were detained for periods exceeding two years.

The Refugee Status Determination Process

A person arriving in Australia seeking recognition as a refugee must demonstrate that they meet the definition of a refugee contained in the *1951 Convention Relating to the Status of Refugees* (United Nations 1951) and the *1967 Protocol Relating to the Status of Refugees* (United Nations 1967), incorporated into Australian law through the *Migration Act 1958 (Cth)* (Commonwealth of Australia 1958). This definition sets out that a refugee is a person who,

owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his (sic) nationality and is unable or, owing to such fear, is unwilling to avail himself (sic) of the protection of that country; or who, not having a nationality and being outside the country of his (sic) former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (Article 1A)

A person who applies for recognition as a refugee in Australia is termed an *asylum seeker* until a final resolution regarding their claim is reached. Asylum seekers held in immigration detention are first interviewed by a Department of Immigration officer. This is known as a *screening interview*, in which the officer determines if the person's initial claim has merit. A person who is determined to have not raised

protection claims is considered to be *screened out* and is held in separation detention⁶ until arrangements are made for their removal from Australia.

A person who is determined by Department of Immigration staff to have triggered Australia's protection obligations is *screened in* and provided with a registered migration agent to assist in the preparation of a Protection Visa application. However, asylum seekers residing in the community do not undergo a screening interview and the Department of Immigration has no obligation to appoint a migration agent to assist in the process. The Department of Immigration does fund some community legal centres and private providers to assist asylum seekers in preparing Protection Visa applications through the Immigration Advice and Application Assistance Scheme (IAAAS).

The initial Protection Visa application is lodged with the Department of Immigration and a delegate of the Minister will make a determination of the claim. The delegate may interview the applicant, but is not legally bound to do so (Fiske and Kenny 2004, 140). If the application is not successful the asylum seeker may appeal for the decision to be reviewed by the Refugee Review Tribunal (RRT).⁷ The RRT is an independent body and will assess the claims against the same criteria used by the Department of Immigration as set out in the *Migration Act 1958 (Cth)* (Commonwealth of Australia 1958). Its members can make a decision that the asylum seeker is a refugee without interview, but cannot reject a claim without interviewing the applicant (Kenny and Fiske 2009, 305-306). If the RRT finds that the person is a refugee, the file is remitted to the Department of Immigration with a recommendation to grant a Protection Visa. The Department of Immigration must can either grant a visa or challenge the RRT decision to the Federal Court. If the RRT finds that the asylum seeker is not a refugee, the applicant may, in limited circumstances, appeal the decision in the Federal Court.

⁶ Separation detention refers to the holding of a detainee in a separate compound with others who have arrived on the same boat. Separated detainees are not permitted access with detainees who are further along in the assessment process to prevent any inter-personal advice opportunities. This is explained in more detail later in this chapter.

⁷ People who have arriving by boat after 2001, following the 'excision' legislation that removed large parts of Australia from the 'migration zone', do not have access to the refugee status determination process and go through an alternate assessment process. However, the people interviewed for this research (and those detained with them) all underwent refugee status determination and so only this process is discussed here.

The Federal Court cannot review the merits of a person's claim, only whether the correct legal framework was applied in reaching the decision. Decisions of the Federal Court may be appealed by either party (the asylum seeker or the Minister for Immigration) to the Full Bench of the Federal Court, and in exceptional circumstances, decisions of the Full Bench of the Federal Court may be appealed to the High Court of Australia. If any of these courts find in favour of the asylum seeker, the case returns to the RRT for a merits review (Kenny and Fiske 2009, 306).

An asylum seeker may also appeal to the Minister for Immigration for humanitarian consideration of their case at any stage after the RRT decision. The Minister for Immigration has the power to grant any visa to a person who has failed to meet the definition of a refugee but who can demonstrate compelling humanitarian circumstances and where the Minister determines that it would be in Australia's public interest to intervene (Parliament of Australia 2004). Ministerial intervention is an appeal of last resort and is not routinely granted. Situations that might impel the Minister to intervene may include where a person has failed to demonstrate a refugee claim but who has in the intervening years had an Australian child from whom they would be separated if returned, or where the applicant has a serious health problem for which adequate treatment is not available in the country of origin. The refugee status determination process in Australia is represented in figure 8.

All refugees must undertake health and security assessments before being granted a visa. The health checks are for the purposes of public health only. The security assessments are undertaken by the Department of Immigration, Australian Federal Police and ASIO (Australian Secret Intelligence Organisation). The refugee is also required to provide a police clearance certificate for any country in which they have resided for more than twelve months. Failed security assessments can result in a person being denied a visa even if found to be a refugee. If a refugee has spent a significant length of time in a second country prior to coming to Australia, whether lawfully or without status, they are required to obtain a police clearance from that country too. This process can result in considerable delays in the granting of a visa and therefore delayed release from immigration detention (JSCM 2008, 34-43).

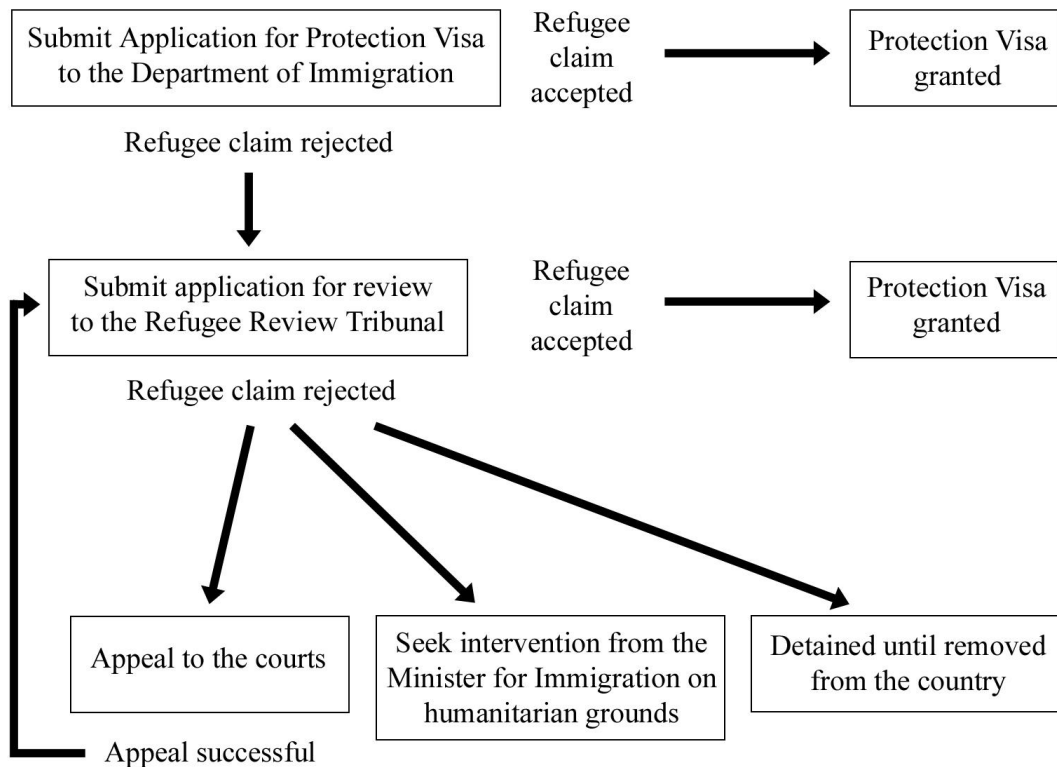


Figure 8: Simplified outline of on-shore protection visa process (Kenny and Fiske 2009, 307).

The process of refugee status determination can take anywhere from a few months to several years. Asylum seekers who have arrived unauthorised are detained for the duration of this process. The Minister for Immigration has the power to order a person’s release from detention while the refugee status determination process is under way, however, there is no independent legal action to enable a court to order the release of an asylum seeker, regardless of the length of detention (*Migration Act 1958 (Cth) Section 73; Zifcak 2006*).

Problems in Refugee Status Determination in Immigration Detention

Australia’s mechanism for on-shore refugee status determination structurally complies with the standards set out in the UNHCR (1992) *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, in that there is a mechanism for assessing refugee claims and an independent review mechanism. Procedurally

however, there are significant problems with the process, particularly for people held in immigration detention.

Access to independent migration advice and representation

All asylum seekers in immigration detention are provided with a registered migration agent funded through the IAAAS. However, this does not occur until a person has been 'screened in' to the process. The asylum seeker has the right to request legal assistance during the screening interview, but will not be provided with such assistance unless they make a specific request (HREOC 2004a, 239). The Department of Immigration has no obligation to inform the asylum seeker of their right to assistance at this stage of the process. In 1998, the Human Rights and Equal Opportunities Commission (HREOC) made a recommendation that the Department of Immigration inform asylum seekers of their rights as a matter of course (HREOC 1998, xviii). The Department of Immigration responded by stating that it considered that its obligations under sections 193 and 256 of the *Migration Act 1958* did not require it to inform detainees of their rights prior to their lodging a protection visa application (HREOC 1998, 196-197; HREOC 2004a, 253). In 1999 the government passed the *Migration Amendment Act [No. 1] 1999*, which prevented HREOC from contacting detainees and informing them of their rights under law (HREOC 2004a, 253-254). The lack of independent oversight or advice at this crucial first stage of the process raises serious concerns that refugees who fail to specifically ask to seek asylum may not enter the refugee status determination process and instead be *refouled*⁸ to a country in which they face persecution or other serious human rights violations (HREOC 2004a, 242).

Once a person has been screened in and allocated a migration agent under the IAAAS, they are able to apply for a Protection Visa. The migration agent may or may not be a lawyer and several inquiries have commented on the variable standard of advice and representation given by different migration agents (Briskman, Latham and Goddard 2008, 69-70; HREOC 1998, 211-212; HREOC 2004a, 258-260). Within the IAAAS, providers are funded to give advice and application assistance at

⁸ *Refoulement* is the return of a person to a country where he/she faces a danger of serious human rights violations such as persecution, torture, imprisonment or death. The principle of *non-refoulement*, the promise not to return a person to such danger, is a cornerstone of the *Refugees Convention*.

the initial application and RRT stages. The scheme does not fund advisers to appear at the RRT hearing, nor does it fund appeals to the Minister for Immigration or the judicial system. RRT rules do not assure the migration agent of the right to make representations on behalf of his/her client at the RRT hearing (HREOC 2004a, 244; Parliament of Australia 2006, 53). The migration agent is responsible for meeting the costs of providing a service to their client (such as travel, accommodation, interpreting and translating). Most not-for-profit providers report that the funding provided under the IAAAS is such that they are forced to provide services by telephone and fax and that migration agents work long hours without recompense to ensure that clients receive an adequate standard of service (HREOC 2004a, 255-261; Parliament of Australia 2006, 54).

The remote location of the largest immigration detention centres has curtailed access to face-to-face meetings with migration agents. Most migration agents contracted under IAAAS were located in Australia's capital cities, usually several hundred kilometres from the detention centres. The Department of Immigration organised and funded 'missions' when IAAAS providers would be flown to the remote detention centres for short periods to meet and interview clients and assist in the preparation and lodgement of claims. The IAAAS contracts stipulated that a minimum of three clients must be interviewed on each day of these trips (HREOC 2004a, 255). This requirement affects the quality of advice and representation that can be provided, particularly in more complex claims involving survivors of torture, gender based claims, children or people with a mental illness. Several migration agents testified to HREOC's *Inquiry into Children in Immigration Detention* that they had to conduct important interviews with applicants by telephone and fax due to the short-comings of the IAAAS contract (HREOC 2004a, 256-258).

Migration agents have raised several issues stemming from the forced reliance on telephone and fax for communication. It is more difficult to build rapport, which forms an essential basis for full disclosure of a (often traumatic) refugee claim, and also impossible to pick up on non-verbal cues (HREOC 2004a, 257-258). David Manne, director of the Refugee and Immigration Legal Centre in Melbourne, states that 'the quality of instructions face-to-face is vastly superior to getting them over the phone' (HREOC 2004a, 257). Furthermore, any written information to be

exchanged between migration agent and client must be sent through the detention centre's Department of Immigration fax machine and will be passed to the client by a Department of Immigration officer. This seriously compromises the confidentiality of communication between client and representative (HREOC 2004a, 257).

Beyond the geographical restrictions on accessing immigration detention centres, there are strict protocols governing visits, including those by lawyers and migration agents. The Department of Immigration requires that lawyers must provide evidence of their qualifications to the Department and provide the detention centre operator (Australasian Correctional Management [ACM] or Global Security Ltd [GSL]) with a written request for a meeting from a detainee (Parliament of Australia 2006, 188). The *Senate Legal and Constitutional Affairs Committee Inquiry into the Administration and Operation of the Migration Act 1958* found that Department of Immigration 'practices in Australian IDFs [immigration detention facilities] appear to impose unreasonable restrictions on access to lawyers and ... fall short of acceptable standards' and that it 'is unclear why these highly restrictive measures are necessary' (Parliament of Australia 2006, 188). The Committee concluded that, 'in the Committee's view, DIMA's explanations, pointing to such matters as the protection of detainees' privacy, do not seem very convincing. They seem in fact to be punitive in nature and open to considerable abuse' (Parliament of Australia 2006, 188).

The cumulative effect of the screening process, the IAAAS funding structures, the remote location of the largest detention centres and the strict protocols governing visits, is that access to legal advice and assistance throughout a complex legal process, with potentially life and death consequences, is substantially impaired.

Delays in processing

There is no statutory limit on the time that the Department of Immigration or the RRT may take to process a claim for refugee status. Both the Department of Immigration and the RRT have performance targets for processing times, but no penalties apply for failure to meet these time frames (Parliament of Australia 2006, 25). The Department of Immigration's internal performance measure aims for 60% of Protection Visa applications, for applicants held in detention, to be finalised

within forty two days of lodgement ‘where there are not factors outside DIMIA’s control which prevent finalisation’ (DIAC 2008, 70). The Department considers that an appeal against a negative decision is a factor outside its control and so people awaiting an outcome from the RRT, courts or the Minister are not included in this measure. Table 1 shows the actual proportion of applications finalised within forty two days for the period 1998/99 to 2002/03.

Table 1: Proportion of applications finalised within forty two days, 1998/99-2002/03. (Data from DIMA 1999, 2000b, 2001; DIMIA 2002c, 2003c)

Year	Target	Outcome
1998/99	60% cases finalised within 42 days	45%
1999/2000	60% cases finalised within 42 days	68.7%
2000/01	60% cases finalised within 42 days	Not reported
2001/02	60% cases finalised within 42 days	47%
2002/03	60% cases finalised within 42 days	81%

It is difficult to get a clear picture of an ‘average’ length of time spent in detention. However long periods in detention have been, and continue to be, a cause of concern to refugees, their supporters, health professionals, human rights bodies, refugee lawyers and ultimately, also of the federal government. In 2005, increasing numbers of people being held for periods exceeding two years in detention, and mounting public discontent about long term detention, led to several legislative and operational changes. The Minister for Immigration is now obliged to notify the Commonwealth Ombudsman of all detainees held for two years or more. The Commonwealth Ombudsman is then required to review the circumstances of detention, advise the Minister of its assessment, make recommendations and table a report in parliament (Commonwealth Ombudsman 2005). In its submission to the 2008 *Joint Standing Committee on Migration Inquiry into Immigration Detention*, HREOC (2008, 11) reported that,

in June 2008 the Commonwealth Ombudsman completed reviews of 72 people who had been held in detention for longer than two years On 27 June 2008, of 390 people in immigration detention, 129 had been in detention for longer than 12 months, 84 longer than 18 months, and 52 longer than two years. Two people were detained for over six years.

The Commonwealth Ombudsman reported to the same *Inquiry* that the number of people held in immigration detention for two years or more had reduced from 150 in June 2005 (when long term detention cases were first referred to the Commonwealth Ombudsman) to 53 in June 2008 (Commonwealth Ombudsman 2008, 6). The Commonwealth Ombudsman (2008, 5) has identified the length of time that people spend in immigration detention as an ‘area of concern’.

Of the fifteen people interviewed in this research, two were detained for less than twelve months, two were detained for twelve to twenty four months, one for longer than two years, five for longer than three years, and five people had been held for five years or more. All reported that, as their periods of detention progressed, their mental health deteriorated significantly, their participation in acts of resistance to detention increased, and their trust in the system was eroded.



Figure 9: Locations of Australian immigration detention centres in and around Australia (HREOC 2004b). 52

Immigration Detention Centres

The federal government established several immigration detention centres (IDCs) around Australia as well as Offshore Processing Centres (OPCs) in Nauru and Manus Island (Papua New Guinea). The largest of the IDCs, where most refugees have been detained, are in remote locations. Figure 9 shows the locations of immigration detention centres in and around Australia in 2004 and table 2 gives information on Australian on-shore facilities.

Table 2: Details of Australian on-shore facilities (Data compiled from DIAC 2008; HREOC 1998; JSCFADT 2002; Millbank 2001).⁹

Name	Location	Year opened	Year closed	Capacity
Port Hedland IRPC ^a	1640km north of Perth	1991	2003	800
Curtin IRPC	2400km north of Perth	1999	2002	1000
Woomera IRPC	500km north of Adelaide	1999	2003	2000
Baxter IDF ^b	350km north of Adelaide	2002	2007	660 ^d
Villawood IDC ^c	Western Sydney	1976	N/A	270
Maribyrnong IDC	Western Melbourne	1996	N/A	80
Perth IDC	Eastern Perth	1991	N/A	44
Christmas Island IDF	2770km north west of Perth	2008	N/A	400 ^e

a IRPC: Immigration Reception and Processing Centre

b IDF: Immigration Detention Facility

c IDC: Immigration Detention Centre

d Plus a contingency for an extra 220 people

e Plus a contingency for an extra 400 people

⁹ New detention centres have recently opened at several locations around the country, including Leonora in Western Australia, Scherger and Brisbane in Queensland, Pontville in Tasmania and Inverbrackie in South Australia. Curtin IRPC was re-opened in 2010.

The geographical remoteness of the detention centres has made it difficult for refugee supporters, families, friends, lawyers, journalists and health professionals to visit. Some detention centres (Curtin and Woomera) are located on Department of Defence land and require a permit to enter (JSCM 2000, 37), and such permits have been rarely granted. Refugees at these centres were isolated, facilitating the federal government's determination to have maximum control over information coming out of the IDCs. The federal government stressed that the purpose of immigration detention was administrative, not punitive (DIAC 2009). International human rights conventions permit administrative detention of non-citizens for limited periods of time while the state undertakes health and security checks (UNHCR 1999a). The *Convention on the Rights of the Child* states that detention of children should be a matter of last resort and for the shortest possible time (United Nations 1989, article 37; UNHCR 1999a, Guideline 6). Detention of asylum seekers as punishment for entering without lawful documents or as deterrence against prospective future arrivals is not permitted in international law and guidelines (United Nations 1951; UNHCR 1999a, Guideline 3[iv]). Entering a signatory state for the purposes of seeking asylum is permitted under the *Refugees Convention* and under Australian law and asylum seekers are not charged with any offence resulting from unauthorised entry to the country (Cooney 2001). To detain asylum seekers in Australia to deter future arrivals is not supported in law or moral philosophy. To cause the suffering of one person as a warning to another is to use human life as a means to an end rather than recognising each person as an end in him or herself.

Administrative Detention or Prison Without Judicial Oversight?

In spite of the official assurances that immigration detention is not punitive, Australian IDCs resemble high security prisons in their construction and management. IDCs are surrounded by high fences or walls with razor wire topping. In several detention centres, there is a high degree of surveillance using a network of closed circuit cameras. Further, the larger detention centres are divided into separate compounds to enable greater control over detainees (JSCM 2000, 27). Each new group of arrivals is held in a separate compound of the detention centre that is isolated from contact with detainees at more advanced stages of processing. This is called *separation detention* and is described by the Department of Immigration as a 'management tool through which the integrity of Australia's visa determination

process is maintained' (HREOC 2005, section 3). The primary purpose of separation detention is to prevent communication with others who have already had immigration interviews and legal advice to prevent earlier arrivals 'coaching' new arrivals in the process and criteria that they must meet to trigger the protection visa application process (HREOC 2004a, 240; HREOC 2005, section 3; JSCM 2000, 33). During this stage of detention no telephones, faxes, newspapers, television, radio or any form of communication with other detainees or with people in the Australian community is permitted (Commonwealth Ombudsman 2001, 13; HREOC 2004a, 11, 240, 254; HREOC 2005, sections 3 and 4). The Department of Immigration has advised the Human Rights and Equal Opportunities Commission that detainees are 'provided with reasonable facilities, *upon request* [emphasis added], to access legal advice, the United Nations High Commissioner for Refugees, the Australian Red Cross and consular personnel' (HREOC, 2005, section 3), but that the Department of Immigration is under no obligation to advise detainees of these rights (HREOC 2004a, 239).



Figure 10: Woomera IDC (HREOC 2004b).

Once screened in, members of the newly arrived detainee group are moved to the main compound where they can interact with other detainees. There are also 'management units' which are separate compounds in which people can be held in group or solitary isolation. Several research participants reported that these

compounds were used as punishment following a protest or challenging a guard or, in one known instance, as a 'pre-emptive warning' when a refugee was transferred to Curtin as a 'known trouble maker' (Sam). people were taken to management units (called 'India compound' in Woomera and Curtin, 'Juliet block' in Port Hedland, 'Sierra' in Villawood, and 'Red One' and 'the Management Unit' in Baxter).

Adding to the prison-like environment in detention, management of the centres is contracted to a private security firm that specialises in operating prisons. The current

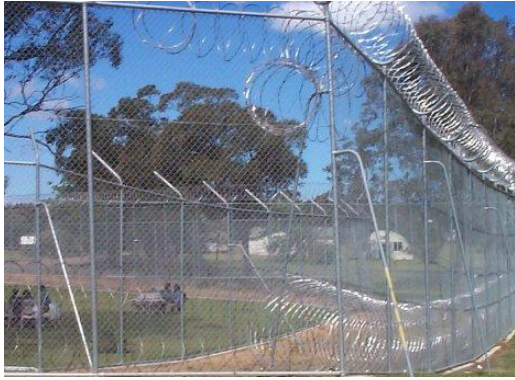


Figure 11: Villawood IDC (Chilout website).

contractor is Serco, a British multinational service company which provides security to Western consulates in Iraq, offers cleaning and catering services in hospitals, and runs Australia's immigration detention centres. Throughout most of the period covered in this research, the detention centres were run by Australasian Correctional Management (ACM), a wholly owned subsidiary of Wackenhut

Corporation, an American security firm which runs prisons in the United States of America and other countries. Global Security Ltd (GSL) briefly held the contract for running immigration detention centres between December 2003 and July 2009 (DIAC n.d.; Roche 2006).

In 2001, the Commonwealth Ombudsman conducted an *Own Motion Investigation into Immigration Detention Centres* and concluded that,

the loss of liberty and personal freedom associated with detaining persons in a secure institution is akin to the situation of prisoners held in prisons. However, unlike criminals who have been extended the full protection of the law before being incarcerated, and who, as prisoners, are exposed to significant checks and balances which have been built up over time reflecting decisions of the courts and community expectations, immigration detainees appear to have lesser rights and are held in an environment which appears to involve a weaker accountability framework. (Commonwealth Ombudsman 2001, 3)

The United Nations Working Group on Arbitrary Detention, which conducted an investigation into Australia's immigration detention centres in 2002, concurred;

At the end of its visit, the delegation of the Working Group had the clear impression that the conditions of detention are in many ways similar to prison conditions: detention centres are surrounded by impenetrable and closely guarded razor wire; detainees are under

permanent supervision; if escorted outside the centre they are, as a rule, handcuffed; escape from a centre constitutes a criminal offence under the law and the escapee is prosecuted. In certain respects, their regime is less favourable (indeterminate detention; exclusion from legal aid; lack of judicial control of detention; etc.). Several detainees who had been in both situations told the delegation that their time in prison had been less stressful than the time spent in the centres. During talks with government officials it became obvious that one of the goals of the system of mandatory detention and the way it is implemented is to discourage would-be immigrants from entering Australia without a valid visa. (UNWGAD 2002, 18)

Kjell Liljegren, a former prison officer and immigration detention centre guard (under ACM and GSL) told ABC's *AM* program in June 2005 that 'it was more obvious that they wanted to run the centres more like prisons than actual detention centres which are meant for administrative purposes only' and that 'most of the training was based on control and restraint' (ABC 2005). This sentiment is echoed by the words of another former guard testifying to the Peoples' Inquiry into Immigration Detention;

I was once told at Maribyrnong 'You are the cat, they are the rat and don't forget that.' The general mindset is the same at Baxter. Officers are not told that it's not against the law to apply for asylum. There is a lot of emphasis placed on control and restraint of people, but I felt that the biggest thing missing was the key that these people essentially haven't done anything wrong. (Briskman, Latham and Goddard 2008, 114)

The Commonwealth Ombudsman expressed concerns about the employment of former prison officers in immigration detention centres;

Many of these personnel were prison officers drawn from ACM's private prisons whose background and training would not necessarily readily equip them to work in a detention centre where the

environment and the nature of the detainees differs markedly from a prison (or at least it should). (Commonwealth Ombudsman 2001, 26)

In addition to the physical resemblance to prisons and the recruitment, training and consequent staff culture among guards, which emphasised a prisoner-guard relationship between them and detainees, many practices employed at IDCs were reminiscent of punitive, rather than administrative, detention. Refugees who needed to leave the detention centre (most commonly for medical treatment) were routinely handcuffed, and those in hospital remained under twenty four hour guard, sometimes being handcuffed to the bed (Briskman, Latham and Goddard 2008, 128; UNWGAD 2001, 18). People were subjected to multiple daily ‘musters’ or roll calls, including at least one at night when sleeping refugees would often be woken by a light being shone in his/her face and a guard’s loud voice (Briskman, Latham and Goddard 2008, 132-133; JSCFADT 2001, para 6.87; UNWGAD 2002, 13). This practice was a requirement of the Department of Immigration, as outlined in its *Handbook to Guide Departmental Managers of Detention Facilities* which stated that staff must,

. . . physically sight the detainee. If the detainee is covered with bedding staff must pull back the sheet/blanket so the detainee can be identified. (HREOC 2004a, 291)

Upon arrival in detention all people are allocated a number, usually consisting of three letters and two to four digits (e.g. ANR-402). For most of the time covered by this work, ACM staff called people only by their numbers, not their names. Most people interviewed for this work raised the issue of being called a number. One man said that he asked a guard to call him by his name, the guard refused, saying it was a regulation that staff must call all detainees by number. Osman responded,

oh God. I’ve got a name. Your donkey... er, your dog and your cat has got name. I’m a human like you, don’t call me by number.
(Osman)

Ibrahim used humour, saying,

we have numbers. Like me, I'm BVN – 11.¹⁰ I still remember it and I'm still using that as a password [laughing]. (Ibrahim)

The United Nations Working Group on Arbitrary Detention criticised the practice as an unnecessary additional stressor in a highly stressed environment;

The routine calling for detainees over the public address system using their registration number, composed of three letters and a number. According to an NGO that had provided toys for Christmas, the children were called up to receive their gifts using their registration numbers. The delegation also observed that most of the detainees who came forward introduced themselves by their registration numbers. At bottom, this practice is felt to be a loss of the detainees' identity (UNWGAD 2002, 13).

A former detainee told the People's Inquiry into Immigration Detention that being allocated a number and night-time head counts were particularly demeaning;

The first day we were given a number and I was told that from now on that's how I will be known. You will be ABC123. That was one of the most difficult things for us because having your normal freedom taken away from you and at the same time you lost your name. One of the most difficult things for me too was that there were three different head counts. There was one at six in the morning, one at midnight and another at two in the morning. No matter who you are, even a baby, they will have to wake you up, you show your card or shout your number loudly. (Briskman, Latham and Goddard 2008, 132-133)

Life in Detention

While the general public was told that conditions in detention were humane and that detainees enjoyed work, education, recreation and fair treatment, reports from detainees, lawyers, visitors to detention, and official visitors (such as the United

¹⁰ Detainee ID numbers have been changed to ensure de-identification.

Nations Working Group on Arbitrary Detention [2002], the Human Rights and Equal Opportunities Commission [1998; 2004a], the Joint Standing Committee on Foreign Affairs, Defence and Trade [2001], the Western Australian Inspector of Custodial Services [2001], the Joint Standing Committee on Migration [2000; 2005] and a raft of other government and non-government bodies) presented a far more bleak picture. The location of most detention centres prohibited regular visits and the desert environment of Curtin and Woomera meant soaring daytime temperatures during the summer and freezing cold nights. Most buildings were not air-conditioned and refugees complained of insufficient warm bedding. (Briskman, Latham and Goddard 2008, 116-117)

People held in detention had little or no access to communication with the world outside. Many former detainees have reported that no newspapers, telephones, television or letters were supplied in Curtin IDC, and that these were in limited supply in other IDCs. Access to sending or receiving a fax was possible only through the Department of Immigration appointed Centre Manager and effectively meant that faxes could not be sent or received in several IDCs. Shahin told one story of trying to get a letter sent to the UN from Curtin detention centre;

So <name redacted> [Department of Immigration Manager of Curtin IDC] came over and said ‘OK, if you want I give you a pen and paper, write a letter to who you want’. ‘United Nations?’ I asked. ‘Yes’ he said, ‘write a letter to UN and I will send it for you. Just send it to my office through officers, ACM officers to my office and I will send it for you to United Nations.’ It specifically described the situation that was there.

By then was perhaps seven or eight months in that situation, this was so many months that we are here... There are 28 of us, we are all men and women and there is only one child with us. This little two and a half year old boy hasn’t seen any other kids for this many months, which I think is not human. So exactly describing what’s going on. I send the letter, a week later he sent for me to his office. An officer came to me to take me to his office. He had the letter spread in front of him, highlighted, in yellow highlighter and saying that these are the

things that you shouldn't talk about and you don't need to mention these things. 'You don't need to talk about that child. You don't need to talk about no access to TV or anything.'

He had highlighted all of them. I said 'OK then , well what do you want me to do? You write a letter and I sign it for you and you send it? Since, why did you ask me?' After I send the letter through the officers I knew that he's not gonna send it.

All research participants who had been detained in non-metropolitan IDCs complained about the lack of access to communication such as telephones and faxes. According to Ibrahim, who was detained in Woomera IRPC at a time when the centre held 1600 people, one public telephone was available for making outgoing phone calls. Anyone outside of detention making a telephone call to a detainee needed to cite the person's detention number when calling. Without this number the call would not be put through. This significantly impaired the capacity of family or friends to make initial contact with a detained person.

Information from outside of detention was limited due to the non-provision or inadequate provision of newspapers, television, radio and internet in non-urban IDCs. Books, movies, recreation and entertainment were lacking in all detention centres. This resulted in people having little or nothing to do for great lengths of time and led to immense boredom and continuous focus on their situation in detention and lack of progress of their protection visa claims.

The Department of Immigration reported that education and recreation facilities were available in all detention centres. A fact disputed by detainees and visitors alike. Professor Richard Harding, Western Australian Inspector of Custodial Services, inspected all immigration detention centres in Western Australia in 2001 and released a report in which he was highly critical of conditions in all three IDCs and of Curtin IDC in particular. He reported that:

- accommodation was unacceptably overcrowded;
- broken toilets and showers posed hygiene and health risks;
- education services were largely a charade;

- there was no opportunity for constructive activity; and,
- medical and dental services were disgracefully inadequate.

There was also some evidence that detainees who sought to air their grievances were intimidated by staff (Harding 2001).

Food

Food was also a source of many refugee complaints (Briskman, Latham and Goddard 2008, 118-120; HREOC 1998; 2004a). Access to food at all centres was strictly regulated. Mothers of young children were unable to feed their children outside of meal times, and this was the source of several complaints (HREOC 2004a). The food was often insufficient, of poor quality and the same dish was served again and again. All participants in this research commented on the food served in detention;

The food first, it's revolting itself. (Mivan)

Like every meal! Lunch, chicken rice. Dinner, rice chicken. Chicken, chicken, chicken. We don't wanna eat chicken every day. (Osman)

Ah, the same food, and it's not enough, and the quality of the food is not very good. (Ibrahim)

It was a story of eighteen months with a boy they wanted to stop his meals. He can have adult food. He was crying all night for three weeks. His mother was taking him to the clinic and they say no this is the guideline and we can't favour you. There are so many other people and if your kid can't do. So many excuses. She was going and coming, there were so many excuses. After lunch she went to one of the officers and just said please, give me a proper meal – this baby is crying overnight. (The guard) she said, I can't, I can't and suddenly she become mad and she was such a peaceful and respectful lady and I couldn't imagine that she suddenly becomes such a violence. She was shouting, crying, swearing . . . (Sam)

In August 2004, the *Sydney Morning Herald* reported that maggots had twice been found in food served to refugees in Baxter (AAP 2004). Amanda Vanstone, then Minister for Immigration, responded that Baxter was ‘the best detention centre that I have seen in the world in terms of conditions . . . It's a detention centre, it's not the Hyatt, I understand that,’ and ‘I don't have any evidence of unhygienic conditions in Baxter, I don't have any indication of that whatsoever’ (AAP 2004).

Health

Health services were inadequate in all IDCs for basic daily health needs and particularly for specialist medical services. Poor access to both physical and mental health services was compounded in remote IDCs. This has been a long standing problem. Australia's Human Rights and Equal Opportunity Commission (HREOC) criticised the inadequacy of health services in detention in its 1998 report *Those Who've Come Across the Seas*. Similar criticism has been made by the Joint Standing Committee on Migration (in 2000 and again in 2005), the Commonwealth Ombudsman (2001), the Western Australian Inspector of Custodial services (2001), and again by HREOC in 2004 (HREOC 2004a).

Each detention centre had nursing staff available full time and on-site, with doctors visiting on a regular basis. However, in most detention centres, the ratio of health personnel to people detained was inadequate and people often had to wait several days and sometimes longer for an appointment with a nurse (Briskman, Latham and Goddard 2008, 124; Loff 2002, 792). Access to specialists was extremely difficult to organise and if it required leaving detention to go to the hospital or practice rooms of the specialist, the person would typically be handcuffed and under guard throughout the appointment (UNWGAD 2002, 7). The People's Inquiry into Immigration Detention¹¹ heard testimony from a number of people that refugees had refused medical treatment due to the indignity of being handcuffed (Briskman, Latham and

¹¹ The People's Inquiry into Immigration Detention was a citizens' inquiry convened by Linda Briskman and Chris Goddard under the umbrella of the Australian Council of Heads of Schools of Social Work. The inquiry arose from Briskman and Goddard's frustration at the severely limited terms of reference given for the Cornelia Rau inquiry. It quickly grew as many people around the country volunteered to help out. It eventually received over 200 submissions and heard testimony from a further 200 witnesses at hearings held in ten locations round the country. For more information about the People's Inquiry see *Human Rights Overboard* (Briskman, Latham and Goddard 2008).

Goddard 2008, 128-129). Mick Palmer, Australian Federal Police Commissioner, was commissioned to conduct an *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* in July 2005. His investigation found that poor provision of psychiatric services at Baxter constituted a ‘serious shortcoming’ (Palmer 2005, 149) and that health services in general in Baxter lacked ‘any focussed mechanism for external accountability and professional review of standards and arrangements for the delivery of health services’ (Palmer 2005, xii). The Inquiry further found that the contract between the Department of Immigration and Global Security Ltd required that GSL establish an expert Health Advisory Panel to oversee and coordinate the delivery of health services in detention centres and to facilitate access to specialist medical services, but that this had not been done. ‘It is unclear why GSL has not established this panel, and it is unclear why DIMIA has not enforced this contractual condition’ (Palmer 2005, 151-152).

The prison-like environment and routine in detention centres impacted on the delivery of health services and the relationship between detainees and health providers. While many reports have identified the commitment of individual health professionals to deliver a high standard of care in adverse circumstances (Briskman, Latham and Goddard 2008; JSCM 2005; Palmer 2005), reports have also identified a hostile attitude towards detained asylum seekers. In its 1998 report into immigration detention, HREOC found that health care across different detention centres varied significantly, that detainees experienced considerable delay in accessing specialist medical services, particularly if they suffered injuries resulting from a ‘security incidence’, that detainees felt they were not receiving an adequate standard of health care and that ‘detainees perceive the available health care staff to be so hostile to over presenting patients that they may fail to seek assistance even when they require it’ (HREOC 1998, 166).

A report by the Joint Standing Committee on Migration released in 2005 reported that the breakdown of trust between detainees and health staff had not improved;

A number of specific complaints about the conditions in the IDF were also made by individual detainees, including the observation that those providing mental health services were not there to help

detainees but rather to manage them for the convenience of the company contracted by DIMIA for that purpose. One detainee indicated his belief that many detainees, even when ill, refused to see the psychologist or psychiatrist because they did not trust them. They viewed the extensive prescription of anti-depressant and anti-anxiety medication as a strategy for keeping detainees under control. (JSCM 2005, 12)

Interviewees in this research confirmed this finding. Several people interviewed said that they believed that medication was being prescribed to detainees to assist the detention provider to manage behaviours rather than for the benefit of the individual. Hussein explained;

I mean they started to take something to the psychology hospital or something. They said you can see psychologists everywhere. They come in the compounds, everywhere. They're always there. I mean everywhere and I don't mean they're looking after us. No. They were thinking they were finding ways how to stop the person of doing, making troubles or something. It's not how to make him well. (Hussein)

Baxter detention centre had two purpose-built sections called Red One and the Management Unit for detainees who were determined (by Department of Immigration or GSL staff) to be at high risk of harm to themselves or others. People would be transferred to the Management Unit or Red One after protests and disturbances. They would also be taken there when self-harming or considered to be at risk of attempting suicide. In Red One and the Management Unit, detainees were held in solitary confinement, under constant twenty four hour surveillance, and were permitted limited hours of open air recreation each day (Palmer 2005, 79-81). Cornelia Rau, an Australian permanent resident wrongfully detained in Baxter IDF for four months, who had been diagnosed with schizophrenia and a personality disorder, was held in Red One to manage her 'difficult behaviour' for much of her time at Baxter, rather than being transferred to a psychiatric hospital for treatment (Palmer 2005). In another incident reported to the People's Inquiry into Immigration

Detention, a young man who became suicidal after being informed that his mother had been killed in Afghanistan was transferred to the Management Unit at Baxter and medicated against his will. An outside advocate requested that the young man be transferred to a medical facility, however, this request was denied and the advocate was told that 'He [the detainee] is going back to management until he agrees not to self-harm' (Briskman, Latham and Goddard 2008, 145-146).

In a court action, in which two detainees sued the Department of Immigration for failing in its duty of care to transfer them to a specialist psychiatric hospital for treatment, Federal Court Judge Finn summarised the testimony of Dr Dudley, a consultant psychiatrist who had provided services inside Baxter and its Red One unit thus;

He was critical of the effects of placement in Red One and on SASH [suicide and self-harm] watch which he regarded as being inappropriate for mentally ill detainees; he saw the primary function of Baxter as being to incarcerate and the medical staff were there to ensure it occurs in the most efficient manner. (*S v Secretary, DIMIA* [2005] FCA 549 181)

These examples focus on the treatment of detainees with a psychiatric illness held in Baxter, but the response was common across all detention centres in Australia. In their 2008 article, psychiatrists Louise Newman and Michael Dudley and psychologist Zachary Steel reviewed data from all Australian detention centres and reported that,

intense observation and isolation from the main detainee group was routinely used to manage self-harm and potentially suicidal behaviour, described by mental health professionals as likely to exacerbate suicidality rather than prevent it. (Newman, Dudley and Steel 2008, 119)

Several reports and experts have commented on the inability of ACM or GSL staff at detention centres to recognise behaviour which is indicative of psychological distress and to respond within a framework of care (Briskman, Latham and Goddard 2008;

HREOC 2004a; Palmer 2005). Behaviour is interpreted through the prism of a prison, which is unsurprising given the razor wire, surveillance, recruitment practices and numbering of detainees. One of Palmer's many recommendations was that the Department of Immigration should,

. . . ensure that as much emphasis is given to recruiting people with health and welfare training and skills as is given to custodial and security qualifications and experience. (Palmer 2005, xxviii)

This issue had been raised at least seven years earlier by the Commonwealth Ombudsman who, when investigating the treatment of Mr Z, an immigration detainee with a psychiatric condition who was criminalised rather than treated, had stated that;

This case highlights the importance of custodial officers being able to recognise the signs of possible mental illness and being able to obtain the appropriate medical or psychiatric assessments. It is totally inappropriate to manage the behaviour of a mentally ill detainee by transferring the detainee to a State prison. (cited in HREOC 1998, 157)

A further inspection of mainland detention centres by HREOC in 2007 reported some significant improvements in access to physical health services for people detained, though serious concerns remained in Villawood and Baxter and the Commission continues to have serious concerns about access to and efficacy of mental health services in immigration detention (HREOC 2007, 12-15).

Mental Health Impacts of Immigration Detention

There has recently been much research published regarding the role of immigration detention in causing depression and other serious mental health problems, including psychoses (Loff 2002; Mares and Jureidini 2004; Silove, Austin and Steel 2007). In 2001, Dr Aamer Sultan and Kevin O'Sullivan published an article in the *eMedical Journal of Australia*, in which they outlined four progressive stages of depression in long term detainees. Stage one occurs during the first few months of detention, when people feel shocked at being detained but have strong hope that their claims will be

accepted and they will soon be able to begin a new life in Australia. Stage two, termed 'primary depressive stage', occurs following the first rejection of a person's application. In this stage, people display symptoms consistent with major depressive disorder, usually followed by a,

'primary revolt stage' of non-compliance and non-conformity. The nature of the revolt varies: some become protesters (engaging in hunger strikes and other non-violent demonstrations); others become advocates (attempting to raise public awareness about the realities of detention); and some become aggressors (engaging in confrontations, riots, detainee-guard conflict and inter-detainee violence). (Sultan and O'Sullivan 2001)

When a person's application is also refused by the RRT, a detainee may enter the third stage, termed 'secondary depression'. Sultan and O'Sullivan (2001) describe this stage as marked by 'a more severe and debilitating' depression in which the person withdraws from fellow detainees, becomes more passive, less communicative, and experiences 'an overwhelming feeling of impending doom'.

The final stage, 'tertiary depression' marks a further descent into depression, sometimes with psychotic features. The authors describe a disintegration of social relationships, hopelessness, fear, chronic impairment in concentration, paranoia and sometimes psychotic delusions and auditory hallucinations. 'The most disturbed engage in self-stimulatory, stereotypic behaviours, such as repetitive rocking or aimless wandering,' and self-harm and self-mutilation is common (Sultan and O'Sullivan, 2001).

Sultan and Sullivan's (2001) research was particularly distinctive because Dr Sultan was also a detained asylum seeker from Iraq who conducted the research with O'Sullivan using a mix of participant-observer and survey methodologies (some of Dr Sultan's story is outlined in Chapter 6). Their findings are supported by several leading psychiatrists, psychologists, mental health nurses and doctors (Loff et al. 2002; Mares and Jureidini 2004; Mares et al. 2002; Newman, Dudley & Steel 2008; Silove & Steel 1998; Silove, Steel & Mollica 2001; Steel & Silove 2001; Steel et al.

2004; Steel et al. 2006), whose research reported significantly higher levels of depression, suicidal ideation, post-traumatic stress disorder and a range of psychological and psychiatric disorders among people held in immigration detention. These researcher all concurred that, while pre-existing trauma was a relevant contributory factor, detention itself was causing these high levels of mental illness. The Royal Australian and New Zealand College of Psychiatrists, HREOC, the Australian Medical Association, the Royal Australian College of General Practitioners, the Alliance of Doctors and Health Professionals, the Australian Council of Heads of Schools of Social Work, the Australian Association of Social Workers and the Australian Psychological Society (ABC 2002b; Royal Australian College of General Practitioners 2002) have all called for the end to mandatory detention due to concerns about the psychological harm caused by immigration detention, particularly to children.

There can be little doubt that prolonged and indeterminate detention causes mental anguish. For some detainees, this manifested as depression and as sleeping a lot. Several participants in this research reported that due to a mix of profound boredom and despair that they would ever be released, all they wanted to do was sleep. Baha'adin expressed the feeling thus;

I didn't know what was going on and all I was doing, just sleeping. I just wanted to die. I didn't want to see how I'm going to die, I just wanted to sleep, sleep, sleep and go under the blanket. Even sometimes I couldn't sleep, I just had to force myself. (Baha'adin)

The Joint Standing Committee on Migration (2005, 9) found that many detainees were suffering from depression and 'tended to sleep for long periods during the day.' The committee discussed this with the health staff at Baxter who suggested that it may be 'a cultural or health issue' (JSCM 2005, 9), perhaps reflecting the penal culture of detention centres which results in an inability or unwillingness of staff to interpret behaviours through a psychological lens.

Resistance

Throughout the history of immigration detention in Australia, there have been protests by detainees seeking better conditions, faster processing, improved treatment and ultimately, release. From 2000 onwards, as detention centres became increasingly crowded and processing appeared to slow, there was a marked increase in ‘incidents’.

HREOC (2004a, 299-301) used Department of Immigration statistics to summarise major incidents in IDCs, which are defined by the Department of Immigration (2004a, 299) as ‘an incident that seriously affects the good order and security of the detention centre’;

. . . between July and December 2001 there were 688 major incidents involving 1149 detainees across all detention centres. . . . Seventy four percent of all the major incidents in that period occurred in the Curtin, Port Hedland and Woomera centres. . . . From January to June 2002, there were 760 major incidents involving 3030 detainees across all detention centres. . . . Almost 80 percent of all incidents occurred in Curtin, Port Hedland and Woomera. (HREOC 2004a, 299)

Refugees protested in a broad range of ways, many of which would not be captured using the Department of Immigration definition of an incident. Protest methods included attempts to negotiate with Department of Immigration or ACM/GSL staff, sit-ins outside Department of Immigration offices, writing letters to people outside detention, making protest banners and displaying these through wire fences, hunger strikes, lip-sewing, riots and escapes. Chapters 6-9 in this thesis address detainee protest in greater detail. Many of the protests were against the dehumanising nature of detention’s daily regime.

Conclusion

This chapter has outlined the conditions in detention, in order to provide the context in which protest actions took place. The research in this chapter has relied primarily on government and non-government reports, however, some detainee testimony has also been included to describe how the conditions in detention centres were

experienced as dehumanising and as a denial of human rights. These subjective experiences are critical in understanding detainee actions. The following chapter outlines the research paradigm and methodology of the research, before the thesis moves on to consider how detainees appear to have understood human rights and how a human rights framework shaped protest actions.

Chapter 4: Methodology

This research explores detainees' explanations of resistance to immigration detention in Australia and the role of human rights in shaping this resistance. It does not seek to provide any generalisable 'truth' claims or definitive 'answers' to why detainees protested against their detention. Rather, my interest arose from a frustration with the dominant public discourses that explained detainee protest actions in the late 1990s and early 2000s as either criminal misbehaviour or desperate behaviour driven by psychological harm. The voices of the actors themselves were missing in this debate. I wanted to hear from those involved of how they explained their actions and what sort of political consciousness underpinned their discussions, decisions and actions. Many messages coming from inside detention centres used a language of human rights and I wanted to know what the actors understood by 'human rights' and what role this had in mobilising action. This research then, seeks to understand a particular phenomenon – that of detainee resistance to immigration detention in Australia between 1999 and 2005 and what role 'human rights' played in these actions. It employs conventional social scientific research methods and draws on several disciplines to interpret and analyse the material gathered. Although multi-disciplinary in design, the research is located within a human rights paradigm and as such, does not seek to be objective, neutral or value-free. This research is conducted from a pro-human rights stance. This chapter sets out the ideological paradigm and the epistemological framework of the research, before outlining the research methods employed.

Epistemological Framework of the Study

My research into refugee protest is situated within the multidisciplinary field of human rights. The study of human rights is often understood as a discipline of law, encompassing those rights guaranteed to humans through codified international and domestic laws. While human rights laws are at times referred to or discussed in this thesis (particularly in the preceding Chapter 3), this thesis is located within broader ideological and philosophical understandings of human rights which traverse the humanities - sociology, philosophy, cultural studies, anthropology and politics, to name a few.

Human rights is not a neutral discipline. While there is considerable ideological and philosophical divergence within the field of human rights, at its core are two basic beliefs. The first is that humans have a certain value that arises from (or attaches to) our simple humanity, and the second is that, philosophically at least, one need not attain a certain status or hold particular traits to enjoy human rights (Hayden 2001, xv; Ife 2001, 5-7). From this valuing of humanity flows the belief that humans ought to receive a certain minimum treatment, that certain practices offend human worth and that we (as humans) ought to act to prevent such practices (Griffin 2001). What constitutes 'human' and whether certain actions (such as unauthorised border crossing) can render people outside the protective accord of human rights is highly contested in practice, but a 'human rights approach', however understood, holds the value of human life at its core. This thesis, in its genesis, design, critique and conclusions sits within a framework which prioritises a care and concern for humans. Rather than making claims to objectivity, this thesis draws equally upon human rights and critical theory to make its philosophical and ideological positioning explicit, enabling the reader to engage actively with the critical subjectivities within.

Given the ambiguities of the terms 'human rights' and 'critical theory', I will address each in turn before outlining the research design and methodology.

Human Rights

Theoretical approaches to human rights can be crudely but usefully divided into three schools: essentialist, functionalist and constructivist. An essentialist approach sees rights as inalienable and given by 'god' or nature. Essentialists such as Thomas Aquinas, Mahatma Gandhi and Henry David Thoreau argued that a 'natural' or 'higher' law exists independent of human action (Sweet 2003, 3). This law or moral order is generally understood as 'god-given'. Human beings, endowed with reason, are tasked to discover this moral order and to live the 'good life' in accordance with natural or divine law (Hayden 2001, 4; Thoreau 2002). It is human beings' shared capacity for thought, reason and discerning right and wrong that enables the development of earthly laws and social rules to build a good and just society (Pollis 2000, 10). Rights may be breached or limited, either justly or unjustly, but an individual never loses his or her rights because they are inextricably bound up in our very humanity. The violation of a right does not mean that the right no longer exists,

in the same way that failure to observe a state law does not mean the law no longer exists. Most major human rights documents (such as the *Universal Declaration of Human Rights* [United Nations 1948], the French *Declaration of the Rights of Man and of the Citizen* [French National Assembly 1789], and the United States of America Congress' [1789] *Bill of Rights*) draw upon an essentialist position to support the existence of rights.

Functionalist approaches to human rights take a different path to the essentialists, arguing that seeking out ontological bases for human rights is a somewhat tangential and esoteric path. The question for functionalists is not 'from where do rights originate?', but 'how can human life be protected and best enabled to flourish?' Functionalists point to human history to demonstrate that rights protections (which may or may not be articulated as human rights) are necessary to stop us brutalising one another (Parekh 2007, 769-770; Rorty 1999).

Finally, a constructivist approach to understanding human rights disputes that rights are naturally held, inalienable or arise out of 'humanity'. Arendt (1976) famously stated that inalienable rights are a nonsense, as any stateless person or refugee can attest (The alienability of rights is discussed in more detail in Chapter 5.). She said that human rights are essentially a contract between members of a political community and that they only exist to the extent that members agree to guarantee those rights to one another. In this view, human rights are constructed, contested and contingent. Within this model, the task for humans is to decide what rights we want (and therefore are willing to guarantee others) and to whom we are willing to extend this guarantee or with whom we share a political community. A human rights approach based on this model would argue for the extension of political membership as the key to achieving universal human rights (Parekh 2007).

This research draws on all three approaches in its attempt to understand detainee resistance to immigration detention, but relies primarily on an Arendtian constructivist understanding of human rights. Arendt's work proved to be particularly helpful in this research in two respects. The first is her insistence in maintaining actual human beings and lived experience as the primary focus of human rights discussions and the second is her constructivist approach to rights as a

mutual guarantee between people (rather than a relationship between a nation-state and an abstract 'man'), which can be seen to manifest in detainees' cries of 'we are human,' as well as in the responses of 'ordinary Australians.' I depart from Arendt in one crucial respect. Arendt argues that 'simple humanity' or 'naked humanity' was an insufficient basis upon which to claim rights, however, this is all that detainees have, after being stripped of citizenship and most recognised bases of identity. Further, the 'rawness' of detainees' humanity is the characteristic that has mobilised large sections of the Australian community. Former detainees who participated in this research all used a language of human rights to articulate their claims and to describe their experiences protesting their detention. As Chapter 5 discusses, detainees frequently appealed to a shared humanity as a basis for their rights. However, this basis for rights found no traction in law because asylum seekers fall outside the accord which Australians maintain with one another. In this sense, the constructivist approach to human rights has proved useful in understanding that human rights do not actually exist beyond the determination of human agreement and activity. This approach however, focuses on the formal political community (the nation state) and does not adequately explain the response to asylum seekers' pleas by civil society actors. While the cry of 'we are human' may have fallen on deaf legal ears, it resonated with ordinary people from diverse backgrounds. These included middle-aged, wealthy women from Sydney's North Shore, radical students from Perth universities and people living in rural and remote areas of Australia. By an observable measure, such as language, religion, nationality, culture or life experience, these people have little in common with 'boat people', with an Iraqi dissident or with a Hazara shepherd. However, these people mobilised around Australia in response to detainees' appeals to a shared humanity. Ordinary people became political activists and sustained the fight over many years, giving succour to the concept of a universal essence of humanity as a basis for human rights. Serena Parekh posits that essentialist positions are particularly useful for social movements in that they establish a good base from which to claim rights which do not yet exist in law and are not recognised by institutions (Parekh 2007, 768-769).

During this study, when wrestling with the theoretical frameworks with which to best interpret and analyse the actors' meanings, as well as when reading through transcripts of testimony about actual people's experiences in immigration detention,

it was hard not to feel that the philosophical task was secondary. I found myself considering whether it really matters from where rights stem or whether there is actually a ‘universal human,’ or whether the vagaries of a ‘shared humanity’ can be deployed to secure an agreement to help a particular person or group in a particular situation at a particular time.

However, both tasks, the philosophical and the pragmatic, are important because both have implications for the lived human rights of people both today and into the future. In fact, all three theoretical approaches to human rights are evident in the testimony of those interviewed and so all three approaches to human rights are woven throughout this thesis and are expanded upon and drawn upon at different times to build a holistic picture of the role that human rights played in mobilising asylum seekers in their protest actions.

Critical Theory

Like human rights, *critical theory* can refer to a range of meanings, disciplines and schools. While the specificity of meaning differs in various settings, critical theory can be broadly understood as an approach that unsettles orthodox positivist means of producing knowledge. Critical theorists argue that all knowledge is contextual, contingent, involves subjectivities and serves a practical (and ultimately, political) purpose (Agger 1998, 4; Always 1995, 2). Critical theory challenges theories that claim simply to describe the world as it is; to explain how or why a particular phenomenon occurs without seeking to lay bare and critique the social processes which produce such phenomena (Seidman 2004, 277-279). This rejection of value-free knowledge, as well as the belief that theory ought to help change the world and work towards liberation from oppressive social structures and forces, is key to critical theory across literary, political, anthropological and sociological schools (Morrow and Brown 1994, 9-12).

While critical theory has developed in several directions over the decades, this thesis draws on its core tenets as set out above and then follows what might be best termed a Foucauldian development, in that it departs from schools of critical theory which seek to be totalising explanations of social forces and, instead, seeks to unsettle naturalising and normalising discourses of knowledge and power. Foucault (1997)

termed his method *genealogy* and used this method to expose the ways in which alternative voices and knowledges are excluded or marginalised throughout the social and political struggles which shape history and contemporary societies. A further part of this methodology is to work to allow these alternate knowledges to be uncovered and given voice in contemporary social struggles (Seidman 2004, 179-181). It is in this alterity, rather than an instrumental or utilitarian relationship of direct cause and effect, that theory finds its emancipatory power. It could be argued that Foucault's rejection of instrumentalism is sufficiently radical to set his work outside of critical theory. However, his core concern with liberation and the role of theory and discourse within contemporary and historical struggle, alongside his insistence upon the multiplicity, contextuality and contingency of knowledge and power, make it possible to at least trace genealogical connections between his work and critical theory. In any case, much as the question of defining and fixing an 'essential humanity' seems secondary in the immediacy of particular human suffering, so too the task of exact disciplinary categorisation becomes secondary in light of the insights that both Foucault's work and critical theory provide in developing a richer understanding of the particular protests by people against their detention in Australian immigration detention centres in recent years.

This research is founded upon the contention that prevailing hegemony surrounding refugees, asylum seekers, protesters, resistance and oppression has assumed an uncritiqued status of 'fact,' deriving from inherited positivist knowledge production. Suppressed under dominant psychiatric and criminological explanations of refugee resistance and protest action are the voices of the actors; alternate knowledges of detention, human agency and oppression which form the core organising framework of this research. I reject totalising explanations of identity, detention and protest which function to narrow and fix knowledge and, instead, I seek to challenge 'naturalised' explanations of refugee protest, exposing their normative construction. This approach does not always sit comfortably with human rights approaches, particularly essentialist understandings of humanity and human rights. This is a tension which flows throughout the thesis and I have resisted attempts to 'resolve' this tension because to do so would involve a theoretical and philosophical reduction which would undermine the depth of analysis that is available and necessary. The critical framing of this study frees it from the task of providing 'the answer' or 'the

explanation' of refugee protests and creates space for introducing previously silenced voices and marginalised knowledges into the public sphere, which is the central concern of this work.

Research Design

This research began with my desire to better understand refugee protest against immigration detention *from the point of view of the actors themselves*. This central question has remained dominant throughout the research process and as such, the study has been designed using phenomenological enquiry. 'The phenomenological approach is primarily an attempt to understand empirical matters from the perspective of those being studied' (Creswell 1998, 274). Such an approach acknowledges and draws upon traditional scientific and social science research methodologies, particularly in regard to the rigour required for production of academic knowledge. However, the approach also allows for consideration of the limitations of traditional methodologies for understanding phenomena where the thoughts and feelings of people in situations are crucial in developing a deep understanding of the phenomena under study (Cresswell 1998; Guimond-Plourde 2010).

Other research methodologies, such as tracing the incidence of protest events alongside government policies, may also have been useful in discerning a political consciousness among protesting refugees, but this was not the primary aim of this project. My objective was to hear participant accounts of protest actions and to theorise 'up' from this foundation. A central concern which has emerged throughout this work has been wrestling with the dynamic interplay of personal despair and political action. As discussed in Chapter 8, orthodox Western theoretical models, which maintain a clear divide between the personal and political, and the private and public spheres, offer little in terms of developing a framework for understanding detainee protest action. Detainee protest actions have rarely been forms of detached political consciousness, actions arising in defence of principle. However, would it also not be accurate to understand their actions simply as the manifestation of mental illness or personal (private, individual) suffering. Giunia Gatta, in her discussion of 'suffering as a political situation,' proposes that a phenomenological approach 'provides a way to translate suffering from the private to the public (and to bring

together into the public the perspectives of sufferers, witnesses, and perpetrators)’ (Gatta 2010, 1).

While phenomenological enquiry may employ a range of different methods in its overarching task, it is generally characterised by certain key features. The first is that it seeks an ‘insider’ account of the phenomenon, being concerned with developing understanding of social phenomena from participants themselves, rather than external experts. Embedded within a phenomenological approach is the recognition that phenomena are inherently plural; that each individual will experience the phenomenon in a unique way, specific to that person. However, this recognition of individual experience sits alongside the understanding that each ‘experience has a certain discoverable structure’ (Dukes 1984, 198) that transcends individual subjectivities. It is phenomenological enquiry’s structural inclusion of both the unique and specific *and* the generalisable or common that makes the method so well suited to this study. Themes of diversity and commonality are also addressed considerably in the works of both Foucault and Arendt, adding to the cohesiveness of the theoretical and methodological frameworks used.

Phenomenological enquiry begins with individuals’ unique accounts of a shared experience, and uses these to discern certain key structural characteristics of the meanings the participants ascribe to the experience, in order to situate personal experience within a broader political context (Dukes 1984; Gatta 2010, 12). It is in this way that phenomenological enquiry mediates the transition of private experience to public political concern. It differs from narrative or case study methodologies, which focus on the specific, and from abstracted theoretical or philosophical studies, which seek generalisable rules or principles. A phenomenological approach to understanding suffering as a political concern rejects the depersonalisation risked in other modes of enquiry. Gatta (2010) points to the dominance of the ‘undifferentiated anyone’ at the core of Western Enlightenment political philosophy. It was this universal ‘anyone’ in the impersonal public sphere who formed the basis of liberal theorising and who is the modern political subject, the bearer of human rights, and the subject of sovereign power (Gatta 2010, 9-12). A phenomenological approach, Gatta contends, refocusses attention on suffering as both a private and political concern: ‘It matters that I am in the presence of the suffering of this specific

person . . . Interchangeable subjects do not suffer. If they do, they do in a very general and aseptic way' (2010, 9).

Individuals in immigration detention each suffer detention in unique, intensely personal ways, yet their suffering was also a highly political experience. This study explores the political meanings of detainee protest against detention in a way that re-centres and privileges the voices of those detained, and so draws on several individual accounts of detention and resistance to build an intersubjective understanding of the situation's politics (Guimond-Plourde 2010). By taking this approach, the dignity and specificity of each individual account is protected and the study avoids mirroring the depersonalisation and dehumanisation of the detention experience. The acceptance of a multiplicity of accounts enables the incorporation of a multiplicity of perspectives aimed at developing a richer understanding of the complexity and fluidity of detainee protest. It puts abstracted theory at the service of individuals' experiences. This means that human rights, for example, can be discussed within a functionalist, social contract or essentialist framework depending on how the term has been used by the speaker.

The second feature of phenomenological enquiry is that it requires the researcher to suspend or 'bracket' his or her own explanatory theories (Cresswell 1998, 52). The researcher's knowledge, experiences and beliefs will inevitably be present in the analysis of primary sources, but needs to be explicitly acknowledged and cannot be used as a basis for excluding material which contradicts his or her theories. Bracketing requires the researcher to conduct semi-structured, in-depth interviews as the primary form of gathering research material. Semi-structured interviews enable the researcher to ask open questions around certain themes, and to encourage participants to expand upon their answers, thus enabling themes and meanings not anticipated prior to the interview to emerge (Guimond-Plourdes 2010, 4). Phenomenology claims to return to the traditional tasks of philosophy in that it is a 'search for wisdom', generating knowledge through an inductive rather than deductive process – the form of knowledge production more commonly associated with positivist research methods (Creswell 1998, 52).

As the central aim of phenomenology is ‘to determine what an experience means for the persons who have had the experience’ (Moustakas, quoted in Cresswell 1998, 53), the accounts of several people who have experienced the phenomenon forms the organising framework of analysis. Phenomenology guides researchers to a smaller sample size because depth, rather than breadth or generalisability, is the primary knowledge sought (Byrne 2001, 830).

I set out on this research wanting to better understand what informed and shaped detainees’ protests against immigration detention and to hear their accounts of their protest actions. With my desire to understand the events of 1999 to 2005¹² in particular, from detainees’ perspective, and having no desire to generate any global theories about refugee protest more broadly, the phenomenological approach has proven to be well-suited to this work. Having set out the etymological, ideological and hermeneutic framework of the study, the remainder of this chapter discusses in more detail the technicalities of the research method.

Method

Sampling and Recruitment

Following the phenomenological method, this study sought out research participants who had ‘had the experience themselves and [who are] . . . able to remember it and create a narrative’ (Guimond-Plourde 2010, 3). For a list of names assigned to participants, and their length and location of detention, see Appendix 1. All research participants:

- had been held in Australian immigration detention as asylum seekers between 1999 and 2005;
- had engaged in protest against their detention;
- were eighteen years or older at the time of meeting with me; and,
- were willing and able to talk about their detention and protest.

¹² This date range is chosen because it is the period during which most protests in detention happened. Prior to 1999, few people had arrived by boat. The boats stopped arriving late in 2001. By 2004 most detainees had been released into the community or removed from Australia. The largest detention centres were closed in 2002 and 2003 due to fewer numbers of people in detention. Asylum seekers who were still detained past 2003 however, tended to be long term detainees who had arrived before September 2001. In 2005, the federal government (following community pressure and legal challenges) introduced the Return Pending Bridging Visa which enabled most remaining detainees to be released. Protest incidents in detention reduced accordingly.

For the purpose of this study, *protest* is defined as any action which seeks to subvert, frustrate or directly challenge immigration detention. Participants in this research reported engaging in actions ranging from raising complaints with Department of Immigration detention centre managers either verbally or in writing, refusing to comply with orders given (such as to leave a particular area, or to clean the kitchen), smuggling of goods into the detention centres or between compounds within the centres, calling talk-back radio stations and speaking about detention, and lodging formal complaints with external human rights bodies such as the UNHCR or Amnesty International, through to more direct challenges to the system such as hunger strikes, lip sewing, self-harm, escape or damage of detention centre facilities. No minimum threshold of action was required.

Participants were selected using purposive sampling methods. I have worked, researched and volunteered with refugees and asylum seekers in Australia since 1997 and had an extensive pre-existing network of contacts in the field. I deliberately chose not to approach any refugees with whom I had an existing friendship or who I had helped in my role as a social worker or volunteer, as I could not be satisfied that consent would be sufficiently free. Instead I approached non-refugee colleagues and explained my research to them, asking them if they knew anyone who might be interested in participating. I also sent emails through Perth, Sydney and Melbourne refugee advocacy and news networks seeking participants. Prospective participants could then opt-in to the study by contacting me, and most participants came through these channels. I also used snow-balling recruitment methods whereby I asked existing research participants if they knew other people who might be interested in participating. This resulted in additional participants.

All participants recruited using these methods however, were men. The gender imbalance is to some extent reflective of the gender balance of people detained during this period: far more men than women arrived by boat and were detained during this period of time¹³. However, there were significant numbers of women held

¹³ Senator Chris Evans, then Minister for Immigration, reported in the Senate Legal and Constitutional Affairs Committee that women and children (as a single category) accounted for between twenty five and forty percent of boat arrivals between 1999 and 2001. Conversely, adult men accounted for between sixty and seventy five percent of arrivals (Commonwealth of Australia 2009, 73).

in detention in this time frame and secondary source materials obtained during the course of the research demonstrates that detainee women did participate in protests. There are a range of possible reasons for my lack of success in recruiting women who were former detainee. The study was not designed to access women in particular, and so did not manage to bridge the structural barriers to refugee women's participation in research. My recruitment methods of using email lists, activist networks and opt-in rather than direct request methods, were, in hindsight, designed in such a way that men were privileged. I am reminded of a comment in a community development class as an undergraduate social work student by Professor Jim Ife of the importance that community workers need to always ask themselves 'who is not in the room?', 'whose voices are not present?' to avoid replicating existing structures of privilege. The absence of women became apparent as the fieldwork was well under-way and, despite belated attempts to specifically recruit women participants, through asking activist and refugee supporter networks for assistance in finding women who would like to participate, pragmatic considerations such as funding and time ultimately resulted in an all male sample. Future research utilising gender-sensitive research methods designed to access women's accounts of protest against detention would be interesting and important research in its own right.

A total of seventeen people were interviewed for this research. However, the testimony from two interviewed people was excluded from the analysis because they did not meet all the criteria for inclusion in the sample. One person had not participated in protest; the other interview yielded little usable material.

The fifteen participants whose interviews were included in the study came from Iran, Iraq, Afghanistan, Jordan and one person was stateless. Participants had been held in detention for periods ranging from seven months to six years, and between them had been held in every mainland detention centre operating during the period of time covered in this research, including Curtin, Woomera, Baxter, Villawood, Perth, Maribyrnong and Christmas Island detention centres (Figure 7 [p43] shows the locations of these detention centres). Most participants had been held in a number of detention centres during their periods of detention. Most participants reported that there were some differences in the conditions of detention in different detention

centres, and that, while the conditions of detention were a significant factor, the length and indefinite nature of detention was the single most significant factor in protest actions. Table 3 shows the length of time spent in detention for each participant.

Table 3: Length of time spent in detention by research participants

Length of time in detention	Number of Participants
Less than 12 months	2
Between 1 and 2 years	2
Between 2 and 3 years	1
Between 3 and 5 years	5
Five years or more	5

Consent Processes and Interviews

Information was collected through lengthy semi-structured interviews. This is the method recommended by phenomenological enquiry and also the best suited method for gathering material with sufficient qualitative depth to enable the research objective, which is to develop an understanding of refugee protest against immigration detention from the perspective of those directly involved, to be adequately addressed.

Most interviews were conducted between January and March 2008. Most interviews were conducted individually, with two conducted as small group discussions at the request of those participants. Interviews were conducted most often in the participant’s home, but also in my home, a friend’s home and a public café. The location of each interview was chosen by the participant. I began each interview with a brief outline of my research and the general themes of the interview, inviting prospective participants to ask any questions and establishing full and free consent. In establishing consent, I drew on models of *iterative consent*, which recognises that signing a written consent form may not indicate informed and free consent. It understands people as holding ‘relational autonomy’ rather than absolute autonomy;

that one's capacity for self-determination (essential for free and informed consent) is significantly constructed within the social and political context of that person (Mackenzie, McDowell and Pittaway 2007). The political and social positioning of refugees who have been held in immigration detention is highly relevant in determining whether each participant has freely consented. Given that refugee supporters were, in some cases, the person to approach the participant about engaging in the research, a desire to please, feelings of obligation or reciprocity may all influence each person's decision to participate in the research. This was mitigated somewhat by the opt-in nature of the recruitment process and by the approach being made by an intermediary rather than by me directly. Five people declined to participate, indicating that refusal was an accessible option for people in the research population.

All participants were advised of their right to decide the level and depth of their involvement and their right to withdraw at any time. I gave all participants a written summary of the research and discussed with them whether they would like to sign a consent form and whether they would permit me to record the interview. Most participants signed the consent form, although three did not, one saying that it was meaningless and the other two said that they did not like paperwork as it reminded them of detention and immigration. As per iterative consent methods, I made notes about the discussion of consent immediately after each interview as an alternative to written consent forms.

All participants except one agreed to the interview being recorded. The person who did not said that he remained distrustful of authority and that recording interviews reminded him of the immigration process. I took extensive notes during this interview in lieu of a transcript. All recorded interviews were transcribed, but transcriptions were not sent back to participants for checking. This decision was made for several reasons. Talking about detention and protest is difficult and involved recalling painful and unpleasant experiences. To then read through the transcripts in isolation would likely cause further unpleasant memories. It was decided that the potential benefit of clarifying certain points or the accuracy of transcription does not justify the further imposition of reviewing transcriptions on the participants. Although the participants were offered an interpreter, all chose to

speak in English. All participants had been in Australia for more than five years, and some for ten years. All had at least conversational English and some had near native-speaker proficiency.

Each interview began with me asking for some basic facts about the person's length of detention and where he was detained. I would then ask him to describe a typical day in detention for me. I would then listen carefully to his response and ask further questions or give minimal prompters to encourage his continued talking. Each interview became more conversational as it progressed. I had a list of thematic areas which I wanted to be sure to cover, but more important to me was to listen carefully to what each participant was saying and to respond to this and ask questions which arose out of his narrative rather than following pre-scripted questions. This enabled me to explore further the meanings that each participant made of his own detention and protest experiences.

Information gathered in earlier interviews also influenced later interviews. For example, in my first interview with Ismail and Sayed, I asked Ismail if he thought his protest had been effective. I had asked the question from a pragmatic perspective, having in mind information about whether the protest action resulted in better access to the telephone, a trip to the dentist, or improved food. However, Ismail responded,

of course, the protest helped. Because at least I did something for my rights. Because if I didn't do those things, nothing different between me and this table. With me? I got a soul. I got a mind. I got thinking. While this table . . . Of course, I wouldn't stay like that. (Ismail)

This response introduced an existential aspect to protest and redefined the meaning of *effective* for me. It reshaped my understanding of the nature and quality of the research and influenced how I approached subsequent interviews. In later interviews I paraphrased Ismail's words and sought a response to them from participants. His words resonated with all and almost invariably opened up extensive and deep reflections from participants, adding a philosophical depth to this work that I had not initially anticipated.

The thematic areas that each interview covered were: length and location of detention, description of a typical day in detention, description of some protest actions participated in, description of protest actions not participated in, participant's thoughts and feelings about different types of protest and whether and how this changed over time, communication and discussion between detainees (both within each detention centre and between centres), purpose and meaning of protest, intended audience of protest actions, and the participants' thoughts and feelings about detention itself and how this changed over time. Interviews generally covered these areas through free-flowing conversation without the need for me to ask specific questions, though towards the end of each interview I did check through my list of themes to make sure each area had been covered.

Analysis

Following a phenomenological method, all recorded interviews were transcribed and then themes identified. Phenomenological research is an inductive method – that is, it seeks to build theory from the information gathered, in this case, the testimony of people involved in protest, rather than apply pre-existing theory to a data set. As such, I did not have a pre-existing set of themes that I looked for within the interview transcripts, rather I read and re-read the transcripts frequently throughout the course of study. This process of theme identification is consistent with inductive research methodologies.

Inductive analysis means that the patterns, themes, and categories of analysis come from the data; they emerge out of the data rather than being imposed on them prior to data collection and analysis. (Patton cited in Srivastava and Hopwood 2009, 77)

This process enabled me both to identify themes and, to develop and enrich these themes through an iterative process of persistently revisiting detainee testimony looking for repetitions, connection within and between testimonies and between testimonies and theoretical literature (Atkinson and Delamont 2008). A theme was identified and pursued if it was repeated frequently, if it was discussed by several participants, if it related to the research question and, if it provided a basis for developing theoretical insight and a contribution to understanding refugee resistance (Bryman 2012, 580).

The themes identified in this process went on to form the structure of this thesis, with each theme forming a separate chapter. The themes identified are; ‘human rights and humanity,’ ‘daily resistance and power,’ ‘escape,’ ‘riot,’ ‘bodily protest (self-harm, suicide and hunger strike).’ Sub-themes of ‘identity’, ‘media’ and ‘reading Australian politics’ were also evident and are addressed in relation to the major themes outlined above.

The themes identified from interviews then guided my search of existing academic literature as I sought to analyse the transcripts using inductive rather than deductive processes. Several theoreticians (notably Hannah Arendt and Michel Foucault) and theories have been drawn upon in this work, with each framework adding a layer of insight into understanding participants’ lived experiences and the meanings they attribute to their experiences in a broader social and political context. This makes the research relevant beyond the individuals interviewed for this project. Where possible, third party accounts of identifiable incidents (such as a particularly large group hunger strike in Woomera in 2002 or a mass break out from Woomera in 2000) have been included to assist with contextualising and strengthening the argument. I have also incorporated first-hand participant and observer accounts of detention and protest already available in the public domain, such as testimonies reported in *Human Rights Overboard* (from the People’s Inquiry into Immigration Detention), Australian Human Rights Commission reports, Senate and other government reports, United Nations reports and published collections of detainees’ writings such as *From Nothing to Zero* (Burnside 2003). Much of the publicly available accounts of detention and protest by detainees not interviewed in this work closely reflect the thoughts, feelings and meanings of those discerned in the interviews, indicating that the propositions presented here have relevance beyond the anecdotal.

Chapter 5: We are human! Re-humanising human rights

Respect. Just respect. When someone respect me I respect him, because the respect it's belong just to human. Animal won't respect you, animal will obey you, because you feed them. They don't know the respect. They walking with you, dog walking with you, suddenly without 'excuse me' he just pee in the road. But a human, it's the respect between each other. So when we say that we are human – show some respect. That's it. (Osman)

A recurring theme among refugees interviewed was a desire to be recognised as human. Embedded in these calls was both an appeal to a shared or universal humanity and an implied belief that human status entails a guarantee of a minimum standard of treatment and an implicit acknowledgement of a human rights framework. Sometimes, respondents made overt pleas to human rights as a way to improve their situations, while at other times the inference of human rights was less explicit. Although some participants in this research did have extensive knowledge of formal human rights systems, the discussion of humanity and rights by most of the participants seldom arose from a substantive knowledge of international human rights laws and systems. Detainees nonetheless found human rights to be a powerful language for articulating matters of injustice. Every person interviewed in this research complained of feeling dehumanised and unrecognised in detention, with some comparing their status to that of animals, inanimate objects or death. Osman expressed his frustration at being reduced to a status lower than an animal;

When officer call me '0276', I said 'Oh God! I've got name. Your donkey, er your dog and your cat has name. I'm a human like you. Don't call me by number.' (Osman)

While detainees' physical survival needs were met in detention through the provision of shelter, food and clothing, the testimony of former detainees supports a position that human life entails more than physical survival. Human life entails an existential aspect that cannot be reduced to mere biology and that distinguishes humans from animals. Detainee cries of 'we are human' were appeals for recognition of these

existential aspects of humanity. Former detainees interviewed in this research, regardless of the extent of their knowledge of formal human rights systems, shared an unshakeable belief that to be human, at least morally if not legally, entitled them to certain rights.

This chapter uses Hannah Arendt's work on the human condition and human rights to explore the understandings of human rights evident through detainees' protests and narratives.

Dehumanising Categories

They could call me Sam or whatever, but they call me ERA23. OK, it's me. They wrote the number when we were in Ashmore Reef, the first day, the navy, the soldiers, that's what they have done. That was the first thing we seen on the Australian soil. They came to us and wrote the number here on the left hand side (points to his left arm). So the first day we been in Australia we been numbered. (Ibrahim)

The project of modernity seeks to know the world. It rests upon a belief that the world is knowable and that certainty can be established through the systematic application of reason. According to Bauman (1991), a central aim of the project of modernity is the 'eradication of ambivalence.' Categorisation, which refers to the identification, labelling and classification of all earthly matter, is perhaps the one key strategy in this eradication of ambivalence. Ambivalence, or the 'possibility of assigning an object or event to more than one category' (Bauman 1991, 1) causes discomfort and anxiety and so is experienced as disorder. The drive to categorise the world is a drive to 'know' the world and to increase our feeling of being in control and to feel safe in the world. 'To classify, in other words, is to give the world a *structure*: to manipulate its probabilities' (Bauman 1991, 1) and to increase human mastery. Ambivalence, Bauman (1991, 2) contends, reminds us of the impossibility of complete mastery and so is experienced as threat and 'everything that could or would not be defined' must be suppressed or eliminated (Bauman, quoted in Parekh 2004, 42-43). Asylum seekers are not known at the place and time of their arrival,

creating an ambivalent situation. Their arrival has not been previously authorised and, thus, risks exposing the fallacy of an entirely knowable world.

The process of labelling and categorising is a necessary step in turning the ambivalent into the certain, and so the Australian government's first response to the arrival of a boat has been to label the boat, usually using three letters (such as DON, or ANA), and the people on board, using numbers. Then each person is allocated an identification sequence. This sequence started with the first three letters of the government-ascribed labelling of the boat on which they arrived, thereby identifying a sub-category within the larger category of 'unlawful entrant,' and was followed by two to four numbers to identify the individual within the sub-category, without recognising his individuality in a meaningful way. Asylum seekers were subsequently treated according to this categorisation of 'what' they were, which is unlawful entrants. For instance, the government proceeded to publicly announce the arrival of '73 unlawful entrants,' categorising the people onboard into a clear definition of 'what' they are (unlawful entrants). The use of figures and bureaucratic language is intended to reassure the Australian polis that the world remains certain, organised into manageable categories and safely under bureaucratic control. This 'reception' and categorisation then framed all treatment that followed until the person was able to win reallocation to another category, that of 'refugee'. This process of categorisation, which numerically identifies each separate body, akin to samples in a scientific laboratory, while simultaneously denying any individual distinction, was explained by Baha'adin; 'It was numbers. We had numbers, we were just numbers. No names, nothing.'

Hannah Arendt makes a distinction between 'what' and 'who' a person is (Arendt 1958, 179). A person may be identified and placed into certain categories, such as woman, Jew, Muslim, or boatperson, from externally observable characteristics such as dress, appearance or context in which she is encountered, such as on a small, overcrowded boat off Australia's northern coastline. However, that person can only reveal *who* she in particular is, through her own speech and action, including her unique biography and her opinions, hopes, fears, loves and beliefs. The individual characteristics that distinguish each unique person can only be discerned through the revelations of that person, gained inter-subjectively through interaction and

engagement on a basis of equality. The ‘what’ of a person can only ever be an approximation of humanity, consisting of stereotypes or categories into which individuals are grouped with little or no regard to the uniqueness of each specific person. To treat a person according to ‘what’, rather than ‘who’, she is, dehumanises the person. She is denied the opportunity to reveal her unique self to the world and is denied entry to the public sphere as an initiating and equal person, *vita activa*, and reduced to a representative sample of the category into which she has been placed:

If a Negro in a white community is considered a Negro and nothing else, he loses along with his right to equality that freedom of action which is specifically human; all his deeds are now explained as ‘necessary’ consequence of some ‘Negro’ qualities; he has become some specimen of an animal species called man. (Arendt 1976, 301-302)

It is, according to Arendt, a distinguishing human characteristic to be able to reveal a unique and distinct self to the world. When treated primarily or only as a representative of a group, in this case ‘boatpeople,’ a person’s humanness is not recognised, their ontological equality is denied and they are reduced to a state of animal biology. If a person is recognised in the common world (public sphere) merely as a representative of her group, as a specimen, she holds no specific value as an individual and her life becomes unimportant and potentially superfluous. Detainees interviewed in this research understood and felt this lack of individual recognition keenly. Dr Aamer Sultan commented;

That’s one of the arguments I used to leave with many Australians outside, that the government are doing that now to people who are in detention, outsiders, migrants, Arab, Muslim, it doesn’t matter. What guarantee that they won’t do the same to someone else outside? Started with the homeless people, the Aborigines in a way. (Aamer)

Aamer could see that when experienced only as a representative of a group, such as ‘Arab, Muslim’ he didn’t matter and was interchangeable with ‘homeless people’ or ‘Aborigines’. They all were individually unrecognised and therefore superfluous.

Emad expressed a similar concern. He complained that in detention there was no attempt made by the authorities to discern any individuality, but that instead ‘detainees’ were treated as just that, detainee, regardless of any individual distinction;

Not all people are the same. Mentally, some of the people can cope with the circumstance there. Some of them, the majority of them – especially kids and women – cannot. So the management and the immigration didn’t take into consideration that the people are different. They behaved in a one rough manner, one rough standard towards all of the people, and that’s completely wrong. You’re being tough to everyone. You have to understand every person’s need – or try to understand. Even if you fail, try to understand. Try to take some effort to understand. That we couldn’t see, we didn’t see at all actually. We just saw some, a very hard-line treatment and it was typical every day, every morning, every night. *They didn’t try to investigate what’s in our hearts or mind. And we believed that humans can, actually can, reach to the hearts and minds of the other humans* [emphasis added]. But unfortunately it wasn’t the case at that time.
(Emad)

Ibrahim expressed a similar frustration when he said ‘It’s wrong. But for us, we been just all same. Refugee or criminal or whatever – you the same. Like the children, women, anyone.’ Ibrahim complained that any individual speech or action in detention was not recognised and had no impact on the way in which he or his fellow detainees were treated. He, and those detained with him, had been categorised as ‘unlawful entrants’ and would be treated accordingly until a Department of Immigration official advised of his re-categorisation as ‘refugee’. The sameness about which Ibrahim, Emad and Aamer complain is defended by the Department of Immigration as ‘equality before the law’ and non-discrimination; that all people who arrive by boat will be detained until a determination is made about her claim, and that the same process is applied to all. Yet this principle, designed to protect the equal dignity and worth of all individuals regardless of status, birth, achievement or other characteristics, functions in this setting to dehumanise through the aggregation

of individuals into categories and the application of the same rules to all regardless of individual health, biography, fears, resilience or need.

At heart, it was this bureaucratic dehumanisation, the strategies and practices of detention and refugee assessment, during which time people were not recognised as unique individuals, but treated according to their categorisation as boat people, that the insistent cries of 'we are human' struggled against.

Some Problems with Human Rights in Modernity

Human rights are commonly spoken of as a body of jurisprudence – the laws, treaties, declarations, legislation, judicial decisions and official comments of national, regional and international bodies. Following World War II, these formal legal human rights systems have grown in scope and depth as the Western world, in particular, has sought to overcome the horror and shame of two world wars causing unprecedented destruction and the Holocaust, in which modernity's eradication of ambivalence was taken to its logical extreme. In a well-intentioned, but perhaps too hasty, effort to ensure such events would 'never again' occur, the world, dominated by Western victor nations, developed the United Nations and a series of declarations and treaties to create legal human rights protections.

The reason that this effort may have been too hasty is because, in the determination to build systems aimed at preventing a recurrence, some fundamental paradoxes and tensions within human rights discourse were left unaddressed. Principal among these tensions is that human rights are conceived of universally, but international systems are built upon national sovereignty. The global human rights system constructs human rights as claims belonging to the individual and made against the state in which they were born or hold citizenship. Paradoxically though, it is precisely at the moment when the relationship between individual and state ruptures, or when the state itself collapses, that human rights are both most needed and cease to exist in any enforceable, tangible form of protection for human life (Arendt 1976, 302). Arendt considered that this paradox (and others) may well be irresolvable, but she saw a protection in the effort of active engagement in the *idea* of human rights, as well as in wrestling with the dilemma and the ontological issues made evident in times of crisis.

Serena Parekh notes that, since World War II, ‘the ontological dimensions of human rights have been ignored largely in favour of the juridical’ (Parekh 2008b, 12). This has two particularly important effects relevant for this study. The first is that human rights become the field of the expert, such as the lawyer, diplomat and bureaucrat. Technical and expert juridical knowledge is required for an opinion to carry weight and the voices of the non-expert, including those most at risk of human rights violations, are relegated to the margins, devalued and discredited as personal opinion (Foucault 1997, 7). The second is that the process of institutionalising human rights has imported fundamental and unresolved paradoxes while simultaneously divorcing human rights from its philosophical and historical roots. The result is that human rights takes on the status of legal orthodoxy and ‘common sense’, assuming a place in the ‘natural order of things’ and becoming protected from critique. Protecting human rights from critique however, does not help the human subject of human rights in the moment of rupture between citizen and state, when someone becomes simply and only a human being and must look to the international human rights system for protection (Arendt 1976, 293-297). It is at this moment that the ‘human’ (rather than human-citizen) realises the material implications of a purportedly universal system enacted through state sovereignty. A continued focus on institutional rights, without a critical reappraisal of its philosophical, human roots is unlikely to lead to systems which better achieve their well-intentioned universal aims. Protecting human rights from critique does nothing to protect *human* rights.

Human rights are, for Arendt, a human construction and, thus, continued human engagement with the concepts, limitations and possibilities of human rights enliven human rights and create a political space based on plurality, which can be understood as incorporating difference, equality and inter-subjectivity. It is also in this space that hitherto subjugated and discredited voices, which represent the many rather than the experts, can enter the public debate as political equals because pluralistic knowledge is valued (Arendt 1958, 1976; Baldissoni 2010; Foucault 1997).

Arendt called for a revived attention to the human subject of human rights, asking who it was that human rights seek to protect. There is a risk of fixing and essentialising humans in any attempt to identify what features or characteristics are the ‘human’ characteristics that distinguish humans from other species. Anyone who

is deemed not to possess or display these characteristics can be classified as non-human, pseudo-human, quasi-human or some other lesser category (Ife 2010; Rorty 1999). Any list of human characteristics will necessarily reflect the subjectivities of the compiler, privileging a particular view-point at high risk for all others. Those categorised as pseudo- or lesser-humans can then be treated with disregard and violence without implicating the fully-human perpetrators in any ethical wrongdoing. Richard Rorty (1999) points to Serb torture and murder of Bosnians, to the holding of slaves by the drafters of the US Declaration of Independence, and to the continuing subjugation of women the world over, as examples of the dangers of attempts to define 'human'.

An increased awareness of the subjectivities involved in such an exercise may account, in part at least, for the avoidance of such dangerous philosophical territory in modern human rights frameworks. A converse risk however, is that abandoning discussion of 'human' entirely does not result in universal human rights, but leaves a system of human rights which continues to rest upon a foundation of the autonomous, rational Enlightenment man. Human rights then inherit the subjectivities and limitations arising from a global system based on this temporally, culturally and geographically specific abstraction of 'man', while also precluding discussions with ontological implications resulting in a collective blindness to important paradoxes. Arendt (1976) warned that continuing to speak of human rights as universal and inalienable, while they are in fact national and contingent, seriously undermines any modern human rights regimes. Her challenge and her contribution, having shown the clear alienability of rights, was to stimulate and participate in a political discussion (in the Ancient Greek manner) about the human condition and human rights (Arendt 1958; 1976).

And so, it is with an awareness of the problems and dangers in such an exercise, but compelled by detainees' cries of 'we are human', that I turn now to a discussion of Arendt's theories of 'the human condition' and human rights and map detainee testimony alongside Arendt's thoughts, in order to argue for fluid and un-institutionalised conceptions of some universal human traits which can be helpful in forming a basis for human rights beyond nationality and other constructed divides.

The Right to Have Rights

Arendt conceived of human rights in two groups. Civic rights are ‘all those rights which require the protection of a government’ (Parekh, 2004, 41), which includes all the rights contained in international human rights treaties, such as the right to adequate food and shelter, the right to vote, to education, to freedom of movement and so on. Prior to this group of rights however, is the right to have rights, which she defined as the right to ‘a place in the world which makes opinions significant and actions effective’ (Arendt, 1976, 296). Speech and action, Arendt contended, are fundamental dimensions of the human condition and distinguish us from other animals. We work because we must eat and have shelter, or we can escape work by compelling others to work for us, such as in the case of a slave holder, without losing any fundamental aspect of our humanity (Arendt 1958, 176). But if we are deprived of the opportunity to speak and act, and to engage with other human beings on a basis of political equality, we are denied an essential aspect of our humanity. Speech and action become meaningful only when they are recognised by others, and this recognition of our words and deeds conveys and constitutes our equality and our membership of a polis.

Conversely, when our speech and actions are ignored by those around us, we become a non-person and we have no impact on the common world, which is the political world beyond the private sphere of family and close personal relationships that makes up our political selves. In this case, one’s self as an equal member of human society is denied. It was precisely this non existence that Sam referred to when he said that ‘People’s situation in detention was that you were the lost person, the forgotten person, you don’t exist, you cannot change anything and you have no power over anything.’

Arendt termed this status, people existing outside any polis which recognised and claimed them, as ‘absolute rightlessness’. The right to have rights arises from and is entirely contingent upon acknowledged membership of a political community and the fundamental recognition which comes with this. A person may have certain civic rights such as freedom of belief or speech or movement, but still remains fundamentally rightless;

There is no question that those outside the pale of law may have more freedom of movement than a lawfully imprisoned criminal or that they enjoy more freedom of opinion in the internment camps of democratic countries than they would in any ordinary despotism, not to mention in a totalitarian country. But neither physical safety – being fed by some state or private welfare agency – nor freedom of opinion changes in the least their fundamental situation of rightlessness. The prolongation of their lives is due to charity and not to right, for no law exists which could force the nations to feed them; their freedom of movement, if they have it at all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool's freedom, for nothing they think matters anyhow. (Arendt 1976, 296)

Belonging to a political community and participating in the public life of that community is, for Arendt (1976, 297), a fundamental aspect of the human condition and human rights conceived outside of a specific and particular community cannot exist in a tangible form that is able to actually guarantee the rights it expresses. Arendt's conception of human rights arises from her conception of the human condition, which is distinguished from gods and beasts by our capacity for action and our existence in plurality, for 'no human life, not even the life of a hermit in nature's wilderness, is possible without a world which directly or indirectly testifies to the presence of other human beings' (Arendt 1958, 22). It is a 'fact that men, not Man, live on the earth and inhabit the world' (Arendt 1958, 7) and that, since Aristotle, humans have been 'defined as . . . commanding the power of speech and thought, . . . and as the "political animal" . . . one who lives in a community' (Arendt 1976, 297). Being a 'political animal' is not the same as being a social animal, which requires individuals to live together for procreation or more effective hunting strategies or any other labour which increases the chance of survival of the species. Politics has an added existential depth and involves the capacity to organise and create a world of human affairs, which Arendt (following the Ancient Greeks) termed the *human artifice*. It is this that distinguishes humans from other animals (Arendt 1958, 22-25). Therefore, the loss of a political community means the loss of not only specific rights, but the loss of recognition and therefore of 'some of the

most essential characteristics of human life' (Arendt 1976, 297). This loss of a political community means the loss of the right to have rights.

The Human Condition as the Basis for Human Rights

In order to understand how the loss of recognition in the public sphere equates to the loss of humanity and the right to have rights, it is necessary to look in greater detail at two key aspects of Arendt's conception of the human condition; first, the human need for meaningful speech and action and, second, plurality, which consists of equality and distinction. Constructing public spaces and processes which enable meaningful speech and action within a framework of equality and distinction can then be used as an ontologically stable basis for human rights.

Meaningful Speech and Action

As discussed earlier, Arendt identifies meaningful speech and action as fundamental both to a human existence that is beyond life as a biological specimen of the species man, and also as a necessary condition for a life which is 'fully human' and enters the common world as an equal. It is through individual speech and action, recognised and judged by others, that each individual human being reveals her unique and distinct self to the world:

In acting and speaking, men show who they are, reveal actively their unique personal identities and thus make their appearance in the human world, while their physical identities appear without any activity of their own. . . . This disclosure of 'who' in contradistinction to 'what' somebody is – is implicit in everything somebody says and does. It can be hidden only in complete silence and perfect passivity (Arendt 1958, 179).

But a life of silence and passivity is, according to Arendt (1958, 176) 'dead to the world; it has ceased to be a human life because it is no longer lived among men.' So actively participating in public life, not just belonging to a community, is necessary for human life to be distinct from 'mere bodily existence,' and it is through meaningful engagement with others as equals that human life distinguishes itself. Ismail remarked that if he had not protested against the regimen of detention, but

instead had silently and passively accepted his position, he would cease to be alive in any meaningful sense:

Because if I didn't do those things, nothing different between me and this table. With me? I got a soul. I got a mind. I got thinking. While this table . . . of course, I wouldn't stay like that. (Ismail)

Sayed expressed a similar opinion when he explained why he and others took action against detention; 'That's what happens, that's the main purpose everybody do what they do. Otherwise there is no difference between the live and the dead you know. Otherwise I could be dead – nothing.'

When someone's speech and action are not recognised, her speech and actions are made meaningless and she is treated and judged, not according to *who* she is (through her words and deeds), but according to her membership of a particular category of person. This refusal to recognise someone's individuality, her unique distinctiveness, is a refusal to recognise a fundamental aspect of her humanity and is profoundly dehumanising.

When Arendt speaks of the individual, it is not the pre-existing abstract autonomous individual of Enlightenment thought, upon which modern politics and modern human rights are based, but rather, she is referring to an ontologically intersubjective and interdependent individual. 'The self for Arendt is the self of a human community that is formed through and cannot exist without interacting in the world' (Benhabib, quoted in Parekh 2004, 52). The power of speech and action is not only a capacity for self-revelation, consisting of the disclosure of a pre-formed and complete self to a waiting world, but is simultaneously self-constituting, for it is through our interaction with other unique and distinct people, as well as through their speech and actions and their responses to our speech and actions, that we develop our own thoughts, beliefs and opinions, forming the basis for further speech and action. Humanity is fundamentally plural and plurality is both an inescapable and a desirable dimension of humanity.

Plurality: Equality and Distinction

Plurality, according to Arendt, paradoxically consists of distinction and equality, both of which have been alluded to here, but which require a little further exploration.

For Arendt, humans share certain essential characteristics, in particular the capacity for speech and action, which is the capacity to initiate, discuss, change and initiate again. Unlike the potentially homogenising force of universalist or essentialist arguments, that have arisen from the project of modernity to eradicate ambivalence and to ‘fix’ the world in knowable and manageable categories¹⁴, Arendt’s ‘human condition’ is based on distinction, both of humans from other animals and of every human from every other human. ‘We are all the same, that is, human, in such a way that nobody is ever the same as anybody else who ever lived, lives, or will live’ (Arendt 1958, 8). Every human is different and distinct, though we all share the capacity to initiate, to create, to think, speak and act, and these capacities are core to human life. Therefore, being ‘deprived of the right to utilise these capacities deprives us of something fundamental’ (Parekh 2004, 46) because the self is created interdependently with other selves and yet remains distinct and unique. No two people who inhabit this earth are ever absolutely identical and it is through the insertion of the individual self in the common or public world that each of us contributes to the human artifice, which constitutes the common world and ourselves at the same time. Therefore, failure to recognise an individual’s distinction is a refusal to permit them entry to the common world and denies them a fundamental aspect of the human condition. Expulsion from the polis is a form of civic death and is dehumanising, as the expulsion or refusal of recognition reduces the individual to an interchangeable, indistinct specimen of a category or group. Therefore, distinction, but also recognition of that distinction, is essential for justice and human rights.

This discussion introduces the element of *recognition* and its importance for human life. Arendt defines this term as the recognition of an actual individual person, and

¹⁴ Elizabeth Grosz gives an excellent account of the risks for the other in essentialist and universalist discourses in her essay ‘Sexual difference and the problem of essentialism’ in Clifford, J. And Dhareshwar, V. (Eds.) 1989. *Inscriptions*. Centre for Cultural Studies, UCSC: Santa Cruz.

not the abstract 'man' that forms the basis of modern codified human rights laws. The concept of recognition also introduces the necessary tandem element of plurality, which is *equality*. *Equality* does not refer to the equal distribution of material goods, nor to an abstract equality inherent in the human condition, but equality is a political decision of humans and is the basis for politics shaped by justice, rather than societal organisation based on coercion or force:

We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights. Our political life rests on the assumption that we can produce equality through organisation, because man can act in and change and build a common world, together with his equals and only with his equals.' (Arendt 1976, 301)

Detention life was marked by inequality. Osman described that at times there would be critical incidents in detention, such as physical confrontations between detainees and guards or protests staged by detainees, but that the lack of recognition shaped every day in a multitude of mundane events. Osman told how he would sometimes try to speak with the guards but;

They don't talk, the guard never open personal matter. Never. They don't talk to you. For example, I'm bored, I want to practice my English. There is an officer sitting there smoking. 'How you going mate? How's your day?' Just say 'Just keep distant.' Like they been trained that we are a number. Even if they speak English, they are a number. (Osman)

He went on to say that one guard, an older man, was a 'nice guy' and who explained to Osman that 'if you meet me outside, I will be different person, but that's my job. Please understand these things?' Similarly, Baha'adin described that the daily treatment in detention 'shows how they didn't respect us. Like they didn't give a damn about us, you know what I mean?' Inequality and a lack of recognition of detainees' basic humanity shaped interactions between detainees and officials, and was reinforced through every aspect of detention life. Food was raised by almost every person interviewed for this research. Osman expressed the poor food as an

issue of inequality. He complained to the detention manager and said ‘the way you eat in your home, bring it to us.’ Most people expressed the lack of equality and rights as a lack of respect. Ibrahim, when asked what he needed to feel human responded;

To be respected as a human. To be treated as a human. So you can feel your humanity and dignity. It’s very important. It’s very simple too. That’s what we were asking for and unfortunately, we didn’t find it. We found the opposite thing, which is they treated us as an animal, and maybe even the dog.... because the manager of the camp has a dog, and I think the dog, he was luckier than me. Seriously. (Ibrahim)

Arendt considered that respect is an essential foundation for politics that is based on mutual equality rather than coercion or force. She described respect as a public sphere sentiment that acts as a basis for human relationships, similarly to the way in which love binds relationships in the private sphere:

Yet what love is in its own narrowly circumscribed sphere, respect is in the larger domain of human affairs. Respect, not unlike the Aristotelian *philia politikē*, is a kind of ‘friendship’ without intimacy and without closeness; it is a regard for the person from the distance which the space of the world puts between us, and in this regard is independent of qualities which we may admire or of achievements which we may highly esteem. Thus, the modern loss of respect, or rather the conviction that respect is due only where we admire or esteem, constitutes a clear symptom of the increasing depersonalisation of public and social life. (Arendt 1958, 243)

In this light, the respect which Ibrahim and others (see for example Osman’s quote at the opening of this chapter) said they needed in order to ‘feel human’, can be understood as a demonstration of their ontological equality and their belonging in the community. As we are intersubjectively and interdependently constituted selves, a widespread lack of respect in the public sphere can easily lead to civic death, or what Sam described as being ‘the lost person, the forgotten person, you don’t exist.’ A

refusal to be lost or forgotten, a refusal to accept their civic non-existence was a major motivation in much detainee protest action.

Human Rights as Mutual Guarantee

Arendt's understanding of equality as a human decision and a human construction marks another ontological departure from modern human rights orthodoxy. The universal human of the French *Declaration of the Rights of Man and Citizen*, the American *Bill of Rights* and the United Nations' *Universal Declaration of Human Rights* is 'born equal'. The risk of such a conception of equality, as somehow inherent in God, nature or man, is that no human action needs to be taken to ensure equality (Parekh 2004, 49). Without such human engagement and a conscious promissory decision to ensure equality and, therefore, rights, inequality, exclusion, injustice and rightlessness are sure to result. Without equality as a foundational precept, human interaction is organised not by politics, which Arendt understands as 'the right to develop an opinion and test it on an intersubjective basis' (quoted in Parekh 2004, 47) in the public sphere, but by force. Arendt points to historic events (the French Terror and the Holocaust are two powerful examples) as confirmation of the consequences of human abrogation of responsibility for equality and rights. Equality is both a necessary pre-condition for politics and a result of human political action.

It is our uniquely human capacity to guarantee one another equality and recognition of distinction that forms the only meaningful basis for realisable, enforceable human rights. According to Arendt, and demonstrated through historical events, human rights are not inalienable, and pretending that they are founded in god, nature or 'man' is not a stable basis for rights because it denies the political reality that humans can be stripped of all rights if excluded from the guarantee. Human rights only exist when actual people decide that rights are important and make a promise to one another to guarantee 'mutually equal rights'. Shahin identified this mutual guarantee as an essential aspect of 'being human':

It is a very tough question, you know I don't know. That's a route and road that I am travelling along, to be fully human person. That's what I *wish* to become, so... there are very simply rights that we would like

to have as whoever that we are. And I think that if I allow other people to have those rights as well, then I am human enough. There are a lot of things that I want for myself as a writer, as a existent being that I would like to have and if I allow you to have those things as well, then I think we become more human. (Shahin)

This mutual guarantee may be realised through the construction of a law, but law is not the same as the promise. Rather, the law will collapse if the promise is withdrawn. This was demonstrated in Germany through the progressive stripping of Jewish rights by the Nazis through a series of legislative changes, before marching Jews off to the gas chambers (Arendt 1976, 296). Hitler's claim that 'right is what is good for the German people' (Arendt 1976, 299) was a vulgar expression of what is demonstrably true, that is, when the will of the nation (the people) is at odds with the laws of the state, the will of the nation will always emerge triumphant. So the guarantee of human rights can, and necessarily must be laid down in law, but this is insufficient in itself. Law and politics should not be confused, nor politics reduced to bureaucratic administration of laws (Arendt 1958, 23-24). Laws are a strategy by which the guarantee of rights is enacted, but to understand laws as equating to rights is potentially dangerous because it allows us to neglect our determination to live together in plurality. The development of laws cannot reliably protect humans' rights if they are not underpinned by a collective agreement that the rights of these specific people ought to be protected. For example, Australia's introduction of the policy of 'excision', arbitrarily removing territory from Australia's 'migration zone' through legislative amendment specifically to ensure that asylum seekers arriving in excised zones could not trigger any legal rights mechanisms, demonstrates the dominance of the nation over the state and the contingent nature of 'inalienable' human rights.

As human rights exist only as a result of human decision, expulsion from a community willing to protect one's rights means expulsion from the right to have rights, and therefore, any prolongation of life is due to chance or charity, not right. The rightless then, need to be able to either form their own political communities that are willing and able to ensure one another human rights, or gain admittance to another polity if their right to have rights is to be restored. Arendt (1976, 300) contended that simple humanity, being identified as 'nothing but human,' was an

insufficient basis for claiming tangible human rights. Arendt argued that the spectacle of Europe's Jews, stripped of their national identities demonstrated that 'the world found nothing sacred in the abstract nakedness of being human' (Arendt, 1976, 299). However, for asylum seekers in Australia's detention centres, 'simple humanity' was all they had. Having been stripped of all citizenship rights, they could not claim their rights as Iranian or Iraqi or Afghan citizens. They arrived in Australia in their 'naked humanness' and so needed to use this human status as a way to insert themselves into the polis, to insist that their speech and actions be meaningful. Interviewees for this research confirm much of Arendt's theory – that rendering speech and action meaningless is dehumanising, that we can only be fully human among others who recognise both our distinctiveness and equality, and that human rights rest upon human decision. However, I depart from Arendt slightly, in that refugees in detention were able to use their 'naked humanity' to create a place in the world where their speech and action were meaningful. In saying this, I do not entirely dispute Arendt's position, as the right to have rights has not been entirely realised for asylum seekers in Australia. It has been realised on an individual basis by most, but not all, asylum seekers who have arrived here by boat over the last fifteen years, largely by winning re-categorisation as a 'refugee' and thereby being formally admitted to the polis.

Rights of asylum seekers arriving by boat remains a highly contested issue and provokes passionate responses from a wide range of views. The majority opinion in Australia remains that asylum seekers fall outside the community and therefore outside the mutual guarantee of rights. Therefore, their rights remain very limited and, to that extent, simple humanness has been insufficient as a basis upon which to claim rights. It is possible that this has remained so because asylum seekers have been effectively dehumanised, not only in terms of their own experiences of a public political self, but also in their representations in the Australian community. Successive governments have maintained detention as a foundational policy and have maintained tight control over the information flow into and out of detention centres. Most Australians have only indirect experience of asylum seekers and rely on media representations in order to form their views (Klocker and Dunn 2003). This media representation is heavily influenced by government public relations efforts and closely reflects government positions and, further, only infrequently conveys the

direct voices of individual asylum seekers (Mares 2001). As such, asylum seekers remain ‘abstract’ human beings rather than distinct individuals. Attempts to overcome this abstraction and explain their unique and distinct situation and the reasons for their actions (including arrival by boat and protests undertaken in detention) were a major aim of many protests (see Chapters 6-9 for examples).

Regaining the Right to Have Rights

Asylum seekers in detention, having been stripped of their rights through their expulsion and denationalisation, realised the importance of membership of a political community for their human rights. As such, they used their human capacities to gain entry to a new political community and to restore their rights. This was done in multiple ways simultaneously, including:

- through the formal bureaucratic procedures of the refugee application process;
- through strategic engagement of the legal system (committing crimes to be brought before the courts); and,
- through attempting to open direct communication channels with people outside detention and to appeal to people’s consciences for recognition as fellow human beings.

Detainees also formed their own alternate political communities within detention centres. Relationships, discussions and protest actions served to reassure individuals of their own capacity for agency and of their own humanity.

While they were in detention, asylum seekers were engaged in the refugee status determination process. They put forward their claims for refugee status, participated in interviews, appealed negative decisions through administrative and judicial means, and attempted to make the set procedures for formal entry to the polis work for them. There is much to research in this process alone, however, this particular study is looking at the extra-procedural efforts of detainees to be restored to a position of rights-bearing human beings. I turn now to the extra-procedural strategies for regaining the right to have rights.

Rights as a Criminal

The importance of agency, which is the human capacity to initiate meaningful action and speech, can be seen through people's actions beyond formal bureaucratic procedures. Asylum seekers in detention realised that as asylum seekers they had no particular status and had very limited protections through the law, but that as criminals, they could access more rights. Emad explains;

Moreover we, let's say in the criminal justice system and the civil law system here, you have a right to see let's say your lawyer to talk about legal let's say aspects of your case. We didn't have the right at that time. The side that have the capability, the determination of giving you the right to see your solicitor is the immigration department and the ACM. And I think they abused it at that time. We didn't have a frequent, regular access to the legal system in this country, and that's another frustrating thing that really pushed the refugees to demonstrate against this case. (Emad)

Issaq, who was held in a different detention centre, reached the same conclusion;

Well yes, there is a criminal in here but there is some Criminals Right Act that someone would come and say 'well under criminal laws you shouldn't treat them like this'. In Australia criminals have rights of education, criminals have rights of phone, criminals have rights of communication, criminals... You have rights. Even though you are a terrorist, you still have rights. It doesn't matter how bad you are. That's how we got motivated. I mean, okay, we are bad, we are terrible, but we still have rights and we want that rights even if it's a right to a newspaper or a TV or communication, some forms of communications, we should have that right and we need that right.

(Issaq)

By committing a crime, such as escaping from detention or damaging property, asylum seekers/detainees attained a legally recognised status within the polis. This status of criminal meant that access to communication, legal representation and a range of minimum standards of treatment became a matter of right rather than

discretion. It also opened a forum for them to speak, in which their words were afforded a more equal status with those of the government. When brought before a court, asylum seekers had the opportunity to explain their own actions and to argue on a more equal footing with government explanations of detainee protest. As a person charged with a criminal offence in a court of law, the anonymous abstract asylum seeker became a specific individual with a name, a reason for his/her actions and a political opinion that, even if refuted, had to be engaged with in a substantive manner (Chapters 7 and 9 address this in more detail).

Arendt theorised that criminals, although enjoying less freedom of movement, actually have more *rights* than ‘free’ refugees:

The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective. Something much more fundamental than freedom or justice . . . is at stake . . . when one is placed in a situation where, unless he commits a crime, his treatment by others does not depend on what he does or does not do. . . . They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion. Privileges in some cases, injustices in most, blessings and doom are meted out to them according to accident and without any relation whatsoever to what they do, did, or may do. (Arendt 1958, 296)

While classified as asylum seekers and nothing else, people’s treatment was dependent on charity (or lack thereof) and not right, and so was vulnerable to whim. Mohammed explained that the first time he participated in a protest was after watching ‘the not well behaving of officer to the kids ... I see one officer in the kitchen throwing the apple, that didn’t give the apple to kid, little Afghani girl, and she cried and they told “she didn’t say me please”. I was so, so cross.’ Being deprived of rights meant that the company running detention centres was able to make up rules arbitrarily and asylum seekers had no public space in which to challenge these rules. Dr Sultan understood that many of the rules he and others were forced to comply with had no basis in law. He began to challenge the guards; ‘Is that

law or is that like a local law you made it?’ However, any challenge from asylum seekers remained in the private sphere, due to their lack of formal status in the polis and the lack of any enforceable instituted mechanisms for asylum seekers to insert their voices into the public sphere, except by committing a crime. Sam (whose experience in court is covered in detail in Chapter 7) discovered this when he was charged and convicted with a criminal offence. In court, he was able to speak publicly about the conditions in detention and the treatment meted out to asylum seekers. After serving three months in prison, he returned to detention ‘so brave’ and felt much less intimidated by threats of legal punishment from the detention centre manager because he ‘was really getting confidence in the court. You see a lot of justice in the independent court rather than the immigration court.’ What Sam termed *justice* was a place in which he was able to explain his own actions and have his words taken seriously. Committing a crime restored asylum seekers, at least partially, to a position within the polis as distinct and equal human beings. Chapter 7 discusses the greater rights that detainees achieved through committing a crime and gaining legal recognition as a ‘charged person’.

Direct Communication Beyond the Bureaucracy

Asylum seekers in detention were aware that they were isolated from the community and that they were being represented to the community by the government as different, as dangerous and threatening. Emad explained that,

it was very hard for us to change the image that the government gave about us to the external world. Just psychologically you get really frustrated when you think that oh the people that I will meet outside think that I’m a different person, you know I’m a primitive, I’m criminal, you know. It’s very, very sad actually. But if you’re inside the detention centre and let’s say you have no access to legal system, you have no access to the media, you cannot talk to the management there, you cannot talk to the immigration department there, you don’t have the ability to explain yourself. (Emad)

Establishing direct lines of communication with members of the Australian community was a high priority for asylum seekers, both in terms of a strategy

towards regaining rights and in terms of creating a political space in which their words and deeds were meaningful. Speaking directly to members of the polis was a way of inserting themselves into the polis, regardless of any formal entry procedures.

After his release Shahin urged people he met to,

write letters to people in detention centres. Get in touch. There is a wall the government has created. And this wall needs to be chipped away from both ways. People from inside are doing their way, for you really the best way is to get to know them. As long as that wall is there the government can do what they want. And once it is broken or has holes in it, then it's very hard. (Shahin)

He was convinced that with direct communication, 'people could see a human face behind the kind of stories that they had heard or they had seen on the TV. It was very different to be that close.' Shahin's comments reveal an Arendtian understanding of the political sphere, a common space in which people can come together and develop and test their opinions with one another on an equal basis and where membership is confirmed not through formal citizenship, but through recognition of one another displayed through engagement with one another's words and deeds. This draws on Ancient Greek conceptions of politics as a realm in which individual, mutually constituted human beings come together and build a common world, and not on the understanding of politics as the formal mechanisms of state such as representation, voting and administration, nor as the technocratic organisation of work which needs to be done to most efficiently meet basic survival needs or to achieve some other particular end. Politics is the realm through which humans present themselves to the world *qua* human and constitutes the space for 'appearance' as equal and distinct individuals.

Formal political mechanisms of state are based on representational politics, and asylum seekers had no representative in this realm. They astutely worked towards reaching out to people outside detention as 'fellow human beings'. Mohammed explained that 'the problem was because we saw a lot of things government accuse us, abuse us and a lot, in the TV and we want to tell "we are here, we are human beings, we're not more than anything, just we are same as you."' Issaq hoped that the

protests would open up a space in which he and other detainees could ‘just reflect our feelings to another human being, just to see us not as a danger but as another human being who escaped from danger.’ Many of the protest actions aimed at either directly, or through the media, asking ‘ordinary Australians’ to recognise their shared humanity, both their general sameness and distinct individual identities.

Detainees needed to find ways to speak for themselves if they were to be able to find a way into the Australian polis. Osman used to write notes and put them inside tennis balls and throw them over the fence at Port Hedland detention centre in the hope that someone would find them and read the letter inside. Most asylum seekers detained for long periods had Australian pen pals who they could write to and express themselves, and many of these letters have been collated and published in several books as collaborative efforts to increase the public reach of asylum seeker voices (Burnside 2003; Keneally and Scott 2004). Sam and Sayed both used to call talkback radio stations to explain riots or escapes or simply to counter government media releases about the very good standards of treatment and facilities in detention. Asylum seeker efforts to find a way to speak publicly belie an understanding of Arendt’s contention that speech must always accompany action, as without self-narration, actions lose their ‘revelatory character’ (Arendt 1958, 178). When hundreds of detainees broke out of Woomera detention centre in June 2000, Ibrahim and others took the opportunity to speak publicly to gathering media and to Woomera townsfolk. ‘So we start to talk, we start to express what, why we have done this. We want the people to understand. We are here, we don’t want to harm anyone, we just want our rights’ (Ibrahim). Protest actions were a way to prise open a space in the polis in which asylum seekers could speak and thereby participate in the human artifice and so restore some of the essential characteristics of the human condition; recognition of one’s speech and action as distinct and equal human beings.

Asylum seekers protested as a way to speak for themselves and to speak to other human beings as fellow humans, rather than people acting in a bureaucratic role, such as the older guard described by Osman above. Whenever they had the opportunity, asylum seekers spoke about the injustice inside detention, expressed their feelings of despair and pleaded to be recognised as human. These messages

were heard by an ever increasing number of people in the general public who recognised the detainees as fellow human beings and felt compelled to act in solidarity with detainees to restore their rights and status as fully human. This phenomenon challenges Arendt's belief that a global 'humanity' is an insufficient basis upon which to base rights claims. It is perhaps a precarious one, in that the general public do not have the same direct access to formalised power in the way that legislators and politicians do, but people were able to mobilise and use their power as citizens, whose speech and actions are thereby meaningful, to contribute to several changes both for individual refugees and to the system itself. Asylum seekers' pleas to be recognised as fellow human beings relied on a belief in human conscience and the capacity of all people to think and make moral judgements. Osman explained that after release he spoke with a passerby at an anti-detention rally who had made a disparaging comment about 'boat people'. Osman shared his story with the passerby and explained why asylum seekers come and how they are treated in detention. He then implored the man to 'Use your brain. Judge. You know? Who was in wrong, who was in right?'

Although Arendt rejected bare humanity as a stable or sufficient basis for achieving rights, it was the only basis available to asylum seekers in detention and, through their actions, they were able to form relationships with people outside detention and make their words and deeds meaningful.

An Alternative Polis: Mutual Recognition among Detainees

Asylum seekers in detention, denied formal entry to the Australian polis, formed their own political communities inside the detention network. These smaller communities may not have had the capacity to ensure people's civic rights in the manner of a nation-state, but they nonetheless established a basis for protecting individual human dignity against the complete denial of the official system. Through protest, asylum seekers were able to experience their own agency and offer support and recognition to one another. Sayed explained that;

You gain self confidence because in the environment you are in, you are depending for everything and you abide by the rules so, you have to do like they tell you to do. They set the time for food, you don't

have control on anything. When we do something like that, at least we, we, it's like a self-independence type of thing. That's what happens. That's why we protest like, because you are achieving something, even though you're not, in the short term, yes you are, but in the long run you won't, but still you will say, you will gain the self confidence. (Sayed)

Osman expressed a similar sentiment when he said that 'after a protest I would feel proud of myself. Cos I did something that every free man would do. You know? You are not dead body. You are human, you have got dream.'

If thinking only in terms of formal nation states as political communities, it is easy to become alienated and disempowered. The recognition that political communities can take many shapes is crucial for maintaining one's agency, engagement and humanity. Detainees sat together and analysed their situation, their place within Australian politics, possible actions they could take, the ethics and efficacy of different actions, and how to create ways to speak directly to the Australian public. These communities extended beyond individual relationships and individual detention centres, and across language, religious and ethnic divides. Within these communities, detainees addressed each other by name and their opinions were made significant, at least at a very local level through a shared sense of solidarity and belonging. These political communities reassured detainees that they mattered:

A lot of things for other people we done as well to show the support to other things, people that look out at you, 'you are not alone, don't kill yourself. We help you out. We try to help you as well', yeah plenty of things. . . . they were doing it as well for me too. (Baha'adin)

Emad saw this interconnectedness not only as situational interpersonal care, which is a matter of the private realm, but as fundamental to politics based on mutual respect and recognition, and to the human condition:

So we all try in this world to do something better, because I can't live this life by myself without seeing you smile in this world, because I'll be frustrated at that time. You know I want to live with other humans

who are happy. And I want to see them, you know, achieve their goals in this life. (Emad)

Conclusion

Detainees pleaded for recognition as fellow human beings. As Emad put it ‘I’m not a perfectionist, I’m not calling for 100%. I need the minimum when someone treats me as a human, not like an object inside the detention centre.’ Detainees sought to restore their rights by gaining formal entry to the Australian political community through both formal refugee applications as well as committing crimes. In parallel to using rights-based institutional mechanisms for restoration of the right to have rights, detainees drew on moral and philosophical discourse of human rights, centring on the ‘human’. To be stripped of rights is no distant or academic experience; it is intensely intimate and is at once both personal and political. The protests and actions of refugees in detention were aimed at ‘us’, as actual people, and they were intended to trigger a sentimental, human response and so to insert the asylum seekers into the polis, in the absence of bureaucratic recognition, through human-to-human recognition. Arendt’s model of human rights, as arising only from human determination, carries with it the realisation that we have the power to affect human rights and to decide who falls within the mutual guarantee. Detainee actions demonstrated an understanding of this and pushed for recognition by the Australian community beyond the legal and bureaucratic systems enacted. Detainees may be granted a visa and with it, certain legal rights based on re-categorisation as a ‘refugee’, but achieving the sort of human rights that Arendt discusses, of belonging, equality and distinction, relies on deeper political (in the Ancient Greek sense) recognition. Shahin expressed it beautifully:

You see, Lucy, it is a massive thing to live with the title of ‘refugee’. Which is something that you are bestowed on, you didn’t choose it, you didn’t pick it, you thought you are making a freedom of movement to get out of a problem that you are in, and now you are in another type of trouble and there is a title for you to carry on. It is very understandable that a lot of people don’t want to be called by that title and as soon as you go out, that’s the first thing that you get. Not many of us feel comfortable with that, but some of us feel like, I don’t know,

I would like to... this is something that is on me now. I would like to define it the way that I fulfil it. So yes, I'm a refugee, I'm from Iran, but I'm a human being with these passions, these emotions, this laughter and these crying moments. You know, like any other human being. And that is the way that I am that refugee. (Shahin)

PART TWO

FIELDWORK

Chapter 6: Power and Resistance: Everyday Resistance to Immigration

Detention

I clearly stated that from now on I'll work hard to try to break the system. (Aamer)

Conceptualising Power and Resistance

One of the most significant inheritances of Foucault's body of work is a shift in the way power is conceptualised. Foucault destabilised orthodox understandings of power and convincingly mapped the ways in which power functions as a dynamic flowing through all social relations. His reconceptualisation of power radically altered understandings of power, undermining didactic models which seek to identify who 'has' power and who does not, fixing and polarising actors into 'powerful' and 'powerless'. Foucault expressed doubt about commodified understandings of power, a paradigm with roots in the Enlightenment, particularly in social contract theories, and the Industrial Revolution. In this framework, power can be understood as an entity in its own right and can be individually held, traded, apportioned, taken or won. This power-as-commodity formulation is influential today and many theories of justice (and strategies for improving justice) are concerned with competition for power, redistribution of power, or convincing those with power to deploy it in a just manner. Foucault's body of work cuts radically through this by conceiving of power, not as an entity, but as a force and as coming into being when it is exercised.

Throughout his work, Foucault resisted any absolute or generalisable definition of power and, in fact, rejected the question 'What is power?', preferring instead to address questions of how power functions, what mechanisms enable power to be enacted, and what are the effects and relations of power in society (Foucault 1997, 13-16). Foucault acknowledged that power can be oppressive and repressive, but extended this by discussing power as a dynamic force pervading all social relations, enacted through language, naming, institutionalisation, knowledge production, theorising, and through all social interactions. Power here may be repressive, oppressive, constitutive or constructive, but it is, he contended, always productive. Power produces the subject and the social world. Important here, is that power produces resistance (Foucault 1976, 95).

Foucault proposed that, ‘power must be understood as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organisation; as the process which, through ceaseless struggle and confrontations, transforms, strengthens or reverses them’ (Foucault 1976, 92). In this model, power is not to be found in one exclusive seat within one sovereign entity, but in the exchange and the struggle *between* people, ideas, institutions. ‘Power is everywhere; not because it embraces everything, but because it comes from everywhere’ (Foucault 1976, 93). Taking this conceptualisation of power, asylum seekers are, from the moment of arrival, and through the act of arrival, at once exercising power and engaging in a power struggle with Australia, which continues throughout the ensuing period of detention. In opposition to Agambian scholars (for example, see Crowley-Cyr 2005; Zannettino 2008), who theorise that asylum seekers in detention camps are reduced to ‘bare life’ and reduced to the *Muselmann*¹⁵, which is defined as the body in complete submission, upon which the state can exert its sovereign power unfettered, the meeting of state and asylum seeker does not actually produce a defined seat of power and a passive subject respectively, but in fact, an unequal power relationship shaped by struggle for dominance and subjugation.¹⁶

The relationship established between state and detainee is marked by a cycle of struggle, power and resistance. Most writing on the topic focuses on the greater power of the state and seeks to map this power through the actions of the state to inscribe its sovereignty on the body and civic status of the asylum seeker (Maley, 2003; Pugliese 2002; Tazreiter 2006). However, this addresses only one aspect of the power relationship and results in a tendency to politically eviscerate the asylum seeker further. It may equally be conceived that the originating act, which is the

¹⁵ The term *Muselmann* was used by concentration camp inmates to describe fellow inmates who had lost ‘all consciousness and all personality’ (Agamben 1998, 185) and who were consequently indifferent to all around them, whether pangs of hunger or cold, beatings from guards or approaches from fellow inmates. The *Muselmann* was described by Primo Levi in his account of his own experiences during World War Two, *If This be a Man*. Agamben takes Levi’s figure of the *Muselmann* to explore the ambiguous philosophical terrain in which ‘life’ and ‘death’, and *zoē* (‘the simple fact of living common to all living beings’ [Agamben 1998, 1]) and *bios* (living proper to an individual or group’ [Agamben 1998, 1]) become indistinct.

¹⁶ Some people in detention did collapse into a state which might resemble Agamben’s *Muselmann* (Shayan Badraie, whose story is partially told later in this chapter, is a dramatic example of this). But when such collapses occurred, others around the person rallied and exercised their own power in many different ways on behalf of the *Muselmann*. There is an insufficiently critical acceptance of representations of detainees as ‘passive victims’ and the dominance of this view, particularly among refugee supporters, serves to further mask the agency of the majority of detainees who resisted throughout and beyond their detention.

initial force that establishes the relationship, is initiated by the asylum seeker as he/she arrives. The state then responds by deploying its greater political and material force to reassert its dominance, to subjugate and control the asylum seeker. Prime Minister John Howard's now (in)famous statement, 'We will decide who comes to this country and the circumstances under which they come,' was a *response* to asylum seekers arriving by boat. And so, a cycle of action and reaction, force and response is established. The exertion of sovereign power is provoked by the action (power) of the asylum seeker and it in turn creates, not submission, but resistance.

Detainees are not submissive recipients of state power, they are 'never in a position of exteriority in relation to power', they are 'always "inside" power' (Foucault 1976, 95) as they are in a relationship with the state and power is present in all social relations. Power is produced by and in turn produces social relations. Once power is understood as a dynamic force created through social relations, it can no longer be spoken of as a monolithic entity to be deployed by one actor upon another, but rather, requires a new framework for thinking, new theory and new language that is a language of movement, flow and struggle. As power is a force produced through social relations, it follows that 'where there is power, there is resistance' (Foucault 1976, 95). Power relationships require power *and* resistance in order to exist:

Their (power relationships) existence depends on a multiplicity of points of resistance... These points of resistance are present everywhere in the power network. Hence there is no single locus of great Refusal, no soul of revolt, source of all rebellions, or pure law of the revolutionary. Instead there is a plurality of resistances, each of them a special case: resistances that are possible, necessary, improbable; others that are spontaneous, savage, solitary, concerted, rampant or violent; still others that are quick to compromise, interested, or sacrificial; by definition, they can only exist in the field of power relations. But this does not mean that they are only a reaction or rebound, forming with respect to the basic domination an underside that is in the end always passive, doomed to perpetual defeat (Foucault 1976, 95-96).

Detainees were engaged in a power struggle with the Australian state, with those who guarded them, with the bureaucrats sent to categorise and regularise them, and with their construction as a threat, a non-citizen and therefore a non-person. This struggle did not occur because they needed to seize some of the state's power for themselves, but because they were already *within* the power relationship and had to respond to its force upon them, through submission, transformation, subversion or resistance. The struggle was, and remains, multifaceted as detainees resisted the omnipotent technologies of control that constituted daily life in detention, struggled with the bureaucratic (legal) strategy of refugee status determination (another technology of the state to rationalise and regularise the asylum seeker and through that, its own sovereignty) and with cultural and semiotic processes which functioned to dehumanise them and force them into archetypal categories, principally 'prisoner' or 'patient', both of which construct them as 'powerless,' awaiting some act of state to be re-humanised.

Resistance was not unitary, centralised or institutionalised, there was no 'mother-strategy' nor a central organising committee. Rather they (resistances) were 'mobile and transitory . . . producing cleavages . . . that shift about, fracturing unities and effecting regroupings, furrowing across individuals themselves, cutting them up and remoulding them, marking off irreducible regions in them, in their bodies and minds' (Foucault 1976, 96). It is more helpful to speak of 'detainee resistances' than 'Detainee Resistance'. While some actions were planned and coordinated within and across different ethnic groups and different detention centres, detainee resistances are better understood as mobile and transitory instantiations of individual and collective action and reaction 'incapable of unanimity' (Foucault 1997, 8).

This resistance may take many forms, not all of which are readily recognisable as resistance, but which nonetheless seek to subvert, disrupt or manipulate the state's power. Detainees in Australia's detention camps engaged in daily acts of resistance. Some had explicit political consciousness, such as the example of a detainee digging his own grave and constructing a headstone with an epitaph reading 'the tomb of WMA 2065' (see figure 12), and some did not, such as when parents attempted to smuggle food out of the dining room so that they had something to offer their child in the night time. Politics and power infused every aspect of detention life, and every

act that departed from compliance and submission became political, whether that act sought to confront, transform or elude sovereign power. At risk of contradiction, but following Foucault, even acts of submission could be strategic acts in the power struggle, gaining a tactical collusion to gain some brief advantage, such as a



Figure 12: A political act of resistance: the self-dug grave of a detainee with the epitaph reading 'the tomb of WMA 2065' (Anonymous source).

cigarette lighter, an apple, or a hoped-for-debt across the divide. Even what looks like submission to a bystander may not be a *Muselmann* collapse.

Although all forms of resistance were important and need to be acknowledged and recorded, this study focuses on acts undertaken with political consciousness and an awareness of strategy, in keeping with the primary research objective of identifying and examining detainee consciousness in resistance.

Conceptualising Detainee Resistances

Resistance performed dual functions for detainees. It was a means in pursuit of tangible outcomes and also had an existential function, providing a way to exercise and experience agency within a highly controlled environment (Carlton 2007). Most resistance actions operated simultaneously on both levels, though there are some examples where either no demand for change was made or where the expressed demand was so unlikely that the sought-after outcome was the protest itself. Drawing on primary sources from interviews with former detainees as well as secondary resources addressing detainee resistance, the following matrix may be helpful for thinking about detainee resistance. These categories are falsely simplified and should not be read as 'truths', but simply as vehicles for organising ideas and actions.

Tangible Functions

Much detainee resistance was outwardly aimed, that is, there was a specific external target audience and/or goal that the protest sought to achieve. This may be further broken down into two categories: actions which were targeted at achieving specific material changes, such as getting a light bulb replaced in a room, getting increased access to telephones or calling for the release of all detainees. These actions were directed primarily at those with explicit power over the detention environment, comprising government officials and security guards. Other forms of resistance were aimed, not at government or others directly involved in detention, but at the broader population, both Australian and international, seeking semiotic change in order to effect their representations and position in Australian politics. The target audience of these latter protests was the Australian community. These protests were typically made through the media, but also through refugee supporters outside, and aimed to disrupt and unsettle government accounts of their presence in Australia and their actions in detention and to insert their own narrative alongside their own actions. Detainee resistance marked a refusal to allow official government or bureaucratic explanations of their presence and actions to go unchallenged.

My analysis is less concerned with whether these objectives were actually achieved or not, than with the attempt. It is through detainees' exercise of power and engagement in struggle that agency is revealed, which in turn challenges the passive victim archetypes too often ascribed to refugees and which also enlivens and problematises theoretical debates about 'human', 'refugee', 'power' and the modern state.

Existential Functions

The detention centres were extraordinarily controlled environments, where communication, food, activity, movement and information was tightly regulated and monitored. Detainees had little opportunity for participation in decision making, either at the mundane level of deciding what to eat, or in more fundamental matters such as education, work or political status. Resistance was an important way for detainees to experience their own agency, to take a decision not to eat the food on offer, or to create a disturbance and force a response from authorities such as through self-harming or breaking a piece of camp infrastructure. The aim of the protest was

less about achieving a change to their environment and more about experiencing self. Sam explained this eloquently:

People's situation in detention was that you were the lost person, the forgotten person, you don't exist, you cannot change anything and you have no power over anything. So, self-harm in most cases wasn't a planned thing. It was in most cases out of frustration and it was good in a way that people feel they are real again, they exist, they have power over something – their body. So, blood always has a very powerful message and when people see they can get over their fear and do something, certain thing, harsh thing, they come back to that colour of existence . . . I have power. I can do things. So I was calling that self-actualisation. (Sam)

The framework of understanding resistance as externally (goal) oriented, seeking both material and semiotic change, while also serving an existential purpose, will be used alongside a Foucauldian construction of power and resistance to explore some of the multiple acts of resistance taken by detainees across the detention network.

Detainee Analyses

Whether a particular instance of resistance was externally or internally oriented, prior to any strategy came analysis. As stated elsewhere in this thesis, detainee resistance was too readily explained by government representatives as arising from the inherent criminality or barbarity of the detainee, and by many refugee supporters as arising from the utter despair and hopelessness of the detainees. Both explanations mask the consciousness of the actors, resting instead upon pathological or primal drivers to action and fail to recognise the political agency of the detainees. Detainee leadership and resistance was not always organised in ways familiar and recognisable to the Western eye, there were no formal committees, nominated group representatives or coalitions formed around fixed ideological positions. However, it would be erroneous to conflate the lack of Western-style political structures and organisations with an absence of political consciousness.

Detainees spent considerable time and energy ‘reading’ Australian culture and politics and seeking to understand their position within the new political environment. As the asylum seeker’s arrival can be seen as an exercise of power, so too was their refusal to passively accept the analysis and position given to them by the government, guards and media. This wasn’t always easy to do. Sam, who spent three years in Perth, Port Hedland and Curtin detention centres explained that with one television set for at least one hundred people ‘it wasn’t easy to grab news. It was difficult to convince people who were very tired and they want to watch something entertaining and to just switch to the news,’ but that he would explain to people that ‘this is really good for us to watch the news and know what’s going on.’ Detainees engaged critically with their environment and whatever information they could access and used this to build their own world views and to determine for themselves their social positioning.

Detainees’ access to information was almost entirely mediated through either mass media, including newspapers and television, or contact with government officials and guards. It is important here to note that, while there are discernable commonalities of critique, these critiques were neither universal nor static. Different people held different views, the same people changed their views as they accessed more information, or interpreted information differently, or experienced changed subjectivities, such as the emotional changes that occurred as initial detention became longer term. One of the disciplining technologies of the state was to present asylum seekers as a dehumanised, undifferentiated, homogenous mass. But life is more complex than that and, in reality, there were ruptures, divisions and differences within the detainee groups. Nonetheless, four threads of analysis emerged consistently throughout interviews with former detainees. First, those in separation detention, without access to television, newspapers or telephones, believed the camps were secret. Then, once people had access to communication, people made three more analyses, which consisted of the belief that they were being portrayed as illegal invaders and a threat to Australia, the belief that there was political capital in their suffering for the Coalition government, and the belief that their suffering was meant to be a deterrent to other prospective asylum seekers. These four analyses, along with other critiques, opportunity and emotion, formed the basis for strategy.

Secret Camps

While people were held in separation detention they were denied access to television, newspapers, telephones and all forms of contact with the outside world and with detainees who had access to communication. Separation detention typically lasted a matter of weeks, but for a significant minority of detainees, the process lasted months. Unsurprisingly, many detainees formed the view that the detention centres were secret camps, not known about by ordinary Australians. Issaq was part of a group who had been held in separation detention for several months. The group had grown tired of waiting for a resolution to their situation and began to discuss forms of protest. He relayed one such discussion among detainees:

There was politicians inside detentions and the Iranian politicians who said ‘this place is a secret and when it is a secret, it’s bad. They don’t want public to know about it’. I mean he was politician. Because some people put their arguments in that ‘if you use violence it’s going to be negatives and people don’t like it,’ all this sort of thing. He said ‘if people knew about detentions, detention wouldn’t be 500k away from a city. It would have been inside a city if people were supporting it. But people are not supporting it. It’s something that people don’t know about. Now we just need to make sure that they know.’ (Issaq)

Some detainees were concerned that the use of violence or aggression would be counter-productive, but Issaq and the fellow detainee he quoted argued (incorrectly, as he was to later discover) that the detention centres were secret and this analysis underpinned their position that violent protest was warranted. He went on to explain that through committing a criminal act, they hoped to be brought before the courts and to be able to access rights as criminals:

Well yes, there is a criminal in here but there is some ‘Criminals Right Act’ that someone would come and say ‘well under criminal laws you shouldn’t treat them like this.’ You know what I mean? We don’t care. Okay, we are criminals but there is an Act. In Australia criminals have rights of education, criminals have rights of phone, criminals have rights of communication. Criminals – and he knew it, he had studied in England, in the UK in Oxford at the university and he was

graduated from there. He knew all the westerns. He had a great understanding of the culture and the law and how the westerns works. I mean, in Iran a criminal doesn't have any rights. If you are in jail you don't have rights, you know what I mean? But he knew that here is not like that. You have rights. Even though you are a terrorist, you still have rights. It doesn't matter how bad you are. That's how we got motivated. I mean, okay, we are bad, we are terrible, but we still have rights and we want that rights even if it's a right to a newspaper or a TV or communication, some forms of communications, we should have that right and we need that right. (Issaq)

The detainees concurred with Hannah Arendt that the status of 'criminal' contains more protection than the status of 'refugee'. With the status of 'citizen' beyond their immediate reach, the detainees were determined to re-enter the public sphere, to no longer be held incommunicado or hidden from view, and committing a criminal act was, in their analysis, an effective vehicle for gaining some recognised status in the polis. The detainees' analysis that their presence was unknown and their status undefined, underpinned decisions about strategy.

Asylum Seekers Portrayed as Criminals, Terrorists and a Threat

Once people had been moved to general detention, with at least some access to television and telephones, they were able to see how they were being presented in the media. All participants in this research told of being shocked, frustrated and angry about being portrayed as 'illegals', criminals and as threats to society. Emad spoke of his frustration at the popular portrayal of asylum seekers:

It was very hard for us to change the image that the government gave about us to the external world. Just psychologically you get really frustrated when you think that 'oh the people that I will meet outside think that I'm a different person, you know I'm a primitive... I'm criminal,' you know. It's very, very sad actually. But if you're inside the detention centre and let's say you have no access to legal system, you have no access to the media, you cannot talk to the management there, you cannot talk to the immigration department there, you don't have the ability to explain yourself. (Emad)

Baha'adin said that he felt 'more angry and upset' when he 'was watching the news on there and I heard that Phil Ruddock was saying "these people are very dangerous people and they are terrorists" . . . He used us a bit of propaganda like "they are dangerous people, they are terrorists" or "they are criminals" and things like that.'

Realising that they were already presented as violent and dangerous was a key issue in discussions between detainees about protest actions. Some, like Sam, maintained throughout several years of detention that it was imperative that violence was never used. He cautioned fellow detainees that 'the government could take some advantages with some of the bad protest and make bad publicity for the refugees. I was fearful that it's going to make majority Australian people hate us even more.' Sam believed that it would be too easy for the government to take footage of a noisy protest or one where violence was used and use it to reinforce its position as protectors of the Australian people against a threatening invader and that he 'didn't want to help the government do what they wanted to do.' He argued that Australians 'don't justify violence in any way . . . regardless for the best reason in the world. . . . You don't get heard and you lose your credibility.' Dr Aamer Sultan held a similar view to Sam and did not participate in any violent protests during his three years in detention, but looking back on the course of events he was less resolute in his objection. He said that he was 'very unhappy' about how 'the media had shown those aggressive criminals' but that in hindsight,

it was a positive thing. . . . At last the government did the mistake of transferring the camera into there, let the people know at least there are some people there – I mean it's just the beginning of questioning 'Who are those people. We don't know about them. We worry about them. Criminals or not, even the most dangerous people in the world, or maybe the other way around, we just want know about it.' It's just the fact that this has transferred the argument from a faceless people into actual people doing something bad or good, it doesn't matter.
(Aamer)

Issaq argued that the remoteness of the camps meant that any protest action had to be newsworthy in order to get media to come. He believed that getting the media to come was more important than concerns about how their actions might be portrayed because to be invisible carried more risk than ‘bad publicity’:

Peacefully doesn’t answer anything because there is no journos here. We need to get journos here and how we can do it just go to a town and sit in there until journos gets here? Or just burn the place down and the smoke will bring journalists, you know? That became the main point just to get the journalists coming there, to make a scene, have a story for a TV or radio or newspaper to put that budget for journalists to fly in there and see us because they had to come from Adelaide and it was like 500k away. So they needed a good story. People sewing their lips in detention was a good story or people burning down the centres was a good story, even though it was relative. But it was getting into a media. ... We didn’t care about negative publicity. We just wanted to get people to come to detentions and sit. (Issaq)

‘How to reach the media’ was detainees’ ‘biggest question’ according to Emad and everyone that I interviewed. How to get the media to come, what sort of message to portray to the media and whether the risk of reinforcing the dominant government narrative about detainees’ inherent criminality and barbarity was outweighed by the need to raise awareness of their situation in detention centres was hotly contested among detainees in all detention centres.

Political Capital and Deterrence

The final two threads of analysis common across all interviews were that detainees saw that they were being used as pawns in Australia’s national politics, in particular, that there was political capital for the Coalition government in their suffering and that their suffering was intended to be public and to act as a deterrent to prospective asylum seekers overseas.

Ibrahim believed that detention was ‘a plan to punish these people to be honest. This plan has been well managed by someone with high authority in the hierarchy to punish these people and to make them a good example for others ... people are gonna think twice before they come to here.’ Osman reached a similar conclusion, saying, ‘John Howard and other minister mention many time that they keep us to send a message to the smuggler, to other people, don’t come to Australia,’ and Mehdi also stated that,

we were the victim of Australian policy to just stop people coming illegally or something. We were the victim and they wanted to show people that we keep them... It’s not a matter of ‘what’s your story or what...?’ it’s just ‘keep that person.’ That’s it. They needed to keep some people... for a long time to say that ‘We are strong against these people’. (Mehdi)

This analysis is important because once people had determined that their fate rested not on an individual assessment of each person’s claims, but on national political interests, detainees lost faith in the official systems and began to consider alternate actions to resolve their situation.

Emad also saw that prolonged detention was not, as the government stated, non-punitive administrative detention, but was a punishment for arriving unlawfully and a means of deterring those who might yet come. He added to this that the theatre of detention gave material proof of the government’s strength and resolve to protect Australia’s borders and that this was a deliberate strategy to retain government:

Their intention was to give a real strong lesson to the outer world not to come to Australia, okay, by restraining us a group. It’s just a misfortunate incident, bad timing for us. Someone wants to give a lesson to the whole world through us. They wanted to say, ‘If you come to Australia that will be your destiny. You will be treated like this.’ *So, we are subjected to a political, not legal, pressure – a political pressure that the government, at that time, needed to get votes from the ordinary Australian people* [emphasis added]. And that’s what I think happened. In reality one of the main aspects for

John Howard election – and he won the election at that time – is that he used immigration as a pressure point, as an element in his campaign to defeat Labor. So we were the source of this election campaign... Unfortunately they didn't look at us as humans in need for their help. They looked at us as a human that they can use in their election to win and to prevail. And I think that's completely wrong.
(Emad)

Emad was highly critical of this political strategy, labelling it as Machiavellian because the government's focus was on retaining power, regardless of the human cost. 'This way of thinking was really belonging to 300 or 400 years ago of political thinking... Whenever it's good for them, for the votes, they take it. They remind me of the old monarchs in France – Louis XIV and XV and XVI – where just the power was all what they think of, you know.' Emad insightfully identified several key issues in Australian politics at that time. As a lawyer with an interest in human rights, Emad recognised that the Coalition's focus on retaining power over-rode two centuries or more of developments in political thinking and systems, that individual rights were secondary to maintaining a strong state. He also identified the difference between legal 'pressure' and political 'pressure' and that the lack of hard law enforcement mechanisms in international law made asylum seekers' legal rights subservient to national political agendas. This analysis implies that Emad should have turned to political rather than legal strategies to insist on the rights of detainees, but he did not. Throughout his eight months of detention, Emad consistently discouraged fellow detainees from protest, he was determined that 'the law will rule in the end . . . from the head of the states to the normal people.' Not long after his release a group of detainees broke out of Curtin IDC and protested outside the fence. The protest received extensive media coverage and soon after, greater numbers of people began getting visas and were released from detention. Emad believes the escape caused the acceleration in processing:

I think it was a big scandal to Philip Ruddock government in front of the international media, and the international reputation of Australia was the main element to think about. Seeing refugees who are being, let's say more than one year in the detention centre without their application being processed, and suddenly they broke out, they left,

they jumped over the fence and the media started to cover this in the news. I think that's what pressured the government to release bigger groups. Otherwise I don't think they would release them . . . It shouldn't be this way. (Emad)

A common critique among detainees was that the government was determined to stop asylum seekers coming and to retain power. The government viewed asylum seekers not as individual human beings with rights, but as criminals who had offended against Australia's sovereignty. Government ministers felt no ethical or moral discomfort in using detainees as a means to their own political ends.¹⁷ Reaching this realisation was key in shaping detainees' compliance with detention and refugee status determination systems and underpinned discussions about resistance and strategy.

Strategy

While there was a high degree of agreement between detainees about analysis, there were far more divisions and disagreements about strategy. Several people interviewed were opposed in principle to the use of violence as outlined by Sam above. Others, such as Issaq, remained convinced that spectacle (which often involved violence) was a necessary ill to make their voices heard. Still others, such as Osman, argued neither for nor against violence, but simply saw it as an inevitable part of the dynamic between officials and detainees, 'You push me, I push you. That's the way everywhere it works, you know.'

Strategy sits between analysis and objective, and is designed to achieve particular ends and shaped by each person or group's analysis of the situation and their ethics and belief systems. I have divided the aims of resistance into two categories: externally oriented and internally oriented. Externally oriented actions were aimed either at exerting pressure on officials with direct power over detention and detainees to achieve a particular material change, or at the broader Australian and international community to achieve semiotic change of detainee representation and understanding of their circumstances.

¹⁷ Some government backbenchers, such as Petro Giorgio and Judi Moylan, were an exception to this but there was no public discomfort expressed by government Ministers.

Through their resistance detainees showed inventiveness, ingenuity, creativity, courage and determination. They employed a broad range of strategies including work strikes, sit-ins, letter writing campaigns, smuggling information and items in and out of detention centres, launching legal actions, lodging official complaints, hunger strikes, self-harm, unauthorised communication, both between detention centres and also between different compounds, particularly with those in separation detention, formed alliances with activists outside detention, staged roof top protests, damaged detention infrastructure (such as smashing light bulbs, stealing a guard's walkie-talkie), rioted, escaped, spoke to visiting politicians and other officials, engaged in civil disobedience, art work, theatre and calling in to talk-back radio shows to name just some. One man interviewed even applied for the job as detention centre manager:

They were having a problem to get a detention manager. Always tried change this one, that one, you know, acting all the time. I said OK, why not? I have a lot of experience, I been here four years, I know all the rules. I write my credentials and send it to them. (Sayed)

Damaging detention centre property was widely believed to be an effective strategy for achieving an immediate and specific individual change such as getting access to a dentist or getting a paracetamol tablet. Sayed explained that, 'if you ask for the request – you don't get it, but if you shout and do something, break something up, you get all these things done.' Salah reported a similar belief; 'I mean after two or three years we found out, after all these experiences and stuff people they're breaking things and eventually they got visa. Or they hang themselves, they cut themselves, they get visa. What's happening? What's going on?' Osman thought that, 'the ACM organisation wanted that things to happen, cos if you smash one lamp, they charge the government treble.' All agreed it was a more effective strategy of getting simple needs met than the official system of request forms.

Most actions, though, were not targeted at government officials or ACM guards, but instead aimed to achieve semiotic change, to insist on a political voice for detainees and a place in the polis. As identified by Foucault (1976), resistance by marginalised

and subjugated voices is mobile, transitory and fractured. The relative consensus discernible in detainee analyses is not present in strategy. I will make no attempt to unify what was never unified and will instead outline some different examples of strategies used by detainees to change their own and others' detention.

Sam and Shahin

Sam and Shahin met in Curtin IDC in 2001. Sam had already been detained for more than one year in Perth and Port Hedland detention centres as well as in a WA prison following conviction for leading a breakout from Port Hedland in June 2000 (see Chapter 7 for more detail on this action). Shahin had been detention for eleven months in separation detention and he met Sam when he was transferred to the main compound. He described meeting Sam:

Oh that's the first time to meet Sam and Sam's wealth of knowledge. Oh, Sam! He knew everything and everyone... Perhaps that's why we have stayed such close friends after all these years because I think we could read something together that was beyond those four walls. I don't want to discredit anybody else in that. There were other people who did a magnificent job as well, but... I think myself and Sam just hooked up at the best time... and it was a magnificent partnership.
(Shahin)

The two men shared a similar world view, a commitment to nonviolence and a firm belief that the struggle was political and semiotic. They shared a need to convince the Australian people that asylum seekers were no threat and to win support in order to force a change in government policy. During his time in several places of detention, Sam had developed a good network of contacts and allies outside detention. He was informed one night that a commercial television news crew would be visiting Curtin IDC the following morning and that this would be the first time that media was permitted into the remote detention centre. Sam was determined to seize this opportunity to get a message out to the Australian people, although he was also concerned about the risk of footage being presented as confirmation of the violence and threat of asylum seekers.

Sam was acutely aware that the ‘Australian government tried to create an environment where the Australian people knew these people are so violent and to be fearful of them. A protest to me wasn’t a violent act, it was the available peaceful option that raise awareness or just raise the voice of justice.’ Sam thought carefully about who to involve and,

called for a meeting with the people that I knew were going to understand the sensitivity of the situation... And trying to find the right person to come up with ideas so I was really pleased with Shahin. He’s an artistic person, he came up with brilliant ideas. It was fantastic to work together, to get something meaningful done. ...We didn’t sleep that night, we just work.’ (Sam)

Sam, Shahin and a few other detainees sat up all night discussing this opportunity and planning their action. They decided that movement and chanting could too easily be construed as a security risk and the media visit would be immediately terminated, or that any footage of adults chanting and marching could be reported as threatening or violent behaviour. Shahin explained that,

we could see the way that Philip Ruddock was portraying us, so that was a small opportunity for us to show this is the way that we are... (we were) sitting down and thinking ‘How can we send that message out? What we really would like here?’ It was giving a true face to what we were, but in a very small window of opportunity. (Shahin)

The final plan was to stage a series of silent protest actions in different sections of the detention centre so that wherever the media were taken they would see powerful symbolic messages. They needed more people than their small group to effect the action. Sam said that they were ‘selective first to convince people that can convince other people’ to join in this carefully choreographed and highly disciplined protest.

Two main actions were planned for the following day. A fellow detainee who ‘look like Jesus... he was with long hair and green eyes’ (Sam) was draped in a blanket with ‘Sharing, Caring, Brotherhood’ written on it and posed by a fence as if crucified on the cross. He was under strict instruction not to move. Anticipating that the

Centre Manager would quickly move the camera crew on to the school, the detainees planned another protest there. The men invited some children in on the planning group and asked them what message they would like to give the outside world. The men then sat up all night painting A4 size posters with slogans and drawings such as ‘we hate cage’ (with a picture of a bear in a cage), ‘we like to go to school’ and ‘we want to play’. Twenty five children were recruited to hold these posters and to pull them out when the camera crew came. Adults near the school were given strips of material from torn up bed sheets to tie around their mouths and to stand perfectly still and silent. The bands were to show ‘that they can’t speak, it doesn’t go anywhere... If we talk it shows us a violent people so we just sit back and not move. If we move, it consider that you are just, that they show us a violent people so we are just standing’ (Sam).

The media visit unfolded almost exactly as Shahin, Sam and their co-collaborators expected. The Centre Manager took the journalists into the main compound, directly to where Shahin and ‘Jesus’ were waiting. Shahin recounted the moment with more than a little delight; ‘We knew that this is going to happen, he didn’t know. It was amazing. It was amazing to see it. It was amazing to see the Centre Manager take a second look “what the hell was that?!”’ The Centre Manager quickly moved the media on towards the school where Sam, the children and several adults were waiting. As soon as the journalists arrived, the children pulled out their posters, the adults wrapped their ‘gags’ around their mouths and all stood perfectly still. Some detainees not included in the action saw the cameras and the theatre being staged and began chanting ‘Freedom, freedom’. The Centre Manager ordered the media to stop filming, ‘but you know how they report. He just hold down the camera but he was holding it towards the refugees. So it was a very short footage’ (Sam). The footage was shown on commercial television and Sam and Shahin, although disappointed that the careful choreography of their protest was interrupted by other detainees shouting, were satisfied with their actions. ‘It didn’t go well in the end, but at least some of the message got across. It was enough for us in there, to show some sort of civilised protest’ (Sam).

Sam and Shahin believed that government policies towards asylum seekers and ‘border protection’ were both supported and driven by a majority view within the

Australian population that asylum seekers are dangerous people who need to be locked up, and that they needed to change this dominant belief if longer term change to detention and asylum policy was to be achieved. They were particularly careful to reject modes of protest which could be used to reinforce the image of asylum seekers as dangerous. Consequently, much of their resistance was designed ‘to make people think twice and think “is it fair to do all of this to these people? Maybe they are reasonable people and they can be dealt with in a different way”’ (Sam).

Also discernible within Shahin’s account in particular, are elements of existential satisfaction, a transformation of the power relationship between detainees and officials, if only momentarily. Ordinarily in detention, the guards and officials have greater knowledge and power, but Shahin remembers the feeling of knowing what was going to happen and the Centre Manager not knowing, and the pleasure of seeing the shock on the manager’s face. Sam identified getting footage of the children and their posters on the news as a major achievement of the protest. Shahin was supervising the ‘Jesus on the cross’ protest, but didn’t mention whether any footage of this made it to the news. For Shahin, there was at least equal satisfaction, or pleasure, in a brief exercise of power and the capacity to know ‘more’ than the manager as in any tangible ‘outcome.’

Although Sam and Shahin have now been released from detention for almost ten years, both have continued their resistance to detention and efforts to shift public opinion about asylum seekers and detainees. Shahin is a writer, director and actor by profession. Soon after his release he wrote a one-person play *Refugitive* and staged more than 280 performances in cities and country towns around Australia. *Refugitive* tells the story of an anonymous detainee on hunger strike. After his release, Shahin ‘had heaps of stories in my brain. I made a list, there were some things I wanted to talk about. I thought “What is the *main* story I want to tell?”’ He had also been asked by people after his release why detainees hunger strike and self-harm. He felt compelled to answer, to explain the actions of detainees;

The story was the story of a person who’s a hunger striker. No nationality, no name, nothing. Somebody who has been in a detention centre. And because everybody knew that I have been through that

system they would think that maybe it's exactly my story but it wasn't. It's a collective story because I had lived next to all those people. And I would always say, this would happen because you have no other choice. You can't make any decisions in your life. Just to show that you are alive you could make a decision to stop receiving anything in your body. That would show you that you're alive, because you could make a decision, in a place that you can't make any decision. (Shahin)

After most performances Shahin would return to the stage and invite the audience to ask questions and make comments. 'You see, there is a lot in this for me to gain, that there was a huge victory after this, because not only have they sat through this performance, but now they are also hungry for more information. They want to know more.' Shahin was particularly keen to hear from people with negative views about detainees. He said that audiences would often boo someone who made a negative comment, but he would quickly respond saying 'No, no, no. I'm more than happy to have you here than the rest of these people. That's a very valid question because I know there are millions of you outside these doors.' Shahin was willing to sit and talk, sometimes for hours, after a show in an effort to explain what was happening in detention centres and to shift public opinion about asylum seekers. At the end of these discussions he was inevitably asked, 'what can we do?'

Shahin told his audience that there were four things they should do:

The first thing I would ask them I'd say is perhaps a very hard thing, but let's talk about it at your dinner table. Maybe sometimes you get in fight with your husband, daughter, son or whatever, but let's just raise it. Tell them this story of you came to this performance, you saw this and you heard this stuff. Let's just discuss it in our little communities.

Then I would ask them to write to your local member. If there is something that you heard tonight that you think is against policy, against what you believe in as an Australian just write to your local members, talk about it, ask them for answers.

And then go above, go to your federal members and ask them, make them to talk about it in the parliament. If you really believe in what you saw in this performance is unjust. Let's just discuss it now further.

Definitely you have a power. Every letter that you write to your local or federal member would be one hundred opinions so they will really react to it.

Fourth thing I would ask them is to write letters to people in detention centres. Get in touch. There is a wall that this government has created. And this wall needs to be chipped away from both ways. People from inside are doing their way, for you really the best way is to get to know them. As long as that wall is there the government can do what they want. And once it is broken or has holes in it, then it's very hard.

These are the four things. (Shahin)

Shahin was a prolific writer while in detention, writing to various external bodies such as the United Nations, Australia's Human Rights and Equal Opportunity Commission, Amnesty International and assisting fellow detainees to write appeals to the Australian Federal Court. He also used his theatre and performance skills to carefully choreograph messages and images from inside detention, explaining that 'I'm not saying that I was, that we were the good people, we were the ones who believe in that side of things. Because we were able to express ourselves . . . I was able to be in that front, and fight the war in that front.' He saw the media visit recounted above as a 'very small window of opportunity' to insert his voice into the public sphere. He continued his activism after release, again using his writing and performance skills to try to shift public opinion which he saw as underpinning government policy. He now had greater and unmediated access to Australians and his strategies expanded accordingly, 'But of course I had a better window after release and that was why I did *Refugitive*.'

Sam has also continued his activism over the last decade. Soon after his release he attended a large refugee conference in Sydney. Over four days he was delighted to

hear so many people discussing refugees and detention and how to shift public opinion and government policy. ‘I was amazed at what I was hearing, but I thought something was missing here. There is no refugees talking, there’s no real voice of refugees.’ Sam decided that he should speak;

So at the closing I went down and I said that I really need to say thanks to people. I got there and I had a few points that I wanted to make. It was great. I found the courage to talk in front of 600 people for the first time in my life. I need to talk here. (Sam)

The conference participants were as happy to hear from Sam as he was to speak and ‘from that point so many people asked me to go and talk to their group so I was very pleased that people were welcoming the voice of refugees.’ He is an articulate and gentle man, and he soon became well known. He has spoken multiple times to television, radio and print journalists, assisted writers and researchers documenting detention policies and events and is acknowledged in several books and publications. He explains that speaking out is,

the extension of my protest - that I needed to continue because I was still feeling powerless to just change anything except telling the stories and just education properly what was the real story behind what they heard from the media about what was going on inside at that time with the news. (Sam)

Sam had held political opinions in his native Iran, and had attended some low-key student political meetings there, but didn’t feel safe to become actively involved in politics in that environment; ‘I wouldn’t dare to go out and talk in public for those things that I believed because it wasn’t the environment where I could do that.’ But after release from detention in Australia and meeting other activists, he managed to,

grow that sort of bravery to go to the public. It was a different environment here. I was appreciating that I am in a democratic country within a people that they want to know what is the truth and they want to act according to justice so it was important that. The level of consciousness was amazing and I couldn’t believe that I am amongst so many conscious people that they have no benefit to be

involved here. That they just act upon their consciousness. I was thinking that probably this is the heaven that I was looking for. I'm among conscious people and it was a really great appreciation for me.
(Sam)

Sam continues to speak out at every opportunity.

Dr Aamer Sultan

Doctor Aamer Sultan was detained in Villawood IDC from 19 May 1999 to 2 July 2002 (three years and six weeks). He is a medical doctor from Iraq, specialising in surgery but also with some experience in psychiatry. He became a high-profile detainee, speaking out and writing about the harms and injustices of detention.

Aamer spent his first year in detention improving his English language skills, doing basic translations for fellow detainees and watching and learning the systems of detention and refugee status determination. He obtained English grammar books and studied to improve his language skills. As one of the few people who could read and write in English, fellow detainees soon began asking him to translate documents relating to their cases. 'I found myself in the position, like doing extensive work of translating and explaining the system as best I can . . . So given the fact I was free 24/7, I would sit with someone for eight hours . . . try to work out their case and how to put it in a way to concise it and to sell it to a barrister or lawyer outside by phone only to take it for free, pro bono.' As he assisted more people from many different backgrounds, including Arabic speaking, Afghan, Iranian, North Korean, Southeast Asian and Cambodian, Aamer saw patterns emerging and began to question the paradigm of the refugee determination process:

Well that's the question I'm asking. What's the political ideology underpinning that bureaucracy? What is the target of this political? What was behind it? What was it aiming for? It looks to me that this bureaucracy complication of things was aiming of denying those people a visa, simple. (Aamer)

At the start, Aamer said, he was ‘just reacting to immediate necessity. There were one hundred, two hundred people around me who just needed to be safe and out.’ It was only later that he developed a position which was fundamentally opposed to detention itself. Aamer’s early work in detention was to assist individuals to navigate the system and get out of detention. As he saw patterns emerging, he asked for meetings with Department of Immigration officials to, ‘try to work with them to change things, but this is going nowhere because the Minister for Immigration made it so clear it was coming from him.’ Aamer began to recognise that detention policy was guided more by politics than law. He believed that ACM and the Minister for Immigration would create their own rules, regardless of any legal rights detainees had. He gave the example of cameras being banned from detention centres;

There is no camera allowed in the detention centre and no camera allowed around detention centre for 500 metres. There is no law in Australia that can prove that, but it is a local law to prevent people to know what’s happening. When many officer would come and ask me ‘do you have a camera in your place?’ I’m not answering that question. ‘Is that law or is that like a local law you made it?’ (Aamer)

Aamer said that ‘after almost a year I start to take a big step towards activism outside . . . I clearly stated that from now on I’ll work hard to try to break the system.’ Aamer’s analysis shifted from an initial trust in the official systems to achieve justice for individuals, during which time his strategy was to engage in individual advocacy and education about the refugee status determination process, to believing that the system itself was politically corrupt. He changed his strategy accordingly to target the system itself. Aamer said that when he realised ‘they are doing it deliberately’, he ‘didn’t feel any despair’, but instead told himself ‘Oh well, it’s time to make it right.’

Aamer described that the ‘local’ making of laws left much of detention life in a ‘grey zone’, a grey zone which enabled the arbitrary exercise of power by officials, but which also gave him room to move ‘That was my field of play, I can play there.’ Aamer thought carefully about his skills and positioning, as well as his reading of Australian politics around asylum seeking and detention, and decided on his Approach. ‘I would divide into three main streams I was working on activism wise’:

- Legal strategy
- Medical and mental health strategy
- Media strategy

Legal Strategy

Although he had now pledged that he would ‘work to break the system’, Aamer continued to work with individuals in detention to try to understand their claims and to find them a good pro bono lawyer. He recognised that the system would not be changed quickly and in the meantime, individuals had to work within the system. As well as individual case work, Aamer also hoped the ‘lawyers will be able to change things’ and passed on information to lawyers lobbying for law reform.

Medical Strategy

During his first year in detention, Aamer started to notice patterns of mental ill-health among longer term detainees. Initially his response to this observation was to prioritise who to help with their case first;

I started to realise the mental health problems and then I realised the sooner I get someone out the better because eventually they are not getting any better, it will get worse. So with time I started to prioritise whom I shall work for urgently and support first is the people who need to get out sooner. (Aamer)

At the same time, Aamer soon started asking more systematic questions. He wondered if the people he saw had any pre-existing mental health issues before detention or if the symptoms he saw were caused by detention. He decided, within a few months of arrival to ‘run a core study’, tracking people’s mental health status from ‘day one over a long period of time and document everything . . . and see whether if they are trailing into serious mental health issues.’ Aamer noted that Australia’s detention policy meant that ‘unfortunately many of them stay that many years, which made the research possible.’ He described Villawood as a ‘paradise for mental health researchers . . . in a negative way . . . It’s way out of the percentage of unhealthy people, probably anywhere I’ve seen.’

Aamer was aware of the cultural status of doctors and medical professionals and recognised that, although he was a detainee without formal legal status, he had cultural status as a doctor. He also holds a very high opinion of the commitment of doctors to the Hippocratic Oath and their medical ethics. He believed that if he could document what he saw happening in detention and get the news out to the international medical community that ‘all the medical professionals would not let that happen . . . Really I held my hope very high with that horse to win.’ Aamer explained that in 1995 Saddam Hussein ‘introduced this decree of shaming soldiers who deserted the army by putting a burning sign, a permanent scar on their head... and cut part of their ear.’ Saddam Hussein ordered doctors to conduct these operations. ‘I still remember that despite his dictatorship and his perfect system as a superpower . . . countless surgeons resigning and few consultant frankly refused to do it. They disappeared. We never see them again.’ After two months, Hussein had to repeal the decree as no doctors would conduct the surgery in spite of threats and disappearances. Seeing the resolve of doctors in a more extreme situation gave Aamer ‘a big hope that well, it comes to kind of like doctor-patient relationship. You can still rely on that. So I was really hoping on the medical . . . in Australia and internationally.’

Aamer asked a detention visitor to find out if any previous studies had been conducted on mental health and detention. Through this he obtained articles written by Derrick Silove, Zachary Steel and Kevin O’Sullivan. He made contact with each of them and discovered that O’Sullivan had previously worked as a psychologist at Villawood. He discussed his research idea with him. Throughout his time in detention Aamer kept meticulous notes about his fellow detainees’ length of time in detention, their mental health, the detention environment and events happening for individuals, such as refusals of claims, and he conducted semi-structured interviews with thirty three long term detainees. Through their research Aamer and Kevin O’Sullivan identified a four stage process of decline in people detained in excess of nine months. They wrote up this study, naming what they observed ‘Immigration Detention Stress Syndrome’ and it was published in the *Medical Journal of Australia* in 2001 while Aamer was still in detention (Sultan and O’Sullivan 2001). The article received extensive media coverage as well as reaching the medical community (CNN 2001, Hassan 2001, Manne 2001, Nowak 2001), and prompted the Minister

for Immigration to publish a letter refuting the work in the following edition of the journal (Ruddock 2002). Aamer received a High Commendation in the Human Rights and Equal Opportunity Commission's Human Rights Awards in December 2001. The article continues to be regularly cited by medical and other researchers (Kenny, Silove and Steel 2004; Robbins et al 2005; Rogalla 2003).

Media Strategy

Aamer recognised the absence of detainee voices in the media coverage of detention and resolved to 'try to be the voice from inside.' 'It's a very special position to be in to see things inside and then it's hard to be discredited, even by the government, for someone who is talking from inside because you already know better than the government.' Aamer was determined to use his position as a doctor inside detention to speak out against detention:

Here I can see the same attitude coming from many people, different ages, they do respect doctors to some extent and that was to my great benefit. We were having this debate with the government, so even with the Minister was coming and telling that Dr Sultan's statement was full of factual errors, but he just admit he was lying, he was telling me that I was lying. Still, it would be seen by most people well – I mean how could you imagine or people will not accept a fact that a doctor is telling lies easy. (Aamer)

He recognised that his voice would be harder to discredit than the voices of other detainees and would use his status as a doctor to give a credible account of the treatment of detainees and the harms caused by detention.

Aamer had already spoken with journalists on several occasions when he met Jacquie Everitt, a journalist and lawyer who was then studying a Masters degree in International Law. She was researching 'something about



Figure 13: The Badraie family inside Villawood IDC (Lamont 2002).

international law about asylum seekers and children.’ Aamer introduced her to the Badraie family, which consisted of six year old Shayan, his one year old sister Shabnam, father Saeed, and step mother Zahra (real names are used here, as the story is in the public sphere). The family had been in detention for one year and four months at that time (O’Neill 2008, 256). Shayan was severely traumatised from detention, particularly from witnessing self-harm, and violence between guards and detainees in Woomera. Shayan was present during riots in Woomera when tear gas and water cannons were used (for more on this see Chapter 9). He gradually became more traumatised, suffering from insomnia, bed wetting and nightmares. By the time Jacquie met him in July 2001, he had stopped eating, drinking and speaking and the family had been transferred from Woomera to Villawood due to Shayan’s deteriorating health. Each time that his condition reached a life threatening stage he was transferred to hospital for treatment. Each time he improved he was returned to detention. All medical staff who had treated Shayan, both in detention and in hospital, believed that Shayan’s condition was a direct result of detention and that recovery was not possible in detention. All recommended that the family be released from detention (O’Neill 2008, 72).

Jacquie describes her first meeting with Shayan:

The child’s dark, half-open eyes stare sideways, unmoving and unblinking. It is the first time I have met him and this lifelessness shocks terribly... his skin has the waxy colourless look of death, and I wonder how long there is left (Everitt 2008, vii).

With medical opinion being ignored by the Minister, who has the power to release someone from detention on a bridging visa, Jacquie and Aamer resolved to bring Shayan’s plight to public attention.

Jacquie wrote a feature article, ‘Suffer the Children,’ about Shayan and other children in detention, which was published in the *Sydney Morning Herald* on 1 August 2001 (Everitt 2001). This prompted Debbie Whitmont, a journalist with ABC’s *Four Corners*, to contact Jacquie. Aamer, Jacquie and Debbie decided to get a camera to Aamer and to film both Shayan and life in detention. Jacquie smuggled the camera in to Villawood through the metal detector by wearing layers of silver

necklaces and bracelets, coupled with charm and bravado, to get past the guards without a search. Aamer's admiration for her courage is clear;

So Jacquie Everitt, the mother of seven kids and the international lawyer, she broke all the rules by being such a character, becoming such a naughty kind of girl by wearing all this silver ornaments and big winter coat to hide the camera under her arm so when the metal detector beeped she said 'Oh, it must be my jewellery . . .' (Aamer)

Aamer then filmed an interview with Saeed with Shayan's limp body across his lap. Aamer also spoke to camera, explaining what life is like in detention. Aamer kept the camera for three days, smuggling tapes out through the low security stage three detainees 'every day to make sure because there was a possibility the camera would be captured.' The footage went to air on national television on 13 August 2001 (Whitmont 2001) and caused a nation-wide outcry. In



Figure 14: A drawing by Shayan, showing the water cannon at Woomera, a guard with a riot helmet and baton, a man dripping blood after cutting himself, and children crying (from Chilout website)

many respects this could be seen as an important turning point in community opinion about detention. It was the first time that footage had been taken inside a detention centre without the government having editorial control. It showed a different side of the story and detainee voices were heard unmediated for the first time.

Aamer believed that speaking through the media to 'Australian people' was necessary. He stated 'that the government really wants this policy for a hidden agenda... Is it possible that they deliberately do that hard line to win the votes? If it's true, then it's a very dirty game.' He believed that 'most Australians are quite good hearted and well intentioned people' and that the government was telling them lies about 'dangerous boat people'. He described watching a television show in which a doctor became politicised about asylum seekers after treating some hunger strikers and realised that direct contact and personal stories were necessary to shift public

opinion and government policy. He described it as ‘a battle you have to win, not for one thing, for re-establishing your faith in something.’ Aamer continued his three-pronged approach to resistance throughout his time in detention.

Post-Detention Activism

Aamer was granted a protection visa in July 2002. He took a couple of months ‘off’ to rest and recover from his three years in detention but then realised,

the responsibility is still there, the feeling that it’s unfinished work in a way. The cause or the argument was still, the issue that triggered all that. The sense of injustice was still there. Detention was still there. Kids were still in detention. The nation was still in the dreamy period and people in detention. (Aamer)

Aamer joined up with *Medicines Sans Frontieres* and visited six capital cities, setting up a shipping container in the mall and sitting inside it and talking with anyone that came along. He also went on a bicycle ride from Broken Hill in Western New South Wales to Geelong in Southern Victoria, travelling through country towns meeting ‘ordinary Australians’ and getting to know his new country (Stephens 2002). Aamer met with activists and politicians and continued to advocate for an end to mandatory detention. He devised several strategies for talking to people about detention and boatpeople. ‘So I get around and talk about it in 100,000 ways I would say. It depends on whom you’re talking with.’ When talking to politicians, Aamer would draw on the *Refugees Convention* and Australia’s legal obligations, when talking to medical professionals he talked about his study with Kevin O’Sullivan and the psychiatric harms caused, when talking to church people he spoke of ethics and being true to your word, and when talking to others he tried to explain why boatpeople ‘come through the window’ instead of the door.

Aamer still speaks to journalists, researchers, friends and anyone who is interested. He even considered writing a book about his experiences, but has decided against it; ‘I believe that someone who writes a book needs to have skills of writing a book. I may end up causing damage to the cause by my lousy writing.’

Conclusion

The resistances of other detainees are documented in the following chapters. Detainees subverted, confronted, rebutted and eluded the power enacted upon them by the state in many ways; through refusal and riot, hunger strike and lip sewing, letter writing and cultivating contacts with journalists. Detainee resistances were multifaceted, opportunistic, courageous, creative and astute. Different readings of power, politics and law coupled with different personalities, ethics, emotions, skills and opportunities to produce a ceaseless struggle. There was, as Foucault (1976, 96) theorised, 'no single locus of great Refusal,' but multiple, shifting, transitory resistances, temporary alliances, solidarity and lasting friendships, carefully planned actions and spontaneous eruptions. Power flowed through detention centres as the primary physical sites for sovereign exercise of power and asylum seeker agency and strategy, shaping all relations between detainees, guards, government officials, health workers, visitors and all who had contact with the centres and the policy.

The following chapters will look at some specific strategies of resistance: escape, hunger strike and self-harm and, riot.

Chapter 7: Escape

It was so difficult to live in detention; there was so much panic and people fighting because of the limitation with everything. There was no room for living. Resources were limited. People were frustrated because there was no result and no decision. No one was getting through. People were getting frustrated with the whole situation and at the time we were thinking of so many things. I was thinking of escaping the detention centre and going to Canberra with a few people that I thought we can make this happen. We try to find a connection outside who can help us and go and chain ourselves to Parliament.
(Sam)

Between 1999 and 2008 there were 373 escapes from Australian immigration detention centres (O'Neill 2008, 103).¹⁸ Section 197A of the *Migration Act 1958* (Commonwealth of Australia 1958) makes it an offence to escape from immigration detention, although it does not define 'escape'. Various state and commonwealth laws define escape as absconding from custody, which includes prisons and the custody of a police or prisons officer (Butt and Hamer 2011, 213). *Escape* implies that a person leaves lawful custody and continues to evade the law and, while some of the incidents of escape from immigration detention centres do fit this model, many more are better understood as acts of civil disobedience. In these instances people breached a perimeter fence of a detention centre, but made no effort to evade capture and instead staged sit-ins or other forms of protest in the vicinity of the detention centre and submitted to the legal consequences of their actions. Escape as civil disobedience was aimed primarily at staging a protest which would be covered by the media and thereby give detainees an opportunity to insert their voices into the public debate on detention of asylum seekers. Escaping also had another, probably unintended, consequence in establishing a legal status for detainees. Once charged

¹⁸ Not all of these escapes were by asylum seekers. It is difficult to obtain an accurate breakdown of numbers of escapes in each facility and by each category of detainee (asylum seeker, visa overstayer, criminal deportee). 'Snapshot' figures available through the Australian National Audit Office (ANAO 2004, 141) report 48 escapes from Villawood IDC in 2002. Department of Immigration (DIMIA 2003b) figures for 30 December 2002 report that Villawood then held 513 detainees, only 14 of whom were unauthorised boat arrivals. These figures indicate that it is probable that most escapes from Villawood that year were by detainees other than asylum seekers.

with escaping custody, detainees became prisoners and so, as Arendt (1976) points out, were restored to a recognised legal status within the polis. This chapter will explore escapes to evade detention and the omnipotent power of the state and, escapes as civil disobedience.

Escape as Civil Disobedience

Throughout 2000, pressure on the capacity of Australia's detention centres steadily increased. New detention centres had been opened in Derby and Woomera in September and November 1999 to accommodate the rising numbers of asylum seekers coming by boat. However, the processing of refugee claims was sufficiently slow that there was a pervasive belief among detainees that claims were intentionally not being processed in order to punish asylum seekers for arriving unlawfully and also as a deterrent against further arrivals. Sam explained that,

Everything was getting tighter and tighter for us. For nearly seven months not more than a few people left the detention centre. We are getting more and more people coming in and not many people get processed. Probably they try to send their signal as much as possible to Indonesia that this is not a good place. (Sam)

Detainees lost hope in established processes and began to think about what they could do to draw attention to their plight. At the same time, Australia was preparing to host the 2000 Olympics and the Olympic torch was making its goodwill tour around the country. Detainees recognised the irony of the situation and saw this as a unique opportunity to stage a protest:

We were thinking all the time about how we can protest and create an awareness for the Australian people that we are not demanding as they are told... We can make a protest, that is the best time. We are all looking at the torch and looking at Australia. Getting all this publication. It is going to be very embarrassing – when the torch of the Olympics is taking the spirit of brotherhood and multi-nationalism and fairness, whatever good things with it and Australia is treating some people in that way. (Sam)

Sam and a few fellow detainees in Port Hedland began discussing different protests, they wanted to organise a large scale protest that included all nationalities and that was staged at all the large detention centres:

With a group of people that were thinking, trying to plan together, we decided to grab people from different groups. Different boats had different nations, someone trusted – had some sort of big brother, some sort of leader, someone that they believe more and if we could convince that person we could convince a whole group. So for some time I was talking to different people from different groups, and I was trying to convince them that this is good for all of us and then we found a connection with a relative of someone outside that knew someone in Woomera and also Curtin detention centre, and I thought that if we can do this all together that would be great. (Sam)

The plan was that detainees from Port Hedland, Woomera and Curtin detention centres would break out and stage a short march near each detention centre before sitting down in protest overnight and then returning to detention the following day. The action was planned for 9 June 2000, to coincide with the launch of the Australian leg of the Olympic torch relay at Uluru that day (Zinn 2000).

Woomera

Ibrahim was not involved in the core planning group in Woomera, but was approached by the leaders a few days before the breakout and asked to assist on the day. He readily agreed;

They planned already. They'd done everything, but they want some support from the other people. Especially the close ones to them because they didn't want to reveal anything about the plan until the time come. And when the time come, I was one of them, but I don't know anything. They came to me and said 'You have to swear. We gonna tell you this. It's the time now.' 'OK. I'm with you.' I didn't even hesitate for one minute. Nu-uh 'I'm with you.' Straight. (Ibrahim)

Ibrahim did not mention the Olympic torch relay in his account of the action. For him, his motivation was primarily about acting in solidarity with the organisers and to feel a sense of his own power in breaking the fence. 'To break the fence is a major thing. It's a major thing, you can't imagine. And forget about what happens after that. It's the fence. That's the thing – the fence!' Detainees in Woomera had been preparing for weeks. They smuggled some pliers from the workshop, '[swore] with each other on something just to make it a strong bond between each other' and allocated tasks to different people. At approximately 2.00AM three detainees used the smuggled pliers to cut a hole in the fence. Ibrahim's job was to cover the edges of the hole with a blanket and hold it back while detainees slipped through. Once out, a group of approximately 300 people began the walk to Woomera (Lohr 2000). They were joined by two further groups of approximately 100 detainees each over the next few hours. The detainees gathered in the central mall around the public telephones. Some chanted, 'we want freedom!' and similar slogans, while others sat and rested after the three kilometre walk. Ibrahim recalls his surprise at the Woomera residents' surprise. 'People surprised, seems to me they know nothing about the camp, people in Woomera.'

The detainees were soon surrounded by ACM guards and were prevented from moving around the town. On the second day of the protest food and water was given to the children but adults were instructed that if they wanted to eat, they could do so back in detention (Lohr 2000; Oakley 2000). The Department of Immigration instructed local shopkeepers to close their businesses, thus ensuring that detainees could not buy food or water. Ibrahim described it as a 'siege,' aimed not only at preventing access to food and water, but also at keeping detainees from speaking directly to local residents or the media;

Well, the people in the town can't [help us] because the siege was really strong, so no-one could get close to us. Because they told them we are dangerous, we are criminals. So who wants to help a criminal? And people listening to the authorities. That's OK. We understand this, but what the company have done to us is really horrible to prevent you to drink water. The water just a few metres from me. And the third day people start to fall over and ambulance start to get them.

So every few minutes there's someone falling on the floor because no food and nothing for three days and it was really horrible. (Ibrahim)

The mass breakout, as anticipated by organisers, attracted significant media attention and nominated detainee spokespersons told the media of long delays in processing their applications, of their complete isolation from the outside world, of mistreatment by the guards in detention and of poor food and facilities at the centre (Coleman 2000; DeBelle and Clennell 2000a, 2000b). Detainees requested that the Minister for Immigration come to speak with them and that their cases be processed quickly:

We need someone from the government to come down to ask us why we have done this. We are not violent people. We don't want to give the image for the people in Australia that we are violent people or that we are criminals or whatever... We done something wrong maybe, but we have not another choice. You know what I mean? So we try to explain this for the people. OK get someone to talk to us and we will go back peacefully to the camp. We don't want to harm anyone. We need someone to talk to him [Minister Ruddock], to know what's gonna happen about our cases, our future. We gonna stay here forever in this camp or what?! (Ibrahim)

After two nights a number of detainees were hospitalised due to lack of food and water:

So on the third day it was really crisis. Because some people tried to break the siege to drink some water, and they start to fight with them. And the guys were very weak, you can imagine what happened. They just allowed the kids to drink some water, and a little bit a small amount for the women. I can't believe it, seriously, I can't even when I remember that, seriously, that this was going on in Australia. Is this Australia? You can't do it like this. (Ibrahim)

Departmental negotiators promised detainees that their cases would be processed and that the Minister would come to meet with them but only if they agreed to return to detention. There was some dispute among the protesters about what to do.

Some people said ‘Come on, that’s enough guys, let’s just go back. There’s nothing gonna happen, we gonna lose it.’ And some they said ‘No, we get out of the camp, we not going back. We need to get out of Australia now, not just out of the camp. We don’t want Australia anymore.’ So it was some differences between people want to go back, people want to stay and to fight, to keep fighting, but... to fight who? (Ibrahim)

Eventually all the protesters agreed to return to detention. Buses were organised to take people back, but a group of detainees, including Ibrahim, in a final act of defiance, refused to go on the bus:

But when they ask us to go back to the camp, we decide to go back walking. We came to Woomera walking, we not going to ride in the bus. Because they brought some buses for us to take everyone back and we said to them whoever wants to go on the bus, that’s alright, but we going walking on our feet. We came to here walking, and we going back walking. (Ibrahim)

Curtin

While the Woomera breakout lasted for three days, the breakouts in Port Hedland and Curtin only lasted a matter of hours. Curtin detention centre is located on a military base approximately forty kilometres south east of Derby and is surrounded by desert. Detainees there managed to break a hole in the fence and about 150 people left the detention centre and began walking along the only road. The police were quickly able to establish a road block and intercept the escaped detainees (Gray 2000). Most escapees were returned to Curtin detention centre, but twenty four people were arrested and charged with escape.

Emad was released from Curtin just before the escape. He was aware of the plans and attempted to dissuade fellow detainees from escaping. Emad’s dogged belief in ‘the rule of law’ precluded him from joining in any protest which broke a law. Although he disagreed with the escape, Emad was highly critical of the police response:

Now, some of the guys succeeded in crossing the razor wire, and the police used the dogs against them. And they were able to catch every one of them and return them to the detention centre. Now the use of force, by even the police at that time, wasn't necessary, because you imagine in a small town like the one we... you know we're living in, it's so easy for police force, for the management to track everyone. Where you'll go? You know he's a foreigner. He don't know the country, he don't have money. They took all the money, they took the mobile phones, they took all our stuff – even the paperwork, the papers we have, the IDs, everything [upon arrival in detention]. So we don't have anything actually. So the use of force, you know just give you the impression that you're dealing with someone who have no understanding at all for human rights, and just you know they're treating you like a criminal, like a normal let's say convict. And this is not right, because we are covered by an international treaty. And this right was admitted 50 years ago – more than 50 years ago – after the World War II, you know to save the people who are in need for protection not to be mistreated again. So that's what happened unfortunately. (Emad)

He was also convinced that the escape triggered the subsequent processing of refugee claims:

. . . then surprisingly after June 2000, after the guys broke the razor wires and the media covered the whole incident there, the management decided to release most of the groups. I mean it shouldn't be this way . . . I think it was a big scandal to Philip Ruddock government in front of the international media, and the international reputation of Australia was the main element to think about. Seeing refugees who are being, let's say more than one year in the detention centre without their application being processed, and suddenly they broke out, they left... they jumped over the fence and the media started to cover this in the news. I think that's what pressured the

government to release bigger groups. Otherwise I don't think they would release them. (Emad)

The Minister for Immigration and Departmental officials maintained that protests did not accelerate the processing of refugee claims, but Emad's position is not entirely unsupported. On 9 June 2000 Minister Ruddock appeared on the *7.30 Report* and confirmed that no one detained in Woomera had, at that time, received a decision about their refugee claim (ABC 2000a). The Department of Immigration does not publish statistics on how many people were released from each detention centre each month and so Emad's claim cannot be positively demonstrated. However, the first visas for people detained at Woomera were issued in July 2000, one month after the mass breakout (Woomera Lawyers Group 2005; ABC 2000c).

Port Hedland

Detainees from Port Hedland also broke out as planned. The plan was to break the fence and a group of about one hundred would march to South Hedland (a satellite town about 20 kilometres away) and stage a twenty four hour sit-in before returning to detention. Detainees had prepared slogans to chant, including, 'we want fairness and protection' and 'protection not detention', and they appointed spokespeople to talk to the media. As with the Curtin staged protest described by Sam and Shahin in Chapter 6, Sam and his collaborators were determined that the detainees be highly disciplined and present a peaceful image of themselves during the breakout. The main message they wanted to convey was 'that we are legitimate refugees, we want fairness and protections, we escaped from terrorist governments' (Sam). Mohammed was also involved in the breakout. He explained that the physical and psychological pressure in detention had been steadily building as the centre became overcrowded and no visas were being issued:

Because suddenly government stopped every door, they closed the detention door and keep every man there. Suddenly detention become more than 800 detainees. Each room for six mattress got six people, five people, live together and they talk and they told they're going to be – that time it was the huge, huge protests started because the people try to figure out what they came to do and how to – because a lot of

children and families there, that was the broke of the fence, all this stuff happening because huge people, the population there. (Mohammed)

The Port Hedland detention centre is located within the town of Port Hedland. Police there, having seen the Woomera breakout the night before, were prepared for a similar event at Port Hedland. Sam explained that as soon as they broke the fence they were confronted by a significant police presence:

The day that we broke out they were so prepared. They had more than enough people, equivalent to anyone outside they had one or one and a half persons. So we were so surrounded. We couldn't get more than one kilometre out of detention and after I realised that people are getting beaten so severely. There was a guy I told you, an old guy, he was very brave but he was going according to the plan when the police grab him to take him to the police car. He was telling him 'I'm going myself, I'm not resisting' and the guy was holding his hair from back and bang his face to the corner of the car and there was blood, and I was thinking, 'God, that's bad.' I just raised my hand and I just ask everyone to be quiet and talked to the head of the business that this was planned and we wanted to have a peaceful protest and we are going back. We want to make a promise to go back. It wasn't a plan to escape, it was just a protest people try to make this protest to the South Hedland city and then go back the next day. It wasn't a plan to escape, it was just a protest. (Sam)

Fearing further violence, the escapees returned to detention. Seventeen people, including Sam and Mohammed, were arrested and charged with escape from immigration detention. The charged men from both Curtin and Port Hedland were taken to Roebourne Prison, about 330km south of Port Hedland and held in the cells there. In several media interviews the Minister spoke of the breakouts as criminal rather than protest actions and he warned that criminal convictions would have an adverse affect on visa grants for those directly involved (Grey 2000). Ministerial and Departmental statements were in keeping with government efforts to criminalise

asylum seekers (see Chapter 2). However, the tactic had consequences that the government would neither have anticipated nor desired.

Criminal Charges

Detainees charged with escape from Curtin and Port Hedland detention centres met in Roebourne prison and were able to talk about the different centres and form direct relationships, rather than relying on relayed messages and long distance phone calls. Having discussed plans for the breakout, they now discussed strategies for responding to the charges. They were also restored from the liminal non-status of ‘asylum seeker’ to a recognised legal status as a ‘charged person’.

Sam explained that most of the people facing charges wanted to follow legal advice to plead not guilty and to contest the charges, but that he thought it better to plead guilty:

I wanted everyone to plead guilty. I can't talk but it seems that people had every right to be so afraid because it seems that the government was furious with what happened with the first protest in Australia. They needed to show some harsh reaction because they didn't want it to happen again. It could be a big sacrifice from those people. Anyway, we started something and there was no place to regret it. I had to plead guilty so I was only going to plead guilty and even the lawyer was thinking ‘Does he know what he is doing?’ Yes he does. We talk about this before. I couldn't really do anything with the charge because the charge was escape in the first place and the definition of escape was leaving legal custody even if the police officer asks you to stay it is escape so there is no way I could argue that one. I wanted to explain the situation and why. Mitigation after that. And for that reason I plead guilty. (Sam)

Despite his fears about receiving a strong sentence intended to deter future breakouts, Sam wanted to use his appearance in court to explain conditions in detention, including the overcrowding, slow processing and mistreatment by guards. He was shocked though, when the Public Prosecutor sought to lay additional charges

against him, alleging he had weapons and intended to commit violent offences during the breakout. 'It was shocking and I was really afraid that so many things I was charged that I was making arson or had a knife or razor – I mean I'm a serial killer generally, not a protester. So it was a dangerous situation.' Fortunately for Sam, the judge disallowed the charges due to lack of evidence. Sam had taken time in prison to think about what he wanted to say and had 'prepared five pages for my lawyer to present to court, up to twelve or thirteen minutes and I asked the court if I could read my statement.' The prosecution objected and accused Sam of time-wasting, but again the judge found in Sam's favour saying 'I want to hear him. Something is going on here and I don't know whether it is good or bad.' Sam read his statement to the court and outlined the conditions in detention, why the detainees had escaped, how the breakout had been carefully planned to be a nonviolent protest and how the detainees had abandoned the protest as soon as people were hurt. Sam was also permitted to present character witnesses during the sentencing proceedings. The prosecution sought a two year prison sentence in maximum security (the maximum sentence permitted under law at that time), but the judge pointed to Sam's good standing in the detention centre, his work translating and interpreting for others, his advocacy on behalf of fellow asylum seekers and the fact that he had been escorted outside detention on several occasions with minimal security and without incident. The judge stated that he believed Sam to be of good character and that maximum security was not justified. He sentenced Sam to a minimum three months in prison, saying that he accepted the breakout as a protest and that Sam seemed to be 'the most peaceful guy in the camp' (Sam, quoting the magistrate).

Ironically, efforts to further criminalise Sam and use him and the others as an example of what prospective protester-detainees could expect, served only to strengthen Sam's confidence in justice beyond the walls of the detention centres:

It was a life-changing experience. After that I was so brave. In the next detention centre every time they tell me they are going to send you to prison, the detention manager at Curtin said 'We are going to send you to prison' and I said, 'On what charges?' 'Child abuse.' And I said 'I would really like to see that in the court.' I was really getting confidence in the court. You find lots of justice in the independent

court rather than the immigration court, so I was very grateful for that experience. (Sam)

Ibrahim, who was not charged but who was warned by fellow detainees and by detention centre staff that the breakout would slow visa processing further, believes that it was because of the breakout that visa processing accelerated. Ibrahim was among the earliest groups of people to be released from Woomera in September 2000. In Curtin, Emad also believed that the breakout was a direct trigger for the resumption of processing. He said that, ‘the most powerful manner they followed I think, is the breaking out of the detention centre,’ adding, ‘it shouldn’t be this way.’

Rather than producing a more compliant detainee population, the government’s strategy of charging protesters with criminal offences actually functioned to embolden detainees. Detainees began to see both that their protests exerted political pressure on the government, leading to faster processing, and that Australian courts were sympathetic to detainees’ reasons for protesting. Speaking in court provided an opportunity to table detainee voices in a formal setting that was open to the media and was often legitimised by judicial comments.

In 2001, the federal government amended the *Migration Act* to increase the maximum penalty for escape from two years imprisonment to five years imprisonment. It also dictated that an attempt at escape was to be treated as an actual escape and would therefore carry the same penalty. In the *Explanatory Memorandum* accompanying the Bill, the government explained that these changes were ‘prompted by instances of inappropriate behaviour by immigration detainees’ (Parliament of Australia 2001, para 2). The mass breakouts from Woomera, Curtin and Port Hedland detention centres in June 2000 were specifically cited as reasons for ‘the Government seek[ing] to strengthen its capacity . . . to control inappropriate behaviour by immigration detainees’ (Parliament of Australia 2001, paras 3 and 4).

No mention was made of the relatively lenient sentences issued to Sam and his co-offenders. Nonetheless, the amendments were clearly a response to the breakouts and affirmed the government’s position that ‘escape’ was to be treated as a serious criminal offence, carrying a prison term reflecting its gravity. It is difficult not to

read the amendments as a message to the judiciary of the government's position, which afterwards needed to be addressed when sentencing people convicted of escape.

Judicial Responses

It was not long before the judiciary needed to impose sentences on escaped detainees under the amended *Migration Act*. In March 2002, outside activists organised a convergence of refugee supporters to meet at Woomera IRPC over the Easter long weekend. Protesters were able to reach the perimeter fence of the detention centre and, using bolt cutters and other tools brought with them, assisted detainees in making holes in the fence. Fifty detainees escaped. Most were recaptured within a few hours, and almost all were back in custody within a few days. On 27 June 2002, a smaller group of activists again assisted detainees to make a hole in the perimeter fence of Woomera IRPC, through which thirty five detainees escaped. As with the earlier escape, most were captured within hours. Tariq was part of this escape and remained living in the community for three years before handing himself in to the Department of Immigration. His story of the escape is told later in this chapter. At least eleven re-captured detainees were arrested and charged with escape.¹⁹ Their cases were heard in the South Australian Magistrates Court, which took a lenient approach to sentencing, and, for the most part, imposed good behaviour bonds and did not record convictions against the detainees. The federal government appealed many of the sentences in the South Australian Supreme Court, arguing that the Magistrate failed to give proper consideration to the legislature's policy intentions, as made clear through the 2001 amendments and *Explanatory Memorandum* outlined above. Before looking in further detail at the South Australian courts' approach to Woomera escapees, it is necessary to look briefly at the legal framework for defending a charge of escape.

Australian law allows only very narrow grounds for defending a charge of escaping legal custody, which consist of the defence of 'necessity', such as when the detainee's life is in immediate danger from a fire or other imminent threat and where

¹⁹ I am grateful to Michael Grewcock who, in his paper *The Great Escape*, listed several court cases of detainees charged with escaping from Woomera. While Grewcock's analysis of escape from immigration detention focuses on state crime, the identification of relevant cases was very helpful in locating transcripts of appeal hearings which formed a basis for the analysis which follows.

escape is the only way to ensure survival (Grewcock 2010, 7). However, United States law allows a defence arising from ‘intolerable’ conditions of detention (Grewcock 2010, 5), a defence that Australian courts have not recognised. Mehran Behrooz, a former immigration detainee, sought to test this in relation to immigration detention. Behrooz escaped from Woomera on 18 November 2001. He was arrested within a few hours and was charged with escape under the *Migration Act 1958* (Nicholson 2004). Behrooz sought to have the charge dismissed on the grounds that conditions in detention were such that detention went beyond ‘administrative detention,’ as lawfully permitted under the *Migration Act*, and were in fact, punitive and, therefore, not lawful. If detention itself was not lawful, then no charge of escape could be laid (Behrooz v Secretary, DIMIA [2004] HCA, para 4).

In aid of his defence, he sought to introduce evidence about the conditions in Woomera and served summons on the Department of Immigration and ACM, requiring several documents to be provided to the court. ACM and the Department refused to hand over the documents and argued that as ‘intolerable conditions’ was not a recognised defence under Australian law, the documents that would provide evidence of the conditions in Woomera were therefore not relevant to the proceedings. Successive South Australian courts found in favour of the Department and ACM, and Behrooz appealed the decisions to the High Court of Australia.

Six Justices of the High Court found in favour of the Department and ACM, with Justice Kirby dissenting. The majority stated that, ‘the conditions under which he was being held do not form part of the statutory concept of “immigration detention”’ (Behrooz v Secretary, DIMIA [2004] HCA, para 7) and therefore, detention at Woomera remained lawful. The majority Justices said that civil protections are available to non-citizens in immigration detention and that, ‘if those who manage a detention centre fail to comply with their duty of care, they may be liable in tort. But the assault, or the negligence, does not alter the nature of the detention. It remains detention for the statutory purpose identified’ (Behrooz v Secretary, DIMIA [2004] HCA, para 22). The remedies available to Mr Behrooz and other detainees were to lodge a complaint with relevant authorities or to launch civil action against the Department or ACM, but that even harsh or inhumane conditions of detention did not warrant ‘an exercise of self-help’ (Behrooz v Secretary, DIMIA [2004] HCA,

para 10). The Justices also addressed jurisprudence from the US permitting ‘self-help’ to evade intolerable conditions and noted that US cases rested upon ‘the reach of the constitutional guarantees found in express terms not seen in Australia’ (Behrooz v Secretary, DIMIA [2004] HCA, para 57). It followed then, that if the conditions of detention are irrelevant to the lawfulness of detention, they cannot be relied on as a defence to the charge of escape (Crock, Saul and Dastyari 2006, 180; Nicholson 2004).



Figure 15: Detainees escape from Woomera, assisted by outside protesters, 2002 (Johnston 2008).

Justice Kirby, in his dissenting judgment, noted the ‘considerable body of disturbing evidence, assembled for the appellant’s case, from which inferences might be drawn that the conditions of supposed “detention” in which he was kept were inhuman and intolerable’ (Behrooz v Secretary, DIMIA [2004] HCA, para 96). Justice Kirby concluded that, in his opinion, the Australian Constitution and international law enabled an interpretation of the *Migration Act* which indeed set parameters on the conditions of detention and that Mr Behrooz had an argument that ought to be tested in law. In a strongly worded dissent, Kirby labelled the proposition that Mr Behrooz and other detainees should rely exclusively on a civil remedy ‘absurd,’ noting the physical (the fact of detention), legal (real risk of deportation before such an action could be heard), geographic, cultural, linguistic and financial barriers to detainees accessing necessary legal resources to launch such an action (Behrooz v Secretary,

DIMIA [2004] HCA, paras 135-137). Kirby further commented that the High Court ‘should not give a legal answer that future generations will condemn and that we ourselves will be ashamed of’ (Behrooz v Secretary, DIMIA [2004] HCA, para 139).

Notwithstanding Kirby’s strong dissent, the Behrooz case meant that detainees charged with escape were not able to plead ‘not guilty’ on the grounds of inhumane conditions. The case did not however, prevent them from bringing conditions of detention before the court in sentencing as mitigating factors.

Returning to the eleven or more detainees charged with escape following the March and June 2002 Woomera breakouts, the importance of the Behrooz case for detainees responding to escape charges can be seen. Following the Behrooz High Court decision, escaped detainees had no legal defence against the charge itself available to them, and faced up to five years in prison and subsequent difficulties meeting the character requirements for an Australian visa, should they be found to be refugees. The potential consequences were very serious and the Commonwealth intended to make a show of strength as a deterrence against possible future escapes (Parliament of Australia 2001, para 4).

Detainees charged with escape following the 2002 escapes from Woomera entered pleas of ‘guilty’ in the South Australian Magistrates Court and then brought information regarding the conditions of detention into proceedings as mitigating factors in sentencing. The Court, in response, developed a practice of invoking a ‘merciful approach to sentencing’ (For example, Bridle v Gomravi [2005] SASC 295, 42) and imposed a range of lenient sentences on people convicted of escaping immigration detention. The sentences imposed ranged from no conviction recorded and a twelve month good behaviour bond of \$100 (Shillabeer v Hussain [2005] SASC 198) to a three month prison sentence followed by a three year good behaviour bond of \$500 (Bridle v Gomravi [2005] SASC 295). One person was released with no conviction recorded and no conditions upon his release (Boonstoppel v Hamidi [2005] SASC 248).

In sentencing comments, the magistrate(s)²⁰ referred to material put before the court regarding the conditions of detention and the impact on each charged detainee. In sentencing Aftab Kakar to a good behaviour bond with no conviction recorded, the Magistrate commented on the regular practice of addressing detainees by their ID numbers in immigration detention and the ‘concern’ which this caused Mr Kakar, observing that, ‘it is a very unusual thing in our society to refer to people by numbers. We are a community which prides itself on our individuality and the promotion of identity’ (Police v Kakar; Elder v Kakar [2005] SASC 222, para 12).

In sentencing Sajid Hussain to a twelve month good behaviour bond with no conviction recorded, the magistrate said, ‘I am very mindful of the material that is before me that relates to conditions at Woomera’. He/she then drew attention to Justice Kirby’s comments in the Behrooz case, drawing particular attention to paragraph 96 (quoted above in this chapter), in which Kirby discussed publicly available information regarding the mistreatment of detainees in Woomera. The magistrate also referred to a report by the United Nations High Commissioner for Human Rights, Justice Bhagwati, which was highly critical of conditions in Woomera and other detention centres (Shillabeer v Hussain [2005] SASC 198; Boonstoppel v Hamidi [2005] SASC 248). In unconditionally discharging Abdul Amir Hamidi due to the seriousness of his mental ill-health, the magistrate accepted that detention in Woomera was a major causal factor in his mental ill-health. The link between detention at Woomera IRPC and mental ill-health was noted in each of these cases and relied upon by the magistrate(s) to reach a conclusion that the men’s ‘personal antecedents allow a merciful approach to be taken when sentencing’ (Police v Kakar; Elder v Kakar [2005] SASC 222, para 43). The legal reasoning of the magistrate(s) was that, ‘while Mr Hussain’s suffering does not excuse his behaviour, it does provide an explanation for his conduct and suggests that his criminal culpability is materially diminished’ (Shillabeer v Hussain [2005] SASC 198, para 42). Despite the federal government’s efforts (through the Behrooz High Court case) to exclude detention conditions from judicial review, detainees were still able to explain what life was like in detention in an official public forum. In

²⁰ Only transcripts from cases which were appealed are publicly available. In each case the original sentencing magistrate is not named and so it is not known how many different magistrates heard the cases.

response, the South Australian Magistrates Court appeared to be sympathetic to detainees' arguments that conditions in Woomera were indeed 'intolerable.'

The federal government appealed against the sentences imposed by the Magistrates Court, arguing that in each case the magistrate failed to adequately take into account the policy purpose of the legislative scheme of the *Migration Act*; to ensure the regulation and control of entry into Australia, and that maintaining order within detention centres was a key function of that policy and purpose. The Commonwealth further argued that the intention of the legislature to maintain control in detention centres was made clear by its increasing the penalty for escape to a maximum five years imprisonment in 2001. The accompanying *Explanatory Memorandum* stated that the increased penalty is intended to reflect the gravity of the offence of escape and 'that sentences imposed in relation to this offending ought to deter others from engaging in such conduct' (*Morrison v Behrooz* 2005 [SASC] 142, para 30). However, the *South Australian Supreme Court* upheld most sentences, determining that a 'merciful approach' was warranted because of the stresses inherent in immigration detention.²¹

Rights as a Criminal

Federal government attempts to further criminalise detainees and to extend the already extensive reach of its power over detainees, through both legislative amendments and criminal prosecution, failed. Detainees charged with escape, although compelled to plead guilty, found a political voice and experienced the status of a rights bearing person recognised before the law.

Hannah Arendt (1976) theorised that criminals have more rights than asylum seekers and stateless people. She contended that what we speak of as 'human rights' are in fact 'national rights', rights which exist only insofar as one is a member of a political community willing to guarantee those rights. Expulsion from a polity entails being

²¹ The only changes to sentences were as follows: the sentence for Hamidi (discharged with no conditions) was amended to be discharged under the care of the Public Advocate. Justice Gray stated that 'Mr Hamidi's mental health problems require treatment and supervision.' Hadi Gomravi was initially sentenced to a 12 month good behaviour bond after being caught by Department of Immigration officials in Sydney eleven months after his escape from Woomera in March 2002. The SA Supreme Court imposed a three month prison sentence and a three year good behaviour bond instead.

stripped of one's rights and results in vulnerability to the goodwill (or otherwise) of a community of which one is not a member. 'His treatment by others does not depend on what he does or does not do... Privileges in some cases, injustices in most, blessings and doom are meted out to them... without any relation whatsoever to what they do, did, or may do' (Arendt 1976, 296). It was precisely this stripping of rights and subjection to arbitrary treatment which triggered the more dramatic protests in immigration detention centres, such as riots and escape (see Chapter 9 for more detail on arbitrary injustice). Ironically, Arendt contends, the most immediate way in which a rightless person can attain a status recognised by law, and thus be brought within the polity, is to commit a crime. Through being charged with a crime, an asylum seeker comes before the law as a charged person and therefore has access to a range of rights, such as the right to speak in a forum in which his or her speech is guaranteed by law and supported by effective enforcement mechanisms. 'When a rightless person commits a crime he is put in a better situation than other rightless people because he is at least being recognised by the law as a criminal' (Parekh 2004, 46).

As articulated so clearly by Sam, asylum seekers in detention had no effective or accessible recourse to legal rights regarding their conditions of detention or their treatment in detention, but when brought to a court as a charged person, they were restored to the status of a rights-bearing person recognised by the law. In that forum, detainees' voices became meaningful and were given greater credibility and legitimacy when judges recognised their actions as protest or as a reasonable reaction to intolerable conditions. Formal recognition was a profound restoration beyond merely legal status, and restoring a person's experience of themselves as 'someone who matters'.

When detainees were sentenced to imprisonment, many found the regimen of prison preferable to immigration detention. Ismail reached the end of his sentence and asked the prison authorities "Can I stay another month?" But unless you do something, no. Cos I find it's much better than detention centre. When I went there I start to go to English class cos before that I couldn't talk English at all, in prison I start to go ... in class and I learned that and I want to stay more. And I want to do more things, not like in detention centre.' Sayed was sentenced to three months

prison for escaping from Port Hedland detention centre. He too found that time 'much easier to spend' because 'you know why you're there,' 'when your time finishes,' and the rules are consistent and predictable.

Mohammed received a three month prison sentence for his role in the June 2000 Port Hedland breakout and served his time in Roebourne Prison. Roebourne Prison was identified as a 'failing prison' by the Western Australian Inspector of Custodial Services in 2002. The Inspector described the prison as,

. . . a hard prison for prisoners to be held in and staff to work in. The Inspector has been well aware, since his first visit to the prison in September 2000, that the prison's service delivery standards were inadequate; that prisoner conditions were poor, and as a consequence the prison was squarely in the category of a failing prison. Note was taken of the overbearing security arrangements in the prison, the squalid conditions of much of the cell accommodation, the poor hygiene standards and conditions in the prison kitchen, the inadequacies of ventilation and cooling systems in several parts of the prison and the shortage of purposeful activity for prisoners in the form of work or educational opportunities (WAICS 2002, 6-7).

Mohammed, who was in Roebourne Prison at the time of the Inspector's visit in September 2000, had a very different opinion. 'Three months Roebourne. That was the best ever place I'd been. Yeah that was much better than any, any detention I've been in, Villawood, everywhere. But the Roebourne, it was – I give it five stars.'

The rights to speech that matters and to be heard extended beyond the semantic or psychological implications as described by Sam, to include material differences to the conditions that a person can be held in. In response to Behrooz's request to produce documents relating to the conditions in Woomera detention centre the federal government did not argue that conditions are not inhumane or degrading, rather that the conditions of detention do not affect the lawfulness of that detention. While detained as an unlawful non-citizen, a person had extremely limited rights

enforceable in law. When detained as a convicted criminal a person had more rights and more effective protections of those rights.

Escape as Escape

As mentioned in the opening paragraphs of this chapter, not all escapes were acts of civil disobedience intended to protest treatment in detention. Some escapes were simply attempts to get away from intolerable conditions. Hadi Gomravi, who escaped from Woomera in March 2002, remained at large until his recapture by Department of Immigration officials in February 2003 (*Bridle v Gomravi* [2005] SASC 295). Upon his recapture, he was taken back into detention and charged with escape. He was sentenced to a twelve month good behaviour bond, which was increased to a three month prison term and a three year good behaviour bond upon appeal. Tariq escaped from Woomera detention centre on the second occasion that outside protesters assisted detainees to escape in June 2002. He remained living physically 'free' but unlawfully until he surrendered himself to the Department of Immigration in 2005. It is interesting to note that several of the detainees who escaped with Tariq on 27 June 2002 were prosecuted. By the time that Tariq handed himself in to authorities on 21 June 2005, the federal government appeared to have lost its appetite for prosecuting escapees. Tariq discerned a change in the political environment and it was this, alongside the ongoing stress of a life without legal status, that prompted him to turn himself in. Tariq was not prosecuted and, ultimately, was granted a Temporary Protection Visa and released from detention lawfully.

Tariq's Story

Tariq arrived in August 2001 and was detained in Woomera IRPC until his escape on 27 June 2002. He spent three years 'couch surfing' in Melbourne before presenting himself to the Department of Immigration and being re-detained. He spent a further five and a half months in detention before he was granted a Temporary Protection Visa and released into the community.

Tariq explained that several people escaped in March 2002 when pro-refugee activists organised a mass action at Woomera. The activists managed to reach the detention centre's perimeter fence and the activists and detainees together made a

large hole in the fence and detainees leapt out. The activists hid escaped detainees in cars and attempted to drive people away from the area and into the relative safety and anonymity of Australia's larger cities. Very few made it and most escapees were back in detention within a day (for a more detailed account, see O'Neill 2008, 96-103). However, Tariq did not escape at this time because he was scared both of the activists ('they were crazy looking people') and of,

what immigration would do, of what would happen. But a few months later I heard about a man in Curtin, they injected him and deported him. We heard about all this, about who was being deported and we were scared – who's next? I was scared that the next one would be me. Am I the next one? I started freaking out. (Tariq)

Tariq did not plan his escape until three months later. He was returning to his room after handing a paper to the Department of Immigration office when he heard a commotion and car horns beeping. He went over to see what was happening and saw, 'activists, they were funny looking, hippies with dreadlocks . . .' According to Tariq, the activists, 'went crazy and broke the fence.' Still in his pyjamas and without his cigarettes, Tariq took his chance and slipped through the hole in the fence and ran towards the activists' cars:

There were five cars, four of them were full of refugees, a van with lots of refugees in the back. I went to the last car, there was lots of fruit and vegetables in the back, no room for me. I ran round to the right side of the car – in Iran the driver sits on the left and the passenger on the right, but of course, it's different here and there was a hippy woman driving, maybe 50 years old. I couldn't speak English, but she told me to get in. There was another hippy couple in the front seat, so I jumped in, I sit on her legs and we start driving. (Tariq)

Tariq and his rescuers evaded a road block by driving into the desert, with Tariq bouncing on his rescuer's lap throughout:

We drove about one kilometre. You could see Woomera – little lights in the distance. She stopped the car and told me to get out, she said

she'd be back at sunrise. I thought she meant sunset and I was scared I would die – it was very cold and I only had my pyjamas. (Tariq)

As sunset came, Tariq became fearful of dingoes, snakes and other dangerous creatures in the bush. The temperature was also plummeting and, believing himself to have been abandoned, he decided to go back to detention. He found the road and tried to wave down a car, although a couple of cars passed, no-one stopped. Tariq settled in for a cold and sleepless night in a water drain running under the road. Early in the morning Tariq emerged from the drain and before long the activists returned and picked him up. They drove into the desert and set up camp smoking marijuana, drinking and waiting for police searches and road blocks to be removed. He remembers this time camping in the desert fondly;

I met this girl, we stay the night together and . . . Well, probably you don't need this for your research, but it was the funnest bit! The fun part of the story. She slept with me five nights and on the morning she told me she is born the same day as me. The day, same month, same year – pretty freaky huh? (Tariq)

Of the thirty five escapees, twenty five were caught immediately, but ten (two Iranians and eight Afghans) camped in the desert, 'and had a little celebration. We drank vodka – I think it was off, it was terrible vodka, but we had a little party to celebrate' (Tariq). After a week in the desert, the activists took the escapees to Sydney, Melbourne and Adelaide. Tariq went to Melbourne and was supported through a network of activists. Life as an 'illegal' was extremely difficult, and he had to constantly move, sleeping in spare rooms or on couches.

I didn't know anyone in Melbourne. I met some people and stay with them a few weeks. They found another for me for a few weeks, a week, ten days, eight months, two weeks.... until three years. I get panic attacks since then. Heart problems, stomach problems, I have to drink soy milk. For three years I couldn't be in touch with my family. To call Iran you have to go out at night, I couldn't go out at night in case the cops catch you. You must always buy a ticket for the tram. You have to be VERY careful. It was SO stressful. No Centrelink, no

Medicare card if you get sick... But somehow there's a network.

(Tariq)

Tariq had a series of casual cash jobs washing dishes or painting houses, and was always vulnerable to exploitation. Tiring of a life in the shadows he 'decided I had to do something about it, it was so stressful. And now things were changing. Petro Giorgio²² was talking, there was more pressure on the government, more eyes on detention. So I thought maybe now, it's the time to give myself up and apply for a visa.'

Tariq went to the Refugee Immigration Legal Centre (RILC) and spoke with a lawyer. Together they went to the Department of Immigration, who were 'actually a little bit impressed that I had given myself up, not many people do that. I thought I had a chance now. Petro Giorgio was pushing.' Tariq was taken into detention in Maribyrnong (in Melbourne) before being transferred to Baxter, which he described as 'terrible'. Although his three years living unlawfully had been stressful, he does not regret his escape. When he went to Baxter, he met a friend who was in Woomera when he first arrived;

He was a fit and healthy young man, excellent soccer player, agile, energetic. When I went back after three years outside 'Reza' was still there, but a completely changed man. He was depressed, he didn't move much, and very slow. He didn't talk much, didn't make eye contact. I still see him now and he still suffers. He still doesn't look at anyone, he's very quiet. Damaged. (Tariq)

Tariq talked at length about the damage detention does and that he wonders how the people that spent long periods of time in detention are going today. He worries about

²² Petro Giorgio was a Liberal Party backbencher (retired in 2010) who led a small group of fellow government MPs in challenging the government's position on asylum seekers. He began speaking publicly against the government position, drafted a Private Members Bill to improve the rights of asylum seekers in detention, threatened to cross the floor and vote against the government on a 2006 bill and managed to negotiate with the Prime Minister for significant improvements, particularly getting children out of detention centres and getting a new class of bridging visa introduced to get long term detainees out. Giorgio's public criticism of the government's position became a key focal point for changing community attitudes (For more on Giorgio and fellow backbencher dissidents, see Fleay [2010, 121-126]).

the children who were detained, and one little girl in particular sticks in his mind. She was in Woomera during the Easter convergence in 2002 and had tear gas sprayed directly at her. Tariq remembers her screams of pain and said she cried for two days. She was just eighteen months old and ‘I think of her often and wonder how she is, if she still suffers.’

Tariq was found to be a refugee and was released from detention on 5 December 2005.

Conclusion

During the height of over-crowding, protests and political posturing about border protection the federal government sought to use a range of methods to further criminalise and demonise asylum seekers in detention. Government ministers made many public comments about the protests in detention, casting escapes not as protest, but as further evidence that ‘these people’ were not law-abiding and would not be a welcome addition to Australian society. The government also amended the legislation to increase powers of Department of Immigration staff and subcontractors (at that time ACM) to search detainees and their property and to ‘manage inappropriate behaviours’ in detention centres. The *Explanatory Memorandum* and the first and second reading speeches accompanying these changes provided further opportunity for the government to portray asylum seekers not as conscious individuals protesting against intolerable treatment, but as an inherently criminal and difficult group. The third strategy of the government was to prosecute offenders through the criminal justice system for offences committed in detention. This final strategy was not particularly effective and, in fact, provided a stage for detainees to explain their own actions and draw attention to their protest in a formal setting.

As well as seeking to insert themselves in the polis in order to make their speech and actions meaningful through the criminal justice system, detainees also used their bodies to make visible the hidden injustices of detention and to create a space in which their voices would be heard by ‘ordinary Australians’. The following chapter looks at embodied protests, particularly through hunger strike, lip sewing and self-harm.

Chapter 8: Hunger Strike and Lip Sewing

My hunger strike was about twenty one days . . . I lost nearly twenty five kilo when I was on that. The reason I break it, I couldn't move nothing. I was just lying there and I didn't know what's going on around me. Suddenly I saw they put their syringe through my nose, through my thing and it was really hurting in my nose. It was really hurtful. They broke my fast. I was kind of like fainted. I didn't know what was going on and all I was doing, just sleeping. I just wanted to die. I didn't want to see how I'm going to die, I just wanted to sleep, sleep, sleep and go under the blanket . . . After fourteen days or fifteen days I was very, like kind of conscious, you know. I didn't know what's going on. It was terrible. They forced me . . . they hold my hands and they put the syringe in my nose by force because I was nearly, I wanted to die really bad. So I was close to it. (Baha'adin)

After about one week of hunger strike, the striker will experience dramatic weight loss. This is followed by vital organs atrophying; first the liver, intestines, kidneys and then the heart. The striker's pulse will slow, blood pressure falls and she experiences dizziness, lethargy, fatigue, faintness and headaches. Her concentration suffers, she becomes apathetic and bedridden. After between thirty five and forty two days, the striker will enter the 'ocular phase' in which progressive paralysis of oculomotor muscles occurs, causing her to experience uncontrollable, involuntary rapid oscillation of her eye-balls. Her vision will become seriously impaired, as does her ability to swallow water and to cease vomiting despite an empty stomach. This phase lasts approximately one week and once it passes, the striker is left physically weakened, sleeps extensively, loses awareness of her surroundings and often becomes incoherent. Death occurs anywhere from day forty onwards (Kenny, Silove and Steel 2004; World Medical Association 2004). Recovery from a hunger strike is also dangerous. Re-feeding following a strike of twenty one days or more carries dangers of oedema (excess water accumulating in tissues, including the lungs), encephalopathy (defined in the Webster's Medical Dictionary (2010) as 'disease, damage or malfunction of the brain . . . usually caused by liver damage or kidney failure') and cardiac failure, among other serious medical consequences.

Hospitalisation to enable close medical supervision of re-feeding is recommended for the first several days post hunger strike (Peel 1997).

Hunger Strike and Self-Harm in Australian Detention Centres

People detained in Australian immigration detention centres have used hunger strikes as a method of protest since detention was introduced in the early 1990s. In the year in which mandatory detention was introduced, two detained asylum seekers from Cambodia went on a hunger strike. As their conditions deteriorated, each was taken to hospital for rehydration. Both refused to consent to medical treatment. The government applied to the court to have the two women declared ‘prisoners,’ thereby giving it power to enforce medical treatment against the will of the strikers. Before the case could be determined, the government introduced Regulations 182C and 182D to the *Migration Regulations*. These regulations gave the Minister of Immigration and the Secretary of the Department power to authorise non-consensual medical treatment where there is a serious risk to the detainees’ health and for the use of ‘reasonable force’ (such as physical restraint or chemical sedation) to enable the treatment to be effected (Minister for Immigration, Local Government and Ethnic Affairs v Gek Bouy Mok [1992] Powell J, 4982). This power was redrafted in 1994 and is now contained in Regulation 5.35 of the *Migration Regulations*. In its 1998 *Inquiry into Immigration Detention*, the Human Rights and Equal Opportunity Commission (HREOC 1998, 102) reported that Regulation 5.35 had not been used. Despite several written requests for information from August 2010 onwards and several follow up telephone calls, the Department of Immigration has not confirmed how many times Regulation 5.35 has been invoked in response to detainees on hunger strike. In July 2002 the Minister for Immigration confirmed in an *ABC Radio National* interview that he had used Regulation 5.35 to force feed hunger striking detainees, saying that, ‘I think the state has a responsibility to ensure in those circumstances, that they survive, and that's what we've sought to do’ (ABC 2002a).

The use of hunger strikes increased between 2000 and 2003 as the numbers of people incarcerated and length of detention increased. Incidents of self-harm and attempted suicide were also alarmingly high. HREOC reported that in the six month period between January and June 2002, ‘there were 760 major incidents involving 3030 detainees across all detention centres’ (HREOC 2004a, 299). These incidents

included 248 incidents of self-harm as well as two mass hunger strikes involving several hundreds of detainees (HREOC 2004a, 299-310). Obtaining specific and accurate information for each detention centre is difficult and beyond the scope of this work, but these figures are only slightly higher than those reported by the United Nations Working Group on Arbitrary Detention which, citing the Department of Immigration, notes 264 incidents of self harm in the eight month period between 1 March and 30 October 2001 (UNWGAD 2002, 12). Hunger striking in Australian detention centres was possibly most frequent and widespread in 2002. Hundreds of detainees across all detention centres were involved in a series of hunger strikes throughout the year. Some strikes lasted only days, while others extended beyond two weeks, the point at which strikers face a high risk of serious medical consequences. While most strikers were persuaded to end their fasts through negotiation, some fasts were broken only with force feeding, against the will of the strikers. Particularly significant mass hunger strikes were undertaken in January and June 2002 at Woomera IPRC.

The Story of One Hunger Strike: Woomera IPRC, January 2002

Following a government announcement to ‘freeze’ the processing of refugee claims from Afghans, detainees at Woomera IPRC launched a hunger strike in January 2002. Detainees reported that 370 people participated in the strike, though the Department of Immigration maintained that ‘only’ 259 people were involved (Barker 2002). Most strikers were Afghans directly affected by the policy announcement, but Iranians, Iraqis and detainees from other nationalities also joined the hunger strike in solidarity with the Afghans. Men, women and children participated in the strike, with up to seventy detainees also sewing their lips shut both to ‘prove’ they were not eating and to symbolise their voicelessness and silencing by the Australian government.

The hunger strike lasted for sixteen days, with strikers dragging mattresses outside and lying in full sun for the duration of the strike. The federal government called in members of its hand-picked Immigration Detention Advisory Group (IDAG) to meet with the hunger strikers and attempt to restore the ‘normal’ functioning of the detention centre. Daytime temperatures at Woomera in January consistently reach higher than forty degrees Celsius and not infrequently exceed fifty degrees Celsius.

At night, the temperature plunges to near freezing. Paris Aristotle, a member of IDAG and Director of the Victorian Foundation for Survivors of Torture, described the scene; ‘in the blazing sun . . . detainees lying or writhing under blankets . . . a constant stream of stretchers move back and forth to the camp’s medical centre as people collapse . . . It was the most terrifying thing I had ever seen. I’ll never forget it’ (quoted in O’Neill 2008, 91).

The protesters were initially calling for the processing of claims to be restarted, but the demands broadened to protest the appalling conditions at Woomera IRPC (see Chapters 3 and 9 for more detail about conditions in detention). The government remained firm in its position, refusing to be ‘manipulated’ by such ‘barbaric’ behaviour, accusing the hunger strikers of forcibly sewing the lips of their children and of secretly eating (Klocker and Dunn 2003). After spending several days at Woomera meeting with detainees and listening to their concerns, IDAG members Air Marshall Ray Funnell, former head of the Royal Australian Air Force, and Paris Aristotle flew to Canberra to meet with then Immigration Minister Philip Ruddock and brief him on the Woomera hunger strike. They reported to the Minister that the hunger strikers had legitimate grievances and were intent on their strike. They advised him to close Woomera IDC, as the environment and culture there was irreparably ‘toxic’ and that a detainee fatality was a significant possibility (O’Neill 2008, 93).

As negotiations dragged on with no resolution in sight, several detainees began to talk of a mass suicide attempt (Barker 2002). The government deflected the threat as further manipulative behaviour and warned that the government would not be blackmailed. Mahzar Ali, a spokesperson for the hunger strikers, feared that many people



Figure 16: A leaked photo taken by guards, with the caption, ‘Good effort WMA 365 jump into razor wire’ (Anonymous source).

could be seriously injured or die in their attempts to force the government to listen. He implored his fellow detainees not to commit suicide, promising that he would 'do something' (O'Neill 2008, 94). On Australia Day, 26 January 2002, Mahzar Ali climbed up one of the fences and threw himself into the razor wire. He suffered deep lacerations to his arms, legs, torso, neck and face. Somehow he survived the incident. His actions were seen as 'heroic' by fellow detainees;

On the twelfth day of our hunger strike our brave leader Mazher Ali climbs to the top of the fence and throws himself on the razor wire in an effort for us to be taken seriously. It gives a boost to people's courage (Changazi 2010).

Figure 16 shows a leaked photo taken by guards with the caption, 'good effort WMA 365 jump into razor wire.' This caption reveals the derision of Mazher Ali's guardians and shows the degree to which the system of detention had so dehumanised all who were caught up in it, whether as guard or guarded, that someone would throw himself onto razor wire and that the response of those charged with ensuring his safety was not only to graphically document his injuries, likely a contractual obligation with the Department of Immigration, but to add a derisive comment to the photograph.

On 30 January 2002, the government agreed that it would resume the processing of Afghan asylum claims and would consider all information put before them by claimants. The protesters collectively agreed to call off the hunger strike. There were no fatalities and no-one was force fed during this strike, though many people were medically rehydrated. 'Normality' was restored to the operations of Woomera. However, it wasn't long before further individual and collective acts of self-harm, suicide attempts and hunger strikes were enacted in Port Hedland, Curtin, Villawood, Maribyrnong and Woomera detention centres in protest against the continued denial and violation of detainees' human rights.

Reading Refugee Protest

The Australian government narrated detainee hunger strikes, self-harm, suicide attempts and lip sewing in particular as manipulative actions that were 'alien to our

culture' and as efforts to hold us 'hostage to our decency' (Fonseca 2002; Pugliese 2002; Wolfram Cox and Minahan 2004). Refugee advocates and supporters cried out for Australians, and the government in particular, to recognise the pain and despair in detainee actions and to respond with compassion. The high incidence of self-harm and suicide was a product of an epidemic of mental health problems that was exacerbated, if not caused, by prolonged and indefinite detention in an 'environment so toxic that you can't treat anything meaningfully' (Jureidini, quoted in Briskman, Latham and Goddard 2008, 139). Largely missing in the public discussion about the high rate of bodily protests in immigration detention centres was the voice of the participants themselves. Detainees did manage to smuggle out some notes or make telephone calls to media and supporters outside detention, but their voices were largely drowned out by more powerful voices with greater access to public fora. Also missing was a critique of *why* people would harm themselves in an effort to escape harm. Images of people who have voluntarily sewn their lips and whose bodies lie limp on a mattress in the full desert sun are confronting and difficult to understand. The government and refugee supporters both offered simple answers to complex and multi-layered acts. The government message can be summarised as, 'they are so unlike us, their morals and mores so alien to ours, they couldn't possibly live among us and so our jails and guards are needed to protect Australia from such unintelligible, unknowable threats', while refugee supporter messages tended more towards, 'they are just like us, they suffer, are depressed and need our care and compassion'.

A Brief History of Hunger Strikes

Hunger strike has a long history and has been used by prisoners, protesters and disempowered groups around the world. It is rarely a first action in protest against a perceived wrong, and is generally embarked upon only when all other courses of action have been exhausted. While not all hunger strikes are enacted in prisons and detention centres, there is an undeniable link between imprisonment and hunger strike (Ellmann 1993). One of the most famous hunger strikes was undertaken in 1981 in Ireland by Irish Republican Army (IRA) prisoners in Long Kesh Prison. The men were protesting against the revocation of prisoner of war status and their reclassification as 'common criminals'. While some material benefits (such as not needing to wear prison uniform or engage in prison labour and having greater access

to visitors and communication with the outside world) attended the different status of prisoner of war, the political significance, for both the British government and the IRA, was of far greater importance (Howard 2006, 69). The IRA considered themselves republican freedom fighters, fighting against a foreign oppressor. The British government considered the IRA terrorists and thugs committing criminal acts. By revoking prisoner-of-war status, the British government hoped to erode the legitimacy of the IRA and to evacuate their actions of political meaning.

The political status of IRA prisoners was revoked in March 1976, compelling them to wear prison uniform and participate in prison work programs. IRA prisoners refused to comply, and the five year long 'blanket protest' began. Stripped of their own clothes and refusing to wear prison garb, 400 men draped themselves in the blankets from their cells. After two years this escalated to become the 'dirty protest' in which men refused to enter the prison bathrooms, a protest both against the lengthy delays between the request to go to the bathroom and its grant, and against the invasive body searches conducted there. Excrement built up in their cells and the protesters remained unwashed. The British government, led by Margaret Thatcher, remained unmoved. On 1 March 1981, a hunger strike began which would last 217 days and kill ten men (Howard 2006, 71). Prisoners volunteered to strike and a central group of leaders decided who would strike and when each strike was to begin. The first to refuse food was Bobby Sands, and he was also the first to die. Deaths from the hunger strike were carefully timed to ensure a steady stream of coffins emerging from the prison (Andriolo 2006, 105). The British government may have been able to 'manage' a single death, perhaps being able to 'spin' the death as a suicide and evidence of an individual's personal despair, which was notable because of its exceptionality (Pugliese 2002). However, coffins emerged day after day, exemplify the problems hidden from view by the prison walls and calling into question the legitimacy of the state (Ellmann 1993, 92). Allen Feldman explained that, 'the act of hunger striking purified and decriminalised the striker, but the queue of corpses emerging from behind prison walls would shake the moral legitimacy of the British state' (quoted in Andriolo, 2006, 104).

While on strike, Bobby Sands stood for, and was elected to, the seat of Fermanagh and South Tyrone. Sands' victory in British elections proved that the IRA was not,

as the British government asserted, a radical minority group of criminals who lacked popular support. The hunger strike not only rallied the men within the prison around a common cause – recognition as legitimate actors in the eyes of their enemy, but also provided a focal point for those outside the prison to articulate their support for the Republican cause. The strike transcended the walls of the prison (Andriolo 2006, 104).

After ten deaths, and with dozens more prisoners at different stages of hunger strike, and all determined in their resolve to fast until death if need be, the British government was eventually forced to back down and the hunger strike was called off on 3 October 1981. The IRA had won a significant victory, not least consisting of the realisation of the depth and breadth of support for both the IRA and the British government. Afterwards, all exchanges between the government and the IRA took place in a vastly altered power relationship.

In regard to the IRA hunger strikers Ellmann (1993, 17) argues that, ‘it was not by starving but by making a spectacle of their starvation that the prisoners brought shame on their oppressors and captured the sympathies of their co-religionists.’ While there are some parallels between the IRA hunger strikers and Australia’s immigration detainees, particularly in their desire to assert their place as legitimate political actors, there were a number of key differences. Detainees in Australia did not share sufficient common identity traits with the community outside detention (such as language, nationality or religion) and they had been effectively dehumanised in the public arena. This meant that their hunger strikes, as much as they may have garnered support from some, were limited in their capacity to transcend prison walls and build a broad base of solidarity which would bring shame on their oppressors. Their actions could too easily be presented as further proof of their barbarity and otherness. Furthermore, detainees did not get to narrate their own actions. Government control of access to the detention centres and the detainees’ lack of pre-existing links and organisations within Australia meant that they were effectively isolated and their actions were too often viewed alongside a government-supplied narrative. As hunger strike relies substantially on triggering other people’s conscience, articulating the reasons of a hunger strike is essential if the strike is to realise its full force. A hunger strike must also have a ‘. . . statement that

supplements the wordless testimony of the famished flesh. To hold the body up for ransom, to make mortality into a bargaining chip, hunger strikers must declare the reasons for their abstinence' (Ellmann 1993, 17). Without this self-narration, the political act can too easily be subsumed in individual pathologising explanations.

Personal/Political: A Culturally Bound Dichotomy

I started this thesis frustrated that detainees' protests against immigration detention were invariably narrated for them, either by the Australian government who presented all acts as evidence of 'their' criminality, moral bankruptcy, deviousness and difference from 'us', or by refugee supporters who pointed to hunger strikes and lip sewing as proof of the despair, pain and suffering of 'them', calling on 'us' to respond with care and compassion. Missing from these competing views, it seemed to me, was a recognition of detainee protest as informed political action, arising from a critique of the injustices enacted by government policies to 'boat people'. I sought to hear and give a platform to the *political* voices of detainees involved in the actions. Necessary in this task was to disentangle the personal from the political; to write about self-harm as a political act, to demonstrate the politically informed framework leading to hunger strikes and to argue against the pathologising and politically eviscerating medical model. The capacity to so neatly separate my personal and political actions is, I have discovered, a position of privilege bestowed on me by my own whiteness and comfortable middle class status. As affronted as I am by the detention of asylum seekers, I am not living in detention. No one knocks on my door or shines a torchlight in my face several times throughout the night, I am called by my name, and I am free to think, move, say and do as I please within rational, reasonable and known bounds. My desire to separate the personal despair of life in detention with no known temporal limits and the political critique of the principles and rights this offends was naive. Detainees *were* distressed, depressed, feeling hopeless, powerless and despondent. These feelings informed and drove their actions protesting detention, but so too did political analysis. The emotional impact and experience of detention co-existed with, and informed, detainees' political critique, and the two cannot be disentangled. The task then became to write in such a way that escapes the binary and simplistic thinking of 'either/or' and instead develop a more holistic, complex and nuanced understanding of detainee protest.

Detainees spoke again and again of the frustration and despair they felt in detention. The words ‘frustrated’, ‘frustration’ and ‘frustrating’ appear and reappear throughout the transcripts of interviews for this research. Frustration occurred because of the way that written requests for soap, to see a doctor, access to a telephone, information about the progression of claims were simply ignored time and time again. Frustration occurred because of the sameness of every day; the unchanging landscape of razor wire, routine and ‘chicken and rice, rice and chicken. Everyday chicken!’ (Osman). Frustration was felt because nothing that detainees said or did mattered or made any difference at all.

As explored in Chapter 5, Arendt (1976, 296) articulates that ‘human’ rights outside a political community that is willing to recognise them are meaningless. She eloquently states that a ‘refugee’s freedom of speech is a fool’s freedom for nothing she says matters anyway.’ And so it was that detainees were free to speak in detention but that their voices were rendered silent and irrelevant by their exclusion from the polis. Their words of protest, expressed through requests, letters, phone calls and painted banners fell into a void, and were largely unheard and unresponded to. Faced with the reality of Arendt’s astute observation made so many years before, detainees escalated their actions to insist upon their voices and actions being heard.

With no formal political community, detainees had been stripped of their status as political subjects and reduced to objects of Australia’s national politics. They were existing in a state that Arendt described as biological specimens of the species ‘human’. Reduced to this corporeal state, yet rejecting this reduction, and having learned that ‘words do not grip unless one gives them hands to do so, unless one embodies them’ (Andriolo 2006, 102), detainees used their bodies to reinsert themselves into the polis. Conversely, Arendt warned, action must always be accompanied by the narration of the actor if it is to be political communication and, thereby, participation in the human artifice;

Action and speech are so closely related because the primordial and specifically human act must at the same time contain the answer to the question asked of every newcomer: ‘Who are you?’ ... Without the accompaniment of speech, at any rate, action would not only lose its

revelatory character, but, and by the same token, it would lose its subject, as it were; not acting men but performing robots would achieve what, humanly speaking, would remain incomprehensible. Speechless action would no longer be action because there would no longer be an actor, and the actor, the doer of deeds, is possible if he is at the same time the speaker of words. The action he begins is humanly disclosed by the word, and though his deed can be perceived in its brute physical appearance without verbal accompaniment, it becomes relevant only through the spoken word in which he identifies himself as the actor, announcing what he does, has done, and intends to do. (Arendt 1958, 178)

Detainees understood the need to narrate their own actions, to explain what they were doing and why. But quiet speech, speech without the physical force had failed and so people in detention began to use their bodies to make their voices heard. The risk of course, was that their narratives would become separated from their actions, enabling the government to present their actions as ‘barbaric’ and ‘unknown to our culture’. Nonetheless, detainee hunger strikes and some acts of self-harm were primarily communicative acts insisting on a response from both the Australian population and the government.

Detainee hunger strike and self-harm must be understood in multiple ways:

- As profoundly political acts, arising from both strategic analysis *and* intimate despair because Detainees’ politicised status made their actions both personal and political.
- As both individual and collective action. Hunger strike and self-harm are perhaps the most personal and individual acts one could take, and yet are often undertaken within (and often for) a collective.
- As the use by detainees of their bodies to make visible both their depoliticisation and their rejection of the reduction to a corporeal state. Regardless of the outcome of the strike, whether the immediate goals of the protest were achieved or not, detainees’ sought to exercise control over their own bodies; to re-establish sovereignty of self against the omnipotence of the sovereign state which detained them.

- As communicative, using bodies and performance where words had failed.

I will now turn to each of these analyses in turn.

The Politics of Personal Despair

In *Discipline and Punish*, Foucault (1977, 28-29), drawing on the work of Kantorowitz, proposes that, in the same way that ‘The King’s Body’ needs to be understood as being at once ‘a transitory element that is born and dies’ and an ongoing representation of the kingdom, a ‘physical yet intangible’ icon maintained through ritual and ceremony, so too the condemned man must be understood as both an individual and a representative of state power. This analysis can be applied effectively to detained asylum seekers. The nexus of personal despair and political action is made visible using this analysis.

The *asylum seeker* is at once an individual, unique in her specificity and temporal in her status, and anonymous and enduring in her function as a site for the performance of state power. Her presence enables ceremonies (detention and its accompanying rhetoric) in support of the kingdom (nation-state) to be performed and, thus, maintain the ‘physical yet intangible’ icons of state. The *asylum seeker* occupies a duality of being; an extra-legal non-citizen stripped of her rights, and an essential body in the performance and maintenance of state power and national identity. It is in this duality of her specificity and anonymity, that we can effectively read her hunger-striking and self-harming as being at once intimately personal acts of despair and public political acts; a cry of pain *and* political action.

Most of the former detainees interviewed for this work explained hunger strike and self-harm using both psychological and political frameworks. Emad did not refuse food himself, but participated in a hunger strike in 1999 as a spokesperson and mediator between the hunger strikers and the government. He described the mood in detention in the lead up to the hunger strike;

The immigration didn’t listen. The refugees, they lost any hope of leaving... We have kids in the detention centre, and we have a lot of women, and they have a lot of problems. The psychological pressure

was really high at that time, living in what they call it, a donga²³, with tens of people. You can't sleep at night; you have security guards from the Australian Correction Management knock on the door every half an hour to count the refugees or to check on them. It is a very disturbing environment for them. No talking to their families and they're overseas, no talking to anyone, the feeling of isolation, the feeling that no-one knows anything about us makes them do what they done. (Emad)

He also explained that the strike was a reaction to a specific political development. Temporary Protection Visas had just been introduced;

So once the guys there knew about the new system that was a reason for hunger strike, demonstrations, a lot of actions... So partly because of the legislation, the other part is because of the ACM behaviour in the detention centre. The guards there needed to be more aware of the human rights system. (Emad)

There can be little, if any, doubt that morale in detention centres was extremely low, that people felt angry, frustrated, depressed and despairing about their current situation and a sense of hopelessness for their future. All participants in this study, when asked about hunger strike, self-harm and suicide, responded with explanations that blended their emotional state with complaints about both politics on a local level, most particularly regarding their immediate treatment in detention by both guards and Department of Immigration staff, and broader national and international politics. Salah explained that he and several other detainees conducted a ten day hunger strike in Curtin IDC. He was part of a group of detainees who had been 'screened out' and not permitted to lodge protection visa applications. For a period of ten months, they had been held in separation detention, with no communication with asylum seekers, lawyers, friends or family and no access to newspapers or television. The government was unable to return people to their countries of origin and there was no end in sight to their predicament. The group of detainees were all

²³ A donga is a temporary removable building. Dongas were used extensively in the larger detention centres.

single men except for one family. The family had a young child who had by then spent seven months in separation detention with no contact with other children and no access to school or play opportunities. The group had been requesting for several months that the family be transferred to the main compound where there were other children and slightly better facilities, but without success. Eventually the group decided that their requests using official processes were futile and,

we got a hunger strike because of that family, because straight up, they got one kid, a little girl, and it's really hard. We stayed like I think ten days on hunger strike . . . Yeah, after ten days they took that family and put them to another (compound) . . . We said 'okay' and we broke down the hunger strike. (Salah)

Salah and his fellow detainees' protest was most immediately against the local level enactment of asylum seeker policy, and specifically about one young girl who could not play with other children.

Issaq spent almost five years in immigration detention before being found to be a refugee and granted a visa. During this time he participated in many protests, including hunger strikes and lip sewing. He also committed several acts of self harm in detention. Issaq had been detained in Port Hedland, Woomera and Villawood detention centres. When he had been in detention for twenty seven months he heard that detainees in Port Hedland and Woomera had sewn their lips. He was in Villawood at the time, but knew how isolated the other centres were:

We heard that in Woomera and Port Hedland they sewed their lips as a sign of protest. But I knew that in there that it wouldn't get across because they don't have visitors, they don't have the freedom that we have here. We had visitors, activists coming in and see us. In there no one could get in and see them in person. They were handing out the notes and writing something in notes. It's different from personal experience. It was me and another two teenagers where we thought 'let's sew our lips and that will get some attentions.' (Issaq)

Issaq displays an acute political awareness in his decision to sew his lips. He understood that narration of the event was essential ‘if they intend[ed] to make their self-starvation readable as protest’ (Ellmann 1993, 19), and so Issaq was very deliberate in his decision about how to reveal his sewn lips to the wider world. He decided that Dr Michael Dudley, a psychiatrist, would be the best person to narrate his actions. He explained that he could have called a journalist himself, as he had direct phone numbers for several journalists at major news outlets, but,

the first thing I did was before telling anyone or any officers or anything, I just handed a tissue in front of my mouth. I came in and the first person who saw my lips are sewn was Dr Michael Dudley because I knew that he will go out and reflect it positively. He’s a psychiatrist . . . he’s not just a journalist going around and saying ‘people sewed their lips because they are desperate.’ I mean, journalists saying that, it means something. But when a psychiatrist saying that, it means a lot. It means different from people who are just saying it . . . So that was the first thing we did, telling him. He went out, he expressed it and that caught bigger attentions. The way he expressed it to journalists, like ‘well, there is a seventeen years old boy inside detention who sewed his lips off a hunger strike. He sewed his lips in protest of what we are doing . . .’ which magnified the publicity by a hundred as just a normal journalist or person just sitting in a seat. (Issaq)

At that point, Issaq was a teenager with limited education, nonetheless he understood the effect of cultural authority. He understood that his fate was tied up with the fates of unknown others detained in Woomera and Port Hedland, and that they were at once unique individuals and anonymous representations of the universal *asylum seeker*. He understood too, that their actions would be more effective if undertaken collectively, and that these actions could be further enhanced through strategic use of allies with more power than they had. Issaq wanted his actions to be understood as protest, arising from pain and despair, but not an indication of individual pathology, rather as a ‘normal’ human response to unjust policies. Issaq recognised that his lip sewing may appear to be only an instance of psychological self-harming to others,

and so he chose a psychiatrist to explain the difference to a general public who had not met him personally and who likely saw him only as an anonymous *asylum seeker*.

Detainees were always acting with the duality of being specific individuals and also the universal *asylum seeker*. Their actions, whether undertaken individually, as most acts of self-harm and suicide attempts were, or collectively, as most hunger strikes were, were tied to the status of ‘detained asylum seeker’, itself an intimate, personal state of being and a highly politicised status shaping Australia’s national politics at that time.

Individual and Collective Action

The universal *asylum seeker* may seem a totalising status from a distance, but, as previously discussed in Chapter 2, universals have a tendency to fracture under scrutiny. Although the incidence of hunger strike, lip-sewing, self-harm and suicide attempts were alarmingly high in detention centres, not all asylum seekers participated in these actions. Several participants reported that while some actions were spontaneous, more commonly there would be lengthy discussion before a big protest. These meetings rarely reached full consensus either within the detainee population as a whole or within each subgroup detained (detainees often loosely organised themselves in nationality-based groups within detention). Emad, Aamer and Sam were all opposed to hunger strike for different reasons. Emad, a lawyer, explained;

I opposed the idea of hunger strike . . . I didn’t think of it as a practical solution . . . The other people thought hunger strike as the only thing that they know. Me personally, I thought of communicating with the management at that time – sending groups to them, asking for appointments, let’s say to see them and talk to them. But unfortunately most of my requests were ignored at that time. Actually they didn’t listen even to the most moderate let’s say, way of thinking on the refugees’ side. (Emad)

Emad went on to explain that he had escaped a lawless regime and wanted desperately for the official systems in Australia to work. Although the conditions in detention were terrible, he wanted to engage with his gaolers and negotiate a resolution. In his view, hunger strike undermined the rule of law and it was with dismay that he saw the strikes and other protests achieve more than had previous strategies of negotiation and lodgement of request forms.

Aamer's objection was different again. By the time he was involved in a group meeting about hunger strike, he had already learned that the official systems didn't work. But, as a doctor, he believed that one needed to be as alert and clear thinking as possible to survive detention. He explained that,

I disagree with it. Principally, eventually, I know a hunger strike how it damages the body.... Hunger strike will not help mental health at all. If anything it causes much way worse. So mentally it doesn't help and physically it does damage parts of the body irreversibly. (Aamer)

Sam's objection was different again. Early on in his three years of detention, he watched an older detainee on hunger strike. Sam arrived in the detention centre sixteen days into the man's twenty-plus days strike; 'I watched him for a few days and realised no one cared. It seems no one gives a damn.' This seems to have been a formative moment for Sam, who explained that in principal he supported hunger strike as a method of protest;

I still believe in hunger strike as the most peaceful way of protesting against injustice – where you can't do anything else most probably peaceful would be the hunger strike. I mean, there's no other that can beat that one. (Sam)

However, Sam went on to say that he thought in that particular time and context, that hunger strike was ineffective;

I thought it was over used. It seems that it was a good way of being heard but because it was over used... Probably because of good connections that I did have outside I was getting more of a reflection of what's going on and what's working and what's not working. (Sam)

Some hunger strikes were undertaken by individuals acting alone and wanting specific changes to a particular situation. For example, Sayed went on hunger strike twice during his nearly six years in detention. On one occasion, he had been transferred to a prison to alleviate accommodation pressure at the Perth detention centre.²⁴ He felt affronted by this and believed he was being ‘wrongly imprisoned’. He went on a hunger strike until he was returned to the detention centre. On an earlier occasion, Sayed had gone on a hunger strike lasting around ten days. His application had been refused by the Department of Immigration, and, not understanding he had the right of appeal to the RRT, he went on a strike against his removal from Australia.

More often however, hunger strikes were undertaken collectively and in solidarity with others. Issaq’s account above explains that his lip-sewing was to draw attention to the strike of others not known to him personally, while Salah’s strike was to help a child and with no direct benefit to him or his fellow strikers. Tariq, Mohammed, Osman, Aamer and Baha’adin all told of meetings where hunger strike was discussed:

We had a meeting and decided we should do this. We talked about how we can bring this message outside... We made decisions as a group, not as individual. So the group made that decision. We talked about what to do, what not to do. We were all together. (Tariq)

While having a high degree of consensus, with some dissent as outlined above, there was also room for individual determination as to what form of participation to have. Emad did not refuse food or water, but considered that he participated because he was a mediator between the strikers and the Department. Osman explained that some people would refuse food but take water and tea, while others would refuse both food and fluids. He also explained that,

everyone is responsible for himself. Everyone and then it’s up to other people who wants to join us. Like many people didn’t come, didn’t

²⁴ The United Nations Working Group on Arbitrary Detention reported that some immigration detainees were transferred to prisons ‘because of a lack of space in the centres’ and found that this practice amounted to arbitrary detention and constituted a breach of the International Convention on Civil and Political Rights (UNWGAD 2002, 14).

join us for hunger strike, but they would come to look after us. Helping us... Like if we need water, they bring water. If I collapse will bring the officer to come in, all this stuff. All involved, in any way, you know? (Osman)

Paradoxically, the dehumanisation and de-individuation of the detention regime elevated the status of ‘detainee’ to a political identity. Identifying as ‘detainee’ enabled relationships and solidarity bonds to form across differences which would previously have precluded such collaboration. At least at certain moments, Hazaras acted alongside Pashtuns, Iraqi Sunnis and Shias aligned with Iranians, and Issaq, from Iran, and his fellow lip sewers, an Iraqi and an Afghan, went on strike in solidarity with detainees in Port Hedland and Woomera, knowing nothing of their national, ethnic or religious identities. This is not to say that differences between individuals and groups ceased to exist or that there were no tensions within detainee populations, but certainly the status of *detainee* acted as a mobilising identity and formed the basis for several group actions. Osman reported that he would act for, ‘anyone! Anyone who are detainee. It doesn’t matter if you are Iraqi, Afghan, No No. We *are* detainee. We are detainee.’ This was echoed by Baha’adin, who said he joined one hunger strike because, ‘everyone was pretty much protesting. I said “alright you guys going to protest? I’m going to be with you as well and it doesn’t matter how far you go, I’m going to be with you.”’

The sense of collectivity and solidarity spanned beyond being current immigration detainees and included an identification with others who had used hunger strike as a form of protest against injustices of the past. Several former detainees, when interviewed for this research, cited Gandhi and Bobby Sands in explaining their hunger strikes. This implies that detainees felt a solidarity that transcended spatial and temporal limits and extended to include identification as defenders of justice or survivors of injustice. It further indicates an awareness of the importance of locating their actions within a broader historical framework and through this, give greater strength to their resolve, rightness to their actions and legitimacy to their struggle in the public arena (Hall 2008, 170).

Embodying and Rejecting a Corporeal State

Foucault explains that historically the power of the sovereign was rooted in the sovereign's right to determine life and death. Punishment was organised around the body of the criminal and sentences involved public floggings, imprisonment with hard labour, execution, or in some cases, public torture and execution. Foucault theorises that public physical punishment ('punishment-as-spectacle' [Foucault, 1977, 9]) as a display of the sovereign's might and right carried significant risks as it also raised unsettling questions about the moral superiority of the sovereign who ordered such violence, over the condemned who bore it:

. . . although it was always ready to invert the shame inflicted on the victim into pity or glory, it often turned the legal violence of the executioner into shame (Foucault 1977, 9).

Consequently, over the seventeenth and eighteenth centuries, state punishment shifted its focus away from the body of the transgressor and towards the soul. In an effort to evade the shame of the executioner, modern state punishment sought to avoid making a spectacle of the state's violence and infliction of pain on the body of the condemned. 'Rehabilitation' and the soul of the prisoner became the new targets. 'From being an art of unbearable sensations punishment has become an economy of suspended rights' (Foucault 1977, 11).

Modern punishment, rather than triggering discomfort and raising questions among citizen bystanders, as public executions or flogging do, is now designed to demonstrate the power of the state over life while simultaneously hiding the violence of the state. This obfuscation of state violence functions to separate power and violence in rhetoric and performance while protecting the monopoly of violence that the state holds from critical public scrutiny. Transgressors are identified, judged and subsequent punishment is meted out through a complex web of institutions and rules that self-represent as reasonable, proportionate and justified as necessary for the good of the whole. Punishments are presented as a consequence of the transgressor's own actions, thereby divorcing the state from any moral questioning. At the same time, punishment is aimed primarily at the soul of the transgressor and is 'for his own good'. In this way, modern policing, justice and penal systems are able to define their moral superiority and, through their own actions, produce and reproduce a

paradigm of knowledge which reinforces and reinscribes its own moral superiority (Foucault 1977). Modern prisons function as both a public display of state power and provide walls behind which the state can hide its violence. In the public paradigm, narrated by the state, the prison is a site of rehabilitation and necessary curtailment of the rights of the few in order to protect the rights of the many. Deaths in custody unsettle this and are to be avoided as much as possible. Dr Aamer Sultan explained that detention centres were carefully managed to avoid suicide and the attendant scrutiny and possible moral discomfort such an event might provoke, but that nothing was done to make people feel less suicidal (see his comments Chapter 1 for more). Any testimony from offenders about the violence inside prisons is easily discredited by the state as the most powerful voice in the power-knowledge paradigm (Foucault 1997).

This dynamic nexus between institutions, power and knowledge, which frames public life, infuses immigration detention and refugee protest. As explored in Chapter 2, the state has been able to criminalise asylum seekers and, with that, deploy centuries of inherited 'knowledge' about crime and punishment against asylum seekers. And so asylum seekers' detention has been turned into a consequence of their own (criminal) actions and any protest against that detention is further evidence of their criminality and moral inferiority. The appropriate public response then is to tighten security and policing of Australia's shores. The citizen bystander is content that they have a full picture and need not ask questions of why people are detained, the conditions of detention or what other readings there might be of detainee protest. Detainees rioting, breaching perimeter fences at Woomera, Port Hedland and Derby, or setting fire to buildings in Baxter are easily accounted for within this framework.

Running parallel to the penal operations of immigration detention and of the rhetoric surrounding the arrival of boat people, the government also repeatedly denied that detention was punitive (Brennan 2007), asserting time and again that immigration detention was administrative detention and the minimum practice necessary to protect Australian people against the potential arrival of criminals, terrorists or other undefined threats (Mason 2004, 235; UNWGAD 2002). The government claimed that detainees' rights were limited only to the extent necessary to achieve the greater

purpose of protecting Australians. In this way, the government was able to use detention as a performance of state power and suppress any discomfort caused by displaying state violence in its exercise of power and control.

Government control in immigration detention centres was omnipotent. The purpose built detention centres in Baxter and on Christmas Island eerily reflect Bentham's panopticon. Cameras are everywhere; enabling guards to observe detainees in every action. Visitors must pass through a metal detector and all bags are scanned by an x-ray machine. All movement in and out of the centres is logged. Perimeter fences are electrified and motion sensors monitor a 'sterile-zone' between the internal and external perimeter fences. A control room looms



Figure 17: Red One room, Baxter IDC, used for behaviour management following a suicide attempt, protest action or other form of disruption (from Project SafeCom website).

above the centre in a tall tower that enables full view of the site. Work opportunities within the centre are extremely limited, recreation programs are sparse, meals are set and delivered on schedule, and detainees are allocated a detention identity number and are checked by guards hourly. Mobile phones are prohibited and all communications into and out of the detention centres are controlled. Request forms must be lodged for any needs falling outside the daily routine of the centre. Detainees' futures depend on the outcome of their visa applications, which are determined by Department of Immigration officials. The life of the detained asylum seeker is subsumed in a web of bureaucracy and governance.

Australia's immigration detention centres exemplify Foucault's 'economy of suspended rights'. Through detention, the state exercises its penal power in a way that leaves no traces on the body, for its target is the soul of the transgressor. State

violence is made invisible through the physical isolation of detention centres, the carefully controlled access to detention centres and through the semiotic and rhetorical distancing of detainees from the Australian public. As Maud Ellmann (1993, 85) eloquently points out, ‘pain without marks is like speech without writing, doomed to pass into oblivion.’ Detainees’ acts of self-harm, hunger strike and lip sewing were an effort to embody the violence of the state, to make visible the effects of the state’s hidden violence and, in so doing, to refuse to pass into oblivion but rather to, ‘trick the conscience of [their] viewers, forcing them to recognise that they are implicated in the spectacle that they behold’ (Ellmann, 1993, 17). Detainee hunger strikes strived to raise questions about the moral legitimacy of immigration detention and, by implication, of the government itself and Australian society. Ramatullah, a spokesperson for detainees on hunger strike in Woomera in July 2002, told outside supporters that the hunger strike was to ‘show the cruelty of persecution on us. If we die, it will make conspicuous our innocence and the guilt will be on the government’ (McKay 2002).

Detainees recognised that they had very limited power, their words were not being heard and so they used the only power they had, their bodies, to challenge detention. The challenge operated simultaneously on two levels. As well as being aimed at the Australian government and population, it was also a way for asylum seekers to experience a sense of self and some control in their lives. Issaq explained that sitting doing nothing created a vacuum and that self-harming was sure to provoke a reaction, through which he gained some sense of his presence in the world;

I wanted to have something to look forward, then slash my wrists and see what’s going to happen. You know what I mean? Just something out of ordinary. I mean I know that I’m sitting here and watching that tree, nothing going to happen. I won’t get a visa, I won’t get out of here and everyday going to be the same. But I want to change it. The only power I have to just slash my wrists and see what’s going to happen after it. Will it cause attention or not? Will it, you know? You’ll hope for a change. To use all what you have to change – I mean, not to get out of detention, but change what’s happening now. I mean, I’m sitting here, by doing nothing, nothing would change. But

by slashing my wrists there are going to be some action at least. At least five officers are going to come out of the door, nurse is going to come and all these things. Something going to happen out of ordinary and in terms of self harm that was the thing I was looking for. All the power that you have. That's all the power, not just a little of it. That's all you have. (Issaq)

Issaq's self-harming was an effort to make his actions meaningful. His discussion of self-harm displays an understanding of Foucault's critique of how sovereign power has shifted from the power over death to the power over life and the risks of a death in detention to the moral legitimacy of the government. If he self-harmed, the authorities *must* react. Paradoxically, his apparently destructive self-harming actions brought him closer to a place in the world in which his actions were meaningful.

Sam didn't self-harm during his three years in detention, but he was a trusted confidante of many fellow detainees and talked with many people who were self-harming. His explanation is similar to Issaq's, but with less concern for provoking an external reaction as an internal one. He said self-harm,

. . . was out of real psychological frustration and self actualisation. People's situation in detention was that you were the lost person, the forgotten person, you don't exist, you cannot change anything and you have no power over anything. So, self harm in most cases wasn't a planned thing. It was in most cases out of frustration and it was good in a way that people feel they are real again, they exist, they have power over something – their body. So, blood always has a very powerful message and when people see they can get over their fear and do something, certain thing – harsh thing, they come back to that colour of existence – I have power, I can do things. So, I was calling that self actualisation out of frustration in that situation. (Sam)

The omnipotent power and control of the detention environment reached into every aspect of detainees lives. Their daily routines were micromanaged to such an extent that people lost a sense of self. Shahin explained that hunger strike was a way for

detainees to experience their own agency and will, regardless of whether any specific goals of the protest were achieved or not:

This would happen because you have no choice. You can't make any decisions in your life. Just to show you are alive you could make a decision to stop receiving anything in your body. That would show that you were alive, because you could make a decision, in a place that you can't make any decision. (Shahin)

Sayed conducted two hunger strikes in detention and said that when he protested he re-gained self-confidence and a sense of himself:

I think you gain self confidence because in the environment you are in, you are depending for everything and you abide by the rules so, you have to do like they tell you to do. They set the time for food, you don't have control on anything. When we do something like that, at least we, we, it's like a self-independence type of things. That's what happens. That's why we protest like, because you are achieving something, even though you're not . . . but still you . . . will gain the self confidence. Because you're so dependent. You don't have the ability to make decisions or ... because you lose ability to make decisions . . . That's what happens, that's the main purpose everybody do what they do. Otherwise there is no difference between the live and dead you know. Otherwise I could be dead – nothing. (Sayed)

Detainees' bodies became a site for the exercise of state sovereignty, but they were also sites for detainees to reclaim sovereignty of self. Lacking power over their external environment, detainees sought to exercise power over their own bodies and through this to exert some influence on their environment and regain a sense of self. However, this sovereignty of self was limited because the government, through Regulation 5.35, retained the power to administer medical treatment against the will of the detainee. Whereas Bobby Sands could defiantly claim that, 'it is not those who can inflict the most, but those who can suffer the most who will conquer' (quoted in Andriolo 2006, 105), the capacity to fast until death was denied to detainees and so their capacity to perform the violence of state policies through self-suffering, already

limited by their geographic and semiotic isolation, was further circumscribed by the state's ultimate power to use physical and chemical force to administer medical treatment. Sylvia Pankhurst, an early suffragette, described her experience of being force-fed to break her hunger strike as 'an oral rape that violates the essence of the self' (quoted in Ellmann 1993, 33). Pankhurst's description of being force-fed, of the physical pain and violation involved, differs little from descriptions by detainees who tell of being taken by armed guards in the middle of the night and being physically restrained while tubes were forced inside them. A debate continues in the international medical and human rights field as to whether force-feeding can be justified given it violates many international human rights and common law principles (Kenny 2002; Nicholl et al 2006). Ellmann (1993, 34) captures the multi-layered effects of force-feeding when she writes, 'what has been forced into her is not only the food but the ideology and even the identity of her oppressors. Under this torture, starvation rather than ingestion has become the last remaining recipe for authenticity.'

Communicative Acts

Hunger strike and self harm must also be read as communicative acts that are designed to reach out to the consciences of the oppressor or the citizen bystander. A hunger striker needs an audience and the desired outcome is for a response from those with the power to end her suffering. Death is a risk, but not the goal.

Woven throughout the transcripts of interviews for this research is an awareness of how detainee protest might be received, by the Australian government, the Australian people, the media and the world. Mohammed talked of the need to find a 'legitimate' or 'acceptable' form of protest. He supported hunger strikes primarily because,

. . . you're not hurting anybody. You're hurting only yourself. You're not damaging anything, you're not breaking anything, you're not breaking any law. This is the one always everybody knows and everybody accepting, like the Bobby Sands as you remember . . .
(Mohammed)

Detainees wanted others to know that they were being locked up in remote detention centres, that they were suffering and to respond to them. Respondents identified ACM, Department of Immigration staff, the Australian government, the media, the Australian public, the United Nations and the world community as targets for their message.

Most respondents said that hunger strike was a way to reach Australian citizens and ask them to question the government's policies and to question what was happening in detention centres. The hunger strikers saw that the government was restricting the flow of information out of detention centres and that they were being held in secret. Baha'adin explained that the guards would sometimes come and take hunger strikers and hold them in isolation, 'because they didn't want us to show to the people what we were doing and they wanted to keep everything secret. This kind of thing was shocking for Australian people I think.' Osman echoed Baha'adin's thoughts;

And when we say the hunger strike, that's the most peaceful action. It's anyone can believe in peaceful, will do the hunger strike. Many famous people, like Gandhi and eight Irish... they did the hunger strike because they believe in peaceful, ok? I have got something, but I can't, nobody listen to me, I do this action and the people will say 'oh, why he's doing this?' So my attention, or my problem will be heard.
(Osman)

In her extensive work, *The Hunger Artists: Starving, Writing and Imprisonment*, Maud Ellmann repeatedly draws links between food and words, in that humans need sustenance of both body and soul. She quotes Wole Soyinka, who went on a hunger strike while imprisoned; "Why do I fast?" he writes. "I ask for books, writing material . . . I also ask for an end to my inhuman isolation . . . To feed my body but deny my mind is deliberate dehumanisation" (Ellmann 1993, 106). In this research, Shahin spoke similarly. Although he did not fast himself, he attempted to explain why detainees did. He explained that when all other forms of communication had elicited no response, people would use their bodies:

I was never involved in hunger strikes . . . Because perhaps I was able to express what I wanted to say through language. What I did with

*Refugitive*²⁵ when I got out of detention was answering the questions about people who would self-harm, who would go on hunger strike . . . (Shahin)

Hunger strike relies on the interconnectedness of human beings and on human conscience for its power. It speaks to the oppressor (the Australian government) and onlookers, implicating them in the dialogue through their gaze, and requests a response. Issaq was sure that sewing lips forced people to question what was happening in detention centres:

John Howard was saying ‘they are criminals’ and media were backing it up. But after that we saw how it changed and people started to – I mean journalists, lawyers, everyone just get together, those who saw something in there, you know. I mean, they sew their lips. ‘Why do they sew their lips?’ Not just ‘seen sewing lips’ but going for the reasons of why. Just asking a question . . . That’s what was good about all these protests, you know, just reflecting our feelings to another human being, just to see us not as a danger but as another human being who escape from danger. You know what I mean? (Issaq)

Andriolo (2006, 110), writing about protest suicides, including hunger strikes, describes such actions as, ‘acts of hopeful despair,’ and argues that, ‘we ought to pay attention to protest suicides,’ as, ‘those who take notice . . . also register themselves as conscious participants in humanity.’ The government’s rhetoric around asylum seekers in Australia denied any similarities between ‘those sort of people’ and ‘us’ and refused to acknowledge the existence of any possible points of connection across the over-emphasised cultural and religious divides. However, what remained was a biological similarity, as we are all still made of flesh and blood, and it was from this basis of the physical body that detainees attempted to build a dialogue and communicate with their unwilling hosts.

²⁵ *Refugitive* is a play that Shahin wrote and performed after his release from detention to explain hunger strike and self-harm by detainees. For further detail, see Chapter 6.

Hunger strike and self-harm in detention, as communicative acts, ask the question of *who* is responsible for the detainees' suffering (Anderson 2004). Ellmann notes that the verb 'to starve' contains an ambiguity at its root, for it means both 'to cause starvation [and] to suffer it' (Ellmann 1993, 92). Detainees, through lip sewing, hunger strike and self-harming sought to provoke a response in the general public, to create discomfort which may then lead to bystanders asking questions. Aamer, who opposed hunger striking, nonetheless told the story of how a doctor who attended to two hunger strikers who were transferred to hospital for treatment subsequently began to question immigration detention. According to Aamer,

when he met them he realised there is something extremely wrong happening in these detention centres. So he got engaged, he found himself impulsion to be engaged. He had to engage with immigration and try to work out why this is happening. (Aamer)

The communicative aspects of self-harm and hunger strike were limited by the government's ability to narrate the action, but the government could not entirely control the message sent nor the interpretation of the audience. Despite government efforts to narrate detainee hunger strike and self-harm as 'barbarism' and 'blackmail,' these actions forced open a small space in the polis in which detainees were able to insert their voices.

Mivan explained that there were lengthy discussions and competing views in detention. Many detainees thought that lip sewing and self-harm would be an affront to Australian people and that the strategy would backfire and help the government's portrayal of asylum seekers as people to be frightened of, whereas others disagreed. Mivan believed that such physical protests would reach a sympathetic audience:

But at least you can find somebody who has a good heart, they can say something. People they were sewing their lips and throwing themselves onto the razor wires and stuff, they were messages. Messages from the people in the detention centre. For example those messages made this Petro Georgiou or other backbenchers or something to push the government 'What are you doing? What are you doing with these people?' (Mivan)

Issaq maintained that detainees had to ‘make a noise, let someone hear it’ and that even if ‘ninety percent of them don’t care . . . one of them will come to the door and say “what’s going on in here?” and that’s all we needed, and you tell them why.’ Hunger strike and lip sewing was a way to ‘make some noise,’ provoke the question ‘why?’ and create a public space for detainees to speak.

Conclusion

Hunger strike, lip sewing and self-harm were strategies used by detainees to escape the omnipotence of detention. They served multiple purposes. Bodily protests reached out to the consciences of people outside of detention, bypassing the bureaucratic relationships which surrounded them. These strategies had great symbolic power. Detainees and the treatment meted out to them inside detention were largely hidden from public view, by sewing lips or cutting themselves, detainees were able to make visible the injustice of the state. Indeed, these protests were effective. Refugee supporters mobilised and grew in number as the frequency and intensity of detainee protest grew. Lip sewing in particular had a significant impact on the public debate, polarising opinions and making ‘neutral’ positions harder to hold. By using their bodies to challenge the cruelty of detention, detainees were able to force open a space in the public debate, insist that their actions had meaning, and insert, although still in a mediated fashion, their voices into the polis. The hunger strikes also gained some concessions from the government. Processing of Afghan refugee claims were resumed as a direct consequence of the mass hunger strike in Woomera in January 2002. Further, repeated hunger strikes, riots and breakouts from Woomera were likely to have influenced the government’s decision to close that centre in April 2003. Importantly, hunger strikes and self-harm enabled people detained to experience themselves as agents in their own lives, to experience the speech and action that Arendt places at the core of the human condition.

The hunger strike is a slow and patient protest. It enables the expression of a range of critiques and feelings, but sometimes the anger, indignation and immediacy of injustice leads to a different kind of protest. The following chapter looks at riots in detention centres.

Chapter 9: Riot

A Journey from Compliance to Resistance

I tried to work with them to try to change things but otherwise this is going nowhere because the Minister for Immigration made it so clear that was coming from him or whoever with him and it was heading towards, what do you call it? Full war. It was like a complete war against detainees. It was like he considered detainees as his enemies and he was launching this war on media in every possible sense. In a way dealing with him – and he's got his own personal agenda – you can't really – there's no point. It's just like a rabbit try to negotiate with a lion the conditions of not eating him. It will eat eventually. I mean they lose, so there's no point to try. (Aamer)

There have been protests from within detention centres since the inception of the policy of mandatory detention. These protests have included rooftop protests by Chinese detainees in August 1992 and June 1995 (HREOC 1998, 213; *Minister for Immigration and Ethnic Affairs v Guo Wei Rong* 1997), and hunger strikes by Cambodian asylum seekers, as described above in Chapter 8. However, the first riot did not occur until July 1999 in Port Hedland IRPC. Australia's Human Rights Commission reported that, in 2001, there were fourteen separate riots in Woomera, Curtin and Port Hedland detention centres, up from one riot in 2000 and more than double the number that occurred in 2002 (HREOC 2004a, 300-301).

This chapter examines detainee testimonies of riots alongside sociological, criminological and anthropological theories of riot. First, I reconstruct a riot event that occurred in Woomera IRPC in August 2000, using interview transcripts, witness statements tendered to the Australian Human Rights Commission and People's Inquiry into Immigration Detention inquiries, media reports and other material available in the public domain. This incident is illustrative of the dynamics involved in riot episodes and the complex interplay between participants, authorities, emotion and reason. I then use academic literature and reports from government inquiries into

riots to analyse why riots happen and to contextualise riots in Australian immigration detention centres. I propose that Australia's detention centres are ideal incubators for riots, that riots in this context are predictable and preventable, and that actions by Australian authorities are major contributory factors in the cause of riots.

The Story of One Riot: Woomera IRPC, August 2000

On 30 November 1999, a group of 140 asylum seekers was flown to Woomera and became the first group of people to be detained at the newly opened Woomera IRPC (JSCM 2000, 32). The facility had been converted from a disused military base to an immigration detention centre, in order to cope with the increased numbers of asylum seekers arriving by boat. Initially planned to hold 400 people, the centre soon became over-crowded. The Joint Standing Committee on Migration visited Woomera IRPC on 28 January 2000, just eight weeks after it opened, and reported that the centre then held 936 detainees (JSCM 2000, 93), and by April 2000 that number had grown to 1500 (Whitmont 2003). Staffing and infrastructure lagged behind and tensions in the centre, among both staff and detainees, increased correspondingly. In June 2000, some 500 detainees broke the perimeter fence and walked into the town where they staged a three day sit-in protest before returning to the camp (for more on this see Chapter 7). Following the break out, security at the detention centre was significantly tightened. Ibrahim, who was involved in the June 2000 break-out, reported that following that protest an additional perimeter fence was erected with an exclusion zone between the two; 'They made the fence double now . . . and the new one that's higher, higher than the first one and stronger.' 'Courtesy fences' were established within the centre that created compounds to enable easier management of future disturbances. Each separate compound could be isolated and people's movement within the centre restricted. A former ACM employee testified to the People's Inquiry into Detention that detainees returning to the detention centre following the June break-out were greeted by officers in full riot gear, and that families were separated from each other; '. . . they had separated women from their children, they had separated husbands from their wives' (quoted in Briskman, Latham and Goddard 2008, 165). The worker went on to explain that, 'from June 2000, the mindset of detainees was totally different' (quoted in Briskman, Latham and Goddard 2008, 165).

The atmosphere in detention grew increasingly tense as more people arrived and few were processed. As early as January 2000, the Joint Standing Committee on Foreign Affairs, Defence and Trade (2001, 33) noted that, 'the lack of any processing at the time of the Committee's visit had created obvious tension among the detainees.' This assessment is echoed by Department of Immigration staff at Woomera, ACM guards, medics and former detainees. Anthony Hamilton-Smith, then Department of Immigration Business Manager at Woomera IRPC, testified to the Human Rights and Equal Opportunity Commission (HREOC) that when he, 'arrived at the WIRPC in May 2000 none of the residents there had had a decision made in relation to their visa applications' (Hamilton-Smith 2002, para 8). Dr Bernice Pfitzner, employed by ACM as a doctor at Woomera, told the HREOC Inquiry that, 'the main cause of this stress was visas processing. The length of time taken was inordinately long and information given to applicants was almost non-existent. People were therefore suspended in limbo' (Pfitzner 2002, para 7). A former detainee told the People's Inquiry into Detention, 'we started to lose hope completely because we have noticed there is no single individual released from the detention. People had their nerves completely destroyed. People just lost their patience and they started to involve in demonstrations' (quoted in Briskman, Latham and Goddard 2008, 164).

By July, some people had received visas and been released from detention, but more continued to come, processing was slow and the information flow to detainees remained inadequate. Issaq was involved in a series of protests leading up to the riot;

Well, as I said, we started it peacefully, we just did the demonstration. I mean, for three or four weeks we used to go and sit in one place just to show our objections to what they do. But it wasn't getting across. There was a DIMIA manager sitting in there and laughing at us because our objection wasn't getting anywhere. It was as far as those detention and people who were in detention and it wasn't getting anywhere. (Issaq)

The protests began to escalate and at 2.00pm on Thursday 24 August 2000, approximately 100 detainees began marching around the centre chanting 'We want our freedom'. According to an ACM report to the Department of Immigration, the

group ‘attacked the inner eastern courtesy fence’ and threw rocks at staff (ACM report, quoted in Morton 2002). Shortly after 5.00pm, the group had dispersed and the Centre Emergency Response Team (CERT) was ‘stood down’. Later that night, a slightly smaller group of detainees resumed marching around the main compound, again chanting for their freedom. The second protest lasted about an hour and a half before the protesters returned to their rooms and ‘normalcy’ was restored in the centre. The ACM report (quoted in Morton 2002) concluded that, ‘this was a peaceful but vocal demonstration by the detainees.’



Figure 18: CERT Team at Woomera IRPC, with tear gas gun visible at bottom right (Anonymous source).

This protest was to become the catalyst for a violent clash between detainees and ACM guards just a few days later. Allan Clifton was the ACM Operations Manager at Woomera at the time and he told the *Four Corners* television program that he believes the subsequent ‘riot’ was caused by ACM’s heavy handed response to the protest (Whitmont 2003).

The following day, all was quiet at the centre, but ‘[t]o assist in controlling potential trouble, ACM head office arranged the deployment of a ten person specialist CERT team from the Arthur Gorrie Correctional Centre to Woomera’ (ACM report, quoted in Morton 2002). ACM nurse Mark Huxstep described the CERT team’s arrival;

They were certainly something to behold. They seemed to be everywhere at once. They were dressed in dark blue overalls with like riot gear, and helmets, riot shields, batons, they had covers over their elbows and knees, they were prepared for a full on conflict ... it was just intimidating to witness it, and I was on their side of the fence. (Huxstep, quoted in Morton 2002)

Woomera IRPC remained quiet throughout most of the following day, Saturday 26 August. Late in the afternoon ACM decided to 'extract' the suspected leaders of Thursday's protest from the main compound and take them to the management unit. Between twenty and twenty five people were removed. ACM Operations Manager Allan Clifton



Figure 19: CERT equipment room at Woomera IRPC (Anonymous source).

reported that the detainees sent a delegation to see him to report that two people who had been taken to the management unit had not been involved in the protest and were being wrongly held. They asked for those two individuals to be released back into the main compound:

Detainees raised with me that they believed that some of the people we had removed to Sierra Compound may not have been involved in the disturbance, and they were very unhappy about their removal to Sierra. They were, incidentally, also very unhappy with those who had caused the disturbance.

I accepted that some of those removed may not have been involved in the disturbance and I wanted to release them into the general population. I negotiated with the detainees in the main compound and agreed to speak to my superiors to see if they could be released. I was of the view that the situation could continue to escalate if it was not handled carefully.

I called head office and was told by the Detention Services National Operations Manager at the time, 'Fuck 'em. ACM does not back down, take them on.' I warned that there would be a riot if nothing was done, and I did not believe that we had enough staffing resources to handle the situation, but I was ignored. After I communicated the decision to the detainees, there was a riot with fires and extensive

property damage. Several staff were injured during this incident (nil detainees were injured). (Clifton 2002, para 15)

Trevor Robertson was a guard at Woomera from 2000 to 2002, and shared Clifton's concerns that ACM's handling of detainees was inappropriate. He told Quentin McDermott of *Four Corners* that,

'Black Panadol' was the terms that the ACM jail officers would use for batons used on prisoners, 'oh he needs a bit of Black Panadol to calm him down. 'Gas and bash' was the terms that the fly-in CERT teams would use, as they seemed to think that you would come in, blow gas on people and beat them and resolve the situation. (McDermott 2008)

ACM reports to the Department of Immigration state that at 2325 hours²⁶ (11.25pm) on Saturday 26 August, a group of approximately one hundred detainees gathered in

the main compound and began throwing rocks at staff and administration buildings (Morton 2002). A little before 0030 hours on Sunday 27 August, a CERT team entered the compound and ACM reports that the team was met by organised detainees who, 'had formed a defence line with barricades . . . and were rushing forward in waves' (ACM report, quoted in



Figure 20: Detainees and guards clash at Woomera IRPC (Anonymous source).

Morton 2002). Mark Huxstep was in the medical building at the time, which was one of the buildings that detainees were throwing stones at, and he disputes this report. Huxstep told Tom Morton of ABC Radio National's *Background Briefing*, 'I didn't see any waves of detainees, they didn't seem to be very well organised from what I could see' (Morton 2002).

²⁶ The ACM reports all use the 24 hour clock, and the militaristic language is re-used here to assist in conveying the atmosphere at Woomera both before and during the riot.

ACM became worried that the detainees would breach the perimeter fence and escape. ACM's Executive General Manager in Sydney was contacted and gave permission for tear gas to be used. Allan Clifton's report to ACM states that a water cannon was also used. The detainees dispersed and relative calm was restored for a few hours (Morton 2002).

Issaq remembers the night well and described the mood in Woomera. He said that detainees already felt frustrated about the lack of response to their earlier peaceful protests, but that ACM's decision to put suspected ringleaders in isolation in the management unit triggered the violence. He said the violence in August 2000 wasn't planned, but was a culmination of frustration, fear and rumour:

The first violent clashing started when the officers started to just hand pick a few people who knew they were organising all these protests. They started to hand-pick them, like in the middle of night just come and take them and put them in isolations, different places, because we had all these different isolations.

People just got frustrated and frustrated. There were rumours that they were being hit in there, they were being tortured in there. It just put on your anxiety and then you lose it. Then the next officers who comes to pick up someone, everyone else come to hit that officer and then you see all officers in riot gears and batons coming to control people and people with the rods and everything. Before you know it, it's in the news and they bring the water cannons and tear gas and it became a war basically, it became a war between two groups, detainees and officers. (Issaq)

The direct confrontation between guards and detainees ended in the early hours of Monday 28 August, following the deployment of tear gas and water cannon. After this, both detainees and guards settled into a tense night. ACM identified twenty three detainees who it believed had been instigators of the night's violence. They quickly planned an 'op' to extract these twenty three detainees, which was codenamed 'Operation Morning Glory.' The Department of Immigration was not notified of the planned action (Morton 2002). At 0500 hours, Woomera ACM staff

and the CERT team from Arthur Gorrie Correctional Centre entered the rooms of the suspected ring leaders. According to the ACM report, ‘five of the detainees were removed without incident, and then one of the extraction teams was attacked by approximately one hundred detainees, throwing rocks and attacking them with bed-posts, slingshots and other bed parts’ (ACM report, quoted in Morton 2002).

While ACM had been preparing for the early morning raid, so too had the detainees. Issaq explains that,

you just respond to it. I mean every action brings a response and when they were coming in the riot gear that was our response. We didn’t have riot gears, we didn’t have gas but we could get an iron post out of the fence or there was lots of rocks around. That was our response to their action . . . (Issaq)

ACM guards withdrew from the compound and fired a second canister of tear gas into the crowd of protesters. The detainees dispersed to the perimeters of the compound and set fire to a tent at one of the internal compound gates. By 0700 hours, the protesters had re-grouped and began attacking three of the perimeter fences. They also set two mess halls on fire. Detainees had made makeshift shields out of bed bases and positioned wheelie bins as barricades. They tore fence posts from the internal ‘courtesy fence’ and used these both to lever holes in the perimeter fence and as weapons in the confrontation with guards. The protesters managed to create a large hole in the eastern perimeter fence, prompting CERT teams to move in rapidly to prevent an escape. The ACM report (quoted in Morton 2002) states that, ‘the situation resulted in hand-to-hand confrontation,’ and that at 0800 hours they again used tear gas on the protesters.

The violence and confrontations continued throughout the day, but by evening a negotiated calm had been restored. Moira-Jane Conahan, a nurse employed by ACM at Woomera and a witness to the riot, described the scene to a public meeting in June 2002;

The riot of August 2000 was a horror that I never expected to see in my country. Water cannons and guards with body armour and guns,

burning buildings, smoke and stones. The day after I watched the shell shocked families come wandering out of the rubble, their children skirting around the debris, the tears and apologies and the guards' recriminations started. I watched in disbelief as a loud roar shook the earth and sky and an airforce bomber flew low over the camp, practising manoeuvres, terrifying those war-shattered people. (Conahan 2002)²⁷

Many witness accounts of the day from ACM guards and management, from medical staff and from detainees invoke images of a 'war zone'. All involved were likely traumatised by the days' events. This was the first time that tear gas and water cannons were used in a detention centre, but not the last. Over the next several years, tear gas and, less commonly, water cannons were used to quell riots in Curtin, Port Hedland, Baxter and Woomera detention centres. Although accounts of the August 2000 uprising in Woomera raised serious concerns about ACM's handling of the build up to the riot and the riot itself, no public inquiry has ever been held. Tom Morton, from ABC Radio National, questioned the Department of Immigration about its internal investigation into the incident. He was advised that an investigation had been conducted but that, 'the findings of the report are confidential as they relate to the security and good order of the centre' (Morton 2002).

Many right wing commentators and 'shock jocks' discussed the riots as evidence of the detainees' inherent violence and criminality. A caller to talk-back radio told listeners, 'they're used to being rather barbaric' (McDonnell 2000). Roz St George, a Woomera local, told British newspaper *The Independent*,

you can't convince me none of these people are a threat to national security. It was the World Trade Centre; it could be the Sydney Opera House next. They hate Australians and the women officers get abused for wearing shorts. Who do they think they are? This is not the Middle East. (Marks 2003)

²⁷ The precise timing of the military fly over has not been confirmed, but in response to a question on notice Defence Minister Robert Hill confirmed that the Royal Australian Air Force (RAAF) conducted hundreds of aerial manoeuvres over Woomera between its opening in 1999 and 2002 (Commonwealth of Australia 2003, 13434).

The Immigration Minister rejected any criticism of the conditions in Woomera detention centre or ACM's handling of the riot and its build-up, laying the blame solely with the detainees and emphasising that their actions were criminal and had been planned and committed by, 'people with no entitlement to be released into the Australian community' (BBC 2000). The Minister told the media that the rioters were people who had been through the refugee status determination process and found not to be refugees, and who were protesting against their failure to be granted visas (McDonnell 2000). In fact, several of the rioters were later found to be refugees and released into the Australian community, including Issaq whose testimony is included in this research.

Ruddock rejected any criticism of the conditions in detention, the length of time that people were being detained or the paucity of information given to detainees about their status. Glenn Milne, from Sunday Sunrise, proposed to the Minister that, 'the root problem [was] the length of time that it takes to process applications,' to which the Minister responded, 'well, it's not the problem' (Bath 2001). Instead, Ruddock talked about, 'people who don't like the decisions accorded them,' people who are not refugees and who are 'non-compliant' (Bath 2001).

Explanations that focus on the cultural or pathological barbarity, criminality or simple 'otherness' of detainees do little to help us understand how or why riots happen in immigration detention centres. Professor Richard Harding, then Western Australia's Inspector of Custodial Services, observed after visiting Curtin detention centre in 2001 that, 'it is no coincidence that riots occur in a system that lacks accountability. We do not have riots in our detention centres because we have a riotous group of refugees; we have them because we run appalling systems' (Harding 2001).

Few, if any, asylum seekers engaged in direct protest action within the first several months of arriving in Australia. All those interviewed for this research, along with accounts of people's arrival recorded elsewhere (Hekmat 2010), indicate that asylum seekers typically feel a mixture of relief, hope and trust when they first arrive. While detention may be confronting and the refugee status determination process confusing, people's trust in 'the West' and Australia as a human rights respecting

country, and their hope that they will be accepted and are at the start of a new chapter in their lives, is not readily shaken. This makes for a highly compliant population in detention. So what happens to shift this position of compliance to violent resistance?

The Structure of a Riot

Naming a 'Riot'

Defining a riot is a subjective exercise. There are significant disparities in legal, sociological and lay definitions of *riot*. The British *Riot Act* of 1716 defines a riot as, 'twelve or more people disturbing the public peace for a common purpose' (Wilkinson 2009, 330). Australia has no such federal statute (although some state jurisdictions do), but rioting is defined through common law as the gathering of three or more people who use violence in pursuit of common goals and cause alarm to a bystander of 'reasonable firmness and courage' (Butt and Hamer 2011, 516). Sociological texts are less specific about the minimum numbers involved, but refer to 'crowds', 'mobs', 'groups' or other terms denoting a large number of people in close proximity, collectively engaging in violent acts against other people or property, and typically include some reference to causal or contextualising factors (Horowitz 2001; Rudé 1964; Wilkinson 2009). Populist uses of the term also infer large numbers of people, violence, disorder and chaos, but are more likely to focus on the destructiveness of riot and rioters than to canvas potentially explanatory political, structural or historical factors.

The naming of an event as a riot is often a pejorative act, implicitly carrying a swathe of value judgements about the nature of the act(s), its legitimacy, the character of those involved and its generalised threat to society. Recent events in the Middle East involving large groups of people gathering in a common cause, shouting, throwing projectiles and engaging in violent confrontation with police or military have been discussed in Western media as 'the Arab Spring', 'uprisings', 'civil unrest' and 'popular upheaval'; implying a moral rightness to the same actions that, when committed by the urban poor in Detroit or Brixton, are clearly named 'riots'. Similarly, peasant riots in England in the mid 1760s are, from the vantage point of history, widely referred to as 'food riots', implying that the methods used were violent and somewhat questionable, but adding the descriptor 'food' links it to

a socially just cause and introduces some sense of rationality and justification for the rioters' actions (Randall 2006).

Understanding Riots

Populist lay theories of *riot* typically explain the phenomenon through reductionist 'mob psychology,' which describes a group of disaffected people feeling highly charged emotions, causing them to become highly suggestible. In this understanding, the group is infiltrated by malicious or criminal individuals determined to create chaos and destruction for their own selfish gain (Waddington 2007, 38), and the riot may be sparked by a trivial incident and is an entirely illegitimate reaction, evidencing the feeble herd-like nature of the participants and the pathological immorality or criminality of the leaders. Media reporting of riots is not entirely without blame in promulgating this view. Riots are generally reported within a framework of 'moral panic' and participants are portrayed as irrational hooligans and criminals hostile to society (Scruton, Sim and Skidmore 1991, 115). In this framework, 'we' are the victims and 'they' are the threat. Negotiation and discussion with destructive and irrational delinquents holds no promise and, instead, strong-arm policing and a determined and uncompromising reassertion of state control is the only credible response.

This view of riot has roots in eighteenth and nineteenth century theories of riot and crowd behaviour. However, since at least the 1960s, modern social science disciplines have rejected univariate psychological explanations of riot as too simplistic to adequately capture or explain such a complex social phenomenon (Carrabine 2005; Horowitz 2001; Randall 2006; Waddington 2007). Riots have occurred in almost every society across several centuries. Rural peasants participated in a series of riots across England in the mid-eighteenth century. University students rioted throughout French, Italian and other European cities in the late 1960s, as did residents of the ghettos in several large American cities in the 1960s. Prisoners detained at Peterhead prison in Scotland rioted on several occasions in the late 1980s, while detainees in Australia's immigration detention centres rioted in the early 2000s and again ten years later as this thesis is being written. Even a cursory glance at temporally and geographically disparate riot episodes exposes the weakness of pathologising explanations. The groups listed above are sufficiently

distinct in their national, historical, religious, cultural, social and economic profiles to fundamentally unsettle explanations which locate the cause of riot entirely or even substantially within a 'riotous' individual or group. George Rudé, in his study of British and French riots between 1730 and 1848, cautioned against prevailing reductivist explanations of riot and instead emphasised the utter 'ordinariness' of the people who rioted. They were, he said, largely ordinary individuals with rational reasons to be involved (Rudé 1964).

Riots overwhelmingly display a similar core structure whether occurring in a prison setting, an impoverished developing nation or a modern urban setting (Carrabine 2005; Horowitz 2001; Randall 2006; Waddington 2007). Differences in theoretical explanations of riot are largely a matter of emphasis rather than substance. Each theory cautions against reading the riot beginning at the first point of violence and emphasises that riots are not random or spontaneous events, but rather have their roots in established antipathy and long held grievances (Horowitz 2001). The immediate 'trigger' is generally the 'final straw', an incident that is read by the protesters as emblematic of ongoing injustice and that functions to crystallise people's shared grievances sufficiently to mobilise the group to action (Waddington 2007).

US President Lyndon Johnson established the National Advisory Commission on Civil Disorders (NACCD) in 1967 to examine urban rioting in a number of US cities. The Commission was chaired by Otto Kerner, Governor of Illinois, and had eleven members drawn from Democratic and Republican parties, police, the National Association for the Advancement of Colored People (NAACP), trade unions and business. The Commission looked at twenty four civil disturbances in twenty three cities, surveying police, participants, witnesses and experts. The Commission concluded that,

disorder did not erupt as a result of a single 'triggering' or 'precipitating' incident. Instead, it was generated out of an increasingly disturbed social atmosphere, in which typically a series of tension-heightening incidents over a period of weeks or months became linked in the minds of many in the Negro community with a

reservoir of underlying grievances. At some point in the mounting tension, a further incident - in itself often routine or trivial - became the breaking point and the tension spilled over into violence. (Participants experienced) . . . frustration deriving from a perceived inability to change matters via the political system; an increasingly tense social atmosphere, involving a sequence of negative incidents between local people and the police; and finally, a triggering or 'precipitating' incident representing the 'final straw' . . . within entrenched feelings of mutual hostility. (NAACD 1968)

Drawing on the work of several key riot theorists, including Waddington (2007), Horowitz (2001), Scraton, Sim and Skidmore (1991), Randall (2006), Wilkinson (2009), and Lea and Young (1982), the following section presents an outline of the core structure of a riot common throughout the literature. The model identifies five general pre-conditions (deeply held grievances, no access to redress, generalised hostile beliefs, close proximity and communication, and breakdown in authority-community relations) and three immediate pre-conditions (the precipitating incident, communication and exceptional norm building, and mobilisation and escalation) for riot to occur, whether in a custodial or non-custodial setting. The model also includes an analysis of the 'critical importance of the state response to riots' (Wilkinson 2009, 336).

General Preconditions

Long or Deeply Held Grievances. Studies of hundreds of riots have all identified that among groups who have engaged in rioting there have been widely held long term or deep grievances generally arising out of persistent breaches of groups members' legal rights and/or unmet social and economic needs (Horowitz 2001; Waddington 2007; Wilkinson 2009). For urban African Americans, these grievances may include high unemployment rates, perceptions of over policing, inadequate housing and generalised social exclusion and racism (NAACD 1968). For prison populations, grievances may include arbitrary use of force by prison staff, poor standards of food, over-crowding, poor hygiene facilities or arbitrary use of punishment and solitary confinement (Scraton, Sim and Skidmore 1991). Ethnic riots require a privileging of an in-group's ethnic identity in contrast to an out-group, typically viewed as getting

more favourable treatment, of causing the poverty or unemployment of the in-group, or as presenting a threat to the peace and lives of members of the in-group (Horowitz 2001). The critical element in each of these examples is that personal subjective experiences of injustice, inequality or discrimination are widespread among individual members of the prospectively riotous group. This shared experiential characteristic becomes important in forming a sufficiently strong collective identity as a basis for action. News of an infringement of a group member's rights (whether or not that individual is personally known), is readily assimilated and reinforces shared grievances and a belief in the immutable injustice of social relations.

Within a few months of arrival, it would be unusual for any person in detention to not have personal experience of their legal rights being transgressed, or their social, cultural or material needs being unmet, creating personally felt and shared grievances. Daily life in detention involved a myriad of minor grievances and frustrations around food, sleep, occupation, communication, and other issues. Detainees and former detainees have also reported frequent incidents of much more serious grievances relating to arbitrary use of solitary confinement and excessive use of force by authorities (for example, see *Behrooz v Secretary, DIMIA* 2004).

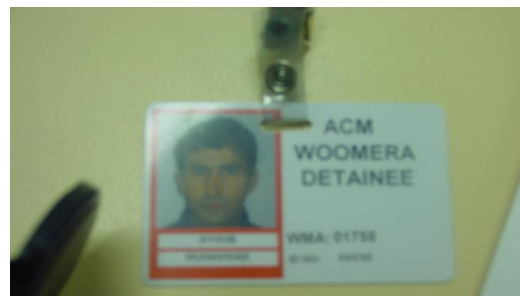


Figure 21: ID card of a detainee at Woomera IRPC (Anonymous source).

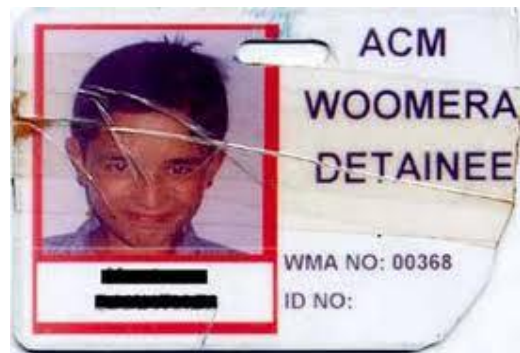


Figure 22: ID card of a detainee at Woomera IRPC (Poynder 2008).

Complaints about food were commonplace, both in terms of the rigid rules around eating times, which made it especially difficult for children who may be hungry outside of set meal times, and about the poor quality and lack of variety being seen as a reflection of the poor regard in which detainees were held. Of the food served in detention, Osman said 'if you offer it to animal, animal will reject it . . . The way you eat in your home, bring it to us.'

Life in detention followed a strict and spartan regimen. Each day was marked by

three ‘musters,’ or head counts, when guards would confirm the presence of every detainee. Detainees were issued with photo ID cards upon arrival and allocated a number. Detainees were required to carry these cards with them and to present them at each muster and at meal times.

One of the regular musters was in the early hours of the morning (around 1.00am or 2.00am). Guards would enter the detainees’ room, shine a torch on their face and loudly demand to see the ID card. While all musters were resented by detainees, the night time muster was particularly antagonising. Some six years after his release from detention, Mohammed remained offended by the intrusion;

Very, very simple point I’m telling, very, very, and at night time when you’re asleep they wake you up, put the torch in your eyes ‘Where is your ID card?’ Now fuck man . . . (Mohammed)

The practice of shining torchlight into the faces of sleeping detainees has been criticised by several bodies investigating conditions in detention, including the United Nations (UNWGAD 2002), Australian Human Rights Commission (HREOC 2004a) and the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT 2001). However, ACM and the Department of Immigration defended the practice as necessary for the security of the detention system and, in fact, the Department of Immigration compelled detention centre staff, through its *Handbook to Guide Departmental Managers of Detention Facilities*, to,

... physically sight the detainee. If the detainee is covered with bedding staff must pull back the sheet/blanket so the detainee can be identified. (quoted in HREOC 2004a, 291)

Apart from attending meals and musters, there was little structured activity in detention. Schooling for children was sporadic and education for adults was almost non-existent. Some work was available within the detention centres, such as cleaning or assisting in preparation of meals, but this was very limited and poorly paid (HREOC 1998, 138-139; HREOC 2004a, 606-607). The Australian National Audit Office (ANAO) identified that a ‘major disturbance’ was the ‘chief security risk’ in

immigration detention and warned the Department of Immigration that the boredom in detention centres was a major factor heightening the risk:

. . . the boredom and monotony of life in the IRPC has the potential to be the catalyst for problems amongst or with residents. Residents are considered to have far too much unproductive time in which to ponder, speculate and react to rumours as to their fate. (ANAO 1998, 47)

The ANAO recommended that the Department of Immigration introduce and expand work, education and recreation programs in detention, in order to reduce the risk of a major disturbance. The Department did make some changes to the work program at Port Hedland IRPC, but there is little evidence that this important recommendation was adequately heeded in the planning or operation of detention centres following the increase in the detention population from 1999 onwards. Boredom and a lack of meaningful activity have been repeatedly identified by detainees, their supporters and official visitors to detention centres as an ongoing complaint (Briskman, Latham and Goddard 2008; HREOC 1998; 2004a; JSCM 2001), leaving detainees too much time to discuss the thousand 'little cruelties' (Jureidini, quoted in Briskman, Latham and Goddard 2008, 132) of daily life in detention and to share their grievances.

The use of solitary confinement and the use of force by guards was seen by detainees as arbitrary, with no transparent process for determining if each particular action was justified or not. Sam witnessed a mother crying and becoming verbally abusive towards ACM and Immigration staff in Curtin IDC when she was told that her eighteen month old son could no longer have child meals and would now be allocated adult meals. The child had been crying for several nights due to hunger, but she was refused milk for him and told simply, 'this is the guideline and we can't favour you.' The young mother became increasingly distressed and angry. Sam intervened to calm her down and to speak to the guards on her behalf:

When the ACM manager come, I didn't even sit with him. They say 'You again!' They say 'Take this bastard' and two officers grabbed me, just hauled me and lift me from the floor with two other officer. They just put me on chest and face and bang me on the floor and they

hand cuff me with those rubber hand cuffs and they just hauled me like that. They didn't even listen to what I wanted to say. (Sam)

The incident escalated further as other detainees witnessed Sam's treatment and 'show[ed] some anger' (Sam). Sam doesn't know what happened next, as he was taken to solitary confinement and threatened with unspecified criminal charges. On this occasion, no riot erupted. Sam continued to explain that what happened to him was commonplace and happened to many other detainees for minor or non-existent infringements. He told of another incident of excessive and unnecessary use of force:

There were some people who were psychopathic, the way they acting, they enjoy that sort of torture. The day they beat a guy because he was asking for a sleeping tablet. I couldn't believe that the guy I knew would cry that loud under a punch. It wasn't a punch, but the way they putting him on the floor and squeezing his hand and he was crying so loud. I was thinking 'God, what is this guy thinking? Is he enjoying that level of torture? I mean, that level of crying noise? (Sam)

Baha'adin told of guards at Baxter detention centre taking people from their rooms in the middle of the night:

They were so cruel what they were doing to us. They were taking us by force like middle of night when we were sleeping. For example you see forty or fifty people they come to your room, forty guards, fully armed. They come to your room in the middle of the night at three or four in the morning, they take you by force. They put you in isolation room and when you are in isolation room you just feeling so frustrated, like you go crazy in there. It's just because you see four walls around you. It drives you mad you know . . . (Baha'adin)

Emad witnessed many similar incidents and said that, 'we just saw some, a very hard line treatment and it was typical every day, every morning, every night.' Osman also complained the guards beat detainees, 'often,' and that this would escalate the situation and usually lead other detainees to come to assist the person being beaten. He expressed his indignation and outrage at the guards; 'listen to him. Don't beat

him! So when we see him beaten . . . they have no right to beat us. My father never beat me. Even here, you don't beat your kids. So who did give you the right to beat him?'

The arbitrary use of power, whether through the use of isolation or excessive force, meant that detainees had little faith that the punishment they observed being meted out was warranted and, further, detainees could easily imagine themselves in that situation. This created strong solidarity between detainees, regardless of the individual detainees' personal or political relationships. Sayed said that seeing women and children in the same situation was particularly difficult;

When the women and children were with us in isolation area, we get more upset because of that. And the things we heard. If we see someone used to cry a lot, we try to involve in that and calm down and do something you know. And it involve us because if human hurt, sometime we try to help each other. (Sayed)

Ibrahim summed up the mood in detention; 'we were always angry. Always angry. Getting angry playing dominoes. Seriously, we were always angry. Since the morning.'

No Access to Redress. Official channels for resolving long or deeply held grievances must be absent, such as during racial segregation in the USA; inaccessible to members of the group, due to factors such as language, cost or prejudice; or, perceived to be ineffective, such as through prison complaints systems. Typically, efforts by the group to gain redress through 'proper' channels, whether legal or political, have met with state indifference (Waddington 2007, 49). As 'normal' or 'legitimate' methods for addressing the groups' grievances are closed off, alienation from the existing social order grows and proposals by members of the in group to launch other methods outside of the system such as protest, strikes or riot begin to gain traction.

If a detainee wanted anything other than that provided during meal times he had to fill out a request form and lodge it with an ACM guard who would then forward the

request to the appropriate person. Detainees were required to lodge request forms to access the telephone to call their migration agent, to request an appointment with a Department of Immigration officer to ask for news about their case, to request a pain killer for a headache, to request an appointment with a dentist or to request a blown light bulb be replaced in their room. These written requests were very often not acted upon in a timely manner, were sometimes refused, or, most commonly, were ignored entirely. Hussein expressed his exasperation;

For example when you've got a headache, a Disprin necessary for you. So to get a Panadol, and if you go there and say 'no, we won't give you' and you have to wait for one or two days. What you have to do? It's true. (Hussein)

More complex or expensive requests such as to see a specialist, were even less successful. Mohammed was detained for four years and as his mental health deteriorated he sought help; 'I applied more than 10,000 times to see the specialist for my mental. They never, ever bring anyone.' Ismail was detained for five years and during that time he, 'used to write a lot of question and request for them. I had this much [*makes a sign with open thumb and forefinger*] request about different issues. All they answer "No", "We don't know" or ignore it. It didn't do anything.'

The cumulative frustrations of daily life in detention often led to protests. Most of these protests went unreported in the media. Osman told of a 'strike' that detainees in Port Hedland staged to get appointments with Department of Immigration staff. For a week detainees refused to clean or remove rubbish; 'we did the mess, leave the rubbish, smell, oh, very very mess.' After a week of refusing to work, the Department of Immigration agreed to meet with detainees. Not all protests were successful though. Issaq described a daily 'sit in' outside Immigration offices at Woomera demanding access to telephones to call their families. At that time, there were approximately 1500 people detained in Woomera and everyone sat outside the Department of Immigration office for half a day. Their request was refused; 'they were bringing all these excuses that "we can't bring you a phone" and all this sort of thing. People got angry, people got frustrated.' ACM guards dispersed the crowd and people returned to their compounds feeling frustrated and angry. According to Issaq,

this incident in April 2000 was the first in a series of protests, culminating in the mass breakout in June 2000 in which several hundred detainees marched into Woomera and camped by the public telephones for three days:

That was the first protest and just for the phone which it became bigger and bigger and people decided, well, we have to do something and we broke out and went to a town and sat in the town . . . It wasn't because we wanted to get out, it was because we just wanted to use the phone. In there, there was one Telstra public phone that people started to call *1800 REVERSE* and call their families. (Issaq)

ACM and Immigration's indifference to the detainees' request for telephones escalated to a mass breakout from the detention centre.

Smaller protests and complaints were often greeted with a hardline response from ACM. Dissent was not tolerated. Those who were known or suspected of being involved in organising protests were routinely placed in isolation or 'management' compounds. Ibrahim explained;

So Serena camp and India camp it was really awful punishment for anyone who start to make any violence. Well, to be honest, all the people who were transferred to this camp, they haven't been violent at all. They just were talking about why the food is bad, why they not allowed to talk to our families. They just complain. Well, to complain that's not violence! So you don't even have the small right to complain. You don't have this right. You are here, you have to obey, you have to follow what we say to you and what we do to you. You don't have any right to say anything. Don't argue. Don't. Ever. Argue. (Ibrahim)

Detainees sometimes lodged complaints with ACM management and the Department of Immigration about guards' excessive use of force, but all participants in this research said that their complaints were dismissed without proper investigation. Mohammed said he complained about guards' treatment of detainees several times but,

never ACM, they never, ever, the supervisor never ever, or the head of ACM look at maybe some officer doing it wrong. Always support them. What happened, we complain from them and we go see DIMIA. We accept that DIMIA is the manager and see everything. But what DIMIA does is make it worse. (Mohammed)

He expressed his frustration at the Department of Immigration, which represented protests and riots in the media as entirely due to detainees being ‘trouble makers,’ and excluding any discussion of provocation or brutality by guards. ‘Absolutely it was rubbish because we so many times, many, not one, two, three... one hundred times we saw different act’ (Mohammed). Sam tried writing to external organisations such as Australia’s Human Rights Commission, the United Nations and Amnesty International. But all correspondence had to pass through the Department of Immigration’s manager at Curtin IDC, who refused to post any complaint letters:

I was getting good in writing but he was getting good in just tearing. I was told by one ACM officer, the one that became a friend, she told me once ‘In Australia don’t talk, write things and just submit your written things with a witness and it should go somewhere. If you’re talking they can deny that you said anything.’ I was getting good at writing but he was getting good at tearing it up. (Sam)

Flowing from his background in law, Emad believed in settling disputes through discussion and transparent processes. He spent his eight months in Curtin IDC trying to mediate between detainees, ACM and Department of Immigration staff and urging detainees not to protest. He made no progress with management:

I thought of communicating with the management, sending groups to them, asking for appointments, to see them and talk to them. But unfortunately most of my requests were ignored at that time. Actually, they didn’t listen to even the most moderate way of thinking on the refugees’ side. I don’t know. I’m thinking of a manager as, even in the science of management, the manager always has options let’s say, in negotiation skills. [But it was] just like being in an army unit. (Emad)

He also made no progress with detainees, who saw no hope in negotiation:

Most of the people in the detention centre were laughing on my judgements that the law will rule in the end. They said ‘Look, there is no rule of law here.’ Because I believed in the rule of law, even when I was in Iraq, and I said there will be a time when the rule of law will govern all people, from the head of the states to the normal people. The refugees didn’t believe in this, because what they saw around them is a very far behaviour, a very far, a very rude behaviour, very aggressive psychologically and physically to their human rights.
(Emad)

Prior to the increase in boat arrivals from 1999 to 2001, an expert committee was formed by the Department of Immigration to advise it on managing risk at the Port Hedland detention centre. This committee noted that, ‘the more control detainees had over their daily activities and benefits, the better their behaviour’ and recommended that, ‘use of this strategy in the [Port Hedland] IRPC could aid compliance and security at the IRPC’ (ANAO 1998, 46). In spite of expert advice that recommended increased areas for detainee autonomy and the inclusion of detainees in negotiation and decision making where possible, the reality of the intransigence of management and the refusal to engage detainees in even mundane decision making processes was a common thread brought up throughout interviews for this research. Detainees saw that ‘hardline’ management was supported by the Prime Minister and Minister for Immigration, and all talked of the futility of negotiation.

Generalised Hostile Beliefs. Members of the prospective rioting group must share a generalised hostile belief about members of the out-group. This belief may be against the society from which they are estranged or subsections within it, typically the police or other institutions representing authority. Waddington (2007, 40) notes that studies of riots throughout Europe and the USA reveal a background of, ‘entrenched feelings of mutual hostility’ between police and rioters. Horowitz (2001, 532), in his study of *The Deadly Ethnic Riot* also identifies a simmering hostility and apprehension among pre-riot groups, noting that any account of riot must incorporate emotion. Generalised apprehension enables the imputation of hostile intentions of

members of the out-group toward the in-group to be quickly assimilated as credible and functions to prepare rioters for what participants will likely see as vigorous and necessary 'self-defence' (Horowitz 2001, 532-533, 528). This generalised belief will typically grow and spread throughout the group in the weeks or months preceding a riot episode. In the USA, the Kerner Commission highlighted that the periods leading up to the twenty four riots it studied in twenty three US cities were marked by 'an increasingly disturbed social atmosphere, involving a sequence of negative incidents between local people and the police' (NACCD 1968,6) and that these negative incidents were, in the minds of the local people, linked to the long term grievances they collectively held. They were seen as evidence of the police's hostility toward them and fuelled an atmosphere of mutual hostility and distrust (NACCD 1968; Waddington 2007). It is this generalised hostile belief that crystallises during the 'trigger' event, discussed below.

There was a widespread belief throughout the detainee community that the ACM guards and Department of Immigration staff hated detainees and wanted confrontations. Hussein spent almost three years in Curtin and Baxter detention centres and he believed that, 'some of them – they hate us, the officers.' He went on to explain that he believed that ACM intentionally selected people who were hostile to asylum seekers to work in the centres 'of course, they wanted some people . . . What sort of idea they had, it's really evil. I mean, a couple were alright, but most of them, they chose some people that are very tough against us. Maybe we call them as racists' (Hussein). Hussein's friend Mehdi agreed, and went further to say that the guards would provoke confrontations with detainees, 'all the time the officers they trying to make you angry to do something.' Detainees were frequently told that 'Australians' hated them and that they were not welcome (Briskman, Latham and Goddard 2008, 135; Fiske 2006, 222).

Detainees were often also aware of the wider political landscape and believed that they were being used as pawns in Australian national elections. They believed that they were meant to suffer, and to suffer very publicly, in order to provide a deterrent to other prospective asylum seekers and to enable the government to appear 'tough on immigration' to an uneasy electorate (for more on detainees' analysis of Australian politics, see Chapter 6):

That was their policy for sure. They knew exactly what's going on in detention everyday. But they really didn't care. They wanted to make us frustrated more and more and more. ... The reason was because I reckon in that time when we came allot of people they were coming to Australia and the policy was to show to other countries 'we don't want refugees anymore.' Actually, they used us as the victims to show to the people that the refugee come to Australia. I also put it in the other hand that that was quite racist from John Howard and Phil Ruddock, they done that. (Baha'adin)

Believing that their suffering was deliberate and was a political strategy to win votes upset detainees and served to reinforce feelings of hostility towards the government;

Philip Ruddock used us a bit of a thing like 'they are dangerous people, they are terrorists' or 'they are criminals' and things like that. On the news actually he said that. I was very disappointed with what he was saying about us. It really made us more angry and upset of what he said. (Baha'adin)

As well as the general hostility between guards and detainees, the arbitrary exercise of power, occasional forced removal (of which all detainees were afraid) and lack of communication with detainees created an atmosphere of high anxiety. The level of apprehension and tension among the detainees in all detention centres was consistently high. Sam was struck by the atmosphere in Perth detention centre when he first arrived;

I arrive in Perth at the detention centre and as soon as I got in I met some people who were totally traumatised and paranoid. They were thinking there are microphones everywhere and they were fearful to talk to one another and the only time they could talk freely was during their break time in their exercise time in the exercise yard. And every time one ACM officer in that period of time was coming to pick someone, everyone their hearts were racing because they didn't know what was going to happen to them. People were taken by forceful deportation or people were taken by force or manipulation and then

someone else come and took them off for a simple thing like medical visit or a lawyer visit. (Sam)

Several months later, Sam too became highly suspicious of the government. ‘I was at that time very suspicious about what was going on. I was really annoyed and suspicious. This is a lie, why does the government have to lie?’ The cumulative effect of detention conditions was an apprehensive and hostile environment with ‘sides’ clearly bounded.

Close Proximity and Communication. Potential rioters need to communicate with one another to enable sharing of personal stories of injustice which facilitate the development of a collective identity based on shared experiences and oppression. The group need to share analyses of their experiences and, in particular, to hold a shared belief about who is to blame for their oppression. The common analysis is produced through communication and relationships. These stories may be told and re-told, enabling solidarity beyond personal relationships. The re-telling of stories may include rumour, but heard within the generalised feelings of hostility outlined above, even unlikely rumours which accord with the dominant and growing beliefs of the disaffected group will be taken as true and can be instrumental in mobilising the group to action. Prospective rioters also need to be in close physical proximity to one another to enable a rapid response when a triggering event occurs (Horowitz 2001; Waddington 2007).

People in immigration detention centres are, by necessity, in close proximity with one another and have little else to do other than worry about their applications and talk about events happening in detention. Osman described that, ‘like for example, we are sitting, me and you and talking “we have to do something,” and another guy come, and this guy join us sitting . . . It’s just chatting and it becomes all, “OK, let’s do it!”’ Similarly, Shahin said that there was, ‘no book, no magazine, newspapers, radio or TV you know. The people would come to my donga, to my room and they would sit and tell stories, they would tell me stories. Sometimes I have heard the same story maybe fifty times.’ This telling of stories and the absence of any meaningful distraction or objective information about people’s progress through the system heightened the sense of solidarity between detainees. It also established a

fertile environment for rumours. Ibrahim said that the rumours escalated, particularly when groups were separated without explanation, 'because the rumours are everywhere now – they don't know about us, we don't know anything about them. So they start to talk, everyone talk in his version.' The removal of people to isolation compounds was particularly escalatory;

I felt sorry for these guys. This situation in Serena Camp and India Camp was very awful. They took them by force. They force them to go there and keep them for about three weeks – alone! Imagine it! We already in trouble. I'm with people but I'm still feeling bad. What if I'm alone?! You can't imagine it. (Ibrahim)

Detainees worried about people who were taken to isolation. Having seen the force used to remove people from the main compound it was a short step to imagine their fellow detainees were being mistreated there. Issaq said that in the immediate lead up to the first Woomera riots, 'there were rumours that they were being hit in there, tortured in there. It just put on your anxiety and then you lose it.'

Breakdown in Authority-Community Relations. The final pre-condition for riot is a substantial breakdown in authority-community relations. Once the authority, often comprising the police, are seen by the prospective rioting group as harassing and indiscriminate in their policing, then any action of the authority against any member of the group is seen as an offence against all and the likelihood of a collective response is greatly enhanced (Lea and Young 1982, 12). Waddington (2007, 49-50), in his *Flashpoint Model of Public Disorder*, notes that groups, including groups in authority such as police, develop their own cultures on the basis of shared conditions and experiences. As relations between the group become more adversarial and confrontational, and as their understandings of certain events diverge, they begin to 'perceive each other in terms of fundamentally negative stereotypes,' and the stage is set for a trigger or flashpoint to ignite a riot. In the lead-up to riots and mass disturbances, the authorities, whether police, prison guards or detention officers, come to be seen as a substantially undifferentiated whole, to be exercising their powers unjustly, and consequently, are seen as powerful rather than authoritative. In his study of prison riots, Eammon Carrabine (2005, 898) observes that, 'prisoners

withdraw their consent for regimes they regard as unjust and morally bankrupt.’ Maintaining legitimacy in the eyes of the detained, argues Carrabine, is crucial for avoiding riots in prisons. This legitimacy cannot be attained through legal or physical force alone, but through engagement, accommodation of reasonable requests, transparent and fair procedures and a range of other processes which build the moral legitimacy which underpins authoritativeness. When an authority is seen as illegitimate, prisoners are far more likely to riot and revolt.

Similarly, the behaviours of those in authority are shaped by collectively held perceptions of the group they are interacting within. When they hold a preconceived negative view of the group, they are likely to read actions by the group accordingly. This is heightened when media, politicians and other shapers of public opinion respond to the actions of the dissenting group in ways that frame their actions or demands as illegitimate, and that vilify the group or denounce their actions (Waddington 2007, 49). This serves to both reinforce the authority’s negative view of the dissenters, thereby supporting overly strong and potentially escalatory policing actions, as well as reinforcing feelings of resentment within the dissenting group.

It is important to note here that members of the dissenting group often view their behaviour quite differently from those in authority. The dissenting group see their grievances and resulting actions as legitimate. A noisy protest involving marching and chanting or shouting may be seen by protesters as legitimate and peaceful action, whereas the authority may view it as a pre-cursor to a riot and respond accordingly (Waddington 2007). A protest is more likely to escalate to riot when it occurs within a context of poor relations between the authorities and the dissenting group. Where the authorities and the group already hold mutually negative views of each other, each will read the other’s actions through this lens and, if the authorities’ response to the protesting group is seen as indiscriminate, brutal or disrespectful, the involvement of authority will likely be a causative rather than preventative factor (Waddington 2007).

The public representations of detainee actions by politicians and the media as being without legitimate basis and arising from their criminality and refusal to accept the outcome of a fair process has been well documented (for example, see Klocker and

Dunn 2003; Mares 2003; Pickering 2005). The Department of Immigration repeatedly referred to riots in detention as ‘criminal activity’ and attributed the cause of riots to failed visa applications. During a riot in Woomera in December 2001, a Department of Immigration media release stated that,

this was not an unrestrained riot – it was a deliberate campaign of criminal activity to hold the Australian people to ransom in order to gain visas (DIMIA 2001b).

The atmosphere in detention became increasingly polarised. Detainees in all centres reported that the guards, and sometimes also Department of Immigration staff, told them that Australians, ‘don’t want you, the people outside hate you, the people outside think negatively about you. You jumped the queue, you have no rights whatsoever’ (Emad). Allegiance between detainees grew stronger as relationships with guards and Department of Immigration staff deteriorated. Baha’adin explained that, ‘we were kind of like a team when you were in detention. So we were like detainees and guards (were) like another thing.’ The breakdown in relationship between detainees and guards dehumanised members of each group amongst members of the other. In an interview with *Four Corners*, several former guards spoke of how stressful their role was and how a culture developed among guards in which all detainees were viewed as threats and as the enemy. Carol Wiltshire, who was a guard at Woomera in 2002, told Quentin McDermott that she,

. . . hated them. I honestly did. I hated them and I wanted to run them over. I just wanted to strangle them. I thought, you know, this is me, a compassionate person turning into an absolute animal, and that’s how I felt though (McDermott 2008).

Guards who showed kindness to detainees were derided as ‘care bears’ and risked ostracism from their colleagues (Briskman, Latham and Goddard 2008; McDermott 2008). The relationship between guards and detainees was not always hostile, but during the build up to violent confrontations, indiscriminate and negative views of the out-group became more dominant. Another former guard, Trevor Robertson, described how in one fight with detainees at Woomera, he became so frightened that he was striking out at,

anybody that looked Asian by the throat and trying to seriously fucking hurt them. I was trying to kill people because I thought somewhere around there, there was a knife that was going to slip into my ribs or into someone else's ribs and that. (McDermott 2008)

Osman described how a peaceful sit-in in Port Hedland detention centre escalated to a physical confrontation between guards and detainees when guards tried to disperse the group and the group refused to move. He particularly noted that the guards approached the group indiscriminately and used actions against the whole group rather than particular individuals;

One officer came in and hit with his leg the guy who was sitting there, not hard, more like a push. That's very bad in any culture. It's like animal or rubbish. . . . So what's gonna happen? This guy is sick mentally. . . . mentally exhausted. So you don't do that action. So what happened? He [the guard] kick him and he come out and push the guard. He push the guard. OK '*he*' push the guard. You go to *that* person, not the people who are sitting in peace. So what happened that action there, we were sitting here – psht – they start using the gas. We were sitting, the action happened there. [The gas] stings and burns your eyes. So they use that things on us, we were just sitting, that's it. So what's gonna happen? You do this, and I have to do something, that's my right. So we stood up and we started pushing and we don't have any weapon except water. So we start using the water, because if they use the gas and you use the water it doesn't work anymore. So we start like, bring the hose, put water on them. (Osman)

The escalation to a riot involves a series of actions and reactions which serve to reinforce generalised negative and homogenising beliefs about the other group and the threat that they pose. These reinforced beliefs also shape the actions and reactions of each group. Riot experts advise that recognition of this pattern, leading to the maintenance of evidence-based action by authorities that is targeted only at specific individuals, as well as the maintenance of communication with leaders, are essential (Waddington 2007). However, there was little evidence of this in the lead

up to riots in Australian immigration detention centres by the private security companies contracted to run the centres.

Immediate Pre-Conditions

Precipitating Incident: The Trigger. The conditions outlined above create the necessary environment for a riot to occur, and, in that sense, a riot is not a spontaneous event. The pre-conditions for a riot can endure for extended periods of time before resulting in riot, or may never culminate in a riot. However, when a specific triggering event occurs within this context that typifies the sort of injustices experienced by group members, it becomes imbued with signifiers for the oppressed group and can spark a riot. This trigger can be relatively minor in itself, but it will be read by the group as emblematic of their deeply held grievances and serve to crystallise community sentiment to action.

Horowitz (2001, 544-545) observes that the group's reaction to the precipitant is 'to outsiders, startlingly disproportionate, *when the precipitant is considered as a one-time event*' (emphasis in the original) but, he says, rioters are 'radical ontologists' and 'prodigious unifiers, who assiduously link together events in a single, unbounded chain and link targets in an indivisible group.' So too are politicians, media and society, as the homogenise 'rioters,' both across and within riot events occurring in different times, locations and social settings. Hundley's analysis of riot precipitants in American cities supports this proposition. He states that the 'significance of this event is that it immediately focuses the attention on an overt act of suppression that is met with open hostility, not because of the act itself, but because it is representative of a long history of such acts' (Hundley, quoted in Waddington 2007, 42-43).

The triggering event may have no independent importance, its importance lies in its capacity to carry the feelings of resentment, oppression and injustice of the crowd. Horowitz (2001, 522) notes that emotion is an important factor in riots and that the riot is a mixture of instrumental and impulsive violence, combining both reason and passion. The violence is instrumental because it responds to, and seeks to change the unjust relationship between groups, even if only temporarily, and it is impulsive because it enables the discharge of built up anger and aggression by the participants.

Riot as protest, Horowitz (2001, 522-539) proposes, may convey a message to society and so have some communicative elements, but its immediate function and a benefit for rioters which ought not be excluded in efforts to understand riot, is its cathartic power. A riot is rarely a planned affair, but nor is it spontaneous. Rather, it is the culmination of the collapsing of long term and proximate wrongs in a particular moment.

In many instances, the immediate trigger to riots in detention was the excessive and arbitrary use of force or solitary confinement by guards against detainees. Visa refusals, poor conditions, a lack of information about detainees' legal status, too much unstructured time and a generalised atmosphere of fear, anxiety and hostility form a crucial backdrop to the triggering event. As respondents in this research attested, witnessing the misuse of power was a near daily event in detention, but in particular moments this was sufficient to cause all the pre-conditions of a riot to coalesce and erupt.

Mohammed, having said he witnessed mistreatment of detainees 'a hundred times' without rioting, described the start of a riot. He and other detainees, 'saw the officer bashing one detainee underage,' and felt compelled, 'to go support.' Detainees, 'from Palestine, Iran, Afghanistan . . . Iraq, everyone knows what they have to do. Put the fire, put the pain.' The response from ACM was swift and brutal; 'ACM or DIMIA didn't come talk to us. They straight away put armed, shelved, hot water machine and jump and start to kick out . . . they start to put the tear gas . . . suddenly they start bashed, they didn't care, kids there, woman there, man, they start going everywhere.' Although Mohammed lamented the lack of communication or negotiation from Immigration or ACM, he also remarked that, 'even honest with you, many of the detainees didn't come and mediate it, the people got so mental they want to broke and burn everything. "We are stop, please, enough, enough, stop."'

Similarly, Issaq told of the first Woomera riot and how people were taken, unjustly in the opinions of the detainees, to isolation following a nonviolent protest, and that this provoked the detainees to retaliate against the next CERT operation. He told of people feeling 'frustrated and frustrated' and that CERT Operations, alongside detainee rumours, 'just put on your anxiety and then you lose it.' A detainee

involved in riots in Christmas Island detention centre told a similar story of a nonviolent protest by detainees, followed by Serco (the private security contractor running Christmas Island IDC) deciding a 'show of force' was needed and organising what the detainee termed a 'snatch and grab' operation to remove twenty suspected ringleaders from the main compound;

This not only did not help to calm the situation down, but created more anger and frustration among other detainees . . . Not surprisingly, other detainees responded to the arbitrary arrests, and broke into the high security Red Compound in an attempt to free the twenty people who had been taken away in handcuffs. It was then that the police used tear gas and fired beanbag rounds. (Anonymous 2011)

The detainee explained that police and Serco actions, 'enraged the crowd, and some lost their control and started to cause property damage by setting some tents and canteens on fire and smashing CCTV cameras' (Anonymous 2011).

The precipitating incident in each of these examples was an occasion of perceived injustice against a small group of detainees and witnessed by a larger group of fellow detainees. The incident served to crystallise anger and indignation sufficiently to mobilise the group to action.

Communication and Exceptional Norm Building. During and immediately following the precipitating incident, word is quickly spread and feelings of outrage, and perhaps fear, are shared. In the process of discussing the incident, it is important that prospective participants build a clear shared understanding of where blame for this most recent (and prior) injustice lies. Information about the precipitating incident and about prior incidents is communicated throughout the group and community. Smelser (quoted in Waddington 2007, 40) noted that rumours can be powerful at this stage of immediate pre-riot, and can 'distort reality and 'short circuit' the normal paths to the amelioration of grievances.' This shared assignation of blame, shared outrage and indignation at the latest affront and immediate communication facilitates the group developing exceptional norms that will support and enable the rioting behaviour. Contemporary theories of riot accept that riots are not caused by 'riotous individuals', but that, as rioting involves ordinary people transgressing social norms,

participants need to understand their actions as justified and ‘right’ (Horowitz 2001; Rudé 1964). Social support and sanction is essential to the riot.

Horowitz’s study deals with deadly ethnic riots, which differ significantly from riots that principally target property, but nonetheless, his analysis offers useful insights into the structure and anatomy of riot as a sharp departure from the ‘norm’. Rioters, Horowitz (2001, 528) contends, seek justification for their actions and evidence of their ‘rightfulness’, and they ‘reason about justification, however cursory and faulty their reasoning may be’. A riot he says,

is not a wholly irrational affair. . . . at the outset, their reasoning is not defective, . . . they get the facts of the provocation right. . . . What [they] get wrong are the facts about the facts: they exaggerate the significance of the precipitants, . . . they add false facts or exaggerated facts, rumours of . . . aggression, . . . poisoned water supplies . . . Rioters imagine themselves engaged in self-defence (Horowitz 2001, 555).

Rioters ‘view themselves as participating in something akin to military operations’ (Horowitz 2001, 529). Once the situation is constructed as war-like, behaviours on both sides that are not normally accepted become permissible. The exceptional, temporarily at least, becomes normalised.

Most participants in this research used the analogy of ‘war’ to describe the situation in detention. Even those detainees who, throughout their detention, maintained that negotiation and non-violent resistance were the only acceptable courses of action, used war as an analogy. Shahin, whose story is partially told in Chapter 6, said that he, ‘accepted consciously that [he was] in a war,’ and that this shaped his thinking throughout his twenty months in detention. Issaq expressed it more directly;

. . . it became a war basically. It became a war between two groups, detainees and officers. You don’t see any friendship in there any more you know. You don’t care that officers were good officers. You see him as a person in riot gear with a helmet with batons and shots in his hand, and you don’t care who he is. (Issaq)

Solidarity among detainees grew as people saw that actions against a fellow detainee could easily be against them too. Osman explained that if a detainee was being beaten by a guard he would go to their aid, even if he didn't know that person or the circumstances that lead to the conflict;

Anyone! Anyone who are detainee. It doesn't matter if you are Iraqi, Afghan, no. No. We *are* detainee. We are detainee. If I hear that one African guy is under attack – I will go. Why? Even if he's done wrong, if he's done wrong, because he's sick, he's lost his patience. Listen to him. Don't beat him! So when we see him beaten, they have no right to beat us. (Osman)

Osman didn't distinguish between the unknown 'African guy' and himself. Rather, the transgression of the other man's rights was viewed as also a transgression of his own rights.

In war, the sides are clear and polarised, every person is categorised as enemy or ally, and a different set of norms is developed. Sayed and Ismail discussed needing to rethink 'right' and 'wrong' in detention. Sayed used the analogy that, in ordinary circumstances, it is wrong to steal, but that, 'in extreme circumstances, for example if I am really, really hungry and about to die, I might steal the bread.' He said that, although he may 'feel bad' about stealing, he thinks that in certain circumstances, acts normally prohibited can be justified or even necessary. Ismail agreed and added, 'and we knew that detention was wrong.'

Mobilisation and Escalation. Within this heightened state of threat and passion, someone must propose retaliation for a riot to develop. The proposal may be verbal or through a 'spontaneous' hurling of an object at a building or representative of authority. Dynamic leaders may emerge at this point who lead the action. These leaders may be long term community leaders or simply the most persuasive speakers or actors present (Hundley, quoted in Waddington 2007, 42). Most theorists agree that the state's response at this point is crucial in determining whether the disturbance escalates to violence or is dispersed. Hundley, Spiegel, Waddington, and Lea and Young all concur that authorities need to be careful not to confirm the crowd's view of them as seeing the group as an amorphous whole (Lea and Young

1982; Waddington 2007). If police ‘manhandle everyone in sight,’ the situation is likely to become inflamed, and so authorities must be careful to discern which individuals within the group are engaged in violence and make arrests selectively and with the minimum use of force (Speigel, quoted in Waddington 2007, 46). Hundley (quoted in Waddington 2007, 43) recommends that authorities contact leaders within the community and ‘furnish them with meaningful concessions to put to their constituents’. Indiscriminate arrests, excessive use of force and refusal to enter into negotiations are all likely to have escalatory effects (Wilkinson 2009). Similarly, public statements by politicians and other leaders which vilify the protesters and close off opportunities for political re-engagement will do little to avert violence or bring it to an early end.

Policing the Riot

In each of the riot episodes examined for this work, there was a build up of smaller protests, followed by a ‘zero tolerance’ response by ACM, which then escalated through a series of actions and reactions, culminating in an explosion of violent protest.

The Woomera riot, explored in the opening pages of this chapter, describes detainees protesting ‘peacefully’ but ‘vocally’. ACM then took suspected leaders of the protest into solitary confinement. Fellow detainees asked management to release two people who they considered to have been wrongfully punished. Their request was refused, a CERT team was flown in and detainees reacted with anger, attacking fences and property in the detention centre. When ACM attempted to execute a dawn raid the following day, detainees had armed themselves and attacked the CERT team. The riot lasted three days before calm was restored.

The anonymous detainee’s account of the Christmas Island riot in March 2011 outlines a remarkably similar path of events (Anonymous 2011). In the months leading up to the riot, detainees participated in a series of protests, such as hunger strikes, lodging complaints with the Commonwealth Ombudsman and demanding meetings with Department of Immigration staff. None of these actions were successful, and so on 11 March 2011 up to 150 detainees broke out of detention in protest (AAP 2011a). Most returned the following day, but a second breakout of less

than one hundred detainees occurred on 13 March (AAP 2011b). Again, most people returned to the detention centre within twenty four hours, although a group of approximately twenty people remained outside. The Minister for Immigration organised for a delegation to meet with the protesters and to discuss their concerns (Bowen 2011). According to a detainee, the negotiator was taking their concerns back to the Minister and the detainees had informed him that they would continue nonviolent protests while awaiting a response (Anonymous 2011). Meanwhile, the AFP and Serco conducted a 'round up' of twenty suspected ring-leaders and took them to Red Compound, a high security isolation block. That evening, detainees staged a noisy but peaceful protest, waving white flags and asking about the whereabouts of the men who had been removed. The AFP responded to the protest by firing tear gas and bean bag bullets at the crowd. According to the detainee informant, 'this behaviour from the police enraged the crowd, and some lost their control and started to cause property damage by setting some tents and canteens on fire and smashing CCTV cameras' (Anonymous 2011).

A series of smaller protests were met initially by state indifference. The protests gradually escalated over a period of months until a particular protest event was met with 'strong-arm' and indiscriminate policing, which in turn escalated the detainees' actions. The process of action and reaction ultimately resulted in a riot.

In December 2002, detainees at both Woomera and Port Hedland rioted following a newspaper report that immigration detention centres were like 'five star hotels' and the Immigration Minister's complete rejection of a United Nations report criticising Australia's detention centres (Downer and Ruddock 2002, Penberthy 2002). Osman was in Port Hedland at the time, and said that detainees there protested by marching around the compound chanting, 'Philip Ruddock liar. Philip Ruddock liar.' Detainees saw a news report that night of protests and fires in Woomera. They also noted, with some bewilderment, that Port Hedland detention centre that night had only two guards instead of the usual ten:

I was wondering why there is no people, just two. So other people who were very angry, very desperate, they took that opportunity. They smash and smash and smash and suddenly burn everything. (Osman)

Port Hedland detainees were angry about detention being likened to a five star hotel, but also were concerned about what had triggered the protests in Woomera. ‘Something happen in Woomera, like Why? Why? Bad things more are going to happen to us. Everyone in detention, we are in the same boat’ (Osman). Detainees were able to move between different compounds, and so they made their way to India compound and set it alight, ‘because the India camp was bad memories for many people because it was the first place to be in detention and was isolation as well. So they burn it’ (Osman). Memories of recent injustice, rumours of injustices in Woomera and apprehension about what might happen in Port Hedland, coupled with a lack of response and staffing from ACM, was sufficient to escalate an initially peaceful protest into fire and property destruction.

Sociological theories of police responses to riot state that it is important that police neither under- nor over-control an escalating riot. An under reaction by authorities enables people to act with impunity and can encourage more people to become involved, whereas an over-reaction, such as sending in police with riot gear, horses or dogs before negotiations have been exhausted, is likely to be inflammatory (Speigel, quoted in Waddington 2007, 45). The riots in Woomera in August 2000 and on Christmas Island in 2011 are examples of escalatory over-policing, while the Port Hedland riot of December 2002 appears to be the opposite. In each case, there is no evidence of ACM, Serco, the Australian Federal Police or the Department of Immigration engaging detainee leaders in any meaningful negotiations or being willing to accommodate any of the detainees’ demands. A letter from the Secretary of the Department of Immigration to detainees during riots in Woomera, Baxter and Port Hedland detention centres in December 2002 reveals the government’s belief that there was no room for negotiation with detainees. The letter bluntly advised detainees that,

those of you currently in detention are there by your own choice because you are pursuing your cases through the Court system or because you are refusing to cooperate with arrangements to depart Australia. Your situation therefore, could not be any clearer. You can choose to bring your detention to an end at any time by leaving Australia. (DIMIA 2002a)

The same letter also advised that detainees risked criminal prosecutions, that protest would only make their situation worse, that the destruction of detention centre property would result in them being ‘accommodated in circumstances that are far less comfortable,’ and that the Minister would refuse to consider any claims from people in detention until ‘these disturbances cease’.

This *Message to Detainees* was released to the media along with a press release which stated that, ‘there have been ongoing discussions with detainees, to ensure that it is understood that criminal activity will be punished and disturbances are counterproductive to their cause’ (DIMIA 2002a). The Department of Immigration and the federal government continued to see the riots as a protest about visas and a result of detainees’ bad characters. The government was unwilling to consider concerns about the conditions of detention. With no acknowledgement of any legitimate basis for complaint by detainees, good faith or meaningful negotiations cannot occur.

Conclusion

Using this model, Australia’s immigration detention centres could be seen as almost laboratory incubators for riots. They contain a physically, politically, socially and culturally excluded group of people with deeply held grievances, in close proximity to one another facilitating the development of generalised hostile beliefs. Detainees are more often than not portrayed homogeneously and negatively in the media by politicians and social commentators alike. Guards are generally poorly trained and many hold indiscriminately negative views of detainees as a group. Official systems designed to address detainees’ needs or complaints work poorly, if at all, and effectively put access to official redress for grievances beyond the reach of detainees. The close proximity of detainees and lack of meaningful activity to structure each day means that information and rumour circulates rapidly throughout and between detention centres. While some respondents in this research talked about some ‘nice guards’, the relationship between detainees and guards, and detainees and broader Australian society could be characterised as substantially negative, marked by mutual distrust and suspicion. Detention centres are exceptional sites. Their inhabitants are in a legal limbo, with limited rights and no national identity. They are

between states, between statuses and between norms. And so detention centres also develop exceptional norms to guide behaviour, of both detainees and guards. All the preconditions for a riot are met and any number of mundane daily events can act as a trigger.

Break outs, hunger strike, lip sewing and many other forms of protest may be read as strategies of detainees to evade, undermine or dialogically challenge the technologies of state power. Riot however, was a different form of confrontation and communication. The message to be conveyed was an angry one, expressing a loss of hope in civil dialogue and functioning more as catharsis and retaliation. Riots occurred in Australia's immigration detention centres when 'sides' become polarised and issues oversimplified. Like hunger strikes, riots cannot be adequately read through a detached prism with clear delineation of the personal and the political, of emotion and reason. Nor can they be properly read through the actions of rioters alone. The riots in detention centres not only mark moments when fears and tensions in detention centres were heightened, but also moments of intransigence by the state or its representatives. The deployment of state power in detention was always met with resistance in some form. Riots made visible, in a most dramatic way, the struggle and conflict between asylum seekers and the state. Setting fire to buildings, tearing down fences or throwing stones at guards gave release to the anger and indignation of injustice. It was not the civil voice of Arendt's *homo politicus*, but the direct challenge and raw emotion of Foucault's criminalised, institutionalised, discredited, subjugated rising up to tear down the physical representations of their oppression.

Chapter 10: Conclusion

This research was motivated by a desire to discover how detainees explained their own acts of resistance against immigration detention. While Australian news between 1999 and 2005 was near saturated with stories of self-harm, hunger strike, riot, escape and other protests in immigration detention centres, detainees themselves were only seldom heard. This was in part due to strategies of the federal government to distance, dehumanise and silence asylum seekers through policies such as mandatory detention and tight control of media and public access to detention centres. Detainees also had to struggle against more globalised hegemony about refugees that idealise feminised, passive and grateful refugees in distant camps who are reliant on expert Western intervention, contrasted against criminalised, masculinised active refugees seeking their own resolutions to displacement, being represented as threats to the nation. Detainees were simultaneously engaged in struggles at once highly localised, and inextricably entwined with global hegemonies around refuge, terrorism and geo-politics.

It was necessary but difficult to establish an independent voice against such a powerful backdrop. Detainees' actions were at times highly visual spectacles designed to ensure media coverage, but were frequently, although not exclusively, narrated by others, such as refugee advocates or government sources. As an activist and social worker working with detainees and refugees, I had heard several first-hand accounts of life in detention and read letters from detainees circulated by email around the activist community. Many of these voices used a language of human rights to articulate their positions. As well as wanting to uncover detainee accounts in greater depth, I became interested in human rights as a discursive tool, rather than as a body of laws and treaties, and wanted to understand the ways in which detainees understood human rights and the role of rights in mobilising resistance.

With this desire to uncover detainee accounts as the central aim of the research, former detainee testimony formed the heart of the project, from research design and methodology through to analysis and writing. Theory was used as a dynamic interpretive tool to access the richness and insights of the actors' narratives. The works of Hannah Arendt and Michel Foucault, uneasy bedfellows as they may seem,

were of great help in discerning the complexities and multiplicities of detainee accounts and in situating these historically, politically and philosophically. Analysing detainees' testimony through Arendt's theories of the human condition and human rights, and alongside Foucault's work on power, resistance and the production of knowledge, insights were gained which develop important alternate understandings of the specific events occurring in Australian detention centres between 1999 and 2005, and which also contribute to a more generalisable conceptualising of human rights. In particular, the words and actions of former detainees reveal the power of human rights as a discursive tool enabling strategic alliances between temporally and geographically disparate struggles against dominant hegemonies. Through a language of rights, protesters were able to draw upon the hard won moral legitimacy of other struggles, such as Irish hunger strikers, anti-Apartheid activists and the US civil rights movement, and in doing so, strengthen a reading of the situation that questioned the morality of the laws which sanction mandatory indefinite detention. Detainees were also able to forge links with refugee supporters outside detention and to assist in the growth of domestic opposition to the policy.

Foundational tensions within human rights discourse exist between universalism and state sovereignty on the one hand and between universalism and human diversity on the other. Arendt argued that ongoing uncritical acceptance of the proposition that human rights are universal was dangerous rhetoric. She labelled this rhetoric because the existence of refugees and displaced peoples provided proof of the utterly contingent nature of rights. In fact, rights exist only as a result of human decision within a political community both willing and able to guarantee those rights. She argued that conceiving of human rights as universal and as flowing from god, nature or abstract man is dangerous because it facilitates complacency rather than the active ongoing human engagement and commitment required to make human rights real. Leaving responsibility for human rights in the hands of the nation-state fundamentally undermines any realisable universality of human rights.

While Arendt argued against imagining that human rights are universal in application, she also argued that aspects of the human condition are universal. These include the capacity for speech and action, and that we are all distinct and unique

individuals who share a need to live in community and so are 'political animals'. A just society, for Arendt, was one in which members of the community make a decision to regard all members as political equals. Arendt's work searched primarily to understand totalitarianism and the Holocaust of World War II. From this basis, she theorised that a loss of citizenship, which is defined as belonging to a formal political community, entailed a loss of the 'right to have rights,' which she defined as the right to, 'a place in the world which makes opinions significant and actions effective' (Arendt 1976, 296), something only possible in community as we are intersubjectively constituted. Without the right to have rights, any freedoms or benefits one may enjoy are a matter of charity or chance, not guaranteed or enforceable rights. A rightless person is reduced to 'simple humanity' and Arendt contended that the international community saw nothing compelling in the image of naked humanity being marched off to the gas chambers during the Holocaust.

Simple or naked humanity was, for Arendt, no basis from which to claim rights. Stripped of citizenship and other key markers of individual identity, such as names, detainees had only their naked humanity, including the capacities for speech and action, to use in their determination to restore their right to have rights by being recognised as distinct beings and gaining admittance to a new political community. It is at this point, in which Arendt's concern with totalitarianism and the Holocaust anchors her work to a specific historical event, that the work of Foucault can extend the potentiality of naked humanity and recognise a more fluid, fractured and dynamic flow of power, one which is untethered from monolithic sites such as 'the nation-state' and which engages and is engaged by actual people.

Through Foucault's reconceptualisation of power as a force present everywhere and in all social relations, rather than as a finite commodity resting in certain sites and not others, detainees and asylum seekers are no longer powerless. They have *less* power than the government, but they are not *without* power. Human beings are socially constituted and therefore never cease to be engaged in social relations (whether directly or semiotically) and so remain discursive agents. It is a strategy of the more powerful to obscure, discredit, marginalise, suppress and even to bury alternate knowledges and oppositional voices, but these efforts can never be entirely successful as, while power indeed produces and maintains hegemonic 'common

sense' and 'truth,' power also produces resistance. 'Power is everywhere,' Foucault contended, 'not because it embraces everything, but because it comes from everywhere' (Foucault 1976, 93). Detainees then, are not powerless objects upon which the state can exert its absolute power, but are less powerful subjects who both initiate and respond to encounters with the Australian state and who are engaged in an unequal struggle for recognition and restoration of rights.

The creativity, courage and tenacity of detainee resistance to detention are not rooted in citizenship, but in a 'naked humanity'. The Australian government may have seen nothing compelling in this naked humanity, but detainees were able to use their diverse and unique talents and capacities to resist the government's efforts to control the relationship between detainees and the Australian polis, and to forge alliances and relationships with people outside detention. These acts forced a place in the public sphere for detainee voices to introduce themselves, to explain who they were and why they were hunger striking, self-harming and burning buildings. Refugee advocacy and solidarity networks grew, further challenging government hegemony. By 2005, the dominant hegemony was sufficiently unsettled that the Coalition government began to experience internal divisions, forcing the government to withdraw draft legislation designed to extend the government's power over detainees and to introduce new policies that saw the release of children and long term detainees from detention centres.

The words and deeds of detainees support a discursive and strategic universalism, fluid enough to allow for the richness of human diversity, yet sufficiently robust to empower local struggles and mobilise support and solidarity. A language of rights was used by detainees because it expressed their sentiments and beliefs (their incredulity and indignation at their treatment by the Australian state was a genuine, and not a strategic, move) and also had a number of effects. The ideal of human rights has a universal appeal and so a language of human rights was able to build bridges and relationships between groups sharing little else in common, in spite of concerted efforts by the government to block such alliances. It also introduced a moral argument in contrast to the strict legality of detention, unsettling the power of the state and creating a space for unqualified and less powerful voices to make legitimacy claims. The realm of conscience, of both detainees and the Australian

people, relegated by modernity's eradication of ambivalence to the margins and to the private sphere, regained traction as a central concern in a heated public debate, which came to question whether it was *right* (as opposed to lawful) to treat people in this way.

The struggle by detainees to translate their private suffering into a public voice was enormous, and it is not yet 'done'. Detainees used their capacities for analysis, speech and action in creative and multiple ways. Dr Aamer Sultan used his medical training to scientifically document people's demise inside detention and then drew upon the power of the medical community to challenge a policy which so demonstrably goes against health and wellbeing. Shahin used himself, through his writing, acting and speaking skills along with his energy and determination, to tour *Refugitive* to audiences who might otherwise never meet a 'boatperson'. Through the immediacy of face-to-face encounters, he worked to dispel government national security and border-crime propaganda. Escapees, seeking media coverage and to create a public voice by crossing the wires that demarcated their physical and political domain, inadvertently discovered the power of Australian judicial systems for establishing greater rights for themselves as charged persons and greater power for their testimony. When spoken in a court of law, their words could not be so readily dismissed.

Words alone were rarely enough, as hundreds of detainee hunger strikers understood. Realising that lacking formal political status, detainees' voices could be all too easily discredited and ignored, detainees used their bodies to insist upon a place in the polis. Issaq's testimony about the decision to sew his lips and to present this act in the public sphere through a doctor demonstrates a keen political awareness. Using one's body through hunger strike, lip-sewing and self-harm is not however, an intellectual act or a remote defence of principle. Embodied protests convey the interplay of political critique and intimacy of personal emotion. To attempt to understand detainee actions as arising from either personal despair *or* detached critique would fall into established binaries and present two-dimensional reductions of dynamic and multifaceted phenomena.

In looking at riot episodes, the roles of emotion and critique dramatically coalesce as people share stories, share outrage, form close bonds, and mobilise to impassioned action. With civil speech and formal processes for resolution of grievances effectively closed off, detainee critiques of injustice fanned anger and indignation. Emotions in turn shaped critique, becoming powerful forces in need of release. State actions can inflame or diffuse escalating tensions, and in this the Australian government and private contractors fell into uninformed populist understandings of riot. In their struggle for power, recognition and rights, detainees again used their bodies but this time, unlike the hunger strikers who used their bodies to make visible the obfuscated violence deployed against them by the state, detainees used their bodies to directly confront and fight the state itself and to tear down the physical representations of state power.

Detainee testimony about protest also revealed the multifaceted purpose or function of protest. Sometimes aimed at achieving particular immediate or distant goals, such as gaining access to a telephone or establishing a detainee voice in the media, protest also played an important existential function for detainees. It was often only through resistant or subversive acts that detainees could experience their agency; the capacities of independent speech and action essential to the human condition and which distinguish us from ‘beasts and gods’ (Arendt 1958, 22). I am grateful to Ismail, who expressed this so eloquently in my first interview when he explained that if he,

. . . didn’t do those things, nothing different between me and this table.
With me? I got a soul. I got a mind. I got thinking. While this table . . .
of course, I wouldn’t stay like that. (Ismail)

Regardless of any material, political or semiotic outcome of protests, resistance was inevitable because detainees remained human, retained agency and were engaged in socially constituted power struggles.

These struggles are ongoing. At the end of November 2011, there were 4,409 people in immigration detention in Australia (DIAC 2011b) and with around 1,000 new arrivals in December 2011 and January 2012, the statistics are likely to be higher still. The language of the current federal government is more moderate than its

predecessor and it has declared its intention to make greater efforts to limit the time spent in detention through the use of bridging visas and community based detention programs. At the end of November 2011, 1,324 people were in community detention (DIAC 2011b). I have been unable to obtain figures of people released on Bridging Visas or through other initiatives before their refugee application is determined. While these are encouraging developments, the framework through which asylum seeking is understood has changed little. The government has restated its commitment to mandatory detention and border protection as cornerstones for national security. Asylum seeking is still conflated with security, relegating issues of international protection and human rights to secondary status. A major issue currently affecting the lengths of time in detention is the requirement for security clearances for all refugees prior to release. Hundreds of people, mostly Tamils from Sri Lanka and Rohingya people from Burma, are facing indefinite detention as they have been found to be refugees, but refused visas due to adverse security assessments made by the Australian Security Intelligence Organisation (ASIO). The individuals concerned are not permitted to know the basis of this assessment, nor can the assessment be challenged in court. With such an assessment in place the prospect of finding a third country willing to offer residence is unlikely.

Even when this group is excluded, the numbers of people spending more than twelve months in detention while their refugee claims are assessed is growing daily. The last eighteen months have seen an increase in protests by detainees, including hunger strikes, lip sewing, riots and breakouts, which are again making news headlines. Detainees involved in a week-long series of breakouts, riots and direct combat with Australian Federal Police in March 2010 are facing criminal charges. If convicted, they will be subject to new legislation designed to empower the Minister to refuse a visa to a person found to be a refugee if he/she has engaged in criminal conduct while in detention.

While the protests of 1999 to 2005 may have influenced public debate around asylum seeking and detention at that time, the policy is the 'product of deeply rooted state practice and ideology' (Grewcock 2009, 284-285) and bringing about fundamental change in the ideologies underpinning Australia's approach to boat arrivals is likely to be an ongoing project. Academic researchers could fruitfully

engage with detainees, both past and present, to bring the tools of scholarship to the task of uncovering and amplifying the voices of those people most directly affected by the policy and whose voices government policies seek to silence. Forcing a space in the public sphere for the experiential wisdom of refugees can only add depth and richness to the world's understanding of displacement and human rights. Research specifically aimed at accessing the perspectives of women in detention is sorely needed and would enhance the project of justice and human rights.

While this research makes no claims of presenting the 'truth', it has uncovered sufficient repetition of discursive patterns, both between participants in this research and between detainees and activists in struggles elsewhere, to establish that detainees, like other oppressed peoples, critique their political environment, and that explanations of resistance cannot be overlaid by detached expert narrators. The testimony of former detainees gathered for this research provides useful insight not only into an alternate recording of events, but also into how human rights can be conceived and mobilised. A discursive universalism enhances opportunities for alliances across constructed divides, while also allowing for a diversity of manifestations of human creativity as infinite as the situations in which people are placed.

Australian, and other national, governments may want passive, silent asylum seekers upon whom they can project their own narrative as acts of sovereign power, however, the 'naked humanity' of both asylum seekers and citizens cannot be erased. We humans are always speaking, acting subjects and will always initiate, challenge, subvert, resist and rise up with the insistence on a place in the world where our opinions are significant and actions effective.

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APPENDIX

Appendix 1: Details of Interview Participants

Name (Pseudonym) (Interview Date)	Length of Detention	Locations of Detention
Aamer ^a (22/02/09)	Three years, six weeks	Villawood IDC
Baha'adin (16/02/09)	Five years	Curtin IRPC Baxter IDF
Emad (26/02/09)	Eight months	Curtin IRPC
Ibrahim (20/01/09)	Seven months	Woomera IRPC
Ismail (11/01/09)	Five years	Curtin IDC Perth IDC Baxter IDF Casuarina Prison Glenside Psychiatric Hospital. Broome Police Station cells
Issaq (21/02/09)	Three years, eleven months	Woomera IRPC Port Hedland IRPC Villawood IDC
Mehdi (15/02/09)	Five years	Curtin IRPC Baxter IDF
Mivan (15/02/09)	Five years	Curtin IRPC Baxter IDF
Mohammed (25/02/09)	Four years	Perth IDC Port Hedland IRPC Villawood IDC Roebourne Prison
Osman (18/01/09)	Three years, four months	Port Hedland IRPC Baxter IDF
Salah (15/02/09)	Two years, nine months	Curtin IRPC Baxter IDF

Name (Pseudonym)	Length of Detention	Locations of Detention
Sam (25/02/09)	Three years	Perth IDC Port Hedland IRPC Curtin IRPC Roebourne Prison Casuarina Prison
Sayed (11/01/09)	Six years	Perth IDC Casuarina Prison
Shahin ^a (17/02/09)	One year, eight months	Curtin IRPC
Tariq (19/02/09)	Eleven months, then escaped for three years, then five and a half months	Woomera IRPC Maribyrnong IDC Baxter IDF

a Aamer and Shahin are identified in this research by their real names (see Chapter 1).

Curtin University Human Research Ethics Committee Approval Number: HR70/2008