

The Normative Ethics of Immigration Detention in Liberal States

Stephanie Jessica Silverman

St Antony's College, University of Oxford

sj.silverman@gmail.com

01 April 2013

Thesis submitted in partial fulfilment of the requirements for the degree of DPhil in Politics in the Department of Politics and International Relations at the University of Oxford.

Word Count: 69,698

The normative ethics of immigration detention in liberal states

Stephanie J. Silverman, St Antony's College, DPhil in Politics

The Department of Politics and International Relations

University of Oxford

1 March 2013

Thesis abstract

This thesis explores the normative propriety of immigration detention in liberal states. In the first part of the thesis, I explore the development, current practice, and popular justifications for immigration detention in the United Kingdom. I argue that a crucial but unacknowledged role for immigration detention is to function as a political spectacle of the centralisation of power in liberal states. I find that the key motivation for detaining non-citizens is that they could abscond before their removals. I conclude that this basis for detention is normatively acceptable in only very limited cases and, even then, alternatives are often available and ethically preferable. Based on the fact that there is a normatively acceptable rationale, albeit circumscribed, for detention practices, I then propose a framework of minimum standards of treatment in detention that I advise all liberal states to follow.

After outlining my proposal, I turn in the second part of the thesis to an examination of the normative theories of immigration control and how they take account of detention. Normative theorists differ in how they balance their commitments to individual and state rights, yet I find the majority concedes the need for some degree of immigration admissions control. Such theories face a moral dilemma: there can be no immigration control without detention, and so detention becomes an implicit assumption for these normative theories to be coherent. A potential solution for combating the practical problems associated with the growing, worsening detention estates as well as the moral dilemma of incarcerating a non-citizen

based on fear of absconding would be to open borders and eliminate immigration control. Given the reality of the sovereign right to control immigration, however, I argue that the more feasible normative answer is lobby liberal states to adopt my framework of minimum standards of treatment while simultaneously pressing for open borders as the long-term ethical goal.

Acknowledgements

I have always loved reading Acknowledgements sections. I understand them as maps of the intellectual and creative journey of theses. It is my pleasure to write my own as a partial reflection of the outpouring of assistance that I have been fortunate to receive while writing my thesis.

This thesis is undoubtedly a trans-Atlantic affair. On the UK side, my first and greatest acknowledgement is to my doctoral supervisors, Matthew J. Gibney and Bridget Anderson. Matthew has been digging in the trenches of this project for five long years. He has patiently and thoroughly converted me to the merits of normative theory as a rigorous and important challenge to unfair and harmful practices. His incantation of “Be sharp!” will forever illuminate my work, and I thank him for his insights, support, and advice. When Bridget became my co-supervisor over three years ago, she gave me a home at COMPAS and taught me how to be a generous colleague, a rigorous scholar, and a relentless critic of borders and other manifestations of arbitrary inequality. Her approach to work and life has been profoundly influential on my own development. I wholeheartedly thank them both for steering this thesis to completion. I also thank Mary Bosworth for her thoughtful comments and recommendations throughout the transfer of status and confirmation of status processes.

In their roles as examiners, Joseph H. Carens and Cathryn Costello engaged deeply and thoughtfully with the ideas, structure, and purpose of this thesis. I am extremely grateful that their comments, insights, and devotion allowed me to complete this project in a timely manner. I am also extremely appreciative of the extraordinary amount of

time and energy that both Joe and Cathryn devoted to this thesis in revising the final draft, and I am confident that it has become a much-improved project thanks for their efforts.

I would also like to acknowledge the support of three institutions. The first is the Department of Politics and International Relations where I want to acknowledge the assistance of Nigel Bowles and David Miller in their capacities as Graduate Politics Directors, as well as the secretaries in the Social Sciences Division, Ms Debbie Hockley in particular. The second institution is the Commonwealth Scholarship Fund, which generously supported three-plus years of scholarship and introduced me to a world of wonderful friends. Finally, I would like to thank the staff and students of the ESRC Centre on Migration, Policy and Society for acting as a shelter from the storm, literally and figuratively. I truly loved my time in the Basement.

The Oxford time-space-stress continuum may suppress collegiality and fellow-feeling, but I was lucky to find a group of people who defied and redefined the boundaries between friends and colleagues. I am proud to call Evelyne Massa my collaborator and friend. Honor Brabazon provided constant inspiration in the uphill battle to finish our respective theses; her perseverance and wit buoyed me up, and her cutting social commentary always brought me back to earth. Although she refutes the title, Leah Bassel has been a wonderful mentor and I look forward to continuing to learn from her throughout our friendship. My Commonwealth friends, Karina McHardy, Lloyd McCann, and Frances Foster-Thorpe, always showed me kindness, good food, and new and interesting perspectives. At COMPAS, Nora Danielson, Leslie Fesenmyer,

Melanie Griffiths, Olivia Killias, Vicky Kingston, Marisa Macari, and Nick Van Hear showed me how to rethink migration, appreciate multidisciplinary, and dance to Gambian conga music. I am especially indebted to Esra Kaytaz and Cetta Mainwaring, whose innovative ideas and outlooks on migration, politics, and social responsibility are undoubtedly present in this work. It has been a pleasure getting to know Leslie James and David Lappano, and we await their return to Toronto with haste.

In Toronto, I would like to acknowledge the support of a number of people. For their enduring love and support, I thank my oldest friends, Pamela Drappel, Minh-Tuong Dao, and Kiera Ormut-Fleishman. I also thank Sarah Barmak, Christopher Richards Bentley, Meaghan Campbell, Michele Costa, Corey Katz, Salim Rachid, Anne Staver, and Amy Yu for being wonderful friends despite my long absences and frazzled states of mind. My family-in-law, Alice, Ben, and Daphne Lowinsky, have been nothing less than spectacular throughout this process. I would also like to extend my appreciation to Frank Cunningham, Luin Goldring, Jennifer Hyndman, and Audrey Macklin for helping me to leave behind my UK community and re-establish myself in a new context. I also acknowledge the early support of my teachers: William O Walker III of Toronto and then Houston inspired me to pursue a DPhil, and Nicola Short went out of her way to facilitate my Oxford and Commonwealth applications.

It is not dramatic to say, however, that this thesis would not have been possible without my family. My brother, Max Silverman, is a natural leader and all-around rabble-rouser who eloquently stands up for his vision of the good life and teaches me how to be brave in the face of authority. My parents, Joanne Bargman and Earl Silverman, are

wonderful teachers who support me in every way possible. From a very early age, they inspired me to question the status quo, give back to the community, overcome obstacles, and, most importantly, show understanding towards others in generous and meaningful ways.

I do not have space here to explain why my husband, Daniel J. Lowinsky, is the reason why this thesis is finished. By relocating to the UK, Daniel relinquished sunshine, immediate career prospects, and time with friends and family. He nonetheless continued to build our shared life on foundations of mutual love, intellectual curiosity, and a commitment to social justice. I am grateful for the many, many hours that he patiently and thoughtfully devoted to working through my ideas and tricky grammatical questions. Daniel contributes directly to everything good that I do, and it is truly impossible to imagine having been able to submit this thesis without his support.

Finally, I would like to acknowledge the tens of thousands of people who are suffering from the deprivation of their most basic rights because of their immigration statuses. Alienage can never be an excuse for abuse. Unless we propose new ideas and work together to implement them, immigration detention is going to get bigger before it gets better.

Table of Contents

Acknowledgements	i
Chapter One: Introduction to the normative theory of immigration detention in liberal states	1
Thesis structure	9
Argument	11
The focus on liberal states	14
An approach that combines migration studies, public policy studies, and normative theory	15
Limitations of this approach	19
Language and terminology	21
Irregular migrant	21
Asylum seeker	22
Immigration detention	24
Immigration detention centres	26
Popular arguments for immigration detention	29
Chapter Two: Literature review: The political spectacle of immigration detention	35
Introduction	35
The Political Spectacle	36
What is detention-as-spectacle?	38
Crimmigration studies	41
The roles of the media	45
Does immigration increase criminality in liberal states?	46
Crimmigration and detention	47
Crimmigration and detention-as-spectacle	49
The materiality of immigration detention	51
The materiality of detention-as-spectacle	56
Giorgio Agamben and the state of exception	57
The state of exception and detention-as-spectacle	62
Discussion: The rise of detention-as-spectacle	63
Chapter Three: A history of the development of the UK detention estate	66
Introduction	66
Why the United Kingdom?	67
The current state of the detention estate	68
The legislative foundations of immigration detention in the UK	74
The Labour Party under Tony Blair and the contemporary expansion of immigration detention	81
Key issues facing immigration detainees	86
“Regrettable but necessary”: Official justifications for immigration detention	90
Conclusion	94
Chapter Four: Absconding and deportability are the criteria for decisions to detain to be normatively permissible	97
Introduction	97
The liberal bias for freedom	97
Public justifications or reasons for immigration detention in liberal states	99
Prevention of absconding	100
Empirical claim	101

Normative claim	103
Deterrence.....	104
Empirical objections	105
Normative objections.....	106
Secondary public reasons for detention: grave harms and public charges	107
Discussion: Absconding and <i>public</i> reasons for immigration detention in the UK	110
Categorising immigration detainees	111
Asylum seekers.....	112
Failed asylum seekers.....	115
Foreign national prisoners	117
Immigration rule-breakers	123
The principle of societal membership	125
Conclusion: The promise of alternatives to detention programs.....	127
Chapter Five: Minimum standards of treatment in immigration detention centres in liberal states	133
General problems with contemporary immigration detention estates.....	133
Mental disability	137
Minimum standards of treatment for mentally disabled adults	138
Minimum age requirements.....	139
The immigration detention of children in the UK.....	139
Unaccompanied asylum seeker children and “impostor children”.....	142
Minimum standards for child immigration detainees.....	145
Access to fair legal treatment for <i>all</i> immigration detainees.....	146
Judicial oversight.....	146
Detention and the “refugee roulette”	147
Access to high-quality legal counsel and legal aid.....	150
Conclusion: A framework for minimum standards of treatment in immigration detention centres	154
Chapter Six: Normative theory, immigration control, and detention	156
Immigration admissions: the normative defence of border controls	157
Michael Walzer.....	158
David Miller	163
Immigration admissions: The normative theory of free movement advocacy	167
Joseph H. Carens	167
Two significant convergences	172
Highlighting detention in the immigration admissions debate.....	174
Chapter Seven: Why not open borders?	178
The promise of post-national membership	179
The normative case for open borders	182
Discussion.....	186
The reality of the sovereign right to control immigration admissions	188
Chapter Eight: Rethinking immigration detention	191
Framework evaluation	191
Five themes.....	196
Areas for future research	198
Appendix One: <i>Amuur v. France, Chahal v. United Kingdom, and R (Saadi) v Secretary of State for the Home Department</i>	200
Appendix Two: Chart of common categories of immigration detainees.....	203

Appendix Three: <i>Franco-Gonzales v. Holder</i> and <i>R (HA (Nigeria)) v SSHD</i>	204
Bibliography	207

Chapter One: Introduction to the normative theory of immigration detention in liberal states

Immigration detention is expanding in breadth and scope across every liberal state. Governments are detaining people for immigration-related purposes for increasingly longer periods of time. States are practising immigration detention not only along their borders but also within and outside their territorial jurisdictions. Along with growing schedules of infractions for which people can be detained, the infrastructure and technologies that support the practice are also ballooning. Most developed immigration detention systems include not only the detention centres proper but also reporting centres, transit centres, short-term holding facilities near airports and seaports, and prison cells. They require the cooperation of doctors, nurses, social workers, police officers, lawyers, maintenance workers, detainee escorts, and armed guards. As the “deportation turn”¹ continues to influence public policy and immigration law, a vast immigration detention network has emerged in the UK – but also in the US and elsewhere – that operates alongside and in conjunction with the local network of facilities for criminal detention and punishment.² The costs of financing this system of worldwide immigration detention are continuously increasing.³ In the United Kingdom, detention costs £120 per person per day⁴ and, in the United States, one immigration detainee costs up to \$166 (about £103) per day with the entire US estate costing out at \$1.9 billion (about £1.18 billion) annually.⁵ Given the massive scale of immigration detention as well as its increasing interdependency within the larger regimes of immigration control, it would seem that immigration detention is on a

¹ Gibney, 2008.

² Sklansky, 2012: 182.

³ See Chapter Three.

⁴ National Immigration Forum, 2011: 2, and Hansard HC Deb 20 October 2010 Col 755W, respectively.

⁵ US Department of Homeland Security, 2012.

worldwide trajectory of continued growth.

Non-citizens in the UK can be detained at many sites along the border and inside the state, and at multiple points in time: UK immigration officials legally detain non-citizens on arrival; upon presentation at an immigration office; during a check-in with immigration officials; once a decision to remove has been issued; following arrest by a police officer; and, in the cases of foreign national prisoners, after a prison sentence.⁶ Although not explored in-depth here, the UK and other liberal states also regularly engage in detention outside of their territorial borders through “interception” or “interdiction” efforts. Andrew Brouwer and Judith Kumin (2003: 11) explain that interception or interdiction facilitates the return without delay of all migrants to their country of origin. When they are not returned directly to the country of embarkation, whether this is their country of origin or one through which they transited, they may be taken to a third country which agrees to their disembarkation. Migrants subjected to interceptions or interdictions are rarely disembarked on the territory of the destination state.

There is an extensive international literature on the corrosive impacts of immigration detention on the mental and physical health of detainees. This growing body of scientific research shows very clearly that that experiences of immigration detention directly relate to high levels of mental and physical health problems. Feelings of hopelessness, despair, and suicidal urges are commonly reported. The scientific research finds that instances of physical brutality – including isolation units, forced sedatives, handcuffing, and night musters – exacerbate the progressive worsening of detainees’ health.⁷ Put frankly, people deteriorate the longer they are detained.

⁶ Silverman, 2011a: 2.

⁷ Briskman, Zion, & Loff, 2010: 1095 – 1096.

Children, torture survivors, and other vulnerable people are at particular risk of suffering lifelong psychological damage from even short periods of immigration detention. Research collected from the United Kingdom, Australia, Canada, and the United States, amongst other states, exhaustively documents the negative impact of immigration detention on the mental and physical health of detainees.⁸

There have been at least sixteen recorded deaths in UK immigration detention centres since 2000⁹ and a minimum count of 86 deaths in US detention since March 2003.¹⁰ A number of the deaths in UK immigration detainees sparked vigils, protests, and police-led inquiries about the treatment of detainees.¹¹ In the UK, the suicides of detainees Kenny Peter in IRC Colnbrook in 2004, and Manuel Bravo in IRC Yarl's Wood in 2005, led to inquests and calls for reform of the culture of detention.¹² After accounting for those former detainees who died outside the facilities but whose deaths were precipitated by their time in detention, the numbers of deaths in immigration detention climb higher.¹³ The roles played by private firms in casting a “corporate veil” of privacy¹⁴ over these deaths and insulating governments from accountability, are also ethically questionable.

⁸ For evidence on how and why immigration detention harms people mentally and physically, see, generally, Fazel & Silove, 2006; Field & Edwards, 2006: 50; Robjant, Hassan, & Katona, 2009: 306; Silove, Steel, & Mollica, 2001. There is also a range of research on the particularities of harm resulting from different systems around the world. On the UK, see Crawley & Lester, 2005: 13 – 25; Fillmore, 2010; Lorek, Ehntholt, et al., 2009; Pourgourides, 1997; Royal College of General Practitioners et al., 2009. On Australia, see Briskman, Zion, & Loff, 2010; Calvert, 2004; Coffey, Kaplan, et al., 2010; Green & Eagar, 2009; Mares, Newman, et al., 2002; McLoughlin & Warin, 2008; Newman, Dudley, & Steel, 2008; Steel, Momartin, et al., 2004; Steel, Silove, et al., 2006; Sultan & O'Sullivan, 2001. On Canada, see Kronick, Rousseau, & Cleveland, 2011; Nakache, 2012: 80 – 86; Schizophrenia Society of Ontario, 2010: 18. On the US, see Human Rights Watch, 2010a: 31, 50; Keller, Rosenfeld, et al., 2003; Mukhopadhyay, 2009; Ochoa, Pleasants, et al., 2010; Physicians for Human Rights, 2011; Physicians for Human Rights & The Bellevue/NYU Program for Survivors of Torture, 2003. See, also, Hallas, Hansen, et al., 2007; Nielsen, Norredam, et al., 2008, and Vitus, 2010, on Denmark.

⁹ Bowcott & Hanman, 2010; Kawani 2006: 2; Peretz, 2011; and Taylor & Taylor, 2011.

¹⁰ Bernstein, 2009, 2010; Ferrell, Kelso, et al., 2009; and Florida Immigrant Advocacy Center, 2009: 13 – 22.

¹¹ Refugee Council, 2006; Taylor & Taylor, 2011.

¹² Athwal & Bourne, 2007: 110 – 114.

¹³ Siskin, 2008: 22.

¹⁴ Gammeltoft-Hansen, 2012.

Deprivations of liberty require the strongest possible justification in Anglo-American law and ethics.¹⁵ The right to liberty is elaborated in numerous documents fundamental to liberalism, including the Magna Carta, the US Constitution, and Article 3 of the 1948 Universal Declaration of Human Rights. It is embodied in the writ of *habeas corpus*,¹⁶ a petition that is often brought before immigration judges. Lord Hope of Craighead describes the right to liberty as “a fundamental right which belongs to everyone who happens to be in this country, irrespective of his or her nationality or citizenship.”¹⁷ As recognised in the British Chief Adjudicator’s Guidelines on bail: “[a]s detention is an infringement of the applicant’s human right to liberty, [a court] has to be satisfied to a high standard that any infringement of that right is essential.”¹⁸

Immigration detention is understood in legal terms as an administrative fiat to ensure an orderly and efficient adjudication of immigrant and refugee claims.¹⁹ It is a discretionary power in the UK, meaning that immigration officers are empowered to decide whether a non-citizen should be detained in individual cases. The United Nations High Commissioner for Refugees (UNHCR) urges that immigration detention be considered an exceptional measure of last-resort.²⁰ Cases of detention cannot be arbitrary, disproportionate, or punitive. Liberal governments are beholden to respect

¹⁵ Costello, 2012: 257 – 258. Cole (2002: 106) argues that, with “the exception of the power to make war and to impose capital punishment, few state actions are more serious than locking up a human being... The right to liberty is not absolute, but can be restricted only in accordance with both procedural and substantive due process.”

¹⁶ Habeas corpus refers to a legal action that can be addressed to a prison official, demanding that a prisoner be brought before a court of law to determine if he or she is serving a lawful sentence or should instead be removed from custody. The writ of habeas corpus is frequently used by detainees who are seeking relief from unlawful imprisonment, and is generally regarded as an important instrument for the safeguarding of individual freedom against arbitrary state action. It was commonly used in immigration matters to challenge unlawful decisions resulting in deportation (Kurzban, 2008).

¹⁷ Cited in Joint Committee on Human Rights, 2007: Paragraph 51.

¹⁸ Cited in Amnesty International, 2005: 56.

¹⁹ See Clayton (2006: 510): “The power to detain a person for immigration reasons is an administrative power rather than a judicial one. It is a power to detain pending the next decision or action to be taken, not a sentence passed for a wrong committed.”

²⁰ UNHCR: The UN Refugee Agency, 2012: Guideline 4.1.

the liberal bias for freedom²¹, and so they should consider alternative non-custodial measures and choose the least intrusive or restrictive measure when considering whether to detain.²²

The key obligation to emerge from three influential higher court cases on immigration detention²³ seems to be that immigration detention is not arbitrary provided that deportation is being pursued with “due diligence.”²⁴ The detaining state is not otherwise obligated to prove that the detainee plans to abscond or commit an offence; however, the detention cannot be excessively long or risk violating the due diligence rule.²⁵ The conditions of detention - including the prohibition on cruel, inhuman, or degrading treatment; the special protection due to the family and to children; and the general recognition given to basic procedural rights and guarantees - may also put into question a state’s compliance with generally accepted standards of treatment.²⁶

It is clear that a problem with normative relevance is presenting itself: liberal states are continuously expanding their detention systems; detention harms people; and the legal status of detention is complex and changing in both national and international contexts. Given these considerations, what should the normative position on immigration detention be? In the face of increasing numbers of irregular migrants and refugees worldwide, is immigration detention an appropriate response by states seeking to keep control over the increasing flows of people? Why is the fact of irregular immigration status sufficient cause to deprive someone of her liberty, often for many

²¹ I discuss the liberal bias for freedom in Chapter Four.

²² Crépeau, 2012: Paragraph 68.

²³ Namely, *Amuur v. France*, (1996) EHRR 533; *Chahal v. United Kingdom* (1997) 23 EHRR 413; and *R (Saadi) v Secretary of State for the Home Department* (2002) UKHL 41.

²⁴ Costello, 2012: 281.

²⁵ Hailbronner, 2007: 165, 172.

²⁶ Goodwin-Gill & McAdam, 2007: 463 – 464.

weeks and months? What constitutes an ethical use of detention? Many of us would intuitively answer that the harms caused by immigration detention make it less than justifiable, but normative theorists have not yet presented in-depth explorations of why this is the case.

What accounts for the silence of normative theorists on immigration detention? I think that there are at least four explanations, the first three of which are practically minded. First, the rapid expansion of immigration detention has taken place relatively recently. In the UK, for example, detention has grown from a relatively small estate in the early 1990s to amongst the largest in Europe by the end of the 2000s. It takes time for scholarship to address phenomena that evolve as quickly as immigration detention. Secondly, the complexities of immigration detention make it a difficult phenomenon to approach analytically. It is cumbersome to identify a universal definition of immigration detention,²⁷ let alone a framework for addressing its fluid nature.²⁸ Following from this, a third factor accounting for this silence may be that our ethical-political vocabulary is not equipped to discuss detention. The conceptual equation of barriers to admission with border enforcement focuses attention on issues of asylum, deportation, *non-refoulement*, and the like. Bringing detention into the analysis, however, requires recognizing the implications for membership, state sovereignty, and normative ethics of a *shifting* border.²⁹

²⁷ The difficulties with defining immigration detention will be discussed in Chapter Three.

²⁸ Typically, immigration detention takes place within and outside the state's territorial jurisdiction as well as along its borders in a variety of buildings and under a number of guises. It can last for long periods of time, has unpredictable results, and is governed by legislation that is being constantly refashioned across liberal states.

²⁹ Shachar (2007: 193) describes "a complex, multilayered, and ever-transforming border, one that is drawn and redrawn, through the words of law and acts of regulatory agencies, to better calibrate the admitting state's exclusion lines in response to new global challenges. This *shifting* border, unlike the refortified physical barrier, is not fixed in time and place. Instead, it relies on law's admission gates, rather than a specific frontier location, allowing greater flexibility for immigration officials to tailor new strategies (often taken in concert with their counterparts in other countries) to regain control in today's

The fourth reason for the silence of normative theorists on immigration detention may be attributed to its normative complexity. The discussion of the ethics of immigration detention is nested within a larger normative framework of immigration control by sovereign states. After all, “any discussion about how restrictive the immigration policy of a state should be presupposes that the state in principle has the right to exclude immigrants; if the state did not have such a right, the only permissible policy would be one of open borders.”³⁰ Indeed, the puzzles of detention are connected to a fundamental tension in the political and ethical philosophy of liberal states: namely, the principle of impartial, universal equality that would seem to demand open borders is in normative conflict with the principle of popular sovereignty (and its corollary, the principle of self-determination) that mandates collective control, without interference, over the affairs of the political community, including its immigration control policies.³¹ Another way of looking at this dilemma is to notice that while the liberal state endeavours to eliminate borders dividing its own social classes or ethnic minorities, it takes for granted an external discrimination between citizens and non-citizens. This political tension, in turn, results in competing ethical claims. Matthew J. Gibney (1999: 173) explains that:

To demand that a state show equal concern and respect to those beyond the state may be to ask it to pursue policies that would undermine those practices and institutions which make for a semblance of equality and social justice within the state and would erode the meaningfulness of any claim to democratic autonomy. Yet, to vindicate the partiality of the modern state is to tolerate a world in which differences in citizenship correspond to egregious differences in life quality and life-span.

dangerous world.”

³⁰ Laegaard, 2010: 252.

³¹ Abizadeh, 2008: 44. See, also, Aleinikoff, 2007: 424; Bosniak, 2008: 9; Carens, 1992: 25. Cf. Joppke (2005) for an argument that the sway of an egalitarian, universalistic logic has diminished the potency of sovereignty and self-determination as the basis for exclusion of immigrants. Hence, this fundamental tension is not as severe as one might think.

Liberals seek to resolve this tension by concluding that although borders and immigration regimes are illiberal in themselves, they serve as liberalism's enabling condition: as Bruce Ackerman (1980: 95) concludes, "[t]he only reason for restricting immigration is to protect the on-going process of liberal conversation itself." Or, as Brian Barry (1992: 283) puts it, there can be normatively valid reasons for immigration control.³²

As a practical matter, normative theorists argue, liberal states will be endangered in the long run without the imposition of at least some barriers of access to national membership.³³ These barriers of access are customarily imagined as aligning with the physical boundaries of the state. Border guards are supposed to make quick decisions that swiftly lead to either deportation or leave to remain. Immigration detention demonstrates, however, that determining how to enforce these barriers of access is not straightforward; nor, for that matter, is it possible to confine immigration enforcement to the state's territorial borders. Among other things, detention alerts us that immigration enforcement can take place at virtually any point during someone's stay in another state, and that it can be a drawn-out process. The degree of severity of the restrictions on a detainee's rights and freedoms points to the extreme physical consequences of this theoretical dilemma. More importantly for the purposes of this thesis, detention suggests that normative theorists cannot afford to diminish or relegate this fundamental tension because it has practical consequences for an increasingly large

³² An important distinction should be made here between liberalism as a *boundary-making enterprise* and cosmopolitanism as a *boundary-transcending aspiration*: according to Shorten (2007: 228), liberalism champions the individual over the community, endowing her with rights, liberties, and entitlements to pursue her vision of the good life; whereas cosmopolitanism "regards each individual as standing in a relationship of equality with every other individual" and so "reject[s] the moral significance of belonging in favour of a rigorous, objective and disinterested neutrality." Consider the dichotomies sometimes used to distinguish cosmopolitanism from liberalism: "impartiality against partiality, for example, or reason against passion, abstraction against attachment or individuality against community.

³³ Bosniak, 2000: Footnote 33.

group of people worldwide.

Thesis structure

In the chapters that follow, I investigate the nature of immigration detention in theory and practice. More precisely, I explore the implications for normative theory of certain features of the state-detainee relationship. The unifying characteristic of the detainee population is their non-citizenship or alienage,³⁴ and, on the basis of this attribute, the state may incarcerate them for administrative convenience. Yet, the state is also beholden to liberal values, the foremost of which are liberty, freedom, and basic rights. These values apply to everyone in the state, including non-citizens and immigration detainees. How should we understand this complex relationship from a normative perspective? Moreover, how can immigration detention be made more morally acceptable?

My aim in this thesis is to develop an approach to understanding immigration detention that combines normative theory with migration studies. There are three normative disciplines: philosophy of law, political theory, and ethics.³⁵ I am focusing on political theory and normative ethics,³⁶ and, correspondingly, the substantive moral and political questions of the rise of immigration detention in liberal states. This is not to say that law does not play a role: indeed, we can see the embodiment of norms in social and legal conventions, and national and international laws often provide substantive evidence that norms are being followed in the real world.³⁷ In this thesis, I am more concerned with what the laws on immigration detention *should* be in liberal states like the UK.

³⁴ Cf. Stevens (2011) for evidence that the US occasionally detains and deports US citizens.

³⁵ Tholen, 2009: 37.

³⁶ “Applied ethics” is the state of the art term for “normative ethics. Although I prefer to employ the term “normative ethics”, some of the authors whom I quote use the former.

³⁷ Kacowicz, 2005: 2, 7.

I explore the normative basis of detaining non-citizens, and I defend a feasible framework for a morally permissible detention estate. This suggestion must be applicable in the real world context of immigration detention. My position on the potential tension between first-level questions of ethics and politics and second-level questions of applicability follows Richard Norman (2000: 131):

The professional philosopher who is engaged in applied ethics as an individual can take his or her place as one voice among many in public debate, defending a position and hoping that it will prevail. But if his or her contribution is part of an attempt to formulate a position which can provide a basis for legislation, or a code of practice, or public policy, then second-level considerations are bound to come into play. The question to be addressed is not just, 'Is this right?', but, 'Do enough people think it right for legislation or policy along these lines to be broadly acceptable and therefore workable?'. The posing of this second-level question, and the consequent search for a consensus, have various implications for the role of applied ethics in such contexts.

As such, I will identify and define detention, determine why and under which conditions it is normatively problematic, and reflect on what can and should be done to remediate its harms. While I am particularly interested in examining and critiquing the UK detention estate, I am hoping that my findings will have application for liberal states more generally.³⁸ Although I begin from an assumption that immigration detention is harmful, I analytically group this harm into types of coercion that differentially impact detainees and citizens, and that may occur for diverse reasons and under disparate conditions.

Since I am also interested in the exercise of immigration control and the practicalities of implementing policy, I am working at the level of non-ideal normative theory. Due to the general silence amongst normative theorists on detention issues, however, I develop my understanding of the practicalities of detention through a

³⁸ Risse (2008) employs a similar methodology of focusing predominantly on one case study with an eye to wider application.

secondary exploration of a range of other fields, most notably the migration studies literature. My synthesis of these approaches – the ethical philosophy literature with the migration studies and public policy literatures – is a strategic step towards gaining purchase on the normative dilemmas of practising immigration detention in liberal states.

Argument

My central argument is that we need a complete overhaul in thinking about the roles that detention plays in immigration control as well as the ethical implications of the harms it causes. This thesis is framed by the recognition that immigration detention is on a trajectory of worldwide growth and that a liberal state has a legitimate right to direct its own immigration and border control policies. I suggest that the most coherent ethical position with regards to the rights of non-citizens is to continue to strive towards open borders in the long-term while pressing states to adopt and enforce minimum standards towards their immigration detainees in the short-term. I also argue that deportability needs to be at the basis of any decision to detain and that liberal states must immediately implement a series of minimum standards of treatment in detention,

My argument is therefore descriptive and prescriptive. Throughout, I will frame my inquiry with a series of presuppositions: namely, that while justice may require open borders and a complete cessation of immigration detention practices, the practicalities of our “here and now” mean that detention is our reality. Due to my interest in providing effective, not utopian, reflection, I argue that feasibility should be a major consideration in determining the best courses of action. Although my goal is to find a proposal from the perspective of justice, I think that it is important to select a

feasible option that has some chance of being adopted by states.³⁹ I explain my position further in the final section of this chapter.

In Chapter Two, I argue that governments are using detention as a political spectacle and that this instrumentalisation of detention is normatively impermissible. To reach this conclusion, I examine the three major literatures on immigration detention in liberal states: crimmigration studies, the materiality of detention, and Giorgio Agamben's "state of exception". I demonstrate that each of these literatures provides fodder for my theory of detention-as-spectacle. I pick up on the theme of detention-as-spectacle in subsequent chapters.

Chapter Three is comprised of a descriptive overview of the evolution and current practices of immigration detention in the UK as well as the official justifications provided by the UK Government to explicate the expansion of the practice. This chapter examines the United Kingdom as a case study and a critique of an expanding detention estate. The chapter demonstrates that the history of detention in the UK is of contestation and qualified justifications. My research reveals a racialised, gendered population who are being held for increasingly long periods of time. What emerges from this overview is the *scale* of the detention estate, both in terms of legal and geographical architecture and infrastructure and in numbers of people impacted on a yearly basis.

In Chapter Four, I explore the justifications for immigration detention and examine whether they are persuasive. I find that a concern about absconding motivates

³⁹ Carens (2010: 6) explains: "This approach situates our inquiry in a context where we must take into account .. particular histories, established institutions, the distribution of power, conventional moral norms, the unwillingness of agents to act justly, and so on. All of these factors affect the feasibility of alternative courses of action. For that reason, in this approach, the idea that ought implies can acts as a much more serious constraint on our inquiry. We have to take much of the world as given because it is not subject to our control or easily changed."

almost all detention decisions in the UK. Accordingly, I interrogate the meaning of absconding as well as its empirical and normative purchase in a real-world context. I examine the three main categories of immigration detainees in the UK - asylum seekers, foreign national prisoners (FNPs), and immigration rule-breakers (IRBs) – and find that limited normative support for current practices of detention. I argue that *all* potential immigration detainees are morally entitled to a bail hearing and to enrolment in an alternative to detention program in lieu of custodial detention. I also outline the key components of successful alternative to detention programs, and argue that it is morally incumbent upon the UK government to consider widespread implementation as soon as possible. My overall finding is that, to be normatively defensible, the two criteria of deportability and a high likelihood of absconding must form the basis for all decisions to detain non-citizens in liberal states.

In Chapter Five, I turn away from alternative to detention programs and propose a framework for minimum standards of treatment for immigration detainees in liberal states. I make both large-scale and smaller-scale recommendations, and focus on the special issues related to detaining children and mentally disabled adults as well as the provision of legal counsel and guardians for vulnerable people. This framework addresses and seeks to rectify many of the harms caused by liberal states' practices of immigration detention.

The remaining chapters turn to explore the normative theory of immigration detention. Chapter Six sets out the core normative arguments for and against immigration admissions control. Despite their different commitments to individual and state rights, a consensus for immigration control emerges from these theories. I argue that the implication of these theories is a practice of detention because it is not possible

to have immigration control without detention. I also suggest that current proposals for alternatives such as community supervision and electronic tagging do not provide marked improvements and involve at least as many ethical difficulties.

Chapter Seven argues that one solution to the moral dilemmas posed by immigration detention practices would be to open borders and eliminate detention altogether. I address and respond to a number of arguments against opening borders. My findings indicate that the discussion on the ethics of immigration detention will stall unless it acknowledges the reality of the sovereign right to control immigration admissions. My position is that liberal theorists should continue to strive for open borders while simultaneously pressing states to adopt my framework of minimum standards of treatment as short-term solution.

In the eighth and final chapter, I recap my argument and outline five themes that emerge from my research on the normative ethics of immigration detention. I also suggest a number of areas for future research on the ethics and politics of practising immigration detention in liberal states.

The focus on liberal states

This thesis focuses on liberal states to the exclusion of other non-liberal states. Since people are of inherently equal value, why do immigration detainees incarcerated in non-liberal states not comprise an equally important subject of study? Essentially, it would not make sense to apply a normative analysis to a state that does not identify as liberal or profess to practice liberal values. Such an analysis would be waylaid with criticisms of liberal hegemony and cultural relativism. Normativity is the study of how ethical, legal, social, and other norms cohere in theory and practice. As Niklaus Steiner (2009: 4) notes, “a commitment to the tenets of liberalism.. is central to the controversy

over migration.” Further, it is more incumbent upon liberal states to administer an immigration detention system that ensures the basic welfare of its detainees. It would therefore be beside the point to argue over whether the Islamic Republic of Iran or the failing state of Somalia are living up to liberal values in the administration of their immigration detention estates. I do not suggest that the phenomenon of migrants moving to liberal states and being detained there is fundamentally more interesting than analogous situations in non-liberal states; rather, I am arguing that states that self-identify as liberal are the more suitable subjects for a normative study of the liberal ethics and politics of immigration detention.

An approach that combines migration studies, public policy studies, and normative theory

I am applying normative theory to migration studies and public policy studies in order to move the discussion of the ethics of immigration detention from the realm of opinion and conjecture to that of values and principles. Liberal-minded people may feel strong intuitions concerning the moral permissibility of detention, and it is the task of normative theory to articulate and clarify these “muddled” views.⁴⁰ They may also assume that successful policy outcomes should be measured on the face of shared values without elaborating and defending those values. It seems that the majority of detention researchers implicitly assume that detention is ethically wrong without first distinguishing between those features that are and are not morally dubious.⁴¹ Normative theory is useful for its capacity to separate and prioritise substantive moral

⁴⁰ Norman, 2000: 126.

⁴¹ A debate in the theory of normative ethics that has dominated discussion for the past century or more has been between scholars who support a systematic theory – utilitarianism and other forms of consequentialism – and those who support common moral judgments or intuitions (Singer, 2005: 343). While a thorough reckoning with this debate is outside the bounds of this thesis, it is sufficient to point out that the passionate emotions that detention elicits makes it a clear candidate for the former type of normative theory.

claims from mere descriptions of the moral beliefs or ethical codes of some group or society.⁴² In the context of the study of immigration detention, normative theorising weighs liberal states' competing aims between duties to respect the detainees' individual rights to liberty, autonomy, and dignity with collective control of borders and immigration admissions.

The political community embodied in a liberal state is governed by law and principles of justice that do not presuppose the rightness of any particular way of life.⁴³ Individuals are equal bearers of rights. Everyone is entitled to maximum and equal rights to liberty, dignity, and autonomy in order to realise their own versions of the good life. Individuals have a right to own and control private property. The state seeks the most equitable distribution of scarce goods and resources amongst its members, understood to be the community of citizens. In exchange for giving up their complete freedom and living under the yoke of the state, citizens are guaranteed certain protections from the coercion of the state.

The political society we build generally reflects our common ethical beliefs, otherwise known as our norms. Norms should not be "understood simply as epiphenomena resulting from some deeper set of empirical causes, but.. as being in part

⁴² Clarke & Simpson, 1989: 5; Price, 2008:103. Kagan (1998: 8, italics author's own) explains that normative theory provides a response that is based on core liberal principles and that rationally takes into account a wider range of ethical dilemmas and interests across a spectrum of actors, values, and pragmatic realities:

It is one thing to tell us how a given society *thinks* people should act. It is quite another thing to tell us whether this is indeed the way that people really, genuinely *should* act. If what you are looking for is a description of the moral code of some society or culture ... then you can and must turn to the writings of sociology, or anthropology. But if what you want to know is the correct (or true, or most valid, or best) set of moral beliefs - that is, if what you want is a careful account of what people really should do - then this cannot be settled by an appeal to the social sciences. You must turn instead to normative ethics. For it is normative ethics that attempts to state and *defend* the substantive moral claims. And defending a moral claim - showing that it really does tell us the truth about how people ought to act - is something quite different from merely reporting what this or that group has thought about the matter.

⁴³ Kukathas, 1996: 80.

constitutive of that which is being analysed.”⁴⁴ Joseph H. Carens (2010a: 1) offers the following list of common liberal norms:

the ideas that all human beings are of equal moral worth, that we have a duty to respect the rights and freedoms of individuals, that legitimate government depends upon the consent of the governed, that all citizens should be equal under the law, that coercion should only be exercised in accordance with the rule of law, that people should not be subject to discrimination on the basis of characteristics like race, religion, or gender, that we should respect norms like fairness and reciprocity in our policies, and so on.⁴⁵

Liberal norms are described in a number of liberal social and political institutions as well as an evolving series of declarations, conventions, concordats, and other relevant documents. While normative theorists may debate which values are primary and which are secondary, the point is not that some should not be counted at all but rather how to prioritise them in a world of limited moral consideration.⁴⁶ My interest lies in applying these principles to the migration studies literature in order to propose a moral framework for immigration detention in liberal states.

Theorists recommend laws and principles of co-operation that *ought to* apply in the best circumstances (ideal theory) as well as those that *should* apply in a real-world context (non-ideal theory).⁴⁷ Non-ideal normative theory relies on a feasibility

⁴⁴ Frost, 1998: 126 – 127.

⁴⁵ The precise content of a set of core liberal values and principles is obviously up for debate but there are some consistent similarities across most accounts. For example, Waldron itemises the key liberal principles as follows: "In politics, liberals are committed to intellectual freedom, freedom of speech, association, and civil liberties generally. In the realm of personal life, they raise their banners for freedom of religious belief and practice, freedom of lifestyle, and freedom (provided again that it *is* genuine freedom for everyone involved) in regard to sexual practices, marital affairs, pornography, the use of drugs and all those familiar liberal concerns." (Waldron, 1987: 130).

⁴⁶ Stears, 2005: 326.

⁴⁷ The distinctions between non-ideal and ideal normative theory are not clear-cut. Farrelly (2007) proposes a continuum from “fully ideal” to “less ideal” depending on the fact-sensitivity of the approach. Valentini (2009: 335 – 337) argues that thinking of a continuum would be “a mistake.” Instead, she proposes a more complex rubric examining the target of justice: she argues that principles of justice offer criteria for the justification of the exercise of political power, and that a theory of justice should be action-guiding in the sense of constructing a framework of thought from within which to assess, criticise, and reform the way power is exercised within society (Valentini, 2009: 335 – 337). Hamlin & Stemplowska (2011: 9) propose a further distinction within the ideal/non-ideal theory continuum of the

requirement that prohibits recommendations of massive changes in human nature or societal construction.⁴⁸ For Carens (1997: 4), every “normative political theory or moral analysis has to satisfy two requirements: criticality and feasibility. On the one hand, moral language loses all its meaning if does not provide some perspective from which to criticize prevailing practice. On the other hand, moral inquiry loses its point if it cannot guide practice.”⁴⁹ In David Miller’s (2006: 19) words, normative theory “aims to push towards the limits of practical possibility – in other words to lay down principles for a world that is better than ours, but is still feasible given what we know about the human condition and the laws that govern it.” However, a normative theory approach that relies too heavily on policy or real-world context carries a risk of inadvertently reinforcing the status quo, thereby limiting both the applicability of the research and breathing extended life into conventional thinking. A key component of non-ideal normative theory, then, is the ability to strike a balance between the short-term contingencies of real-world politics on the one hand, and staying alert to the demand of deeply valued long-term ideals, on the other.⁵⁰ In this way, normative theory recommends actions for the state that are not premised on the results of surveys or polls that record, at best, a fraction of the population’s opinions during a given period of time.⁵¹

theory of ideals: the theory of ideals debate distinguishes between individual ideals or principles (equality, liberty, etc.) and the issues arising from the multiplicity of ideals or principles (issues of commensurability, priority, trade-off etc.); by contrast, the continuum of ideal/non-ideal theory identifies social arrangements that will promote, instantiate, honour, or otherwise deliver on the relevant ideals.

⁴⁸ Simmons, 2010: 29; Laegaard, 2006: 411.

⁴⁹ Cf. Carens (1996: 166): “If any discussion of the ethics of migration should recognize reality, it should also consider whether we should embrace that reality as an ideal or regard it as a limitation to be transcended as soon as possible.”

⁵⁰ Stears, 2005: 326. Likewise, Miller (2007: 19) notes that if the non-ideal normative theory “assumes too much by way of empirical constraints.. it may become excessively conservative, in the sense of being too closely tied to contingent aspects of a particular society or group of societies, and therefore no longer able to function as a critical tool for social change.”

⁵¹ O’Neill (2009: 220 - 221) puts the point at follows:

The findings of public opinion polls and exercises in public engagement or deliberation

It is not uncommon for ethical theorists to employ hybrid methodologies. My goals are to employ normative theory, migration studies, and public policy studies to understand the ethical implications of the roles played by immigration detention in controlling admissions, and to use insights from all of these perspectives to make recommendations for a more ethical detention estate. I am also concerned to demonstrate that the literature is disadvantaged by not being clearer about defining immigration detention and as a result of its implicit normative commitments to the moral permissibility of detention.

A number of scholars are sympathetic to an approach combining migration studies and public policy studies with normative theory in the discussion of immigration control. Gibney (2004, 2006), Miller (2001, 2007, 2008a), Martin Ruhs & Ha-Joon Chang (2004), Jonathan Seglow (2006), and Lea Ypi (2008a) all employ a version of this methodology. None, however, describe and analyse immigration detention as a unique phenomenon.

Limitations of this approach

Nonetheless, there are at least two potential limitations to my approach of combining normative theory with migration studies and public policy studies to understand detention. First, my assumption that immigration detention is a reality in the “here and now” could be misinterpreted as an argument to lend moral legitimacy to an unfair worldwide system. Second, a criticism based on cultural relativism could

therefore cannot settle ethical or policy questions, and can make at best a limited contribution to public policy formation. Finding out what some people think or feel, or even what a lot of people think or feel, about some domain of issues — or even what they think and feel after being informed, discussing, and deliberating — however interesting, does not by itself lead to any normative (let alone specifically ethical) conclusions. A consensus can be iniquitous, impractical or irrelevant. Rather, any transition from claims about representations to claims about what ought to be done, whether for reasons of self interest or prudence, or for ethical or political reasons, needs additional premises and arguments if it is not to be an instance of the naturalistic fallacy, of an argument from the dubious authority of consensus or majority opinion — or, indeed, of no argument at all.

posit that my approach privileges liberal values over and above other ethical positions and so it will be applicable as widely as I would like to think.

Nevertheless, I think that a combined approach is an important strategic and intellectual step. As a strategic step, it reveals and unpacks the implicit normative assumptions that scholars and other people make about the reality of the continuous expansion of immigration detention across the world. It is not productive to argue exclusively about how best to eliminate detention, particularly when this stance risks limiting the potential for engagement with the argument to a very limited range of actors. By starting from the standpoint that detention is a reality for the time being, I am creating space to think critically and creatively about the place and propriety of detention in liberal states.

As an intellectual step, the presumption of detention as a contemporary reality and the use of this methodology draws attention to some important ethical considerations that would be harder to appreciate without having first treated immigration detention as a background presupposition. As I discuss in Chapter Seven, without presuming the existence of borders, states, and sovereign control of migration, the normative dimensions of detention would be lost in the scholarly act of deciphering the ethics of borders and immigration restrictions.

With regards to the second critique of cultural relativism, I would respond that the objects of study for this thesis are liberal states and liberal norms. It is virtually impossible to identify and eliminate all culture-specific attributes and still have a moral theory in which views on right and wrong are coherent to the reader.⁵² Moreover, my research question on how to balance collective control of borders with the quintessential norm of individual rights to liberty, dignity, and autonomy resonates

⁵² Carens, 2004: 163.

with anyone experiencing the “threats to human dignity posed by the modern nation-state and its instrumentalities”.⁵³ Therefore, although the cultural relativism critique flags some questionable applications of normative theory to political problems beyond its limits, it does not succeed in the case of exploring moral frameworks for immigration detention in liberal states.

Language and terminology

I employ the terms *irregular migrant*, *asylum seeker*, *immigration detention*, and *immigration detention centre* in this thesis. I would like to take this opportunity to clarify how I define and employ these terms throughout the thesis. In general, I argue that these terms are the most descriptive of the available options and they are relatively neutral in their implications of normative judgement.

Irregular migrant

I use either *non-citizen* or *irregular migrant* to draw attention to particular aspects of the dilemma under discussion. Both terms refer to a person who is subject to immigration control. In fact, persons subject to immigration control are actually a subset of non-citizens, because some people hold foreign citizenship but are not subject to immigration controls. A clear example of this overlap is EU nationals who are technically non-citizens but are not subject to immigration controls when traveling within the EU. Interestingly, *non-citizen* is a catchall for anyone present in the state who does not have citizenship, thereby including irregular migrants, and irregular migrants are necessarily non-citizens. Nevertheless, *non-citizen* is a more general term that could include immigration rule-breakers and asylum seekers, whereas *irregular migrant* usually refers to someone living in the state with an unresolved immigration

⁵³ Sloane, 2001: 594.

status. In Chapter Four, I discuss the subcategories of irregular migrants through my discussion of immigration rule-breakers.

I should note that scholars are innovating new terms to connote the particularities of modern migration, such as *illegalised traveller*.⁵⁴ Others reject sub- and re-categorisation altogether, and prefer *migrant* for any foreign national who has crossed a border regardless of intention or documentation.⁵⁵ By far, however, the most common scholarly terms are *nonstatus* or *undocumented migrants*. Yet, these terms, too, are quite problematic: since the modern immigration control regime engendered the requirement for documents (most commonly a passport and/or a visa), this defining focus on status and documents is historically specific.⁵⁶ Further, *nonstatus migrant* implies an evacuation of any kind of status, and *undocumented migrant* overlooks the specific ways that *documented migrants* are prevented from enjoying comparable status with citizens.⁵⁷ Following Mae M. Ngai (2004: xix), not all irregular migrants lack documents; there are other types of unlawful presence and other grounds for removal. *Irregular migrant* is therefore, as Anne McNevin (2011: 20) suggests, “the best of a bad bunch.”

Asylum seeker

The standard understanding of *asylum seeker* is someone who has left his or her state of origin, has applied for recognition as a refugee in another state, and is awaiting a decision on his or her application.⁵⁸ In this way, asylum seekers can be understood as having lodged a claim for recognition and protection under the 1951 Geneva

⁵⁴ Weber and Pickering (2011: 4) prefer the term “illegalised traveller” because it “explicitly recognizes the legal and political power of those who define who is to be included and who excluded at the border” and expresses “a more fluid conception of contemporary migration and mobility patterns.”

⁵⁵ McDowell, 2009: 1.

⁵⁶ See, generally, Torpey, 2000.

⁵⁷ McNevin, 2011: 19 – 20.

⁵⁸ Article 1(2) of the 1951 Geneva Convention Relating to the Status of Refugees Convention.

Convention Relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention), but have not yet received a final decision. I am thereby excluding from consideration in this thesis those Refugee Convention-approved refugees who are requesting relocation to another state, known as government assisted refugees, and those *de facto* asylum seekers who are living in internal displacement, border camps, or transit states outside the Global North. Article 14(1) of the 1948 Universal Declaration of Human Rights describes the right to request asylum from a state and to enjoy it once it is granted.⁵⁹ Since sovereign states are the final arbiters on asylum, the right to seek asylum is unconditional but the granting of asylum is conditional and not guaranteed by any particular state.⁶⁰ A core principle of refugee law is that of *non-refoulement*, a prohibition on states from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle of non-refoulement is a part of customary international law and is therefore binding on all states, whether or not they are parties to the Refugee Convention.⁶¹ Respect for asylum seekers' rights is virtually guaranteed by the legal and pluralistic constituencies of liberal states.⁶²

According to the UNHCR's annual statistical overview, the UK continued its trend of receiving low numbers of asylum seekers in 2011, recording 25,400 claims and making it the seventh largest recipient of new asylum claims.⁶³ As of July 2012, there

⁵⁹ Schuster, 1998: 11.

⁶⁰ Loescher, 1993: 39 - 40

⁶¹ Betts, 2010: 21, Footnote 10; Goodwin-Gill & McAdams, 2007: 357; and UNHCR: The UN Refugee Agency, 2001: 18 – 19.

⁶² Castles, 2004; Hollifield, 2000; Lavenex, 2006: 338.

⁶³ This was the second lowest level in two decades, made even more significant by the fact that, compared to 2010, figures increased by 12 per cent. While there was a spike in asylum applications in 2011 over the previous three years across Europe and North America, the relative importance of these states has declined: in 2007, these states received roughly 65 per cent of all new asylum applications worldwide but, by 2010, this percentage had fallen to about 50 (UNHCR: The UN Refugee Agency, 2012: 7 – 12, *passim*).

was a backlog of approximately 21,000 asylum cases to be decided in the UK.⁶⁴

Asylum seekers raise special claims of justice for normative theorists.⁶⁵ Liberals empathise with the fact that asylum seekers are making a plea for basic safety through temporary admission into the state. In *Towards Perpetual Peace*, Immanuel Kant formulates the “right of hospitality” as an early plea for sanctuary for asylum seekers.⁶⁶ Michael Walzer (1981: 20), too, defends a normative duty to address the demands of asylum seekers for (at least temporary) admission: “The victims of political or religious prosecution, then, make the most forceful claim for admission. ‘If you don’t take me in,’ they say, ‘I shall be killed, persecuted, brutally oppressed by the rulers of my own country.’ What can we reply?” Likewise, Joseph H. Carens (1999: 1087) equates a world in which everyone is acting justly with a world without asylum seekers.

Immigration detention

As yet, there is no clear, definitive summary of immigration detention in the migration studies, public policy studies, or normative theory literatures. In fact, they yield a number of contradictory readings: detention is at once formal and informal, a place and a status, a cause and an effect, a conscious choice and an inevitable result of the sovereign state system. It would not be a stretch to say that the study of immigration detention is based on a number of different and sometimes contradictory definitions of the practice.

There are, however, at least two definitions that are commonly drawn upon by

⁶⁴ Travis, 2012.

⁶⁵ Seglow, 2005a: 318.

⁶⁶ Kant (1991 (1795): 105 – 106) writes that:

the right of a stranger not to be treated with hostility when he arrives on someone else’s territory. He can be turned away, if this can be done without causing his death (*Untergang*), but he must not be treated with hostility, so long as he behaves in a peaceable manner in the place he happens to be in. The stranger ... may only claim a *right of resort*, for all men are entitled to present themselves in the society of others by virtue of their right to communal possession of the earth’s surface.

scholars of detention. By way of constructing a typology of detentions, Elspeth Guild (2005) provides the first: detention upon arrival; detention of individuals within the asylum system; and detention before removal.⁶⁷ As an administrative and criminal law procedure, Guild explains that detention takes place in open or closed facilities and in the situation of judicial oversight. Second, the UNHCR defines immigration detention as “confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed and where the only opportunity to leave this limited area is to leave the territory.”⁶⁸ Based in international human rights law, the UNHCR definition stresses that detention practices must respect principles of proportionality and non-arbitrariness.⁶⁹

Both Guild and the UNHCR’s definitions are structural approaches that apply human rights law and prioritise states’ policy-making functions. While the expansiveness of these definitions facilitates their adoption around the world, this same characteristic points to a risk of smoothing over the spectacle aspect of detention. The primary function of detention is surely to administer immigration law and policy but the migration studies literature highlights time and again that a second function is to display the state’s monopoly of power over its borders. Another drawback of these definitions is that they address the morality of detention practices by first creating limits and then implying that any practice that overtake those limits is morally impermissible; my purpose is to define detention in such a way that the relevant ethical

⁶⁷ Notably, Guild focuses on a typology of immigration detention *centres*, not the practice itself. Accordingly, she does not provide a definition of detention *per se*. Nonetheless, her work provides one of the most comprehensive explorations of the topic in the literature (Guild, 2005). Cf. Cornelisse, 2010a: 8 – 23.

⁶⁸ Field & Edwards, 2006: 2.

⁶⁹ Further considerations of harm, liberty, the time element, and the possibility of periodic review frame the UNHCR’s legal understanding of detention (de Zayas, 2005: 29).

concerns come to the fore.

This thesis therefore defines immigration detention as *the holding of non-citizens in specific facilities in order to realise an immigration-related goal*. The three central elements of this definition are (i) that the detainee cannot leave at will; (ii) that the detainee is held in a designated room; and (iii) that the detention is being carried out in service of an immigration-related goal.⁷⁰ Immigration detention can, in this definition, be contrasted with holding or being held up for immigration processing, as with routine visa checks or passport control. This definition is neither strictly legal nor capable of encapsulating the myriad permutations of detention; however, it is attuned to the ethical dilemmas of detention that are of interest for liberal thinkers. This definition also flags the importance of detention centres and focuses attention on the fact that detention occurs both at the border and inside the state's territory.

Immigration detention centres

The next chapter will explore the functions of immigration detention and provide a thorough definition. For now, it is sufficient to explain why I do not generally employ either *immigration prison* or *immigration removal centre*. The former term is common in the penal studies, activist, and post-structuralist literatures while the latter is the preferred term of the UK Home Office. I argue that *immigration detention centre* is preferable because both of these other terms are inflammatory and misrepresentative of the full situation in liberal states.

It is common for the governments of liberal states to assign euphemisms to their immigration detention centres. For example, the Canadian government prefers *immigration holding centres*, and the US has *service processing centers*. Following a

⁷⁰ See, also, Flynn, 2011, and Kalhan, 2010.

renaming in 2001, the preferred term for an immigration detention facility in the UK is *immigration removal centre*. While this title suggests short-term secure housing prior to administrative removal or deportation, the actual buildings constructed during this time conform to Category B prison standards suitable for long-term occupancy. Further, as Mary Bosworth (2012: 128) points out, the UK government subsequently built centres following the same architectural design, further undermining the renaming. While I use the term *immigration removal centre* when referring to policies, government documents, or the actual names of UK facilities, I maintain that it is otherwise a misnomer that provides fodder for a common misunderstanding that detention is always short-term and pre-deportation.

I also disagree with the scholarly use of *immigration prisons* to refer to *immigration detention centres*. This term is strategically deployed to highlight the connections amongst the financial incentives of punishment, the spread of neoliberalism, the targeting of racialised and otherwise undesirable immigrants, and the expansion of immigration detention. Jenna Loyd, Andrew Burridge, & Matthew L. Mitchelson (2009: 6), for instance, argue that

Prisons, jails, and detention centers - euphemistically called "bedspace" - exist on a fundamental continuum of unfreedom and confinement... To many, these cages are seen to be legitimate materializations of state power because an undocumented presence violates territorial integrity. Thus, migration prisons ironically and tragically become mechanisms for exclusion (or extrusion) of migrants from national territory. This maintains the ideological integrity of the nation as shared community.

Robert S. Kahn (1996) uses a historiography of US President Ronald Reagan's changes to economic and social policies to chart the expansion of immigration prisons in the US. Shiar Youssef (2011) purposefully distinguishes between *immigration prisons* and *normal prisons*. Mark Dow (2004: 535) explicitly rejects *detainee* for *prisoner*: "The

people in custody are called ‘detainees’ but they are, in fact, prisoners, held in federal penitentiaries, private prisons, local jails, and ‘service processing centers’ while awaiting deportation or legal proceedings.” Indeed, for reasons analogous to why I dispute the utility of *immigration removal centre*, these scholars reject *immigration detention centre* as misleading.⁷¹ After explicitly rejecting *immigration detention centre*, Anil Kalhan (2010: 43) takes the argument one step further by suggesting that *immigration prison* be morphed into *immcarceration*.

Nonetheless, it is obvious that *immigration prison* is a loaded term with strong normative judgments. Whether or not it is true that the modern immigration control regimes conflate migrants with criminals to serve the financial and other interests of a select group of actors, *immigration prison* is not, in fact, an accurate indication of the goals and purposes of immigration detention nor is it reflective of national or international law in liberal states. Whether realised in practice or not, immigration detention is an administrative fiat that is not supposed to impugn the character of migrants, merely hold them until the immigration-related goal can be realised. In addition, by referring to these facilities as *immigration prisons*, scholars may be unwittingly contributing to the criminalisation of migration, an effect that I discuss at length in the next chapter. Likewise, as a result of high-profile *security prisons* such as Guantánamo Bay in Cuba and the security certificate detention centre in Kingston, Ontario, Canada, the public may be predisposed to suspecting that *all* detained migrants are terrorism suspects. The normative consequences of this suspicion of all migrants are significant and, again, elaborated in the next chapter. Therefore, in the interests of

⁷¹ See, also, Beckett & Murakawa, 2012; Cook, 2008; Hall, 2004; Miller, 2005; Pugliese, 2008; Simon, 1998; and Tyler, 2010.

normative neutrality as well as descriptive accuracy, I use the term *immigration detention centre* wherever possible.

Popular arguments for immigration detention

It is also worthwhile at this stage in the thesis to explain the popular, or populist, arguments for immigration detention in liberal states. The first reason why detention may gain traction as a suitable practice for liberal states to engage in relates to a fear of overpopulation. This idea of being “swamped” by irregular migrants, asylum seekers, and foreign national prisoners raises the possibilities in the local population’s mind of deteriorating state infrastructure, heightened competition for scarce resources, and security hazards.⁷² These zero-sum beliefs about immigrants include regressive thinking about economic and democratic power, which culture or value systems are most “important” or most “correct”, and the contributions that immigrants make to society.⁷³ This line of thinking became prevalent as early as the 1950s and continues in moderation across the UK, the US, Australia, and other liberal states.⁷⁴ Some studies show citizens who hold this view are more likely to support tougher immigration policies and social marginalisation of perceived Others. As such, people who perceive immigration and asylum seeking as potentially destabilising to their states are not only more likely to support (mandatory) detention practices but may be hostile and prejudiced towards former detainees upon their release.⁷⁵

⁷² After an extensive analysis of the impacts of migration on human and state security in its variegated dimensions, Adamson (2006: 197, 199) finds that migration flows “can have serious security impacts on the capacity of states that are already weak or failing. Yet states with high capacity have generally shown themselves adept at adjusting to the realities of increased human mobility.” He concludes that states “that are best able to ‘harness the power of migration’ through well-designed policies in cooperation with other states will also be the best equipped to face the new global security environment.” Also see McMaster (2002) for a case study connecting the development of Australian immigration policies and the idea of insecurity.

⁷³ Esses, Dovidio, et al., 2001: 407 – 408.

⁷⁴ Hjerm & Nagayoshi, 2011: 4.

⁷⁵ Esses, Dovidio, et al. 2001; Hartley & Pedersen, 2007.

Another popular reason for supporting immigration detention in liberal states is that liberal states may be permitted to put obstacles in the way of asylum seekers who are perceived to be *shopping* for the best state in which to apply for refugee status. Immigration detention not only stops asylum seekers in the first state they reach but it ensures that they are available for deportation should their claims be refused. The assumption underlying this debate is that anyone credibly fleeing grave danger would apply for asylum in *any* available state; the inference is that asylum seekers who transit through at least one additional state on their journeys may not be genuine Refugee Convention refugees.

Essential to this debate is a phenomenon known to academics as “welfare chauvinism”. This idea connects with the aforementioned populist concerns about state destabilisation. Welfare chauvinism occurs when the existence of asylum seekers claiming rights and benefits becomes seen as a *burden*. The provision to asylum seekers of social rights and benefits is targeted by certain political parties, trade unions, and governmental bodies looking to recruit extra support by linking a suite of economic and welfare issues to the presence of newcomers. On this account, citizens are deprived of their rights to first privileges of social benefits, jobs, and other scarce goods because asylum seekers – and, at times, labour migrants - are depressing wages, putting pressure on housing, and engaging in criminal activity, amongst other undertakings. Importantly, welfare chauvinists frame their arguments such that they are able to sidestep accusations of racism or xenophobia.⁷⁶ Of course, this reaction needs to be

⁷⁶ Doğan, 2007: 432 – 433. In early 2013, a strong strain of welfare chauvinism emerged in the UK concerning the potential immigration of thousands of Bulgarian and Romanian nationals. The Secretary of State for Communities and Local Government, Eric Pickles, claimed on the popular TV show BBC Newsnight that the impending relaxation of East European immigration controls could be problematic for UK citizens: "Given that we've got a housing shortage, any influx from Romania and Bulgaria is going to cause problems - it's going to cause problems, not just in terms of the housing market but also on social housing markets." This comment followed from early December scaremongering statements

read in the contemporary context of insecurity and austerity that is a consequence of the recent dismantling of welfare states, a general erosion of social security protections, and the neoliberal restructuring of the labour market.⁷⁷ Nevertheless, for welfare chauvinists, asylum seekers “are not simply rivals but *illegitimate* recipients or claimants of socio-economic rights.”⁷⁸

Welfare chauvinism can appear as competition for resources on an individual as well as a group level.⁷⁹ Owen Corrigan (2010: 46) observes that, in the UK context, welfare chauvinism creates increased opportunities for the emergence of “both social unrest – witness the ‘British Jobs for British Workers’ marches or the racist attacks on the Roma community in Northern Ireland in mid-2009 – and the rise of far-Right political parties.” Analysis of the 2003 British Social Attitudes Survey reveals that those who feel most strongly that migrants take jobs from UK-born citizens are far more likely to wish to see the numbers of migrants highly reduced; however, the statistical results also indicate that those persons with better incomes, better educations,

such as: Tory MP Philip Hollobone’s claims that “eight out of ten shoplifters arrested by the police are from Eastern Europe”; Home Secretary Teresa May’s comments that “I will be looking at what we call the pull factors, what is it that attracts people sometimes to come over here to the United Kingdom, so looking at issues about benefits, and access to the health service, and things like that”; and an investigation by the Telegraph newspaper into how “loopholes in current restrictions have allowed eastern Europeans to take 50,000 jobs from which they should have been excluded” (Barrett & Freeman, 2012; BBC World Service 2013; Hope, 2012; Wilson, 2012).

⁷⁷ Aliverti (2012: 5) describes the context for the rise of welfare chauvinism throughout the 1990s in the UK as follows:

First, since the late 1970s the diminishing bargaining power of trade unions and their undermined capacity to protect workers had an adverse effect on this group. Second, many low-skilled jobs either disappeared as people were replaced by machines, were ‘shipped abroad’ or were considerably downgraded by the depreciation of wages—in part as a consequence of the influx of economic migrants, particularly from eastern Europe in the mid-1990s. Faced with structural limitations in implementing inclusionary social policies, the Blair administration sought to appease an important fraction of its electorate by promising a halt on immigration and by resorting to draconian measures.

⁷⁸ Huysmans, 2000: 767.

⁷⁹ Immigrants and asylum seekers are seen as newcomers who pose threats to both the personal economic circumstances of *individuals* –particularly individuals at the lowest levels of skill, income, and education in their communities – as well as the sociotropic economic concerns of *whole groups* (McLaren & Johnson, 2007: 713 – 715).

and higher-status occupations are just as hostile to immigration as their lower-status counterparts.⁸⁰ Ryszard Cholewinski (2010: 615) argues that “the present global economic crisis” exacerbates welfare chauvinism whereby “migrants are less likely to be viewed as beneficial to the economy and more as taking away the jobs of natives and draining national welfare systems.” Nevertheless, there is substantial evidence to indicate a high degree of complexity in migrants’ decisions about destination states that contrast with the more narrow decision-making process described by welfare chauvinists.⁸¹

The Dublin II Regulation⁸² is an EU-wide instrument partially meant to address *asylum shopping* and to engage asylum seekers in *orbit* that makes great use of immigration detention practices.⁸³ In conjunction with other important EU asylum instruments,⁸⁴ the Dublin II Regulation heavily depends on, and perpetuates European Union Member States’ reliance on, immigration detention in the European Union. The

⁸⁰ McLaren & Johnson, 2007: 723.

⁸¹ The choice of destinations for asylum seekers is much more complicated than can be explained by the allure of social benefits. In some cases, the choice of destination falls to agents, smugglers, and traffickers rather than the individual applicant (O’Nions, 2008a: 153). Otherwise, an asylum seeker seems to rely on a personal matrix comprised of various “pull factors”. Stephen Castles and Mark J. Miller (2003), for example, employ migration systems theory to argue that any migration decision ought to be understood within a larger context of interacting macro- and microstructures. Timothy Hatton (2004) likewise describes a balancing of choice and constraint that takes into consideration historical ties (language, existing networks of migrants); ease of access (geographical, transportation); and perceptions of economic and social conditions. Eiko Thielemann (2003b) argues that asylum seekers generally choose a specific destination based on labour market conditions (as reflected in the unemployment rate), the existing stock of foreign nationals (the possibility of residing with friends and relatives), and the state’s reputation for generosity (as measured by overseas development aid).

See, also, Ramboll Management Consulting & Eurasyllum Limited, 2010: 140.

⁸² Council Regulation 2003/343/EC of 18 February 2003, (OJ 2003 L 050) establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national (Dublin II Regulation).

⁸³ Macklin (2005: 373) explains that *orbit* situations arise “when country A designates country B as a safe third country, thereby entitling country A to refuse to adjudicate the claim of an asylum seeker who arrived in country A via country B. However, in the absence of a readmission agreement, country B may refuse to re-admit the asylum seeker, and send the person to Country C, who may in turn bounce the person concerned to Country D, and so on.” An asylum seeker in orbit “may ultimately be refouled without any country ever adjudicating his or her claim”.

⁸⁴ These other important EU asylum instruments are (i) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive), and (ii) Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Reception Conditions Directive).

Regulation obliges asylum seekers to lodge claims in the first state they encounter; it places readmission obligations on Member States; and it allows Member States to detain and remove an asylum seeker to a safe third country.⁸⁵

María-Teresa Gil-Bazo (2006) argues that Safe Third Country rules risk violating two legal principles. The first is that that asylum states' legal obligations towards asylum seekers and refugees are not fully engaged so long as they have not managed to formally enter the territory. The second is that asylum states are not obliged to process asylum applications or grant asylum because these obligations are not formally inscribed in the letter of the Refugee Convention, and that they can choose to remove individuals to safe third countries provided that the non-refoulement principle is respected.⁸⁶ For its part, the UNHCR Executive Committee does not object to the concept of detention of asylum seekers for removal to safe third countries, and its focus has been on "what safeguards must be present before a state may transfer refugees to another state."⁸⁷

On a related note, there is another popular argument for supporting the growth of immigration detention estates that relates to thwarting irregular migrants from taking up employment, thereby causing wage depression and job losses for the local population. In the UK and the US, the traditional concern that immigration has a negative impact on low-wage workers, especially minorities, is reflected in the historic

⁸⁵ Costello, 2005: 41; Squire, 2005: 64; Lavenex, 2006; Schuster, 2011.

⁸⁶ Laurens Lavrysen (2012: 240) argues that the Dublin II Regulation perpetuates the spread of (arbitrary) detention practices in the EU:

These cases of detention are primarily motivated by the need of maintaining the Dublin system itself - a system which has proven to be totally inefficient in practice and which compromises the fundamental rights of asylum seekers - rather than actually serving a real legitimate aim. One could therefore argue that the Dublin system in itself is incompatible with the positive obligation to provide a legal framework to protect asylum seekers against the unnecessary and arbitrary use of detention. If one wishes to avoid arbitrary detention, it is therefore preferable to do away with the Dublin system altogether.

⁸⁷ Foster, 2007: 236.

exclusion of migrant workers from trade unions. Despite the fact that the argument that non-citizens employed as day- or low-wage labourers will “take” citizens’ jobs has been extensively refuted in the literature as I demonstrate in Chapter Two, this fear is pernicious and real.⁸⁸ Therefore, detention is called upon and defended as a tool to enable the detection and arrest of non-citizens who are residing and working in the state without permission.⁸⁹ It is important to keep in mind these popular beliefs for expanding detention practices as I turn in the next chapter to examining the three major literatures that describe and analyse other reasons that overlap and interact with these reasons. I will argue that liberal states use detention as part of a political spectacle to monopolise power over non-citizens, and the evidence that I provide will make more clear why the aforementioned popular beliefs continue to gain supporters across liberal states.

⁸⁸ Romero, 2011.

⁸⁹ Hing, 2009: 48 – 49, *passim*.

Chapter Two: Literature review: The political spectacle of immigration detention

Introduction

To recall, this thesis defines immigration detention as *the holding of non-citizens in specific facilities in order to realise an immigration-related goal*. The three central elements of this definition are (i) that the detainee cannot leave at will; (ii) that the detainee is held in a designated room; and (iii) that the detention is being carried out in service of an immigration-related goal. In the UK, powers of immigration detention were initially legislated to allow for questioning of passengers, and to smooth the way for returning those non-citizens who were refused leave to enter.⁹⁰

In this chapter, I propose a framework for understanding immigration detention in liberal states as a “political spectacle”. I argue that it is not normatively acceptable for liberal states to use immigration detention in this way, which I term detention-as-spectacle. I begin by outlining the idea of the political spectacle. I adopt a variation of Jef Huysmans’s (2000: 762) definition of the political spectacle as “an institution through which meaning is conferred by evoking crisis situations, emergencies, and political myths.” I then turn to examine the three major literatures on immigration detention in liberal states: crimmigration studies, the materiality of detention, and Giorgio Agamben’s “state of exception”. I demonstrate that fodder is provided for the idea of detention-as-spectacle by each of these three dominant ways of making sense of the uses, functions, and propriety of detention in liberal states. I focus the majority of this chapter on crimmigration studies because it is currently the most developed body of research. I argue throughout this chapter that building a political spectacle does not constitute a normatively permissible purpose for detention in liberal states. I pick up

⁹⁰ Section 4 of the Immigration Act 1971 gives powers to detain pending examination, removal, or deportation; the details of the detention powers are given in Schedule 2 to the 1971 Act. (Immigration Act 1971 [United Kingdom of Great Britain and Northern Ireland], Chapter 77, 28 October 1971; herewith Immigration Act 1971.)

on the theme of detention-as-spectacle in subsequent chapters.

The Political Spectacle

Guy Debord (2002) describes the spectacle as a distancing social relationship that is mediated by images: while undoubtedly a falsification of reality, the spectacle is nevertheless a real product of that reality and reciprocal alienation is the hallmark of the spectacle as people are increasingly distanced from their social realities. Debord (2002: Paragraph 3) writes that

The spectacle appears simultaneously as society itself, as a part of society, and as a means of unification. As a part of society, it is ostensibly the focal point of all vision and consciousness. But due to the very fact that this sector is separate, it is in reality the domain of delusion and false consciousness. The unification it achieves is nothing but an official language of universal separation.

The majority of writing on the political spectacle focuses on the resemblance of contemporary politics to theatre. There is an invisible curtain that separates the action that the audience has access to onstage from the “allocation of values” taking place backstage.⁹¹ Although it remains an exceptional case where someone clearly victimises an “Other” in the political spectacle, the phenomenon of Othering is itself increasingly common.⁹²

Murray Edelman's (1988) theories of symbolic politics and political spectacle are helpful for understanding the significance of the emotional politics that motivate detention-as-spectacle. Edelman argues that political problems gain life in popular discourse not because they are simply *there* but because they are reinforced constructs of a social reality and ideology that disseminates certain messages that make them appear self-evident.⁹³ Elements of the political spectacle include: symbolic language

⁹¹ Wright, 2005: 664 citing Edelman, 1988.

⁹² Wilsher, 2012: 270, citing Edelman, 1988.

⁹³ Doty, 2009: 66.

and the use of ambiguous metaphors; political language that is banal, strategic, and designed to produce emotional responses; social construction by interest groups of leaders, allies, and enemies, and the assumption of these roles by individuals just as characters are cast in a play; political stages, props, and use of symbolic objects; the marginalisation of most people to a status of spectatorship; a disconnect of means and ends; and the sharing of the benefits accruing from material profits or political influence are allocated backstage.⁹⁴ Edelman writes that "systematic research suggest[s] that the most cherished forms of popular participation in government are largely symbolic" political performances.⁹⁵

Nicholas De Genova (2004: 177) demonstrates how the staging of guards, vehicles, drones, walls, and the like at the increasingly militarised US-Mexico border "provides the exemplary theatre for staging the spectacle of 'the illegal alien'." The production of "illegality" as a categorical identity for migrants requires a "spectacle of enforcement" that is comprised of apprehensions, detentions, and deportations. The spectacle at the border makes visible a racialised Mexican/migrant hybrid identity. Eventually, after sustained performances, the spectacle of enforcement at the border lends itself – as well as the "illegal alien" – a "commonsensical air of a 'natural' fact."⁹⁶

In his study of security measures in the EU, Jef Huysmans (2000: 762) characterises the political spectacle as a drama that confers meaning by evoking crisis situations, emergencies, rituals such as consultations or elections, and political myths. The political spectacle structures processes of role-taking by actors and legitimates political decisions through purported threats or reassurances. The definition that I will

⁹⁴ Wright, 2005: 664 – 665 citing Smith, 2004.

⁹⁵ Romero, 2011: 339 citing Edelman, 1988.

⁹⁶ De Genova, 2004: 177.

adopt highlights the core message of the political spectacle relating to public institutions, particularly immigration: a political spectacle is “an institution through which meaning is conferred by evoking crisis situations, emergencies, and political myths.”

What is detention-as-spectacle?

As it pertains to the migration studies literature, scholars comment on how a confluence of media reporting, ideology, performance, opposition groups, and political convenience collectively portray irregular migrants as dangerous, “alien”, and potential security threats. This spectacle requires the cooperation, if not the collusion, of a variety of state and non-state actors.⁹⁷ In the migration context, the political spectacle is discussed primarily in relation to Mexican irregular migrants in the US and government- and militia-led activity in the US-Mexican borderlands. Some migration scholars suggest that since immigration programs to deter or stop irregular immigration along the US-Mexican border are, in truth, “extremely costly failed attempts”, these programs must be fulfilling other functions.⁹⁸ Mary Romero (2011: 339) argues that

The public demonstration of having armed federal agents with rifles and bulletproof vests raid homes, work sites, and shopping malls reinforces the views of those that support the implementation of harsher immigrant laws and an increase in funding and resources for immigration enforcement. These tactics create the misconception that the government is responding to a major nationwide threat.

The government directs “visual displays of power – mostly with the help of the media” in order to showcase their actions against irregular migrants.⁹⁹ An indication of the extent to which state governments are directing the spectacle concerns the fact that enforcement displays such as raids on meat-packing plants and other workplaces do not

⁹⁷ Chavez, 2007; Doty, 2009: 66.

⁹⁸ Sanchez & Romero, 2010: 783.

⁹⁹ Sanchez & Romero, 2010: 783.

usually include the arrest of citizens who are *employing* undocumented workers and thus violating immigration law but only the immigration rule-breakers themselves.¹⁰⁰ These displays, or spectacles, serve to bolster public opposition to irregular migrants and, in turn, support enforcement actions taken against them.

The political spectacle of immigration enforcement reinforces notions of non-citizens as inassimilable, unwanted aliens or criminals. It also gives an impression that strategies of deterrence are working. Particularly since 9/11 and 7/7, the deterrence of irregular migration has been portrayed as necessary for protecting national security. The Home Office in the UK has projected a firm belief in the deterrent power of detention and deportation, with the end-to-end mandatory detention aspects of the Detained Fast Track process being cited as a means to deter fraudulent claims and detention being alleged as a source of discouragement for would-be migrants to set off for the UK in the first place.¹⁰¹

The spectacle of arresting and detaining immigration rule-breakers who are working without authorisation is also a part of this alleged deterrence strategy. For example, referring to a series of raids which netted eleven immigration rule-breakers in Wales, the chief executive of UK Border Agency, Rob Whiteman, warned other would-be immigration rule breakers about their imminent arrests: “Our officers in Wales work hard to prevent abuse of the immigration system and are tracking down offenders wherever they are. As these enforcement visits show, people who are here illegally should be in no doubt that they will be found, arrested and removed from the

¹⁰⁰ Sanchez & Romero, 2010: 783.

¹⁰¹ Hiemstra (2012: 304) observes a similar phenomenon occurs in the US: for example, policymakers extol the deterrent value of expanding expedited removal from detention - a legal designation which removes due process requirements for migrants meeting certain conditions and puts them on the fast track to deportation - and mandatory detention of asylum seekers is framed as a way to deter “bogus” refugee claimants. The Department of Homeland Security cites future migration as a reason for increasing detention “bed space” because detained migrants cannot abscond.

country.”¹⁰² As of yet, however, there is virtually no evidence that detention successfully deters irregular migration or working without authorisation; the most widely accepted explanations for this situation are that these enforcement actions do not outweigh structural factors motivating migration decisions, including the need to leave and to work, that detained or deported migrants do not spread word of their experience to potential migrants, and that smugglers will assure migrants that their trip to the UK will not involve stints in detention.¹⁰³

Should persuasive evidence emerge that detention practices are not successful at deterrence, this will raise a pressing normative concern that thousands of people are being denied their basic rights in service of a non-realizable goal. Even if evidence does emerge that detention-as-spectacle results directly in decreasing the numbers of irregular migrants arriving at liberal state borders, however, this situation would raise a different but equally important normative concern: this detention strategy uses immigration detainees as instruments in a bid to control the anticipated movements of other people. A strategy of this sort employs detainees as a means to achieve the end of deterrence, and it is a clear violation of detainees’ human dignity. I further discuss the objection to detention as a deterrence strategy from the perspective of Kantian instrumentalism in Chapter Four.

No less significant is another aspect of the political spectacle of immigration enforcement that is directed not at would-be migrants but at citizens of the state. Through constructing the imposing architecture of immigration enforcement – including constructing, operating, and filling the prison-like detention centres – the state displays for citizens a monopoly of power over non-citizens. Detention centres

¹⁰² UK Border Agency, 2012.

¹⁰³ See, on the US, Hiemstra, 2012: 306; Andreas, 2001: 117 – 118.

are often situated in residential neighbourhoods or other locations where they are easily viewable by the local population; in fact, this accessibility of detention centres to citizens sometimes produces a negative collective reaction known as NIMBYism that I discuss below. The state is using detention as a spectacle to affirm its own power over migrants and to promote belief amongst citizens in this power. From a normative point of view, detention-as-spectacle encourages citizens to trust that this centralisation of power in the state is ethically, and politically, correct.

Crimmigration studies

Crimmigration scholarship concentrates on how a discourse, or rhetoric, of criminality informs the development and implementation of certain immigration laws and policies¹⁰⁴, particularly in the US context. Contributions to crimmigration studies come from criminology, critical theory, legal theory, political science, sociology, and other social sciences. By and large, this literature uses analytic tools gleaned from criminology and socio-legal theory. This cross-fertilisation seems logical since crimmigration studies explores an “ambiguous conceptual space where 'criminal-justice-like powers' have escaped the confines of the criminal justice system.”¹⁰⁵

Crimmigration scholars probe the interface where criminal justice, state administration, immigration law, civil and human rights, and security spheres meet. On this view, daily life in liberal states is increasingly characterised by nativism, over- or hyper-criminalisation, social exclusion, and a preoccupation with security.¹⁰⁶ Escalating concern “about crime and fear of crime appears to be one of the

¹⁰⁴ As Bauder (2008) points out in the German context, the immigration–economy link is portrayed in mostly positive terms, the immigration–culture connection is relatively neutral, but the immigration–crime nexus is overwhelmingly negative.

¹⁰⁵ Weber, 2002: 26.

¹⁰⁶ Zedner, 2003.

characteristics of the age.”¹⁰⁷ Xenophobia is driven by perceptions of immigrants as “others” who pose an economic threat, cultural threat – including prejudice and intergroup hostility - and/or safety threat to citizens.¹⁰⁸ Psychological studies have found that there exists a strong negative relationship between self/Other¹⁰⁹ and non-citizens are differentiated into “deserving” and “non-deserving” groups.¹¹⁰

What evidence is there that a “cimmigration crisis”¹¹¹ is actually unfolding in liberal states? First of all, as James Banks (2011: 191) notes, in the UK, there are approximately fifty Immigration Act offences that could result in a custodial sentence for non-citizens. For example, Section 2 of the Immigration and Asylum Act 1999 legislates that “deception” exercised in obtaining leave to enter or remain in the UK can be punished by up to two years’ imprisonment.¹¹² Section 2 of the Asylum and Immigration Act 2004 makes it illegal for anyone to enter the UK without a valid passport, thereby “increasing the difficulty for those seeking asylum to enter the country and further criminalising those individuals who do arrive without the appropriate documentation.”¹¹³ The numbers of immigration-related incarcerations do seem to point to a worrying trend in the criminalisation of non-citizens.

¹⁰⁷ Collins, 2007: 57.

¹⁰⁸ In the Australian case, for instance, Peter Gale (2004: 334) draws attention to a populist bifurcation of refugees who arrive by boat being depicted as “the ‘illegal’, non-western, non-Christian ‘queue jumping’, if not barbaric Other” versus the “ ‘asylum seekers’ [who] are represented as having the right to seek refugee status and to be treated in accordance with UN obligations in the processing of a refugee application.” See, also, Fitzgerald et al, 2012: 481 – 483; Golash-Bazo, 2009: 304.

¹⁰⁹ For example, in one study of Australians’ attitudes towards mandatory detention, researchers found that the more people identified with and felt that the government’s goals were legitimate, the more they felt the asylum seekers were illegitimate (Hartley & Pedersen, 2007).

¹¹⁰ Every & Augoustinos, 2008; Gabrielatos & Baker, 2008; Klocker, 2004; Malloch & Stanley, 2005; Lynn & Lea, 2003; O’Doherty & Lecouteur, 2007; Pickering, 2001; Pratt & Valverde, 2002; Sales, 2002; Zetter, 2007.

¹¹¹ Stumpf, 2006.

¹¹² “Deception” here encompasses entering the UK under false pretenses, possessing false documentation or the destruction of travels documents, whilst the burden of proof is placed upon the asylum seeker who must demonstrate a ‘reasonable excuse’ in such circumstances (Banks, 2011: 191).

¹¹³ Less than one year after implementation of the Asylum and Immigration Act 2004, 230 asylum seekers had been arrested and 134 convicted for failing to produce a passport upon arrival (Banks, 2011: 191).

Immigration law in the UK is increasingly reliant on serious remedies – detention and deportation – regardless of the underlying criminal activity. This contrasts with the continuum of criminal law sanctions that is designed to fit punishment to the seriousness of the crime.¹¹⁴ Likewise, criminal enforcement norms are being embraced to the exclusion of corresponding adjudication norms.¹¹⁵ A similarly troubling pattern of spiralling criminal sanctions for immigration-related offenses can be found in the US.¹¹⁶

It seems that, in the post-9/11 and 7/7 era, crime-related anxiety over immigration “is independent of past immigration concerns, objective measures of regional crime, regional overrepresentation of foreigners among those arrested, and a host of personal characteristics and other controls.”¹¹⁷ The trend of increasing numbers of detentions

¹¹⁴ Kanstroom, 2000: 1891; Martínez, 2008: 13; Sweeney, 2009: 49, 87. Stumpf (2006: 264) explains that, in the US context, deportation is the sanction for a criminal violation regardless of whether it is minor or grave: “Using removal as a baseline penalty robs the law of any capacity for adjustment to fit the seriousness of the immigration violation or its consequences for the individual and others.”

There is often little reprieve for minors in the US context: “Unless current U.S. laws governing illegal immigration are amended to acknowledge and account for undocumented children brought to the US by their parents, unaccompanied undocumented alien children and US citizen children of undocumented parents, it is almost certain that millions of children will .. be victimized.” (Williams, 2011: 12)

¹¹⁵ Legomsky, 2007: 683. The author continues that “At the micro level, the problems [of this asymmetric incorporation] are ones of both fair procedure and substantive proportion. At the macro level, their preoccupation with enforcement has dampened policymakers' incentives to weigh the full set of often competing objectives that should drive a national immigration policy -most importantly, balancing the goal of deterring illegal immigration against the goal of facilitating lawful immigration.” In the US context, results of this embrace of enforcement norms in immigration law include the increased criminalisation of immigration violations (such as using a false passport); the increased immigration consequences of even minor criminal violations, sometimes post facto; the use of mandatory, preventive detention; and the increased role of traditional criminal justice actors, such as local police, in immigration enforcement (Markowitz, 2011: 1315).

¹¹⁶ Immigration-related prosecutions in the US quadrupled from 1996 to 2006, accounting for more than thirty per cent of all federal prosecutions and constituting the largest category of federal prosecutions (Frey & Zhao, 2011: 282). In sum, Gilbert (2009: 29) explains,

The 1990 Immigration Act starkly increased criminal fines for certain immigration-related crimes. Under the Clinton government, the 1996 Illegal Immigration Reform and Immigrant Responsibilities Act created new federal crimes linked to false claims in application, squarely shifting criminality to migrants and (unauthorized) workers. In addition, the 1996 Antiterrorism and Effective Death Penalty Act enhanced the role of law enforcement by expanding the grounds for removal in the case of aggravated felony, which used to be limited to charges of murder, drugs or firearms trafficking, and now has been extended to charges of bribery, perjury and forgery (rendered almost inescapable by restrictive laws).

¹¹⁷ Fitzgerald et al 2012: 492.

and deportations, particularly those of non-criminal non-citizens, continues into 2013.¹¹⁸ The apparatuses of criminal and immigration enforcement are being drawn closer together at the federal, state, and local levels, “duplicating efforts, and doubling the punishment of non-citizens.”¹¹⁹ Crimmigration scholars are keen to shift attention on immigration enforcement and criminalised migrants from an exclusive focus on the border to a more inclusive view of the interior, particularly its urban contexts.¹²⁰

In addition, crimmigration scholarship draws attention to the strategic decoupling of *illegal immigrants* and *bogus asylum seekers* from racial and class politics in liberal states. This dissociation makes it sometimes difficult to draw a clear connection between xenophobia, racism, classism and the criminalisation effects of new immigration laws and legislation.¹²¹ White middle-class citizens are cast as the victims of the aforementioned economic, cultural, and safety threats posed by migrants. This ideology points to various social issues as “proof” of white injury.¹²² Such blaming-the-victim strategies shift responsibility away from political and economic policies and place it on non-citizens employed as day- or low-wage labourers. These discourses use white injury as “a symbolic device that uses ambiguous meanings and emotional narratives to arouse strong xenophobic feelings. Accurate facts and context

¹¹⁸ Kirk, Papachristos, et al., 2012: 95.

¹¹⁹ Hernández, 2008: 39. See, also, Chacón, 2007; Olivas, 2007; Wishnie, 2004.

¹²⁰ Chacón, 2012; Coleman, 2012; Motomura, 2011; Reid, Weiss, et al., 2005; Stumpf, 2008; Yanez & Soto, 1994.

¹²¹ Zedner, 2010: 383; Weber & Bowling, 2008. See, generally, Capdevila & Callaghan (2008: 12) for an argument that

Racism remains an unspoken phenomenon in British politics. Any politician, whether making accusations of racism, engaging in a racial analysis, runs the risk of the accusation of ‘playing the race card’. The effect of this anxious silence around matters of race in British politics means that it is quite possible for politicians to produce rhetoric that marginalizes and denigrates entire groups of people, without risk, as long as they play the game too and do not explicitly name the issue as one of race.

¹²² Examples of injuries claimed by liberal state citizens include “the erosion of public education, high unemployment and crime rates, gang and drug problems, insufficient health care, reverse discrimination, and the subordination of English and ‘white’ culture.” (Romero, 2011: 341)

can thus be ignored.”¹²³

The roles of the media

One goal of crimmigration studies is to demystify the roles played by the media in the criminalisation of non-citizens. Most research findings conclude that the media plays an active role in reproducing, or reflecting back, negative portrayals of non-citizens as threats to society. This is done through a growing taxonomy of metaphors for covering migrants: key characters include “ ‘illegal aliens’, ‘boat people’, smugglers, traffickers, sex workers, organized crime, terrorists, Muslims, nonwhites and ‘the diseased’.”¹²⁴ Other common metaphors include references to a “national body”, “flooding”, and “diseases.”¹²⁵ Spatial terms such as transit, entry, or return/repatriation linked to migrants are contrasted with sedentarist ideas of trust and belonging characterizing citizens.¹²⁶ Media outlets may also refrain from addressing immigrant and asylum seeker issues altogether, thus creating a void in coverage of everyday “human impact” stories that assist in humanising minorities and stimulating

¹²³ Romero, 2011: 341.

¹²⁴ Welch, 2012: 329. While not all identify as “crimmigration scholars”, the following researchers conclude to varying degrees that the newspaper and television media are implicated in a differentiating of “desirable” and “undesirable” migrants and asylum seekers that impacts the formation of immigration policy as well as the treatment of non-citizens resident in Australia, the US, the UK, and Canada. The media is found to be generally “targeting” Hispanics in the US and Muslims or Arabs in all of the aforementioned states. See Aguirre Jr., Rodriguez, et al., 2011; Banks, 2008; Cisneros, 2008; Dunn, Klocker, et al., 2007; Gabrielatos & Baker, 2008; Nickels, Thomas, et al., 2012; O’Nions, 2010; Pickering, 2001; Sarikakis, 2012; Vukov, 2003.

¹²⁵ Cisneros, 2008: 571 – 572 citing Santa Anna, 2012; Tyler, 2006: 192. In the case of the UK tabloid newspaper, *The Sun*, for instance, Julian Matthews & Andy R. Brown (2012: 813) argue that this publication:

performs as a claims maker, producing coverage that establishes, legitimates and demonstrates the UK immigration system is in crisis. Being a newspaper, as opposed to a campaigning group, allows *The Sun* to talk directly to an established readership as a community affected – providing negative comments on the immigration system, those officials managing its operations and the asylum seekers seeking refuge. Stark references made .. to ‘bogus asylum seekers’ as either economic migrants or dangerous enemies within the UK – preaching and/or plotting terrorism – resonate strongly with the findings of existing studies on similar news coverage.

¹²⁶ Gabrielatos & Baker, 2008; Malkki, 1992.

community integration.¹²⁷

Against this virtual consensus, there are some (pro-immigration) scholars who argue that the roles of the broadcast and print media in the UK and other liberal states are being improperly cast in the criminalisation of non-citizens post-9/11 and 7/7.¹²⁸ Nevertheless, regardless of whether it is instigator or echo chamber, it would be wrong to underestimate the influence of the media in shaping an interplay with public opinion and national governments on the treatment of migrants and immigration laws.¹²⁹

Does immigration increase criminality in liberal states?

The implicit assumption animating the ethical core of crimmigration studies is that the criminalisation of migrants is undue and normatively wrong. This means that the majority of crimmigration scholarship operates on a second assumption: namely, that the long-term residence of non-citizens does not cause crime rates to go up. There is also an additional, separate issue that some of the criminality involved is accrued through acts of breaking immigration laws themselves.

In the UK context, it is an everyday “common sense” assumption that “increased levels of immigration result in increased levels of crime, as foreign nationals are more likely to commit crime than are British nationals and are more likely to commit crimes

¹²⁷ Santa Anna, 2013.

¹²⁸ Joppke (2009: 464), for instance, points as evidence to the red-top press’s sympathetic headlines – such as “Don’t Blame the Muslims”, “Islam is not an Evil Religion”, and “Reach Out to Muslim Friends” – as well as the commitments from broadcast and print outlets to shy away from phrases like “Muslim terrorist.” Likewise, Schuck (2007a; 2007b: Footnote 1) stresses that it is very rare for academic specialists in immigration to favour reducing the number of legal immigrants and asylum seekers admitted to liberal states each year; as such, it is possible that immigration scholars are predisposed towards identifying a bias in the media towards criminalisation of migration. Flood, Hutchings, et al, 2011, describe the “impossible requirements” and the “quadruple bind” of ideological commitments in place at the BBC. They conclude that it “was not the BBC’s fault that so many ‘bad’ things were happening and that many of them engendered dramatic footage which cohered with the demands of TV newsmaking. Furthermore, the BBC was not responsible for, nor out of line with, the news agenda followed by the British media of which it was a part.” (Flood, Hutchings, et al., 2011: 235) Likewise, Sulaiman-Hill, Thompson, et al., 2011, find that the New Zealand press was overall positive in its depiction and contextualization of refugee issues between 1998 and 2008.

¹²⁹ Buonfino, 2004: 24.

of a serious nature.”¹³⁰ It is true that both the number of foreign nationals entering the UK and the number of foreign nationals in UK prisons are climbing.¹³¹ But, is it the case that immigration *causes* crime?

In fact, research findings indicate that the opposite is true: factors that reduce criminality are more pronounced in neighbourhoods of high immigrant concentration.¹³² John Hagan, Ron Levi, and Ronit Dinovitzer (2008: 108) show that in the US and Canada, “immigrants are not only healthier but also more law-abiding than are the native born.”¹³³ Immigration either does not contribute, or is beneficial in lessening, some types of crime.¹³⁴ In addition to lowering offending rates, there is also evidence that influxes of immigrants may help to revitalise downtrodden areas; in so doing, immigrants and asylum seekers are producing better jobs for native-born persons as opposed to “taking” their jobs.¹³⁵ While the reasons *why* these factors are more present in immigration communities are mostly speculative, it is notable that the scholarly consensus holds that immigrants do not by and large cause crime and that, therefore, the criminalisation of migrants relies on falsehoods.

Crimmigration and detention

Crimmigration studies highlights and analyses a number of immigration detention issues. First, detention centres provide a profit generating “recession-proof economy” for liberal states.¹³⁶ This insight is also elaborated upon in the variation of the “materiality of detention” literature that focuses on the influences of the private prison industry; I discuss this literature below. Second, legislators and judges mistakenly

¹³⁰ Banks, 2011: 187.

¹³¹ Banks, 2011: 185 – 186.

¹³² Wortley, 2009: 349.

¹³³ See, also, Rumbaut and Ewing, 2007.

¹³⁴ Wortley, 2009: 350. See, also, Lee, Martinez Jr, et al., 2001; Reid, Weiss, et al, 2005;

¹³⁵ Reid, Weiss, et al, 2005: 776.

¹³⁶ Turner, 2013: 36.

conflate exclusion and detention, thereby undermining the dignity and rights of detainees.¹³⁷ Third, crimmigration scholarship demonstrates the difficulties with determining appropriate levels of discretion in decisions to detain. Although often poorly trained, temporary employees and contract security guards, immigration officers are expected to exercise discretion when choosing amongst competing detention priorities.¹³⁸ The solution is not to remove interrogating officers' discretion altogether, however, because schedules of mandatory detention could grow in its place. Fourth, detention is conceptualised as "state crime." Through the systematic alienation, criminalisation, and abuse of irregular migrants, particularly asylum seekers, liberal states engage in "state organisational deviance involving the violation of human rights."¹³⁹

Finally, crimmigration scholars studying immigration detention in liberal states are exploring the idea of detention-as-punishment. On this view, the liberal state uses the threat of detention to coerce non-citizens to follow formal and unwritten rules and legislation governing their behaviours and movements.¹⁴⁰ There are three interrelated versions of this argument. Daniel Kanstroom (2000, 2005, 2007) develops an influential variation that immigration detention comprises a mode of officially sanctioned punishment for non-citizens who fall out of the state's favour.¹⁴¹ The threat

¹³⁷ Wilsher, 2008, 2012. Another way of thinking about protection from detention is found in the European and supranational courts in linking detention's harms to violations of universal human rights (Cornelisse, 2004, 2010b; Costello, 2012).

¹³⁸ Fisher, Kostelnik, et al., 2012; Pratt, 1999; Taylor, 1995; Weber & Gelsthorpe, 2000.

¹³⁹ Grewcock, 2007. Australian crimmigration scholars are spearheading this body of research in the main; see Green, 2006; Green & Grewcock, 2002; Grewcock, 2007; 2009; 2012; Pickering, 2005a, 2005b. But see McKanders, 2011 on the US.

¹⁴⁰ In other words, the immigration system is a means for social control beyond the criminal justice system (Chan, 2006: 159). See, also, Welch (2000).

¹⁴¹ Garland (2001) is another notable influence on the development of this approach. Garland describes how policy focus has shifted away from criminality and the criminal individual and towards the criminal event. A fear of crime "has come to be regarded as a problem in and of itself, quite distinct from actual crime and victimisation, and distinctive policies have been developed that aim to reduce fear levels rather than to reduce crime." (2001: 10) The "new policy advice is to concentrate on substituting

of detention limits migrants' capacities to contest unfair treatment either by local authorities or the general citizenry.¹⁴² Next, detention-as-punishment is conceptualised as a tool to normalise the extraordinary situation of being in limbo and to exert social control over non-citizens.¹⁴³ And, thirdly, detention-as-punishment theories are often interpreted through the lens of Michel Foucault's ideas of governmentality and biopolitics. The plausible threat of imminent detention encourages non-citizens to internalise punitive mentalities and to self-regulate their behaviours and subjectivities;¹⁴⁴ detention "provides a form of biopolitical governing by keeping those deemed threatening away from the larger society."¹⁴⁵

Crimmigration and detention-as-spectacle

The key point for crimmigration scholars, then, is that, "at some level, perceptions of immigrants as criminals appear to influence both the tone of the public debate and the outcomes."¹⁴⁶ Immigration detention is identified as playing a significant role in shaping the tenor of this debate. Mary Bosworth (2008, 2011b) links the upsurge in UK detention numbers with government efforts to transform migrants into criminals, particularly foreign national prisoners. James Banks (2008) likewise cites criminality associations to explain the rapid expansion of the UK immigration

prevention for cure, reducing the supply of opportunities, increasing situational and social controls, and modifying everyday routines. The welfare of deprived social groups, or the needs of maladjusted individuals, are much less central to this way of thinking." (2001: 16) Scholars apply Garland's theory of "the new penalty" to challenge the naturalisation of detention. See, e.g., Bosworth, 2007, 2008b; Grewcock, 2009; T. Miller, 2003; and Welch & Schuster, 2005a.

¹⁴² Welch & Schuster, 2005b: 348.

¹⁴³ Pratt (2007: 52) argues that "[quasi-]judicial, quasi-administrative, and quasi-criminal procedures act upon quasi-criminal detainees in partly punitive, partly paternal ways... detention and deportation are the most extreme, coercive, and bodily sanctions of immigration penalty and do manifest the contemporary persistence of sovereign power." Other scholars who draw connections between the rise of immigration detention in liberal states and heightened social control include Broeders, 2010; Cook, 2003; Díaz, 2011; Dow, 2007; Miller, 2005; Story, 2005; and Welch, 2003.

¹⁴⁴ Walters & Haahr, 2005: 3 – 10; Chan, 2006: 159.

¹⁴⁵ Rygiel, 2010: 156.

¹⁴⁶ Legomsky, 2007a: 500.

detention system. An analogous effect has been commented on in the US context as well.¹⁴⁷

A reinforcing effect is engendered by the interaction of crimmigration with detention. Since much of the local population is already convinced that immigration causes criminality, they sympathise with the view that incarceration of non-citizens is ethically acceptable; in turn, the presence of such large prison-like institutions reinforces the presumed criminality of the migrants.¹⁴⁸ Immigration detention facilitates the literal and metaphorical collapse of the imagined and real boundaries between criminals and migrants.¹⁴⁹

My overview and analysis of the crimmigration studies literature indicates how detention-as-spectacle is playing a large but perhaps under-acknowledged role in this scholarship. The display of power that the state stages through its projection of the threat of detention serves to make vulnerable to criminalisation a whole range of people, whether legally present or not. The growing schedule for reasons for detaining a non-citizen in the UK connotes a cultural preoccupation with “catching” deviant Others, and the list of who constitutes an Other seems to be perpetually expanding. Indeed, the line between criminal and non-criminal non-citizen is becoming thinner as

¹⁴⁷ In the US, the response to “visions of impoverished masses streaming across the southern border” has led “political actors nationwide [to rally] around an anti-immigrant fervour while the federal government has adopted a mass incarceration scheme as part of its immigration law enforcement strategy” (Hernández, 2012: 354 citing Chertoff, 2009). The US now hosts the largest immigration detention estate in the world, with the number of detainees held without any criminal conviction doubling between 2005 and 2009. Two-thirds of US detainees are subject to mandatory detention and approximately seventy per cent of detainees are held in jails under *ad hoc* agreements, up from approximately twenty-five per cent fifteen years ago (Kalhan, 2010: 46). Simon (1998: 600, 604) characterises the US detention estate as “the second great confinement” located in a history of “absolutist power mediated, in part, by unaccountable local (and, today, transnational) hierarchies.”

¹⁴⁸ A more radical understanding of this position is summarised in Green & Grewcock (2002: 99): “the state in both its national and regional forms, has engaged in organised criminal activities (around questions of policing and surveillance) which result in the wholesale victimisation, criminalisation, punishment, and detention of people who for reasons of internal repression, civil war, racism or poverty seek asylum in western liberal democracies.”

¹⁴⁹ Anderson, 2012; Burnett, 2007; Chacón, 2007; Frey & Zhao, 2011; Griffiths, 2010; Kalhan, 2010; Martin, 2012; Martin & Mitchelson, 2009; and Zedner, 2010.

non-citizens' immigration-related trespasses become subject to criminal penalties. Detention-as-spectacle puts migrants and their communities in a constant state of fear of (false) identification as criminals and subsequent deportation.

The state's intention to arrest, detain, and deport is broadcast via the detention-as-spectacle effect not only to migrants but also to the legally resident members of the community. The message sent by the increased policing of migrants is that non-citizens are lawbreakers worthy of prison, not potential citizens worthy of social services provisions. Through the building of detention centres as well as the media's coverage of dawn raids and deportations, legally resident members are encouraged to internalise this understanding of "illegal aliens" and see the government's monopoly on power as successful and just. Indeed, on an individual level, politicians adopting "tough on immigration" positions that support immigration detention and other harsh enforcement mechanisms have proven beneficial in election campaigns across the UK and the US.¹⁵⁰ As immigration detention apparatuses, laws, and practices are becoming increasingly commonplace, detention-as-spectacle produces a self-reinforcing effect of identifying migrants as criminals and cultivating a belief in the crimmigration effect amongst the legally present community members.

The materiality of immigration detention

The second group of researchers making sense of the expansion of immigration detention in liberal states are focussing attention on the materiality or architecture of detention. These scholars concentrate on how and why immigration detention is unevenly deployed as well as where, when, and how it is institutionalised. They are bringing precision to our understandings of how detention unfolds and to reveal its

¹⁵⁰ Longazel, 2013: 91.

underlying power dynamics.¹⁵¹ There are four versions or variations of this literature. The first is based on De Genova's analysis of the connections amongst "deportability", race, law, and citizenship status,¹⁵² the second applies insights from the mobilities literature, the third investigates links between NIMBYism and detention, and the fourth and final variation examines the practicalities of funding detention. I interpret each of these strands of analysis as providing evidence that the state is employing detention-as-spectacle.

De Genova's (2002, 2004, 2007) research on deportability and illegality illuminates the significance of the materiality of immigration detention. De Genova argues that the state's power over irregular migrants lies in the threat of deportation, not deportation itself. The status of *deportable alien* is applied to a minority of non-citizens in order to render the majority fearful and vulnerable.¹⁵³ De Genova contends that immigration law creates a vulnerable status that includes, rather than excludes, undocumented migrants through fear and incapacitation. Importantly, it is the combination of the threats as well as the acts of detention and deportation that produce the strongest impacts on the lives of migrants.¹⁵⁴ Concentrating on the US context, detention is "an intensified penalty for [irregular migrants'] 'illegal' status, a derivative

¹⁵¹ Coutin (2010), for example, argues that the state metaphorically situates irregular migrants outside of territorial jurisdictions even when they are physically present within the territory. Fassin (2010: 214) likewise points out that borders function simultaneously as external territorial frontiers and internal social categorisations. Parallels can also be drawn to Sales's (2002) analysis of the UK government's withholding social security benefits to reinforce punitive notions of undeserving versus deserving migrants.

¹⁵² Amore & Hall (2010), Fussell, 2011; McDonald, 2009; Roasa, 2006; and Squire, 2009: 109. This argument for paying attention to the interplay of space, place, and legislation echoes Mae M. Ngai (2004: Chapter Two) on deportation discretion and the making and unmaking of illegal aliens. It also bears similarities to Michael Walzer on the "everpresent threat of deportation", and RBJ Walker (1993) on the inclusion through exclusion of foreigners.

¹⁵³ Legal scholars analysing immigration law's treatment of domestic violence victims with irregular status note a similar phenomenon: if battered women's residency is conditional on staying in a certain household or family arrangement then they are often reluctant to report their abusers for fear of finding themselves or their family members placed in detention or deportation proceedings. See, e.g., Fanlund (2008), Loke (1996 – 1997), Pressman (1995), Shapiro (2002), and Shor (2000).

¹⁵⁴ Peutz (2006) refers to this phenomenon as "the anthropology of removal."

of their more elementary deportability.”¹⁵⁵

The mobilities literature examines experiences of simultaneous de-territorialisation and re-territorialisation.¹⁵⁶ This literature’s emerging interest in detention relates to how the practice socially conditions infrastructure, land, and space, and people’s relations to these environments. For Nicholas Gill (2009), a critical standpoint on mobilities and detention means establishing and depicting the transience of immigration detainees. Alison Mountz (2011b: 126) locates a process of de-territorialisation/displacement and re-territorialisation/reconstitution in offshore immigration detention centres, like those used by Australia: “Although remote from mainland territory, islands prove central to understanding sovereign power offshore and detention practices onshore. The dislocation of those detained remains intimately linked to the displacement of the border and its reconstitution in detention centres on islands.” This variation of the “materiality of detention” literature demonstrates how detention operates as a spatial strategy of containment and forced mobility.¹⁵⁷

The next variation of the materiality of detention literature is rooted in geography studies and examines the interplay between the growth of detention and NIMBY-ist reactions of local communities to the developing infrastructure. In plain language, NIMBY-ism (Not-In-My-Backyard-ism) is

the motivation of residents who want to protect their turf. More formally, NIMBY refers to the protectionist attitudes of and oppositional tactics adopted by community groups facing an unwelcome development in their neighbourhood... Residents usually concede that these ‘noxious’ facilities are necessary, but not near their homes, hence the term ‘not in my back yard.’ ”¹⁵⁸

¹⁵⁵ See, also, Andrijasevic, 2009: 395.

¹⁵⁶ Sheller & Urry, 2006: 210.

¹⁵⁷ Martin, 2011: 481 citing Hyndman, 2005. See, also, Ashutosh & Mountz, 2012: 349 - 352; Hiemstra, 2012; Mountz, Coddington, Catania, & Loyd., 2012: 6.

¹⁵⁸ Dear, 1992: 288.

Participants in NIMBYism seldom acknowledge any racist or xenophobic motivation; nevertheless, NIMBYism can be seen as “a significant manifestation of ‘environmental racism’ – the series of structures, institutions and practices which may not be intentionally or maliciously racist, but which serve to maintain the privileged status of white spaces.”¹⁵⁹

Phil Hubbard (2005a, 2005b) describes how a series of NIMBY-ist discourses arose in community opposition to accommodation centres for Muslim asylum seekers on the site of the former RAF Newton base in Nottinghamshire and on Ministry of Defence land at Bicester, Oxfordshire, in the early-2000s. These discourses were “underpinned by a (white) rural imaginary that mapped deviance onto asylum seekers themselves. Specifically, .. asylum seekers were imagined as a (sexual) threat to women, home and domesticity—a threat that appeared particularly potent in rural localities imagined as safe, family spaces.”¹⁶⁰ Likewise, Natascha Klocker (2004) documents how the residents of Port Augusta, South Australia, expressed an intense NIMBY-ist reaction to the Australian government’s decision to construct Baxter Immigration Reception and Processing Centre in close proximity to their community. The “potent hostility” towards the detention centre is thought to have grown out of the Australian government and media’s popularisation of negative, stereotypical perceptions of asylum seekers.¹⁶¹

Finally, with a view towards a more pragmatic analysis of the materiality of immigration detention, the fourth literature focuses on a systematic analysis of the financial costs of implementing and sustaining the practice. This literature responds to

¹⁵⁹ Hubbard, 2005: 52.

¹⁶⁰ Hubbard, 2005b: 4.

¹⁶¹ Klocker, 2004: 13. See, also, Curtis & Mee, 2012: Malloch & Stanley, 2005: 60 – 61.

the argument that detention represents an efficient use of the state's scarce resources.¹⁶² These researchers catalogue the different types of detention facilities - including their names, purposes, building categories, and locations – in order to bring order to the confusing and costly architecture of detention in liberal states.¹⁶³

This fourth variation of the materiality literature emphasises the roles played by the private prison industry and other firms in propelling the worldwide expansion of immigration detention. As will be explained in Chapter Three, the responsibility given to private firms such as Group 4 Securicor for the architectural planning, building, refurbishing, raising capital, and operations that was consolidated under Tony Blair's government has continued unabated. A core feature of the conceptualisation of a prison industrial complex in liberal states is that prisons are not constructed solely to house criminals; rather, a confluence of interests has led to the building of more prisons, the enactment of harsher laws, and the mass incarceration of poor people.¹⁶⁴ Likewise, the “immigration-industrial complex”¹⁶⁵ has led to a “fixing of capital in detention centers [sic] [that] creates political and economic incentives for maintaining immigration policies that mandate detention for migrants.”¹⁶⁶ There are also scholarly concerns that immigration detainees are being used as “a cheap and highly exploitable workforce.”¹⁶⁷

¹⁶² See American Civil Liberties Union of Ohio, 2011; Branche, 2011; Nakache, 2011; and National Immigration Forum, 2011.

¹⁶³ Andrijasevic, 2010; Cairns, 2004; Flynn, 2012a; Friend, 2010; Guild, 2005; Instone, 2010; McGregor, 2012; Pugliese, 2008; and Wills, 2009.

¹⁶⁴ Golash-Bazo, 2009: 302. The author continues that “those constituencies with interests in this mass incarceration include the media, private contractors, politicians, state bureaucracies, and private prisons.”

¹⁶⁵ Fernandes, 2007.

¹⁶⁶ Mountz, Coddington, et al., 2012: 8.

¹⁶⁷ Burnett & Chebe, 2010: 96. The 2008 UK detention centre guidance states detainees should be paid £1 an hour normally and £1.25 per hour for restricted projects such as painting a series of rooms; however, cases have been reported of detainees being paid 83p per hour and, when contextualised with the highly-priced products available to purchase in IRCs, UK detainees' “real wages” are revealed to be even more dismal.

The materiality of detention-as-spectacle

The materiality of immigration detention literature bluntly demonstrates the use by governments of detention-as-spectacle. As introduced by De Genova and subsequently popularised by a number of scholars, the key insight here is that it is governments' purposeful aggregation of threats as well as deportation itself that produces a vulnerable status amongst migrants and their community. It is the ever-present possibility of deportation - and detention - that is being performed through state power. In other words, De Genova is identifying the spectacle effect of public acts combined with insinuation of potential immigration enforcement as resulting in deportability. Likewise, the mobilities literature's spatial analysis of de-territorialisation/displacement and re-territorialisation/reconstitution in detention demonstrates the importance of place, time, and agency. This literature demonstrates how the locations and architectures of detention centres are deliberately devised to produce the most control and the least resistance. The spectacle effect here is the centralisation of control in government through incapacitation of non-citizens in detention centres. On a related note, the NIMBYism and detention literature explores the reaction of the local population to the building of detention centres. It demonstrates how government uses a spectacle effect not only to induce cooperation from the local population regarding the *idea* of detaining non-citizens for immigration-related purposes but also to have them then recoil from proposals of detention centres being operated in *their* neighbourhoods. Detention-as-spectacle is successful at tapping into a combined effect of racism, criminalisation, spatial privilege, and xenophobia to motivate NIMBY-ist reactions to detention. Also providing evidence for the success of detention-as-spectacle in the UK and elsewhere is the literature showing the extremely

high costs of detention do not deter construction of centres but, rather, convince more actors to enter the field. Indeed, the escalating range of interests and profit-driven corporations involved in the immigration industrial complex are reliant on detention-as-spectacle to criminalise, marginalise, and generally demonise non-citizens. Without detention-as-spectacle, the local population – and the media which reports on the detention estate - might not believe that harsh responses like mandatory and end-to-end detention processes are appropriate choices made by liberal states, thereby potentially compromising a multimillion-pound industry.

Giorgio Agamben and the state of exception

The third and final major approach to understanding the expansion of immigration detention across liberal states that I will examine is grounded in the work of Giorgio Agamben (1993, 1998, 2005). While undoubtedly problematic,¹⁶⁸ Agamben's work on the state of exception presents a sophisticated and nuanced analysis of the dynamics of sovereign power in immigration detention. His ideas continue to influence a literature on detention practices in liberal states that continues to evolve and produce new insights.¹⁶⁹

¹⁶⁸ Two notable critiques are Agamben's depiction of sovereignty as a unified mass, and his fetishisation of the figure of the refugee. On the first point, Papastergiadis (2006: 437) notes that "the camp is seen as a sealed and homogenous enclosure. Agamben exaggerates the levels of control. Even the totalitarian states with their 'closed' borders and their countless citizen 'informers' never succeeded in totally controlling their societies". This model of the sovereignty contributes to the silencing of people on the margins of power and trivialises acts of contestation by immigration detainees and irregular immigrants. The second principal critique is that Agamben maligns refugees as bare life and, as such, as incapable of political agency. For Agamben, the refugee is useful only for helping citizens to reimagine their political communities, and the detention centre is void of politics and life. To the extent that these critiques are true, Agamben risks reifying the sovereign power that he is trying to puncture. See, e.g., Silverman (2008), and Tyler (2006).

¹⁶⁹ French (2007) on the camp's extension into the community through the use of surveillance technology; Rajaram & Grundy-Warr (2004) on the dynamics of detention in Australia, Malaysia, and Thailand; Mitchell (2006: 95, 97) on the "profound limitations" of Agamben's analysis due to *homo sacer* being inappropriately based on a "'universal', individual, stripped-down white male body". See, also, Aradau, 2007; Butler, 2004, Chapter 3; Gregory, 2006; Johns, 2005; and Michaelsen & Cutler Shershow, 2004.

For Agamben, the sovereign (liberal) state exercises its power (in part) by excluding non-citizens from citizenship. He uses an examination of detention to deconstruct this operational logic of sovereign power. The anarchy that Thomas Hobbes imagined in the state of nature is the “always present and always operative presupposition of sovereignty”.¹⁷⁰ *Homo sacer*, or bare life, is a concept from ancient Roman law that refers to someone who could be killed with impunity and whose death conveyed no sacrificial value. Agamben adopts this term for people who are forced to inhabit spaces outside states’ power but within their purviews of control, including foreigners, refugees, bandits, coma patients, and criminals sentenced to death.¹⁷¹ As an approximation between man and beast, *homo sacer* is a representation of how the sovereign views the non-citizen.¹⁷²

The complex relationship between the sovereign state and *homo sacer* is termed the sovereign ban. Agamben (1998: 110 – 111) describes the sovereign ban as follows:

the force of simultaneous attraction and repulsion that ties together the two poles of the sovereign exception: bare life and power, *homo sacer* and the sovereign. Because of this alone can the ban signify both the insignia of sovereignty... and expulsion from the community.

The ban is an intimate, dynamic process that relates inclusion to exclusion, and bare life to political life.¹⁷³ These contradictory, powerful, and intertwined processes climax in the state of exception, figured in contemporary times as the immigration detention centre or refugee camp.¹⁷⁴

¹⁷⁰ Agamben, 1998: 106.

¹⁷¹ Agamben, 1993: 87.

¹⁷² Agamben, 1998: 109.

¹⁷³ Agamben, 1998: 8.

¹⁷⁴ Agamben (2005: 87) describes the state of exception as belonging to sovereign state power but being positioned outside of it:

From the real state of exception in which we live, it is not possible to return to the state of law [*state di diritto*], for at issue now are the very concepts of “state” and “law.” But if it is possible to attempt to halt the machine, to show its central fiction, this is because between violence and law, between life and norm, there is no substantial articulation... To

Agamben's state of exception builds on and expands three ideas from political theory: Carl Schmitt's idea of the sovereign as the power that decides on the state of exception in which normal legality is suspended; Hannah Arendt's analysis of human rights as citizens' rights; and, again, Foucault's "biopolitics" but this time the key is to recognise how sovereign power controls the right to life and permission to die. Agamben is influenced by Arendt's observation that the loss of a political community is equivalent to the liquidation of a citizen. Arendt (1951: 296, 297) argues that people lose their "right to have rights" when they lose their citizenship, forced to endure "the abstract nakedness of being human and nothing but human." Incorporating biopolitics, Agamben suggests that the pairing of enjoyment of human rights with citizenship status is not a fluke or mistake to be dislocated from the otherwise functioning state system; rather, this occurrence acts to shore up sovereign power.¹⁷⁵ Then, following Schmitt, Agamben argues that in fact sovereign power resides in the decision to decide on who loses the right to have rights and, hence, becomes bare life existing in the state of exception.¹⁷⁶

Agamben argues that the immigration detention centre is an important instance of the state of exception. For him, the state of exception constitutes law while simultaneously suspending it. It is a "zone of indistinction between outside and inside, exception and rule, licit and illicit, in which the very concepts of subjective right and juridical protection no longer make any sense."¹⁷⁷ The detention centre/state of exception signifies sovereign power through its determination of the reach of the law

live in the state of exception means to experience both of these possibilities and yet, by always separating the two forces, ceaselessly try to interrupt the working of the machine that is leading the West toward global civil war.

¹⁷⁵ Rancière (2004, p.300) explains that bare life "becomes the complicity of democracy, viewed as the mass individualistic concern with individual life, with technologies of power holding sway over biological life as such."

¹⁷⁶ Agamben, 1998: 170.

¹⁷⁷ Agamben, 1998: 170.

and the content of its own exception. The defining characteristic of contemporary times is that the allegedly temporary suspension of basic human rights and the rule of law in the state of exception has become a permanent state of affairs.¹⁷⁸

Agamben parallels immigration detention centres and concentration camps because he understands them as outside the reach of everyday law but included in normal practices by virtue of their exclusion. The police act as representatives of sovereign power in both of these spaces.¹⁷⁹ Agamben (1998: 175) argues the concentration camp / detention centre “is the hidden matrix of the politics which we are still living, and it is this structure of the camp that we might learn to recognize in all its metamorphoses into the *zones d’attentes* of our airports and certain outskirts of our cities.”¹⁸⁰ This comparison is taken up and explored by Agamben scholars who find it provides insights into understanding the operations of power in encampments such as detention centres.¹⁸¹

It is correct to draw attention to immigration detainees’ loss of basic rights (to liberty and freedom of movement most evidently). However, Agambenian scholars of detention/state of exception are perhaps overstepping by lumping together *all* detention centres across liberal states. Michael Flynn (2012b: 11) suggests that there is

a broad spectrum of rights that apply to migrant detainees, even if these rights are sometimes not respected. However, assessing relevant norms and whether detention practices are proportionate to the aims of immigration enforcement requires carefully identifying the particularities of a given detention situation, which would appear to be an inconvenient fact for much of the discourse on Agamben.

¹⁷⁸ Notably, the concept of the exception has been criticised on logical, empirical, and philosophical grounds. Cf. Lippert & Williams, 2012; Johns, 2005; Motha, 2002.

¹⁷⁹ Carter & Merrill, 2007: Footnote 9.

¹⁸⁰ Murray (2010: 73) argues that zones of indistinction point “to the fragility of the nation state, and to the erosion of its sovereignty which can only be shored up with a draconian reinforcing of sovereignty that, in the process, reveals its strange processes of exclusive inclusion.”

¹⁸¹ See, e.g., Carter & Merrill, 2007; Ek, 2006; Holian, 2012; McLoughlin & Warin, 2008; Mezzadra & Neilson, 2003; Papastergiadis, 2006; Schinkel, 2009; and Zannettino, 2012.

Carl Levy (2010: 100 – 101) likewise argues that “Agamben and his more enthusiastic followers .. distastefully lump together varieties of refugee camps, Auschwitz, and even gated communities.” Immigration detainees “should not be equated to (a historically inaccurate) mass of passive, half-dead inmates of Auschwitz’s work camps.”

Another dubious feature of Agamben scholarship on immigration detention concerns his relational logic of sovereign power and bare life. For Agamben (1998: 11), “bare life remains included in politics in the form of the exception, that is, as something that is included solely through an exclusion.” He (1998: 115) concludes that “today ... we are all virtually *homines sacri*.” However, does Agamben’s vision reduce thinking about immigration detainees to powerless agents at the whim of sovereign power?¹⁸²

Some scholars suggest that Agamben’s theory does not adequately account for acts of contestation *within* the state of exception, including the acts of lip sewing, fire setting, hunger strikes, and naked protests that periodically recur inside the UK detention estate. Antje Ellermann (2009: 23), for example, argues that

homo sacer has nothing left to lose and can act unconstrained by the fear of the consequences of resistance. ...Because in liberal democracies order so pervasively rests on voluntary compliance, sovereign power reaches an impasse where the state can no longer offer meaningful incentives to secure compliance. Ironically, then, it is those who hold no claims against the state that are most able to frustrate state control.

Researchers suggest that Agamben is both overly deterministic in his evaluation of sovereign power as well as extreme in his pessimism about the meaningfulness and possibility for change generated by immigration detainees’ protests and other forms of engagement.¹⁸³

¹⁸² Connolly, 2007: 27.

¹⁸³ With reference to the “thousands of protests by men and women – ranging from silent, individual acts of defiance to large-scale collective demonstrations” in Australian immigration detention centres,

On the other hand, it is possible to interpret Agamben's focus on the camp/detention centre as offering a way *out* of what appears to be his deterministic logic. For example, change to the sovereign monopoly of political power is possible because "however paradoxical it may seem, *challenges to sovereign power take place when there is a demand for a return to properly political power relations, and take the form of such a demand.*"¹⁸⁴ A detainee's act of protest represents "a re-enactment of sovereign power's production of bare life on the body of the refugee. It illuminates the way in which sovereign power, when it lays claim to the liberal values of fair process and human rights, relies on violence and exclusion."¹⁸⁵ Protest leads to a situation where the "sovereign power's drawing of lines between bare life and politically qualified life is being refused and a politics of radical relationality – power relations – put in its place." Likewise, Richard Bailey (2009) argues that episodes "of resistance in the camp.. appear to confirm [Agamben's] claim that it is the body, stripped of rights or politics, which is the ultimate referent of rights and law." On this second reading, then, Agamben's thesis exposes the ephemerality and weaknesses of sovereign power.

The state of exception and detention-as-spectacle

In any event, Agamben's theory of immigration detention as a state of exception coheres with the idea of detention-as-spectacle. The sovereign ban reveals that the sovereign power is not temporarily but constantly suspending law to pursue its own political aims. The state of exception is a spectacle of distraction whereby the sovereign solidifies and displays to citizens its power over *homo sacer*. Indeed, *homo*

Browning (2007: 79, 93) contends that "Agamben's critique of modernity implies that every effort is pointless – but even within a detention camp, the conditions of exception are not total and there is an intense and bitter struggle against absolute acquiescence." Likewise, Darling (2009: 662) interprets Agamben's oversight of protests as a suggestion to "dismiss the political advances that have been tentatively stepped towards ... [and] miss a very real political opportunity to herald future possibilities." See, also, Bailey, 2009b; Enns, 2004; Owens; 2009; and Sutton & Vigneswaran, 2011.

¹⁸⁴ Edkins & Pin-Fat, 2005: 12, emphasis in original.

¹⁸⁵ Edkins & Pin-Fat, 2005: 20 – 21.

sacer and the state of exception are meant to reflect back to citizens the meaning of politics: in this way, it is possible to see how they – and detention practices - are spectacles meant to intimidate and coerce non-citizens and citizens into behaving in a certain manner.

Discussion: The rise of detention-as-spectacle

Under a banner of security, crime, and cultural concerns, people may be subjected to demanding interviews, body or luggage searches, and scrutiny of their documents when attempting to enter a liberal state. If they do gain entry, all people are beholden to a series of rules stipulating minimum and maximum limits to their behaviours and movements. Some serious – but common - examples of these rules for non-citizens include weekly requirements to “sign on” at specific locations; sporadic, unannounced home visits; and provisos against getting married, accessing social services, or moving house without permission. These conditions lead to a situation of paroling valid visa-holders into the state, instead of releasing or admitting them full stop. Correspondingly, the state regards as violators of the law any visa-holders discovered to have broken an admission rule and, of course, non-citizens found in the territory without a valid visa. These immigration rule-breakers are then vulnerable to immigration enforcement actions. Likewise, foreign national prisoners¹⁸⁶ are punished once for their criminal act and then detained again for their immigration rules violation.

All of these categories of non-citizens are vulnerable to immigration detention. To date, scholars have identified the major issues of detention practices in liberal states as consisting of the criminalisation of migration and migrants, the escalating materiality of detention, and the normalisation of the state of exception à la Agamben. It is

¹⁸⁶ As discussed earlier, FNPs are non-citizens who are convicted of a criminal offense and sent to criminal jail or prison.

becoming apparent that each of these strands of legitimation is also promoting a complementary process of building a political spectacle of detention, or making use of detention-as-spectacle. Since government and media have effectively collapsed boundaries amongst criminals, suspects, and non-citizens, it is perhaps unsurprising that the local population responds in a reactionary, NIMBY-like manner to the *presence* of detention centres but remains broadly acquiescent to the *idea* of detention. The fact that many local residents sympathise and identify with the government's use of punitive, socially controlling measures towards (criminalised) non-citizens helps to explain the rise of immigration detention in the UK, the US, Australia, and other liberal states. Detention-as-spectacle is also intended to send a message of strength and potential arrest, detention, and deportation to immigration rule-breakers, other non-citizens resident in the state, and potential or would-be migrants thinking about journeying to the state.

The UK government has been moderately successful in generating a political spectacle out of detention. As I will demonstrate further in the next chapter, through the use of hyperbolic language, self/Othering, negative discourses, and displays of power over foreigners, Government has positioned immigration detention as a vital response to a crisis, an emergency, and a believable political myth. Each of the three literatures on detention in liberal states under review provides evidence that liberal states are building their detention estates on the foundations of a political spectacle. This political spectacle works to monopolise and normalise power over non-citizens in the hands of the state. It is no accident that the detention centres multiplying around the world resemble prisons or fortresses, that media promote a broadly negative view of non-citizens, and that the schedules of detainable infractions continue to grow while

rights accorded to detainees shrink: these are all examples of the political spectacle of detention.

There are major normative difficulties with the state's choice to construct a political spectacle out of immigration detention. The primary issues lie both with the contemporary escalation of detention's punitive and criminal-like treatment of non-citizens, and, more significantly perhaps, the effect of giving an impression that all non-citizens are potential detainees on the basis of their alienage and the power of the state. These issues are so grave that I am compelled to conclude that it is not ethically acceptable for liberal states to use detention as a political spectacle when detainees' dignity and basic rights are at stake. In fact, the political spectacle manipulates the use of detention to enforce border and immigration control in a grotesque fashion that cannot be normatively defensible for liberal states. As seen in each of the three literatures under review, the spectacle of detention impacts the development of legal, political, and social life in liberal states as well as those of immigration detainees and their communities. It has been constructed intentionally to marginalise and make vulnerable non-citizens in the name of a variety of other interests. This usage of detention is normatively impermissible for liberal states. The impacts of the political spectacle of detention will be explored in subsequent chapters, and I turn in the next chapter to examine the history of the UK detention estate as a case study in the development of detention practices.

Chapter Three: A history of the development of the UK detention estate

Introduction

The previous chapter highlighted that immigration detention is often used as a political spectacle both to instill confidence in the state's monopoly of power over immigration and borders, and to send a message of strength and policing to non-citizens who are either living in the territory or attempting to migrate. This chapter takes a step back from this theory of detention as spectacle, and examines the development of immigration detention in one particular liberal state. It has the dual purpose of tracing the legislative history of the evolution of detention as well as identifying the common justification(s) provided by Government for their detention practices.

In my examination of the historical development of the UK detention estate, I am attempting to paint a portrait of one particular state in order to demonstrate that detention does not emerge *de novo*. Indeed, the history of the expansion of the UK detention estate reveals a *reactionary stance* whereby detention is legislated as a response to endogenous and exogenous political events. Key issues facing asylum seekers, foreign national prisoners, pregnant women, torture survivors, mentally disabled adults, and children, also come to light through presenting this history.

This chapter also traces the historical line of justification for detention provided by the UK government in primary material gleaned from the Hansard Archives, public policy documents, and official statements. As mentioned, the contemporary UK immigration detention estate did not materialise out of the blue, and it is important to understand how the Government has characterised its use of detention over the years in order to gauge its normative permissibility in later parts of the thesis.

Why the United Kingdom?

I focus in this thesis on the UK detention estate for a number of interrelated reasons based on national values, identity, migration history, and size of detention estate. British society has traditionally respected the core liberal values of individual rights to liberty, autonomy, and dignity.¹⁸⁷ The UK's 1998 adoption of the Human Rights Act effectively acts as a bill of rights for non-citizens by incorporating the European Convention on Human Rights into domestic law and undoing migrants and asylum seekers' reliance on international and regional instruments for protection.¹⁸⁸ The UK is also a signatory to a number of conventions and treaties guaranteeing basic rights to migrants and asylum seekers.¹⁸⁹

As we will see below, the UK's national identity is complex in its relation to immigration. The reasoning for UK immigration and asylum policies is highly politicised and influenced by the media and political ideology.¹⁹⁰ The UK is a post-imperial state on the peripheries of Europe with a predominantly Protestant Christian identity tied to the Church of England.¹⁹¹ Save for a generalised focus on social cohesion, integration, and citizenship, the UK has no clearly and consistently signposted immigration and asylum philosophy.¹⁹² Nevertheless, immigration has been a source of "bitter national debate" since at least the 1960s.¹⁹³ Following the UK's experience with larger-than-expected numbers of newcomers immigrating after the

¹⁸⁷ Joppke, 1996: 477.

¹⁸⁸ Waites, 2008: 25.

¹⁸⁹ These include: the 1951 Refugee Convention and its 1967 Protocol (Refugee Convention); the Universal Declaration of Human Rights; the Convention Against Torture; the International Covenant on Civil and Political Rights; the United Nations Convention on the Rights of the Child; and the European Convention on Human Rights.

¹⁹⁰ Waites, 2008: 29.

¹⁹¹ Sales, 2005.

¹⁹² The lack of an immigration philosophy in the UK can be helpfully contrasted with the US "nation of immigrants" or the Australian twin interests in building an "ethnically plural society" while warding against becoming "overwhelmed by an Asian world routinely perceived as restive and hostile" (Philpott, 2002: 64),

¹⁹³ Hansen, 2003: 28.

2004 European Union enlargement, the *visibility* of migrants and asylum seekers in the UK - in schools, in jobs, in public housing, and in media depictions - has contributed to making immigration a prominent national issue.¹⁹⁴

Finally, the UK is increasingly reliant on expanding its immigration detention estate to fill legal and practical holes in its immigration and asylum policies. The UK detention estate is amongst the largest and most developed detention apparatuses in the world.¹⁹⁵ In passing policies that rely on detention for their successful execution, the most recent Governments have further deepened the interdependency between detention and the larger immigration control apparatus. Speaking in Parliament in June 2008, former UK Minister for Borders and Immigration Phil Woolas argued that immigration detention “is an essential part of the Government’s commitment to operate a ‘firm but fair’ immigration and asylum policy by assisting us to remove those who do not qualify for leave to remain here and who refuse to leave the UK voluntarily or who would otherwise abscond.”¹⁹⁶ This quote indicates the prominence of detention to UK immigration control policy and speaks to the reasons why the detention estate has expanded practically every year for the past decade.

The current state of the detention estate

The UK detention estate is one of the largest in Europe, and among the most expansive systems in the world. It comprises a mix of physical infrastructure and regimes of surveillance and control adapted from penal institutions. It is characterised by: old penal or military buildings as well as purposely-built, privately-operated facilities;¹⁹⁷ CCTV cameras, and other electronic surveillance mechanisms; transport

¹⁹⁴ Waites, 2008: 29.

¹⁹⁵ Silverman & Hajela, 2012: 2.

¹⁹⁶ Hansard HC Deb 8 June 2009 Col 628.

¹⁹⁷ As examples, IRCs Campsfield House and Haslar were previously operated as prisons and young

vans with bars and escorts who handcuff detainees en route; and guards, videolink facilities, and immigration courts.¹⁹⁸ The estate makes use of prisons, ships, interdiction and reintegration units abroad, and a facility for families known as the Cedars *pre-departure accommodation centre* in Pease Pottage, West Sussex. It also includes non-residential holding centres and police custody suites.

The capacity of the UK detention estate is over 3,500 places. According to Home Office daily snapshots, between 2009 and 2011, the average number of people in immigration detention is 2,500 people on any given day.¹⁹⁹ 25,935 individuals were held in UK immigration detention facilities in 2010.²⁰⁰ On 31 March 2012, the Home Office snapshot revealed 3,034 immigration detainees, the highest since publication of data began in 2001, and 14% more than on the same day the previous year (2,654).²⁰¹

Growing steadily since the 1980s, the concentration of immigration detainees has shifted categories from visa overstayers who had been identified through denunciations, traffic accidents, or crimes (as victims or perpetrators) in the 1990s,²⁰² to asylum seekers and foreign national prisoners in the 2000s and early 2010s. From December 2008 until September 2010, for example, asylum seekers constituted 67.75% of the total detainee population.²⁰³

Notably, there were 581 FNPs held post-sentence in prisons in July 2010,

offender institutions by the Prison Service. IRC Dungavel had a similar background in the Scottish Prison Service. IRC Oakington occupies old Ministry of Defence buildings. IRCs Tinsley House, Harmondsworth, and Yarl's Wood were purpose built. IRC Lindholme is part of a prison complex, and occupies a mixture of old military buildings and new purpose built ones. IRC Dover was originally a fort that is surrounded by a steep, deep dry moat (Shaw, 2004: 392).

¹⁹⁸ McGregor, 2012: 238 – 239.

¹⁹⁹ Home Office statistics records 2,525 immigration detainees on 31 December 2010. For comparison's sake, this number can be viewed against the statistics of 1,950 total immigration detainees on 25 December 2004 and 780 on 30 December 1998 (Silverman, 2011b; UK Home Office, 2011).

²⁰⁰ UK Home Office, 2010a; UK Home Office, 2011b.

²⁰¹ UK Home Office, 2012a.

²⁰² Bloch & Schuster, 2005: 499.

²⁰³ Silverman, 2011b. Most asylum seekers are granted temporary admission while their claims are being considered.

meaning that there was an additional 18 - 20 per cent of the immigration detention population living outside IRCs that ought to be counted in the overall tally.²⁰⁴ FNPs may remain incarcerated post-sentence while they appeal their removal orders and/or while the UK authorities make travel arrangements for them, including securing documents and booking flights.²⁰⁵ FNPs are becoming an increasingly large minority in the British prison system: between 1999 and 2009, there was a 152 per cent increase in foreign national prisoners, compared to a 55 per cent increase in British nationals in prisons.²⁰⁶ Currently, FNPs account for approximately 15% of the UK prison population.²⁰⁷ A Service Level Agreement of 1 May 2009 stipulates that six hub prisons were to have an embedded team of UK Border Agency staff and that two prisons were to be dedicated exclusively to housing FNPs.²⁰⁸

It is not unusual for the Home Office to re-categorise someone's detention while it is on-going: for example, FNPs may be held for a mix of post-sentence criminality, documentation issues, and visa violations, and visa overstayers may claim asylum while in detention. A high number of Afghan, Eritrean, Indian, Jamaican, Nigerian, and Pakistani males are entering IRCs,²⁰⁹ and the majority of immigration detainees are single men who have applied for asylum.²¹⁰

²⁰⁴ Hansard question from 26 October 2010 cited in Association of Visitors to Immigration Detainees, 2011: 1. Kofman, Lukes, D'Angelo, & Montagna (2009: 127 - 128) recorded 11,211 FNPs in September 2007, comprising fourteen per cent of the overall prison population, and one in five women in prison was a foreign national. Since the UK Borders Act 2007 makes each of these FNPs automatically eligible for removal, it is possible that there are more FNPs held post-sentence than are reflected in these numbers.

²⁰⁵ Fekete & Webber, 2010: 14.

²⁰⁶ Kofman, Lukes, D'Angelo, & Montagna, 2009: 127.

²⁰⁷ Smith, 2007.

²⁰⁸ The hub prisons are HMP Risley, HMP Hewell, HMP Morton Hall, HMP The Mount, HMP The Verne, HMP Wormwood Scrubs; the other two prisons are HMP Canterbury and HMP Bullwood Hall (Kaufman, 2012: Footnote 4; UNLOCK UK, 2011).

²⁰⁹ Particularly when compared to the population of female or white detainees (UK Home Office, 2010b: Table 3(f)).

²¹⁰ UK Home Office, 2010b: Table 3(f).

Lengths of detention typically span two to six months in the UK estate.²¹¹ There is no legislative upper threshold on the time length of detention but European Court of Human Rights standards on front-end detention only permit short periods of detention.²¹² The 2008 European Union *Returns Directive* is a legally-binding measure mandating a maximum stay of six months of pre-removal detention with an optional 12-month extension; however, the UK has thus far opted not to become bound by this measure.²¹³ Of the 3,034 people held in immigration detention on 31 March 2012, 1,270 (42%) had been detained for less than 29 days; 685 (23%) for between 29 days and two months; and 461 (15%) for between two and four months. Of the 618 (20%) detainees remaining, 118 had been in detention for between one and two years, and 42 for two years or longer.²¹⁴

In 2009, there were over 1,000 children detained in the UK; in 2010, this number declined to just over 400, most of whom had claimed asylum at some point; and in 2011, there were about 100 children in UK detention facilities.²¹⁵ Since then, the number of children entering the UK detention estate has increased quarter on quarter. The number of children entering detention was 53 in the first quarter of 2012. On 31 March 2012, there was one child being detained in the Cedars centre.²¹⁶

Immigration detention is a discretionary power. Immigration officers are exercising powers conferred on the Home Secretary under a number of different

²¹¹ Over the period December 2008 – December 2010, approximately 10% of immigration detainees were held between six months and one year, and an additional 8 – 10% were held in excess of one year (Silverman, 2011a: 3).

²¹² See *Saadi v. UK*, described in Appendix One.

²¹³ The controversy over the 2008 “Returns Directive” stems from the fact that the UK operates its immigration control policy independently of EU-level constraints. In the 1990s the UK was tasked with harmonising its immigration detention policy in line with the comparably more lenient or less punitive ones in the EU. However, since each Member State could establish autonomous immigration detention estates, the UK was able to continue governing its estate autonomously. See European Union Council, 2008.

²¹⁴ UK Home Office, 2012a.

²¹⁵ Silverman & Hajela, 2012: 2.

²¹⁶ UK Home Office, 2012a.

immigration acts. This decision to detain is not automatically subject to independent review. The most accessible way for immigration detainees to seek release from detention is to make a bail application to an independent immigration judge at the First-tier Tribunal of the Immigration and Asylum Chamber (FTIAC), the only independent review of detention (short of making an application to the higher courts).

The Home Office has contracted with a combination of private security firms and the Prison Service to outsource the management of the majority of the detention estate.²¹⁷ Although the private sector has been involved in the administration of the UK immigration detention estate since its inception, the trend towards privatisation of architectural planning, building, refurbishing, raising capital, and prison operations that was intensified under Prime Minister Tony Blair's government has since continued unabated.²¹⁸ Group 4 Securicor, or G4S, holds the majority of these contracts.²¹⁹ The Bristol-based MITIE Group PLC also won a £27-million contract in summer 2011 to manage IRC Campsfield House; MITIE charges the UK government approximately £630 per detainee per week. MITIE Group PLC (2011) describes the detention estate as "an area where we anticipate significant future opportunity." The Home Office also contracts private, for-profit security firms to enforce and supervise removals from the UK.²²⁰

²¹⁷ Burnett & Chebe, 2010: 97; Flynn & Cannon, 2009; Menz, 2011; and Silverman, 2011a: 3. Researchers have found evidence of a large variety of state interests, private firms, and other actors with financial stakes in the immigration control industry, particularly in the continuing growth of immigration detention. On the US, see Díaz Jr., 2011; Fernandes, 2007: 71, *passim*; Koulis, 2007; and Sullivan, 2010. On Australia, see Grewcock, 2007: Chapter 6; and Pugliese, 2008.

²¹⁸ Bacon, 2005: 18 – 19. This trajectory is not unique to the UK: the first private prisons in the US, which began operating in 1984, were IRCs (Sklansky, 2012: 183).

²¹⁹ Silverman, 2011a: 3. These private firms who manage immigration detention centres for profit operate worldwide: Australia inked a five-year, 279 million AUD (£177 million) contract in July 2012 with the private firm, Serco, to run its immigration detention system. Serco manages the two UK IRCs, Colnbrook and Yarl's Wood.

²²⁰ Allegations of dangerous and improper use of control and restraint techniques have been lodged against the private firms contracted to enforce removals from the UK. The undue force employed by immigration detainee escorts appears to have led to the October 2010 death of Angolan asylum seeker

The term “indefinite immigration detention” is technically misleading. In the UK, immigration detention is always temporary, and it is used predominantly for “people who have no legal right to be in the UK but have refused to leave voluntarily.”²²¹ Although there is no official upper time limit for an individual’s period of immigration detention, case law establishes that is not to exceed six years of pre-deportation detention.²²²

The UK Border Agency was set up in 2008 as an umbrella institution to carry out the work then being done by the Border and Immigration Agency, HM Revenue and Customs at the border, and the Foreign Office. It was given responsibilities for securing the UK border at air, rail and sea ports. It was also bestowed with power over migration controls, such as the issuing of visas.²²³ Following revelations in an official report in 2012 that the UK Border Agency allowed hundreds of thousands of people into the territory without appropriate checks, Home Secretary Theresa May announced plans to make the UK Border Force - the section of the UK Border Agency that manages entry to the UK - into a separate entity. As of 2012, each of the two institutions has its own director and is accountable directly to ministers.²²⁴

Jimmy Mubenga; the Crown Prosecution Service declined to press charges against the three escorts from the private firm, G4S, that supervised Mubenga’s removal (Amnesty International, 2011; Lewis & Taylor, 2012). See, also, Travis, 2011, citing Chief Inspector of Prisons, Nick Hardwick’s, comments on this “objectionable practice.”

A similar outcry followed the July 1993 death of Joy Gardner, a Jamaican immigrant who had overstayed her visa and who was restrained during her forcible deportation with a body belt and other instruments, and eventually suffocated after having her mouth wrapped with thirteen feet of tape to stop her screaming. See Weber, 2002, discussing how the death led to the disbanding of the Metropolitan Police Deportation Group; Gibney & Hansen, 2003, discussing the deceleration of removals in the wake of Gardner’s death; and Fekete, 2005: 75, describing how the lawyers for Joy Gardner’s son have been seeking compensation for the psychological damage that the boy (then aged 5) suffered after witnessing his mother’s death.

²²¹ UK Border Agency, 2011a.

²²² Wilsher, 2008: 905 – 906.

²²³ Byrne, 2008.

²²⁴ BBC World Service, 2012.

The legislative foundations of immigration detention in the UK

In this section of the chapter, I trace the chronological development of immigration detention legislation in the UK. Of interest here is how the major pieces of legislation enacted changes to how and why non-citizens were detained.

Table 1. Key UK legislation that formalised and expanded the immigration detention estate. (Reprinted with modifications in Silverman, 2012).

Government	Legislation	Detention Innovation
1895 - 1905: Conservative - Unionist (Balfour)		
	1905: Aliens Act	Secretary of State free to detain aliens
1906 - 1918: Liberal (Asquith)		
	1914: Aliens Act	Removal of detention exception for political refugees; elimination of appeals process; registration of aliens with police
1970-1974: Conservative (Heath)		
	1971: Immigration Act	Formal, statutory basis for immigration detention; formal discretionary detention powers for immigration officials
	1971: Immigration Rules	Administrative rules and departmental instructions for governing detention
1990 - 1997: Conservative (Major)		
	1993: Asylum and Immigration Appeals Act	Creation of accelerated asylum appeals procedure in detention
1997-2007: Labour (Blair)		
	1999: Immigration and Asylum Act	Provisions for automatic bail hearings (never implemented); statutory rules for contracting out and managing detention centres
	2000: Detained Fast Track	detention for single male asylum seekers at Oakington until initial decision in cases
	2002: Nationality, Immigration and Asylum Act	revocation of automatic bail hearings proposal Clause 57; section 62 gave the Secretary of State powers to detain in certain cases where previously only the immigration service could detain; section 71(3) allowed for detention of asylum seekers who have existing leave to remain; section 94 introduced the Detained Non-Suspensive Appeals (DNSA) process
	2006: Immigration, Asylum and Nationality Act	detention to verify and detain passengers' identity documents; biometrics
2007 - 2010: Labour (Brown)		

2007: UK Borders Act	detention for migrants of interest to the police and thus possibly in violation of immigration status
2009: Borders, Citizenship and Immigration Act	application of PACE orders to immigration detention

The UK case typifies the development of immigration detention across liberal states. Prior to the twentieth century, Britain had very little legislation to regulate immigration throughout the Realm.²²⁵ Beginning in the 1870s, however, there was a burgeoning sense of unease regarding immigration.²²⁶ In response, Parliament eventually passed the Aliens Act of 1905 and vested an immigration control bureaucracy with formal powers of exclusion.²²⁷

The Aliens Act 1905 is the first immigration control act passed in the UK outside of wartime. Although aliens had previously been held aboard arriving ships to determine whether they could be admitted,²²⁸ the Aliens Act 1905 gives the Secretary of State formal powers to detain aliens for administrative purposes.²²⁹ Section 1 of the Act sets out the categories of detainable aliens, and includes the poor, the mentally ill,

²²⁵ Politicians and opinion-makers were preoccupied with outgoing migration, labour migration, and building the Empire and Commonwealth.

²²⁶ Hayes (2002). In addition to the non-white subjects moving throughout the realm, a prominent issue was the influx of Russian and Eastern European Jews escaping famine, persecution, and the discriminatory May Laws (Cohen, 1994: 41; Gainer, 1972).

²²⁷ Failure to pass a poverty test as well as being deemed mad, diseased, and/or criminal qualified aliens as undesirable entrants, and thereby liable to pre-removal or pre-admittance detention. The 1905 Act established the post of immigration officer and allowed these officers an unprecedented level of discretion in deciding who could be excluded, detained, or deported (Hansen & King, 2000: 397). The Act also called for the establishment of appeals boards.

²²⁸ It was not uncommon to hold ships' captains accountable for improperly documented passengers, and to occasionally levy liability fees for transporting those aliens (Dummett & Nicol, 1990: 149; Schulte Beerbühl, 2003: 569 - 575; Stevens, 2004: 18).

²²⁹ The Aliens Act 1905, Stat. 5 Edw. VII c.13. 11 August 1905. Section 7(3) reads

Any immigrant who is conditionally landed, and any alien in whose case an expulsion order is made, while awaiting the departure of his ship, and whilst being conveyed to the ship, and whilst on board the ship, until the ship finally leaves the United Kingdom, and any alien in whose case a certificate has been given by a court, with a view to the making of an expulsion order under this Act, until the Secretary of State has decided upon his case, shall be liable to be kept in custody in such manner as the Secretary of State directs, and whilst in that custody shall be deemed to be in legal custody.

the infirm, non-political criminals, and aliens under removal orders.²³⁰ Notably, Section 1(1) of the Directions 1905 stipulates that “the alien shall, unless the Court otherwise directs and admits him to bail, stand committed to the prison to which the Court ordinarily commits prisoners until the Orders of the Secretary of State with respect to his expulsion are received”; in this way, an addendum to the Aliens Act 1905 introduces the idea that circumscribing periods of time in detention should be left to the discretion of the Government.

Detention legislation was refined over the course of the two world wars in conjunction with the wartime internments of so-called enemy aliens.²³¹ The 1914 Aliens Restriction Act removed the exception from detention for aliens fleeing religious or political persecution, and eliminated the appeals process.²³² Thanks to Parliament’s annual renewal of the Aliens Restriction (Amendment) Act of 1919, the Government continued practicing administrative immigration detention throughout the 1920s and 1930s although it was on a small scale.

While there was little change in the legislative structure of immigration detention powers through the 1940s and 1950s, incremental changes came with the Commonwealth Immigrants Act 1962, which sought to restrict the free movement of Commonwealth migrants. The 1968 Commonwealth Immigrants Act consolidated these restrictions.²³³ By the late-1960s, Members of Parliament began discussing a new comprehensive immigration bill²³⁴ and this discussion culminated in the Immigration

²³⁰ All arriving passengers carried the onus of proving that they were not aliens if the Secretary disputed their origins (The Aliens Act 1905, Stat. 5 Edw. VII c.13).

²³¹ Silverman, 2012b.

²³² Shah, 2000: 43.

²³³ The 1968 Commonwealth Immigrants Act was rushed through Parliament in three days in response to an increasing number of East African Asians exercising their rights as UK passport holders to enter the UK from Kenya (Bloch, 2000: 32).

²³⁴ Immigration controls remained administrative during the 1950s: concerns regarding Britain’s diplomatic relationship to the ‘new’ Commonwealth countries, as well as filling the labour gaps in an

Act 1971. The 1971 Act describes the first formal, statutory basis for immigration detention and remains in place in 2013. The Act legislates for administration immigration detention pending completion of examination, a decision to remove, the execution of removal directions, or deportation orders.²³⁵ The Immigration Act 1971 does not specify upper limits on lengths of time for individuals in detention. Developed as non-statutory department instructions to accompany the 1971 Act, the Immigration Rules provide structure for the discretionary powers of immigration officials.²³⁶

The first designated facility for immigration detention for five days or more opened in 1976. This research centre outside the London airport was known as the *immigration service detention centre at Harmondsworth*. In its first year, the facility detained 3,767 people, and 5,128 were held in 1978. The longest period of detention in the 1970s was one detainee who was held for 198 days in 1978.²³⁷ Figure 1 demonstrates the trajectory of the facility that is now known as IRC Harmondsworth.²³⁸

expanding economy, took precedence over comprehensive legislative reform (Squire, 2005: 54; Hansen, 2000).

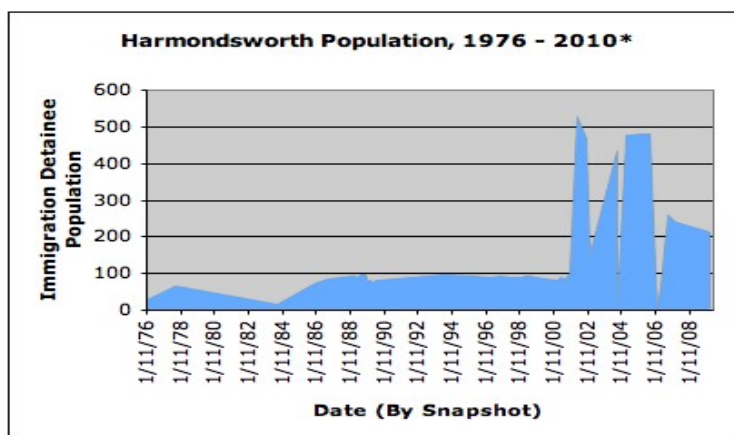
²³⁵ Clayton, 2006: 510. Under Section 4(1) of the Immigration Act 1971, immigration officers may give or refuse leave to enter the UK, and, under Schedule 2, Section 16 (1), the Secretary of State holds the exclusive power to give leave to remain. Notably, The leave to remain is different from the leave to enter. The leave to enter refers to a transitory visit to the UK, while the leave to remain must be obtained if a visitor wishes to remain in the realm for a substantial period of time. Under Section 3 of the Act, leave to remain may be granted to a visitor for a definite or indefinite period, and the visitor may have to abide by regulations concerning work, the support of dependants, and recourse to public funds.

²³⁶ Marrington, 1986: 272 – 274. The current UK Border Agency Instruction and Guidance on Detention and Temporary Release now function in virtually the same way as the Immigration Rules. The Detention Centre Rules

²³⁷ Hansard HC Deb vol 961 cc 83 - 4W (23 January 1979)). It should be noted that these statistics are not entirely reliable because, until 1 May 1987, central records of immigration detainees were kept only where detention under Immigration Act powers exceeded one month (Hansard HC Deb vol 120 cc117-8W (21 July 1987)).

²³⁸ The UK Home Office significantly expanded the capacity for detention at Harmondsworth in 2001. Harmondsworth was briefly out of usage following two major incidents where detainees set fire to large swaths of the facility on 19 July 2004 and again on 28 November 2006.

Figure 1. The population of Harmondsworth Immigration Removal Centre according to sample daily statistics, or snapshots, beginning in 1976.²³⁹



Another notable detention facility was the *MV Earl William*, a ferry that was converted into a floating detention centre in the late-1980s. In 1987, Prime Minister Margaret Thatcher’s government began detaining large numbers of Tamils who defied a visa requirement to come to the UK to seek asylum. After the detention estate reached full capacity, the Home Office hired the disused Channel car ferry *MV Earl William* to provide accommodation for new detainees. As of mid-June 1987, there were at least seventy detainees on board,²⁴⁰ and on 1 July 1987 records indicate 80 asylum seekers on board.²⁴¹ Within a month, the detainees were complaining about staff attitudes and the facilities aboard ship. On 1 August 1987, sixty-four detainees went on hunger strike to demand fairer treatment. Journalists began to cover the story, and forty-nine strikers soon extended their action to a “lie-in”. The protests provoked discussion in Parliament on the treatment of immigration detainees, and Members of Parliament visited the ship and engaged directly with the protestors. After almost two

²³⁹*Hansard archives, Her Majesty’s Inspectorate of Prisons reports, and Home Office data.* I selected this method of charting daily snapshots because it provides a potentially more accurate statistical sample. Since detainees are rotated through facilities, and it is often unclear whether detainees are being double-counted, it seemed more reflective to take single population accounts of various days to track the centre’s expansion over time. Note that prior to 1 May 1987, records were kept only where detention exceeded one month.

²⁴⁰ Hansard HC Deb vol 120 c 781 (21 October 1987).

²⁴¹ Hansard HC Deb vol vol 120 cc117-8W (21 July 1987).

weeks, the protesters called off the demonstration.²⁴² The treatment and protests of the *MV Earl William* detainees catalysed a group of activists to convene the Charter '87, or Charter 87 for Refugees to lobby for an end to the detention of Tamils in the UK.²⁴³

After the marked increase in the arrivals of asylum seekers in the 1980s and early 1990s discussed below, the UK Government refined its use of immigration detention. The Asylum and Immigration Appeals Act 1993 allows the Government to implement an *accelerated appeals process*. This legal regime was intended to efficiently remove those claimants who were thought to be using the asylum system to enter the territory for other, usually economic, reasons without prejudicing the applications of genuine Refugee Convention claimants. Since “blanket” rejections of certain applications would violate aspects of both international refugee and human rights law, the UK implemented the *accelerated appeals* process to hold groups of asylum seekers whose cases were either “without foundation”, “frivolous” or “vexatious”, or whose detention did not otherwise violate the UK’s Refugee Convention obligations.²⁴⁴ Instead of the then-standard ten day window for appeals, refused claimants detained in this process were given a two-day window appeal to a

²⁴² The hunger strike and lie-in aboard the *MV Earl William* was part of a larger campaign for release by detained Tamil asylum seekers. On 17 February 1987, for example, twelve men in a group of fifty-eight Tamils stripped off their clothes in freezing weather on the tarmac at Heathrow Airport to protest their imminent deportations. This action shocked the assembled media and the detainee escorts; it contributed to successful efforts to win judicial review for all members of the group, including women and children (Ashford 1993; Researching Asylum in London, 2006).

²⁴³ AIM25: Archives in London and the M25 Area, 2009. An additional layer of notoriety tainted the *MV Earl William* when it became unmoored and took on water during a violent storm on 16 October 1987. The ferry eventually ran aground and everyone onboard was subsequently evacuated safely. The following day, 70 of the 78 *Earl William* detainees were released on compassionate grounds. Tamil asylum seekers were also released from immigration detention centres across the UK. (Hansard HC Deb vol 120 c 781 (21 October 1987; Hassan, 2000: 188)

²⁴⁴ The Asylum and Immigration Appeals Act 1993 also legislated compulsory fingerprinting, the curtailing of social housing for asylum seekers with any temporary housing, and the imposition of further penalties on carriers found to have transported undocumented or irregular migrants (Bloch, 2000: 34 - 35; Stevens, 1998: 206).

special adjudicator for relief from deportation.²⁴⁵ The *accelerated appeals* process also ushered in the “Safe Third Country” rule: asylum seekers were to be removed to any state passed that they passed through *en route* to the UK provided that this “third country” is deemed safe.²⁴⁶

In 1993, the Home Office acquired a former Young Offenders Institution called Campsfield House to refurbish as an immigration detention facility, the first since Harmondsworth was re-rolled.²⁴⁷ Within six months of being operational, Campsfield suffered a major setback when six asylum seekers escaped following a rooftop protest. The facility remained in the public eye as public protests occurred outside its gates and low-level disturbances continued inside its walls over the next few years. In the wake of sporadic rioting, hunger strikes, and suicides, the UK government concluded and then reversed its decision to close the facility.²⁴⁸ Still functioning in 2012, IRC Campsfield House detains single males whose ages typically range from 25 to 35 years with an average stay of 53 days.²⁴⁹

The Asylum and Immigration Act 1996 supplements the accelerated appeals procedure and creates a “White List”. A White List comprises safe countries of origin to which asylum seekers could be repatriated should their cases be refused; asylum seekers from White List countries could also be denied an in-country right of appeal.²⁵⁰

While the Immigration and Asylum Act 1999 promised automatic bail hearings before

²⁴⁵ Harvey, 1997: 66, 64.

²⁴⁶ See Chapter One’s descriptive section on the Dublin II Regulation.

²⁴⁷ Burrell, 2002.

²⁴⁸ In August 1997 approximately 50 Campsfield immigration detainees participated in a daylong disturbance (BBC World Service, 2007). There were major riots and/or hunger strikes in Campsfield House in June 1994, August 1998, March 2007, and August 2010, amongst others. There have also been suicide attempts and self-harm incidents, including the suicide of a Kurdish teenager in July 2006 and the suicide of a young man in August 2011 (Frith, 2006; Peretz, 2011; Taylor & Taylor, 2011; Walker, 2009).

²⁴⁹ Asylum Welcome, 2008.

²⁵⁰ The 1996 Act also withdrew social welfare benefits and labour rights from asylum seekers while their refugee statuses were being determined, and provided for sanctioning of employers where they recruited immigrants without valid visas (Stevens, 1998: 210 – 222; Banks, 2008: 45).

Magistrates for asylum seekers and immigration rule-breakers who were not accused of any crimes, the Nationality, Immigration and Asylum Act 2002 repealed this policy.

The Labour Party under Tony Blair and the contemporary expansion of immigration detention

When the Labour Party came to power in 1997 under Tony Blair, the new Government found a backlog of asylum applications and a divisive national discourse over asylum and immigration policy.²⁵¹ Over the next decade, the Government under Labour introduced a “managed migration” approach for determining how many migrants and asylum seekers to allow into the UK.²⁵²

While Home Office statistics indicate that the UK received only a few hundred applications for asylum yearly throughout the 1970s,²⁵³ the escalation and conclusion of the Cold War brought large, sporadic influxes of “spontaneous” asylum seekers from South Asia and Africa to Western Europe.²⁵⁴ These influxes generated additional pressure on the UK asylum system for dealing with asylum claims quickly and fairly.

The raft of spontaneous new arrivals following the end of the Cold War became known as the New Asylum Seekers. The numbers of New Asylum Seekers grew quickly through the late-1980s and 1990s to peak at 84,130 refugee claims in the UK in 2002. Table 2 demonstrates the trajectory of the New Asylum Seekers in the UK. The appearance of the New Asylum Seekers in the UK spoke to larger exogenous and endogenous changes²⁵⁵ in the international refugee regime.

²⁵¹ Bloch, 2000; Bosworth, 2008b: 204 – 205; Cheong, Edwards, et al., 2007; Malloch & Stanley, 2005.

²⁵² UK Home Office, 1998.

²⁵³ Waites, 2008: 29.

²⁵⁴ Whereas in 1976, Western European states received approximately 20,000 “spontaneous” asylum seekers (people arriving outside of quota refugee programs), in 1980, they received over 158,000 applicants (Martin, 1998: 4 – 5).

²⁵⁵ The three principal changes are: the quickening speed of international travel; the lowering of national barriers to exit; and that the old classificatory system of determining *bona fide* refugees was due for re-development (Martin, 1998: 8 – 11). The international refugee regime itself was not new, with Lippert (1999: 302 – 303) dating the recognition by public and private authorities that “the world was in such a

Table 2. Asylum applications in the UK, 1985 – 2002²⁵⁶

Year	Asylum applicants (excluding dependants)	Year	Asylum applicants (excluding dependants)
1985	4,389	1995	43,965 (+34%)
1987	4,256 (-3% from previous year)	1996	29,640 (-33%)
1988	3,998 (-6%)	1997	32,500 (+10%)
1989	11,640 (+191%)	1998	46,010 (+42%)
1990	26,205 (+125%)	1999	71,160 (+55%)
1991	44,840 (+71%)	2000	80,315 (+13%)
1992	24,605 (-45%)	2001	71,025 (-12%)
1993	22,370 (-9%)	2002	84,130 (+18%)
1994	32,830 (+47%)	2003	49,405 (-45%)

Echoing the tabloid press, the Conservative official opposition accused the Blair government of being “too soft” on the New Asylum Seekers. The accusation focussed in particular on the allegedly high numbers of asylum seekers who had absconded under their watch.²⁵⁷ The Blair government responded in part by constructing new detention facilities, re-rolling old institutions into detention centres, and introducing the Detained Fast Track (DFT) process in the Nationality, Immigration and Asylum Act 2002.

The Detention Centre Rules, a statutory instrument which governs the processes in detention facilities, were promulgated in 2001. Rule 3(1) states:

The purpose of detention centres shall be to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression.

This statement of purpose underpins many of the decisions that taken with regard to the

political and moral state that it could be relied on regularly to produce refugee crises, refugee movements, and refugees .. routinely” to the 1960s.

²⁵⁶ Sources: Refugee Council, 1992; Bloch, 2000: 30; Stevens, 1998: 208; ICAR, 2009.

²⁵⁷ Gibney, 2004: 126.

operation of detention centres, now called IRCs. The Detention Centre Rules also provide for all IRCs to operate a form-based request and complaints system, and an additional confidential complaints system is operated in all detention centres by the Independent Monitoring Board.²⁵⁸

The 2002 White Paper, *Secure Borders, Safe Haven*, describes the “managed migration” and a related proposal for “end-to-end” system of case determination.²⁵⁹ The subsequent Nationality, Immigration and Asylum Act 2002 legislates detention in IRCs over supervision in the local community.²⁶⁰ Section 62 gives the Secretary of State wider breadth in making detention decisions. Section 71(3) allows for detention of asylum seekers with leave to remain.²⁶¹ Since, as mentioned, the proposal for automatic bail hearings was withdrawn, immigration detainees must file their own bail hearing requests.²⁶²

The Nationality Immigration and Asylum Act 2002 also introduces the Detained Fast Track (DFT) process, which aims to speed up asylum procedures and eventually clear the backlog of cases. The DFT process detains single male asylum seekers until an initial decision can be made on their cases.²⁶³ The basis of suitability

²⁵⁸ Shaw, 2004: 299; 317.

²⁵⁹ All asylum seekers who violated any of their status conditions - including paid work and failing to report on time – became vulnerable to detention (UK Home Office, 2002).

²⁶⁰ Squire, 2005: 66 – 67.

²⁶¹ A person who does not have the right of abode may only enter with leave, as described by Section 3 of the Immigration Act 1971. Leave may be granted for a definite or indefinite period, and may or may not be subject to conditions about working, supporting dependants, or not having recourse to public funds or registration with the police. Thus a visitor, for example, may be given leave to enter and to stay for no more than six months, specifically excluding the right to work or to have recourse to public funds (Sawyer & Turpin, 2005: 693).

²⁶² Some barriers that complicate the applications for bail include: a lack of knowledge; inexpert legal advice, or problems accessing high-quality legal representation; lack of sureties; difficulties acquiring a bail address; problems with listing a bail application; and restrictions intended to prevent future offending of FNPs (BID (Bail for Immigration Detainees), 2010: 21 - 30; 59).

²⁶³ The decision took place within seven days, after which the DFT detainees would usually be released if granted leave to remain or following a refusal with the opportunity to pursue appeals in the community (Detention Action, 2011: 12 – 13).

for the DFT is the claimant's nationality.²⁶⁴ First trialled at IRC Oakington in Cambridgeshire in 2000, the DFT is minimum physical security incarceration with on-site legal representation catering for asylum seekers unlikely to abscond.²⁶⁵ Section 94 of the Nationality Immigration and Asylum Act 2002 legislates for another, complimentary end-to-end detention process for asylum seekers originating from White List countries: this so-called Detained Non-Suspensive Appeals (DNSA) process targets resolution of asylum claims within two to three days, and eliminates in-country rights of appeal for refused claimants.

In 2003, the Home Office introduced a fast track process for male asylum seekers to be detained at IRC Harmondsworth near Heathrow Airport. Although they were to have in-country rights of appeal, most IRC Harmondsworth cases were finished with all appeal processes after 21 days.²⁶⁶ In 2005, IRC Yarl's Wood near Bedford began hosting women on the DFT process.

In 2009, 1,615 asylum-seekers were initially routed into the IRC Harmondsworth DFT and 495 into the IRC Yarl's Wood DFT, 9% of the total 24,485 asylum applications made that year.²⁶⁷ At any one time, around 40% of IRC Harmondsworth's 615 male detainees will be asylum seekers on the Fast Track process.²⁶⁸ Government's goal is to process 30 per cent of asylum claims through end-to-end detention with accelerated adjudication processes.²⁶⁹ Quarterly statistics demonstrate that about 70 per cent of asylum seekers on the DFT are refused protection as opposed to around 60 per cent of the total number of asylum applicants.²⁷⁰

²⁶⁴ Cornelisse, 2010b: 293.

²⁶⁵ Nationality Immigration and Asylum Act 2002, s 115(7). Cf. Human Rights Watch, 2010b.

²⁶⁶ BID (Bail for Immigration Detainees), 2008: 1.

²⁶⁷ Detention Action, 2011: 11.

²⁶⁸ Independent Monitoring Board, 2012: 3.

²⁶⁹ Bacon, 2005: 26.

²⁷⁰ UK Home Office, 2012b.

The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 dissolved the Immigration Appeal Tribunal in favour of a single-tier Asylum and Immigration Tribunal. This Tribunal eventually became known by its current name, the First-tier Tribunal of the Immigration and Asylum Chamber (FTIAC).²⁷¹ The 2004 Act also removed welfare support from families of failed asylum seekers.²⁷²

Published in 2005, *Controlling our borders: Making migration work for Britain* describes the Home Office's five-year immigration strategy that became known as the New Asylum Model (NAM). This strategy's aim is to introduce a faster, more tightly managed asylum process, with an emphasis on greater control of the whereabouts of asylum seekers and rapid and increased numbers of removals from the UK.²⁷³ A central goal of the NAM was to process 30% of new asylum claims on the DFT process. Since March 2007, the Home Office has processed all asylum claims in the UK under the NAM with the majority through the DFT process.²⁷⁴

The Immigration, Asylum and Nationality Act 2006 allowed immigration officials at ports of entry to detain any arriving passenger in order to verify his or her documents; it also phased biometrics into the UK immigration and asylum control

²⁷¹ UK Home Office, 2004. The purview of the FTIAC is restricted to assessing eligibility for bail, which usually translates to disputes regarding absconding. Since the FTIAC cannot hear challenges to the legality of detention, it is expected to bypass these arguments in its hearings (UK Ministry of Justice, 2011).

²⁷² This policy change prompted accusations that the government was trying to "starve out" asylum seekers, and to bolster the deterrence function of detention (Mulvey, 2010: 442). But see the case of *R (on the Application of Adam and Limbuela) v Secretary of State for the Home Department [2004]* in which the UK House of Lords held that a failure by the state to provide social support which exposes an individual to a real risk of becoming destitute will in certain circumstances constitute 'inhuman and degrading treatment', and therefore will be contrary to Article 3 of the European Convention on Human Rights.

²⁷³ Human Rights Watch, 2010b: 10.

²⁷⁴ Coles and Farthing (2010: 5) link this large percentage of asylum seekers in the DFT procedure with the Home Office Guidance on "DFT & DNSA – Intake Selection (AIU Instruction)". Paragraph 2.2 states that it is "UK Border Agency policy that any asylum claim, whatever the nationality or country of origin of the claimant, may be considered suitable for DFT/DNSA processes where it appears, after screening (and absent of suitability exclusion factors), to be one where a quick decision may be made." And Paragraph 2.2.2 states that there is "a general presumption that the majority of asylum applications are ones on which a quick decision may be made."

apparatus.

In the wake of the 2006 scandal over the Home Office's alleged failure to consider foreign national prisoners for deportation, and the subsequent resignation of Home Secretary Charles Clarke,²⁷⁵ the UK Borders Act 2007 was passed to extend "the capability of the British state to expel those convicted of criminal offences and, in the process, [to embed] the use of immigration detention further in the management of non-citizens."²⁷⁶ All non-European Economic Area (EEA) citizens sentenced to 12 months custody or more face mandatory deportation unless their removal breaches international obligations, while EEA citizens will be deported if they are sentenced to 24 months custody. All non-citizens with criminal prison sentences are automatically considered for deportation, and plans are being considered for extending this policy to those sentenced to community penalties.²⁷⁷ The UK Borders Act 2007 also expands immigration officers' discretionary powers of search and arrest, and allows for detention of non-citizens *potentially of interest* to the police.²⁷⁸

The Borders, Citizenship and Immigration Act 2009 integrated PACE orders into immigration legislation.²⁷⁹ It also extends powers of immigration officials to HM Revenue and Customs officials, including the use of reasonable force to detain.²⁸⁰

Key issues facing immigration detainees

While I explore the normative issues of liberal states detaining asylum seekers, FNPs, and immigration rule-breakers in Chapter Four, it is relevant to mention here

²⁷⁵ See Bosworth, 2011b: 9; Gibbs, 2011; Kaufman, 2012: 2.

²⁷⁶ Bosworth, 2008b: 206.

²⁷⁷ Bosworth, 2011b: 3.

²⁷⁸ As well, the 2007 Act provides for biometrics recordings to be taken at any time during immigration application processes (UK Home Office, 2008).

²⁷⁹ Under the 2009 Act, each of the following constitutes a PACE order: (a) the Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2007 (S.I. 2007/3175); (b) the Police and Criminal Evidence (Application to Revenue and Customs) Order (Northern Ireland) 2007 (S.R. 2007/464) (UK Home Office, 2009).

²⁸⁰ Sankey & Coles, 2009.

some of the problems facing these and other vulnerable populations. I highlight some of the key issues confronting asylum seekers, FNPs, pregnant women, torture survivors, mentally disabled adults, and children detained in the UK.

Many asylum seekers present or are later diagnosed with mental illness, trauma, depression, and other physical, psychological, and emotional consequences. Detention can and has been shown to exacerbate and even cause these symptoms and illnesses.²⁸¹ Without the proper screening, treatments, and periodic reviews, detention can have harmful long-term effects on asylum seekers over and above those felt by irregular migrants.²⁸²

FNPs experience a number of practical problems when detained in IRCs. The key issues facing them include restricted access to legal representatives and Members of Parliament (MPs), and reduced chances of bail or temporary release.²⁸³ Since any offence that attracts a sentence of 12 months or more can trigger a revocation of indefinite leave to remain and lead to pre-deportation detention, it is also not unusual for FNPs to be former long-term residents of the UK. As such, the FNP population invariably includes people who speak with British accents, are married to British citizens, parent British children, and have been detained due to convictions of non-violent crimes, including driving infractions, false document offences, petty theft, and, most common at 28%, drugs offences.²⁸⁴

Home Office policy states that vulnerable people are only detained in exceptional circumstances. Vulnerable groups include unaccompanied children and

²⁸¹ Cleveland, Rousseau, & Kronick (2012, January); Global Roundtable on Alternatives to Detention of Asylum-Seekers, R., Migrants and Stateless Persons, 2011: Paragraph 10.

²⁸² UNHCR: The UN Refugee Agency, 2012: Paragraph 50.

²⁸³ Monthly detention reports given to FNPs justify continued detention on the basis of risk of absconding, risk of public harm, a displayed lack of respect for British laws, risk of re-offending, or "*Your unacceptable character, conduct or associations.*" (Griffiths, 2010: 9)

²⁸⁴ Gibbs, 2011; Shah & Trude, 2009: 23 – 24.

young people under the age of 18; elderly people and those with serious disabilities; pregnant women; those suffering from serious medical conditions or mental health problems; and people who produce independent evidence that they have been tortured. However, guidance is unclear on the meaning of “exceptional circumstances”. For example, “too many pregnant women” have been detained at IRC Yarl’s Wood²⁸⁵ and torture survivors and women who have been trafficked have been routed onto the DFT process.²⁸⁶

The Home Office does not release statistics on immigration detainees with mental disabilities or mental health and competency examinations,²⁸⁷ and no independent studies have gaged the scale of this population in the UK.²⁸⁸ While a person who has mental health problems - e.g. who is bipolar or suffers from schizophrenia - can have a very high intelligence quotient (IQ), a person with cognitive disabilities always has a low IQ. Many people with intellectual disabilities have mental impairments.²⁸⁹ There are no special provisions to meet the needs of immigration detainees with mental impairments and/or cognitive disabilities. There are reports of mentally disabled adults becoming “lost” in detention in the US and Australia.²⁹⁰

²⁸⁵ HM Chief Inspector of Prisons, 2011: 6.

²⁸⁶ BID (Bail for Immigration Detainees), 2008.

²⁸⁷ Kaplan, 2012: 10; Tsangarides, 2012: 94.

²⁸⁸ In the US context, the NGO Human Rights Watch (2010a: 17) believes that the number of persons appearing in immigration proceedings in the US who have mental disabilities is at least 15 per cent of the daily or annual total. The Obama administration estimates that over a thousand people with serious mental illnesses are in the US immigration detention system at any given time (Arulanantham, 2012).

²⁸⁹ Human Rights Watch, 2010a: 13.

²⁹⁰ Bernstein, 2009b; Eisner, 2011; and Inlender, 2011. The case of Cornelia Rau was a big media story in Australia and around the world: an Australian permanent resident and schizophrenic, Ms. Rau was held as a suspected unlawful non-citizens after claiming to be a German tourist named Anna. She was detained in Brisbane Women’s Correctional Centre for six months and then at the Baxter Immigration Detention Facility for a further four months. The Palmer Report, published in July 2005, recommended improvements in staff training, identity techniques, mental health arrangements, the environment of immigration detention, data management, record keeping. The report also identified a culture that ignored criticism, was too defensive, bureaucratic and unwilling to make improvements, and recommended exploring alternatives to detention. See Palmer (2005) and Joint Select Committee on Australia’s Immigration Detention Network (2012: 16).

For mentally disabled adults, experiences of immigration detention can exacerbate existing mental health problems, heighten vulnerability, and increase the risk of self-harm and suicide.²⁹¹ In a review of ten studies, Katy Robjant, Rita Hassan, & Cornelius Katona (2009) find that time in detention is positively associated with severity of distress and a persistent negative impact on mental health after the detainee has been released.²⁹² Mentally disabled immigration detainees' conditions can deteriorate without proper medication or mental health services; without legal representation and proper courtroom safeguards, they are also subject to inflexible detention policies that can lead to detention for long periods.²⁹³ The "unknowingness" of the open-ended nature of the UK immigration detention can present difficulties akin to mental torture.²⁹⁴

In spite of government promises to end the practice,²⁹⁵ the UK detains a small number of children with their families. Opened in August 2011, Cedars is a converted special needs school comprised of nine apartments that house forty-four people in families for up to one week.²⁹⁶ Deputy Minister Nick Clegg describes the centre as the cornerstone in the Coalition Government's "compassionate approach" to family detention and removals.²⁹⁷ Tinsley House at Gatwick Airport has also been detaining children for up to 72 hours since April 2011. Families with more difficult immigration

²⁹¹ McGinley & Trude, 2012: 5.

²⁹² Cleveland, Rousseau et al (2012: 20) confirm that evidence from Australia shows that "asylum seekers who were first detained and then granted temporary status had serious mental health problems that persisted years after release from detention. The severity of psychiatric symptoms was proportional to length of detention. Temporary status was linked with continuing high levels of mental health problems, which decreased substantially once refugees were granted permanent status."

²⁹³ Kaplan, 2012: 13 – 14.

²⁹⁴ de Zayas, 2005: 20.

²⁹⁵ Deputy Prime Minister Clegg announced in summer of 2010 that the end of child immigration detention in the UK (Brake, 2010; Brown, 2011; Walters, 2011).

²⁹⁶ Scammell, 2011.

²⁹⁷ In December 2010, Deputy Minister Clegg announced "an enormous culture shift within our immigration system": "The coalition government has always been clear that the detention of children for immigration purposes is unacceptable. We are placing the welfare of children and families at the centre of a fairer and more compassionate system" (UK Border Agency, 2010).

cases are to be held in an as yet undisclosed site in another housing arrangement that is not a removal centre.²⁹⁸ Child welfare services are being provided by the children's charity, Barnardo's.

Children are exposed to long-lasting harm in detention through their own experiences as well as watching their parents deteriorate. While the UK government endeavours to place unaccompanied asylum seeking children in guardianship outside the detention estate, they may be subjected to invasive technologies in order to document their minor ages. I explore the daily conditions for immigration detainees in much more depth in Chapter Five.

“Regrettable but necessary”: Official justifications for immigration detention

Successive UK governments have promoted detention as an essential, everyday facet of immigration control, and justified its expanding use as “regrettable but necessary”. Using research that was partially published in the journal *Politics & Policy* as Silverman, 2012²⁹⁹ this final section of the chapter outlines this historical discourse for implementing detention in the UK. Overall, my findings indicate that the UK government's response in Parliament has historically been to justify detention on the basis of expediency and efficiency, and then to refer the MP to pre-existing statutes that allegedly explicate a legal rationale or basis. In policy documents and official statements, Government repeatedly contends that non-citizens must be made available for removal hearings, and that people with removal orders would abscond if not detained. Thus, detention is an essential mechanism for realising deportation and, hence, solidifying public confidence in immigration procedures. In this way, time and

²⁹⁸ Bosworth, 2011a: 6.

²⁹⁹ Silverman, S. J. (2012). "Regrettable but Necessary"? A Historical Study of the UK Immigration Detention Estate and its Opposition " *Politics & Policy* 40(6): 1131 - 1157.

again the UK government justifies detention as regrettable, but necessary, for the smooth functioning of its desired immigration control system.

In 1959, for example, the Under-Secretary of State argued that detention not only provided “a very temporary physical safeguard against a determined attempt to abscond” but that specific “detentions were justified and necessary, and were, indeed, brought on their own heads by the men themselves.”³⁰⁰ By drawing an analogy to criminal law enforcement, Lord Windlesham in 1971 produced an argument of this sort to endorse the formal institutionalisation of immigration detention in discussions concerning the institutionalisation of the practice in the Immigration Act 1971:

If the police officer could not stop the man without a warrant, the police officer would then have to apply to a magistrate for a warrant. In the meantime the passenger would presumably be able to go on his way unhindered. The immigration officer would have said, "I do not think you are entitled under the current laws of Great Britain to enter the United Kingdom", but he would say, "You try to stop me!". He would be through the airport, in a taxi and have disappeared before any of this process had been set under way. ... Therefore, some [detention] powers are needed. (Hansard HL Deb vol 323 col 1122)

In the late 1970s, following the passing of the 1971 Act, some MPs wondered whether racism could be motivating officers’ decisions to detain. In a message presaging the idea of accelerated procedures on the DFT, the Minister of State at the Home Office warned in 1979 that such accusations could lead to increased detention for some detainees: “Hon. Members should remember that sometimes their representations lead to people being kept in detention, where they have to be in detention, for longer than would otherwise be the case.”³⁰¹

In the 1998 White Paper, *Fairer, Faster, and Firmer - A Modern Approach to Immigration and Asylum*, that presaged the Immigration and Asylum Act 1999, the

³⁰⁰ Hansard HC Deb vol 598 col 670.

³⁰¹ Hansard HC Deb vol 971 col 1285.

Government affirms its intention that detention should be for shortest possible time but free from legal requirements for maximum periods of detention.³⁰² In Paragraph 12.11, the Government cautions, however, that detainees may “use every conceivable avenue of multiple appeals to resist refusal or removal”. The Government implies long-term detainees “are held for longer periods only because they decide to [file appeals].” The core justification - “A balance has to be struck in those circumstances between immediately releasing the person and running the risk of encouraging abusive claims and manipulation” is akin to the regrettable but necessary reasoning.

More recently, the UK government argued explicitly that immigration detention is “a regrettable but necessary consequence of any immigration policy.”³⁰³ The government has been particularly keen to emphasise this line of argument when discussing children or long-term detainees in either House. For example, Secretary of State for the Home Department Beverley Hughes responded in November 2002 to a House of Commons MP’s question on Yarl’s Wood IRC as follows:

As with all other removal centres, Yarl's Wood will be used to ensure we deliver our commitment to remove those without lawful right to be here. The intention is always to ensure that the period in detention is as short as possible. However, it is sometimes regrettably necessary to detain asylum seekers and other immigration related cases for longer periods of time.³⁰⁴

Similarly, following the controversy stemming from the publication of a report on the detention of children at IRC Dungavel by the Scottish Parliament’s Cross-Party Group on Asylum Seekers and Refugees,³⁰⁵ Minister Hughes responded in October

³⁰² UK Home Office, T. (1998).

³⁰³ Hansard HL Deb vol 589 col 342 – 344.

³⁰⁴ Hansard HC Deb vol 392 col 117W.

³⁰⁵ The Scottish Parliament’s Cross- Party Group on Asylum Seekers and Refugees (2002) wrote that: We can see no justification for the detention of children. The risk of absconding does not outweigh the damage done to children being denied their freedom. Dungavel is not an appropriate place for families. Community reporting procedures should be explored as an

2003 to an MP's question as follows: "While the detention of families with children is very regrettable, it nevertheless remains necessary in appropriate cases in order to maintain an effective immigration control and to tackle abuses of the asylum system."³⁰⁶ Likewise, with regards to the detention of children at Dungavel IRC, then-Home Secretary David Blunkett argued in 2003:

Detention, while regrettable, is an essential part of effective immigration control - to affect removal, establish identity, or prevent absconding. Where it is necessary to detain individuals with children, we believe it is better that the children remain with their parents rather than split up the family. Where families are detained, they are accommodated in specially-designed family accommodation. It is essential that we have properly managed immigration and asylum systems which lets into the country only those who are entitled to be here and protects only those who are genuinely fleeing persecution.³⁰⁷

This line of justification for detention – a necessary step to ensure that non-citizens will be available for proceedings, and, should their claims be refused, deportation – is particularly present in Government discussions of the DFT. In the 2002 White Paper, *Secure Borders, Safe Haven – Integration with Diversity in Modern Britain*, the Government argues for the propriety of detention for dealing with potential absconders.

It is necessary for applicants to be available for an early interview and to submit any further representations that may be judged necessary. It is also important that they should be readily available for the decision to be served. The Government's experience is that many applicants, particularly those whose applications are likely to be unfounded, are unwilling to comply with the fast track procedures. In the Government's view, the Oakington [DFT] regime and its use of statutory detention powers, is necessary and appropriate in order to achieve the objective of speedy decision making of a substantial number of claims.³⁰⁸

alternative to the detention of families with children. While children remain at Dungavel, the welfare of children being detained should be the explicit responsibility of the local child welfare agencies and their involvement should be enhanced.

This report caused considerable controversy and sparked a vibrant debate on the ethics of detaining children for immigration purposes in Scotland.

³⁰⁶ Hansard HC Deb vol 411 col 554W.

³⁰⁷ BBC World Service 2003.

³⁰⁸ UK Home Office, 2002: Paragraph 4.70.

In this White Paper quote, the UK Government is attributing the purpose of end-to-end mandatory detention to its own convenience, and arguing for a high probability that removal non-citizens would otherwise abscond. It is also indicating that the public expects speedy decision making and a reduction in the asylum backlog, and this “objective” takes precedence over detainees’ rights.

As a final example, in his announcement of duties to the newly-minted officers of the UK Border Agency, then-Minister of State for Borders and Immigration Liam Byrne announced in 2008 that he was putting “the right power in the right place to keep this country safe.” He then proceeded to collapse a range of enforcement activities into one laundry list of these everyday powers that would be entrusted to the UK Border Agency officers: “powers to board and search vehicles or planes or trains to search for people or goods, the power to stop and question, the power to search, the power to seize things that we believe should not be moving into our country, the power to detain an individual.”³⁰⁹ In this way, detention becomes integrated into immigration control activities and its special concerns around liberty are glossed over.

Conclusion

In this chapter, I attempt to develop a descriptive overview of the evolution and current practices of immigration detention in the UK as well as the official justifications provided by the Government to explicate the expansion of the practice. I begin by providing an overview of the current state of the detention estate. What emerges from this overview is the *scale* of the detention estate, both in terms of legal and geographical architecture and infrastructure and in numbers of people impacted on a yearly basis.

³⁰⁹ Byrne, 2008.

Beginning in 1905, I outline how immigration detention policy was successively augmented to expand from an occasional instrument to hold overstayers to a multifaceted, multi-sited apparatus focussed on holding asylum seekers and FNPs. My history highlights how the UK Government seemed to *react* to world events and in-country criticism in developing its immigration detention policy; this stance contrasts with a possible *proactive* assessment of the use and intentions of immigration detention that could better pave the way for governing the estate's expansion in the future.

In the next section, I outline the key issues facing vulnerable people in immigration detention. The groups I examine include: asylum seekers, FNPs, pregnant women, torture survivors, mentally disabled adults, and children. In each of these cases, my research reveals a possibility for experiencing trauma, dislocation, and unnecessary mental and emotional consequences. The normative implications of the detention of asylum seekers, FNPs, and immigration rule-breakers will be discussed in the following chapter.

In the final section of this chapter, I try to identify and flesh out the official justification for immigration detention by the UK government. It seems that, over the years, an official discourse has emerged that positions detention as “regrettable but necessary”. By tracing this discourse through the Hansard Archives, policy documents, and official statements, a sense that successive UK governments have promoted detention as an essential, everyday facet of immigration control began to emerge. Positioned as an essential cog in the wheel of immigration control, Government consistently relied on a view that detention, while regrettable, was necessary for realising deportation, restoring public confidence in the asylum system, and preventing absconding. The following chapter will interrogate the moral permissibility of this

justification in relation to the detention of asylum seekers, FNPs, and immigration rule-breakers in particular.

Chapter Four: Absconding and deportability are the criteria for decisions to detain to be normatively permissible

Introduction

In this chapter, I explore the justifications for immigration detention and examine whether they are persuasive. I find that a concern about absconding motivates almost all detention decisions in the UK. Accordingly, I interrogate the meaning of absconding as well as its empirical and normative purchase in a real-world context. In order to unpack this concept and explore its applicability, I examine implications for three categories of immigration detainees in the UK: asylum seekers, foreign national prisoners (FNPs), and immigration rule-breakers (IRBs). My research findings indicate that there is limited normative support for detention of failed asylum seekers, certain FNPs, and a small subset of IRBs, and no support for detention of anyone else. I argue that *all* potential immigration detainees are morally entitled to a bail hearing in which their likelihood of absconding should be debated and where the use of an alternative to detention program can be considered in lieu of custodial detention. In the final section of the chapter, I outline the key components of successful alternative to detention programs, and argue that it is morally incumbent upon the UK government to consider widespread implementation as soon as possible. My overall finding is that the two criteria of deportability and a high likelihood of absconding must form the basis for all decisions to detain in order for those decisions to be normatively defensible.

The liberal bias for freedom

A key value in liberal democracies is respect for personal freedom, understood as the right to liberty. Having and exercising “control over our bodies, and in particular being protected against unwanted interference by others, is important to our sense of

ourselves as human agents.”³¹⁰ Political thinking on the right to liberty is so essential that it predated thinking on sovereignty. Indeed, a principal rationale motivating the emergence of state sovereignty was to provide protection for this right. The idea of “liberty of person” is narrowly conceived as the right to bodily movement, and it stands in contrast to the more broadly understood, and less tightly policed, right of freedom of movement.³¹¹ Thus, interference with an individual’s liberty usually entails forcing a person to remain within the confines of a defined space while the latter’s more broadly understood conceptualisation could include crossing borders. International and national laws are careful to delineate how and when states can curb individual liberty.

Given the foundational role that the right to liberty and the bias for freedom plays in liberal democracies, states are beholden to show good reason for locking someone up. Indeed, freedom from arbitrary arrest or detention is a cornerstone in many state constitutions.³¹² For example, people cannot normally be jailed because their government suspects that they might commit a crime; rather, government must first produce evidence that the individual poses a threat before ordering and justifying the incarceration. This logic should apply to immigration detention as well.

This chapter recognises a state’s right to control immigration across its borders. What is at issue here is the normative permissibility of the current lack of adequate safeguards to guarantee the proper exercise of this authority – vested in government - to deny an individual’s right to liberty. In other words, this chapter is interested in identifying the moral entitlements of non-citizens in the context of government’s decisions to detain.

³¹⁰ Miller, 2012: 418.

³¹¹ Cornelisse, 2010: 249

³¹² Hirschl, 2000.

Public justifications or reasons for immigration detention in liberal states

In this section of the chapter, I review and interrogate the reasons or rationales that the UK government offers to justify immigration detention. I term these “public justifications or reasons” because they appear in the public sphere. The most compelling reason is addressing the risk of absconding. This reason influences or motivates the other two, which are deterrence of would-be migrants and prevent of harms and public charges. Indeed, when absconding is not a concern, the other two public reasons for detention are diluted of their normative credibility.

In considering the public reasons for immigration detention, it is important to be mindful that immigration detention makes non-citizens available should the state want to deport them. The UK Home Office (2002: Paragraph 4.74) cites this justification in its White Paper, *Secure Borders, Safe Haven*: “Detention remains an unfortunate but essential element in the effective enforcement of immigration control. The primary focus of detention will continue to be its use in support of our removals strategy.” It stands to reason, then, that only people for whom there is a plausible likelihood of deportation can be legitimately detained. Stateless people, for example, should never be detained because it is very difficult to deport them.³¹³ There is also no plausible reason to detain virtually non-deportable people who do not qualify under “safe third country” rules and who originate from states that are either not willing or not in a position to issue travel documents.³¹⁴ There will also be a substantial minority of people whom the state is not willing or not able to deport due to its own norms, including unaccompanied children, severely disabled adults, and heavily pregnant

³¹³ States often encounter practical difficulties when trying to deport stateless people either because no third country would accept them, or due to the principle of *non-refoulement*; these unique vulnerabilities lead to prolonged detention of non-deportable people (DeChickera, 2009: 8).

³¹⁴ The former includes Iranians and North Koreans, and the latter includes Somalis. Once we recognise that there is no real likelihood of the liberal state being able to obtain the means to return people to countries of origin such as these, the reasons for their detention fall apart.

women. Since these people are not deportable in the short-term, they should not be detained while their immigration cases are being adjudicated.

Prevention of absconding

What are the reasons offered for immigration detention? First and foremost, immigration detention is a means to prevent absconding.³¹⁵ Absconding can be understood as living in the state without authorisation and deliberately losing contact with the immigration authorities.³¹⁶ The risk of absconding may be referred to, particularly in the US context, as flight risk. Absconding may also be thought of as migrants or asylum seekers purposely *not* complying with removal orders or *not* registering with immigration authorities.

Why does absconding matter to governments? Loss of contact with immigration authorities would undermine government's ability to make a non-citizen available for deportation. As such, the UK government justifies detention as a means to prevent absconding. Its 1998 White Paper, *Fairer, Faster and Firmer - A Modern Approach to Immigration and Asylum*, stipulates that detention is normally justified in the following circumstances: (i) where there is a reasonable belief that the individual will fail to keep the terms of temporary admission or temporary release; (ii) initially, to clarify a person's identity and the basis of his or her claim; or (iii) where removal is imminent. In particular, government stresses, detention is justified "where there is a systematic attempt to breach the immigration control" system.³¹⁷ In other words,

³¹⁵ There is a related argument that is unconvincing, but popular, that immigration detention is economically preferable in the long-term because tracking down individuals who abscond is time consuming and resource-intensive, involving the use of scarce public resources (Phuong, 2005: 122; Gibney, 2008: 147).

³¹⁶ Griffiths, 2010: 3. Likewise, the International Detention Coalition defines absconding as "[a]ctions taken by an individual to avoid contact with immigration authorities in order to avoid legal migration proceedings and outcomes" (Sampson, Mitchell, & Bowring, 2011: 3).

³¹⁷ UK Home Office, 1998: Paragraph 12.3.

detention is justified where a risk of absconding could jeopardise the realisation of a removal order.

Chapter 55 of the UK Border Agency's *Enforcement Instructions and Guidance* (EIG), a manual of guidance and information for officers dealing with immigration enforcement within the UK, sets out the criteria for detention decisions. It focuses on factors thought to increase or mitigate the risk of absconding. According to the Guidance, people are more likely to abscond if they have a history of non-compliance, if they have no close personal ties in the UK, and if they have no outstanding legal applications. Time and again, immigration detention criteria stress that the primary purpose of detention practices in the UK is to prevent people from absconding.³¹⁸

There are both empirical and normative dimensions to the justification for detention on the basis of absconding. I will first examine the empirical claim, which I find to be weak, and then I will outline the normative claim, which I find to be more persuasive.

Empirical claim

Official data on the actual numbers of asylum seekers, FNPs, and IRBs who abscond in the UK is scarce.³¹⁹ In 1995, the Home Office Minister made a rare acknowledgement of a low rate of absconding among asylum seekers. He informed Parliament that, of the 37,120 persons who were refused asylum in the three-year period 1992 - 94, only 220 were known to have absconded, the equivalent of 0.59 per cent.³²⁰ There is basically no other mention from government of the rates of

³¹⁸ Burnham, 2003: ix.

³¹⁹ Field & Edwards, 2006: 24 – 25. The US government estimated in 2005 that 325,00 to 400,000 migrants remained in the state's territory despite receiving final removal orders (Healey, 2004: 185).

³²⁰ Bacon, 2005: 7.

absconding.³²¹

Since the Home Office does not usually comment on absconding rates, the empirical data has been collected through UK non-governmental organizations (NGOs) and academic studies. While small in scale and scope, this data reveals a low risk of absconding amongst asylum seekers in the UK. Analysis of the existing evidence suggests that migrants in their destination states “rarely abscond while awaiting the outcome of a visa application, status determination or other lawful process”.³²² For instance, a 2002 study of 98 asylum seeking immigration detainees bailed between July 2000 and October 2001 documented levels of compliance by both those awaiting deportation (80%) and those awaiting decisions about their status (90%).³²³ Non-citizens in family units, particularly those with children, are particularly unlikely to abscond. Children are often embedded in health and educational services that their parents are wary of withdrawing them from.³²⁴ There were low absconding figures from alternative to detention programs for families in the UK³²⁵ and Australia.³²⁶

³²¹ A 3 May 2012 article in *The Daily Mail* newspaper claims that “Internal Home Office figures show that last year 1,665 immigration detainees were granted bail, of whom 277 later absconded.” (Slack, 2012) I should note that the article’s author does not explain how he received access to these figures, whether it was a fiscal or calendar year, or any other details to clarify the nature of the statistics he produced.

³²² Further, if in a transit state, they “appear less likely to abscond .. if they can meet their basic needs through legal avenues, *are not at risk of detention or refoulement*, and remain hopeful regarding future prospects” (Sampson, Mitchell, & Bowring, 2011: 7, emphasis added). Ophelia Field & Alice Edwards (2006: iv) reach a similar conclusion with respect to asylum seekers: “asylum seekers who reach their ‘destination’ country are unlikely to abscond because they have a vested interest in remaining in the territory and in complying with the asylum procedure.”

³²³ Bruegel & Natamba, 2002: 15.

³²⁴ Crawley, 2011: 1.

³²⁵ For instance, the 10-month Millbank Pilot project that ran between 2007 and 2008 at Ashford, Kent provided accommodation to asylum seekers who had recently arrived in the UK (Institute for Public Policy Research, 2010: 3). The Millbank Pilot was poorly run (Nandy, 2009) and exhibited a low rate of return with only one family choosing to return to their country of origin voluntarily (Cranfield, 2009). A second, Millbank-type pilot scheme was initiated in Glasgow in June 2009 to test whether better trust-building exercises could improve the project (Institute for Public Policy Research, 2010: 3). Another project called the Refugee Action Voluntary Sector Keyworker Pilot is supported by the European Return Fund and the UK Border Agency, and is being tested in Liverpool. Sixteen families, with an average of one or two children, are referred to the project at early stages of their asylum application, with each being assigned a Refugee Action keyworker (Cranfield, 2009; Institute for Public Policy Research,

While minimal, the available evidence does not support the claim that immigration detention is necessary to prevent absconding.

Normative claim

The normative claim supporting the justification for immigration detention as a means to prevent absconding is comparatively stronger than the empirical claim. It is worth a reminder that, as part of the structure of this discussion, I accept that legitimate deportation is a morally permissible practice for liberal states. As such, there is some merit in the normative argument that detention is necessary to guarantee that people will be available for their deportations. People have a strong incentive not to show up if they are likely to be deported. Non-citizens who have either personally experienced negative interactions with the state³²⁷ or are otherwise distrustful that their claims will be judged with equanimity,³²⁸ might also have reasons to abscond. While there is a potential, if limited, argument that preventing too many non-citizens from absconding is a defensible normative goal, I will return to examine whether it is in fact reasonable to worry about absconding in each of the major cases – asylum seekers, immigration rule-breakers, and foreign national prisoners - and demonstrate that this general normative claim does not hold equally true all of the time.

2010: 4),

³²⁶ In addition, 2005 legislation permitted the bailing of all child immigration detainees, together with their families, into allowing freedom of movement. As of September 2008, less than 1% had absconded, with no other reported violation of conditions (International Detention Coalition, 2009: 1).

³²⁷ For example, asylum seekers who have had their credibility subject to scrutiny as a result of the institutional *culture of disbelief*. As I explain in Chapter Five, the *culture of disbelief* has become shorthand for describing the relationship between the Home Office and individual asylum seekers that is increasingly characterised by mistrust or disbelief. The UK immigration court tends to judge all applicants by the same rigorous standards and to conduct hearings in a confrontational manner.

³²⁸ Gibney, 2011. There is also an increasing amount of disinformation leading to fear of detention: in the US, for example, official news releases inaccurately claimed that applicants who had been “issued final orders of removal” would be taken into custody. Yet applicants who are denied relief by an immigration judge are not issued “final orders” because they have can legally remain in the US if they lodge appeals (Healey, 2004: 186). This disinformation engenders mistrust and fear and could cause some non-citizens to abscond who might otherwise have come forward for status regularisation.

Deterrence

Another public reason or justification for detention is that either it or its threat discourages people from making false asylum claims and from attempting to enter the state clandestinely or to reside without authorisation. Detention as a deterrent is rarely, if ever, targeted at foreign national prisoners. Although not a supporter of detention as deterrence, Arthur Helton (1991: 253) explains the rationale: “incarceration, particularly if it is prolonged and under onerous circumstances, will prompt the non-citizen to leave and encourage others contemplating a journey to go elsewhere.” Due either to concern about a particular state of origin or potential overpopulation, government may promote detention as a disincentive for migrants to choose its state.³²⁹ In fact, the UK government offered this rationale to explain its shift to “end-to-end” detention processes for asylum seekers in the 1990s.³³⁰

States may also want to deter irregular migrants if the journey is perilous. The Canadian government cited this justification when it implemented mandatory detention measures for certain groups of unauthorised new arrivals that travelled across the ocean. Explaining his proposal to reform the immigration detention estate, the Canadian Minister of Citizenship, Immigration, and Multiculturalism, Jason Kenney argued that “one of the reasons we need to take action to deter the smuggling networks and disincentivise their potential customers from buying the package to come to Canada” is

³²⁹ See Chapter Six.

³³⁰ See Chapter Three. The UNHCR refutes the claims that detention is a successful deterrent and that asylum seekers would otherwise abscond:

there is no empirical evidence that the prospect of being detained deters irregular migration, or discourages persons from seeking asylum. In fact, as the detention of migrants and asylum-seekers has increased in a number of countries, the number of individuals seeking to enter such territories has also risen, or has remained constant. Globally, migration has been increasing regardless of governmental policies on detention. Except in specific individual cases, detention is generally an extremely blunt instrument of government policy-making on immigration.

(Edwards, 2011: 13)

that they are coming “to Canada in the most dangerous and worst way possible – in dangerous vessels that either have been decommissioned or should be.”³³¹

Are these reasons normatively sufficient for using either detention practices or the threat of detention as a deterrent mechanism? There is a surface plausibility that the threat of being detained could discourage would-be immigration rule-breakers from overstaying their visas. Detention could also go some distance towards ensuring that fewer numbers of people arrive at the state’s borders seeking asylum without prior authorisation or with the intention to lodge disingenuous claims. Such migrants would have to employ their own cost-benefit analyses to determine whether they want to risk detention. A similar limited plausibility seems to apply to a liberal state’s intention to use detention as a deterrent to dissuade migrants from taking life-threatening journeys.

Empirical objections

There are a number of persuasive empirical and normative objections to a liberal state’s use of immigration detention as a deterrent. I will first cover the empirical objections and then turn to the normative ones. The empirical objection amounts to the fact that detention has never been proven as a successful strategy for deterrence. Despite increasingly tough detention policies being introduced over the past twenty years, the number of irregular arrivals and asylum seekers has not decreased across liberal states.³³² It seems that the “push” factors outweigh the deterrence factor: simply put, if conditions in the sending countries provide a good reason to leave, one year or more in detention will not stop someone from migrating. Further, if worldwide detention practices continue their current trajectory, then, *inter alia*, migrants might

³³¹ Kenney, 2010.

³³² Crépeau, 2012: 4.

come to see detention as inevitable, not avoidable at all costs.³³³ In addition, even if detention deters some people from taking particular routes to their destination states, other people will switch to riskier routes.³³⁴ As Peter Andreas (2001: 115) argues, although apprehension and detention statistics are “notoriously difficult to interpret,” it seems that deterrence through detention strategies do “more to shift rather than reduce the cross-border flow of migrants.”

Normative objections

It seems obvious that being a successful deterrence strategy does not, in itself, normatively justify an immigration control measure. There are many options for successfully dissuading border-crossers that liberals do not tolerate. For instance, Israel was morally condemned for its role in the deaths of sixteen sub-Saharan African refugees and migrants shot at its border with Egypt in 2010,³³⁵ and Malta has received harsh criticism for incidents in which it has refused to rescue African migrants found clinging to tuna nets in its territorial waters.³³⁶ The normative concession to detention as a deterrent leads to a slippery slope of acceptable options for liberal states.

Beyond the slippery slope warning, there are at least two additional normative objections to using detention as a deterrence strategy. First, building parallels between the treatment of detainees and criminals highlights the moral failings of the detention as deterrence strategy. There are limits to how we can treat people who are not found in violation of criminal laws. We cannot lock up some people in order to discourage others not to break the law. If it is not correct for criminals, why is it acceptable for

³³³ Crépeau, 2012: 4.

³³⁴ In the US, for example, an increase in detention enforcement actions in San Diego in the late 1990s led to a twenty-four-year low of arrests of immigration rule-breakers in that area, but overall apprehensions along the southwestern border actually increased during the same period. The Border Patrol made more than 1.5 million apprehensions in FY 1999 - an increase of 300,000 over 1993 apprehension levels (Andreas, 2001: 115)

³³⁵ Knell, 2010.

³³⁶ Kroeger, 2007.

migrants? Second, widespread use of detention will inflict harm on people who do not deserve it. Genuine refugees will be caught up in the deterrence strategy and detained. This mistake contravenes liberal norms. It is also normatively wrong because this strategy uses immigration detainees as instruments in a bid to control the movements of others. It violates the detainees' human dignity for, in the words of Immanuel Kant: "Legal punishment ...never can be inflicted on a criminal just as an instrument to achieve some other good for the criminal or for civil society ..for a man may never be used just as a means to the ends of another"³³⁷ Kant is objecting to treating a person as a thing, and this principle should be respected in the discussion of immigration detention as a deterrence strategy.

A closer look at deterrence also produces the interesting finding that a concern about preventing absconding motivates deterrence strategies as well. Why is this the case? A successful deterrence strategy is contingent on having non-citizens available for the state to "send a message" of discouragement to other migrants and asylum seekers. Without immigration detainees, it is virtually impossible to communicate that IRBs will face consequences, that failed asylum seekers will face deportation, and that states like the UK are capable of controlling the whereabouts of FNPs. The political spectacle of immigration detention would diminish should these groups regularly abscond. Without absconding, then, deterrence loses its gravitas.

Secondary public reasons for detention: grave harms and public charges

In addition to absconding and deterrence, there are two other reasons that government commonly offers to justify immigration detention. These two reasons are (i) detention prevents grave harms from befalling the community and (ii) detention

³³⁷ Van den Haag, 1981: 714.

prevents irregular migrants from becoming public charges. I argue that the first reason, grave harms, is more plausible than the second, although I do not think that either passes a test of normative reasonableness.

Non-citizens may cause grave harms to the community, including intoxicated driving, murder, crimes against children, terrorism, and rapes, as well as non-violent crimes such as drugs offences. When it was reported that twenty FNPs released in the lead-up to the 2006 Charles Clarke scandal were re-convicted of "more serious" offences after their release,³³⁸ the subsequent public outcry influenced policymakers to modify the detention law more punitively.³³⁹ Nevertheless, it is not normatively permissible to detain someone in anticipation of his or her potentially committing a crime without furnishing appropriate evidence that they are likely to do so. Citizens are not incarcerated on the basis of prior criminal activity: a hearing must be convened at which adequate evidence is presented to justify the imprisonment. Why should alienage tip the scales otherwise balancing the rights of the accused and protection of the public?³⁴⁰ At its core, then, the public justification for (mandatory post-sentence) detention as a measure to prevent grave harms is based on locking someone up because of threats imputed to his or her alienage. This reason – detaining someone because he or she is a non-citizen - is not an ethically acceptable justification for detention.

I am including the final reason only because it plays a role in the UK public

³³⁸ Of these twenty convictions, six were for sex offences - but not against children - three for violence, and eleven for actual bodily harm and grievous bodily harm.

³³⁹ The law was modified so that, no matter how long they have been resident in the UK, foreigners convicted of any designated "serious crime" would be automatically subject to deportation proceedings and, consequentially, post-sentence immigration detention. After the passage of the 2007 UK Borders Act, all non- European Economic Area (EEA) citizens sentenced to 12 months custody or more now face mandatory deportation unless their removal breaches international obligations, while EEA citizens will be deported if they are sentenced to 24 months custody (BBC World Service, 2006; Bosworth, 2011b: 3; Ford, 2006; Owen, 2007).

³⁴⁰ Carens, *forthcoming*: 164. Carens continues: "It is the nature of the threat that putatively justifies the shift in procedural practices. So, why should the nationality of the sources of the threat be relevant to the question of what procedures are used?"

debate. Affordability and shortages in housing continue to function as social bugaboos in the UK. Some media report that resident non-citizens put excessive pressure on these public services. A 2008 House of Commons report finds that immigrants generate social strife, supplant citizens in the workplace or school, and monopolise subsidised accommodations.³⁴¹ More recently, Communities Secretary Eric Pickles caused a media stir when he warned in January 2013 that, following the lifting of European Union migration curbs, an impending "influx" of Romanians and Bulgarians would exacerbate the existing housing problems in the UK.³⁴² The threat of detention is therefore playing an implicit role as a facilitator for arresting and deported immigrants who burden the public purse.

At its core, however, this justification is a variation of the popular, or populist, argument that I describe as *welfare chauvinism* in Chapter One. It has no normative or logical plausibility. First, while the discussion centres on authorised entrants, immigration detention is meant to target only people in violation of immigration law. Second, detention is very expensive, and it makes no financial sense to lock up non-citizens instead of housing them more cheaply in the community. Third, even if immigrants eventually run the risk of becoming immigration rule-breakers, it seems virtually impossible that the threat of detention would – or ought to - deter people who have a legal right from migrating if that is what they want to do. Fourth, policies that restrict access to housing or, for that matter, basic welfare or health care “have not been

³⁴¹ In response to the report, the Conservative shadow minister Baroness Warsi said the report was an "indictment" of the problems caused by the Labour government's "failure to control the numbers of migrants coming into this country" and by their "inability to know where migrants are living and to fund local authorities accordingly". BBC World Service, 2008. Cf. Robinson, 2010.

³⁴² Minister Pickles said on the television program: "Given that we've got a housing shortage, any influx from Romania and Bulgaria is going to cause problems - it's going to cause problems, not just in terms of the housing market but also on social housing markets." (BBC World Service, 2013) Reported options for dealing with the predicted influx include making it tougher for EU migrants to access public services. Another is to deport those who move to the UK but do not find work within three months (Syal, 2013).

associated with increased rates of independent departure or deterrence outcomes.”³⁴³

Finally, it constitutes an abuse of the practice: detention is an administrative fiat, not a means to intimidate legally resident non-citizens into shying away from discharging their rights.

Discussion: Absconding and *public* reasons for immigration detention in the UK

Immigration detention practices are politically and morally permissible solely on account of a legitimate concern that deportable non-citizens will abscond. Nevertheless, the data that exists on absconding is fairly conclusive that high compliance or cooperation rates can be achieved when persons are released to proper assistance and supervision.³⁴⁴ Although empirically contingent, the collective data demonstrates that non-citizens have vested interests in *not* absconding. The fact that non-citizens generally do *not* abscond challenges the normative and logical motivation for immigration detention practices in liberal states. This rationale is further diminished when it is contextualised with the liberal bias for freedom.

This argument raises a further question: if future empirical research concludes that compliance or cooperation are the norm, will the resultant lack of concern about absconding rates dilute the rationale for immigration detention practices in liberal states? I do not think so because this question seemingly confuses the empirical or practical aspects of detention with the normative ones. It seems virtually impossible to gather an evidence base large enough to be persuasive in all situations. It is therefore essential to turn now to ascertaining the likelihood that individual non-citizens or, at least, defined categories and subcategories of deportable non-citizens will abscond. In the next section, I outline categories of non-citizens, interrogate whether it is in their

³⁴³ Crépeau, 2012:17.

³⁴⁴ Crépeau, 2012:13.

interests to abscond, examine whether it is normatively permissible for the state to detain them, and, where appropriate, propose suitable alternative to detention programs.

Categorising immigration detainees

Now we have to turn to think through absconding more carefully. I identify three main categories of immigration detainees: asylum seekers, foreign national prisoners (FNPs), and immigration rule-breakers (IRBs). Within each category, a further distinction is between those people alleged to be deportable and those who have been proven to be deportable. While I elaborate on the categories here, I also provide a summary of these distinctions in the chart included at the end of the thesis as Appendix Two.

To provide a lens into how these categories are numerically represented in the detention estate, it is useful to look at IRC Harmondsworth as a snapshot. At this IRC in 2011, around 40 per cent of the population at Harmondsworth, at any one time, will be asylum seekers on the Detained Fast Track process. Approximately 30 per cent of the detainees are FNPs who have been transferred from prison. The remaining 30 per cent or so of IRC Harmondsworth detainees are IRBs.³⁴⁵

For asylum seekers, the further distinction is between (i) claims that have not been decided by an immigration court, including claims suspected to be fraudulent or otherwise likely to be eventually refused; (ii) claims that are refused by an immigration court; and (iii) refused claimants who are considered deportable. The (ii) group is often referred to as failed asylum seekers. For the FNPs, the primary internal distinction is between (a) valid visa holders or permanent residents whose criminal sentences make them vulnerable to deportation; (b) those cases where the immigration court has

³⁴⁵ Independent Monitoring Board, 2012.

decided that conditions of legal stay have been violated and are now rendered deportable. For both the asylum seekers and cases of FNPs, the deportable category would include the stipulation that all legal appeals have been exhausted.

The final category, IRBs, presents the most complexities in making distinctions between deportability and non-deportability, the basis of detention which accompanies risk of absconding that I outline in the beginning of the chapter. The first distinction amongst IRBs is between (i) people who have been arrested inside the territory for overstaying a valid visa and thereby made vulnerable to deportation, and (ii) those same arrestees who have had their deportability confirmed by an immigration court. The second distinction is between (a) people arrested on *suspicion* of having broken a rule stipulated by a valid visa or residency conditions³⁴⁶ and (b) people who have been *convicted* of having broken a rule and have exhausted their legal appeals, thereby becoming deportable. The third and final subcategory of IRBs pertains to those persons arrested inside territory after having entered territory with a false document, or without detection and/or registering with a border guard. This final group is rendered automatically deportable in the UK. There is a further trifold distinction here: people suspected of clandestine entry; those who have been convicted of this trespass; and those whose legal appeals are exhausted. Cumulatively, I think that these categories describe the majority of immigration detainees in the UK and other liberal states.

Asylum seekers

Let us start with the asylum seeker whose case has not yet been heard. Why should this person abscond? It could be that she is putting forward an inferior asylum claim. It may be that she is lodging a fraudulent case with the sole intention of gaining

³⁴⁶ An example here is a student engaging in work despite being prohibited by her visa conditions.

entrance to the state and eventually going underground. People seeking asylum in liberal states also harbour valid worries about not getting a fair hearing: as mentioned, asylum seekers may have cause to distrust the adjudication process, particularly when they fear confinement on the Detained Fast Track and its low success rate. Many asylum seekers are aware that their destination state may have endeavoured to prevent their arrivals through interdiction measures or carriers liability fees. They could also know that the state is simultaneously reviewing asylum claims and attempting to effect deportations to a safe third country.

Nevertheless, simply because these reasons to abscond exist for *some* claimants, it does not follow that they hold for *all* claimants. For instance, asylum seekers from unsafe or non-deportable states have an extremely strong interest in conforming to all of the state's rules and expectations.³⁴⁷ These asylum seekers have a *prima facie* positive claim for refugee status. They are therefore unlikely to abscond and risk compromising their asylum adjudication processes.

Nevertheless, compelling reasons do exist for genuine asylum seekers to abscond. Liberal states often create circumstances that make it difficult for asylum seekers to eke out their livelihoods, particularly if their cases are drawn out due to a backlog or inadequate resources. A number of studies confirm that the level of social assistance provided to asylum seekers awaiting verification of their claims in the UK is insufficient to meet their basic needs.³⁴⁸ Since asylum seekers are also denied the right to work, they may be *de facto* forced into destitution.³⁴⁹ On this account, non-

³⁴⁷ Liberal states ought to be obligated to identify unsafe states and prioritise claimants originating from them, not just the safe ones that they identify for accelerated processes under the White List.

³⁴⁸ Hintjena, 2006;

³⁴⁹ Pinter, 2012. The British Red Cross reports that more than 10,000 asylum seekers in the UK approached their team members in need of emergency relief from destitution (Williams & Kaye, 2010: 3).

compliance amongst asylum seekers may be a survival strategy. For example, absconders report that their actions were underpinned by “elements of fear – fear of return, destitution, being unable to provide for oneself and the family and loss of personal dignity.”³⁵⁰ Absconders from the UK asylum adjudication system “cited the need to work and earn money as a primary reason.”³⁵¹ This problem is compounded when the asylum seekers originate from non-deportable states such as Democratic Republic of Congo, Eritrea, Somalia, and Sudan: if their claims are refused, the UK government withdraws all financial support but cannot remove them.³⁵² Other plausible, rational reasons for absconding include: the mental trauma of impending or continuing detention; the financial, emotional or other dependence of others on the irregular migrant or asylum seeker; and the need to visit and care for sick or needy family or friends. It would thus be misguided to assume that genuine asylum seekers never abscond, especially considering that the state is complicit in creating the circumstances leading to flight.

Unlike criminal cases, immigration detainees do not have a right to an automatic bail hearing. As I detail in Chapter Three, the 2002 Nationality, Immigration and Asylum Act repealed the 1999 provision for automatic bail hearings for all immigration detainees. Historically, during the period of decisions and appeals, most asylum seekers were not detained, although they might be kept in detention once their

³⁵⁰ Jesuit Refugee Service, 2011: 7.

³⁵¹ Jesuit Refugee Service, 2011: 7. Again, the data on absconding is limited and collected mainly by NGOs. In the US, the Constitution Project was able to contact a number of absconders. The NGO reports that, “[s]ome [immigration] detainees miss family events such as births or deaths while in prison—irreparable losses. Detention also puts an economic strain on noncitizens and their families. When a family’s primary wage-earner is being held in detention, spouses and children may struggle to provide for themselves.” (Franklin & Bloom, 2011: 12)

³⁵² Amnesty International UK, 2006; Morris, 2012; Scottish Refugee Council & Refugee Survival Trust, 2012.

removal orders were finalised.³⁵³ The UK Home Office claimed that the concept of bail for all was “inconsistent with the need to streamline the removals process and would be unworkable in practice with the continuing expansion of the detention estates.”³⁵⁴ The use of public funding for bail applications is subject to a merits test, which requires the legal firm to assess the chances of success to be greater than 50 per cent.³⁵⁵

This absence of automatic bail hearings is normatively impermissible. Asylum seekers are morally entitled to a hearing on the appropriateness of detention in each of their individual cases, both before their immigration court hearings and, should their claims be rejected, after their cases have been concluded while they are awaiting deportation. Measures like mandatory detention of White List asylum seekers³⁵⁶ are wholly impermissible: in the same way that people accused of criminal activities are entitled to a bail hearing to determine whether pre-trial incarceration is *appropriate* irrespective of the particular circumstances of their cases, so too are asylum seekers entitled to individualised assessments regardless of their countries of origin. Detaining asylum seekers through the DFT process contravenes the liberal bias for freedom. It makes more sense to provide asylum seekers with circumstances in which they can conduct dignified lives. To achieve this goal, asylum seekers must receive benefits, the right to work, or some adequate compromise between the two options.

Failed asylum seekers

A key justification for the immigration detention of asylum seekers is to ensure

³⁵³ Sawyer & Turpin, 2005: 706.

³⁵⁴ UK Home Office, 2002: Paragraph 4.83

³⁵⁵ It has also been documented that in some cases detained asylum seekers are representing themselves in their bail applications (Hobson, Cox & Sagovsky, 2008: 58 – 59).

³⁵⁶ See page 80 of this thesis for an explanation of the historical origins of the White List, a rotating list of sending countries that are considered safe for asylum seekers to be returned to.

that asylum seekers whose claims have been rejected by an immigration judge – known as failed asylum seekers - are removed from the UK.³⁵⁷ Of the 17,496 initial decisions in the UK in 2011, 25% were grants of asylum, 8% grants of a form of temporary protection (humanitarian protection or discretionary leave) and 68% were refusals.³⁵⁸

One proposed solution to the normative and practical problem of failed asylum seekers languishing in detention is transferring them to a safe third country in the region of origin. The UK has requested, for instance, that Somali failed asylum seekers be returned to Tanzania in exchange for sending substantial financial aid to Tanzania.³⁵⁹ I think that this proposal for a safe third country scheme with Tanzania is an inadequate normative solution for three reasons. First, it simply shifts the burden of providing for, and keeping track of, failed asylum seekers to Tanzania, a state that does not border Somalia and already hosts refugees from neighbouring countries. Second, it makes little sense to send Somalis to a country with which they may have no connections simply because Somalia and Tanzania are in the same region. For many Somalis, being transferred to Tanzania is akin to being dropped in a foreign land where they have no networks or connections to the culture.³⁶⁰ Third, failed asylum seekers may have resided peacefully in the UK for a number of years; this extended stay may be due, often in no small part, to bureaucratic delays in resolving their cases. It is unfair to both the individual and the community to sever these ties through transfer to Tanzania when granting temporary leave to remain is still an option. I discuss the normative significance of extended residence in the section on immigration rule-

³⁵⁷ Debate about this reason for detention was particularly active in regards to the proposal to initiate the Detained Fast Track process (William, 2009: 74).

³⁵⁸ This figure of the percentage of failed asylum seekers holds fairly steady: Initial decisions in the first quarter of 2012 numbered 4,496, 8% fewer than in the first quarter of 2011 (4,894). Of the 4,496, 65% were refusals (UK Home Office, 2012c).

³⁵⁹ Phuong, 2005: 140.

³⁶⁰ Phuong, 2005: 140.

breakers.

Nevertheless, the state has a legitimate concern that a failed asylum seeker will abscond. In fact, failed asylum seekers' fears that a forcible return to their countries of origin will endanger themselves or their families provides a strong incentive not to attend their deportation appointments. As a matter of fact, due to a fear of imminent danger, failed asylum seekers' impetuses to abscond are probably the strongest out of the three categories of immigration detainees under consideration in this chapter. Detention may therefore be necessary to satisfy both the state's interests both in ensuring that failed asylum seekers are available for deportation and, by implication, deporting those non-citizens whose claims to stay have been fairly rejected by an immigration court. However, immigration detention can be justified only when the state has reason to believe that the failed asylum seeker is deportable in the near future, and when a preferable alternative to detention program is not available. The detained failed asylum seeker is also morally entitled to periodic, continuous bail hearings until the case is resolved.

Foreign national prisoners

Let us now turn to examine the category of foreign national prisoners. FNPs are identified as liable to post-sentence detention either during their criminal sentence or via a questionnaire they complete when entering the prison system that asks, among other things, where they were born.³⁶¹ The regulations governing post-sentence detention relate to an Automatic Deportation provision that is elaborated in the UK Borders Act 2007. These provisions effectively remove the Secretary of State's discretion over whether or not to take deportation action against non-European

³⁶¹ Kaufman, 2012: 704. Kaufman continues: "This questionnaire is explicitly intended to identify foreign national prisoners who might otherwise categorise themselves as British. Its aim, in other words, is to catch those prisoners who do not – or do not want to – conceive of themselves as 'foreign'."

Economic Area (EEA) nationals³⁶² sentenced to twelve months or more. Subject to six exceptions,³⁶³ these people can be detained post-sentence for a reasonable period in order to deport them, thereby revoking any existing leave to remain. Non-EEA nationals sentenced to less than twelve months in prison, or those whose previous convictions over the past five years do not add up to twelve months, can be considered for deportation but are not automatically subject to it.³⁶⁴ The significant number of foreign nationals convicted for non-violent drug offences appears to be driving up the numbers of FNPs subject to immediate custody.³⁶⁵

FNPs are detained before an immigration court hearing can be convened to determine whether they are deportable. A judge or magistrate may include the deportation order in an offender's sentence, or the order may be given while the offender is serving his criminal sentence and his case comes to the attention of the UK Border Agency.³⁶⁶ Since they have already served time for their criminal sentences, this is effectively a second incarceration. The unfairness of this situation is

³⁶² EEA nationals fall under a separate legal regime based on the 2004 Citizens Directive, making them much harder to deport (Bosworth, 2011b: 16).

³⁶³ These six exceptions to the Automatic Deportation provision are: (i) where deportation would breach the person's rights under the European Convention of Human Rights (ECHR) or the UK's obligations under the Refugee Convention; (ii) where the person was under the age of 18 on the date he or she was convicted; (iii) where the person is a citizen of a country belonging to the EEA is exercising treaty rights, or is a close relative of an EEA national exercising treaty rights and deportation would breach those rights; (iv) where the person is subject to extradition proceedings instigated by another government; (v) where the person is held under specified provisions of the Mental Health Act 1983 or its associated legislation; and (vi) where deportation would contravene the UK's obligations under the Council of Europe Convention on Action Against Trafficking in Human Beings (Vine, 2011: 4.11).

³⁶⁴ Trude, 2012: 5.

³⁶⁵ James Banks (2011: 187 – 188) recognises that:

For June 2009, foreign national prisoners imprisoned for drug offences comprised 29% of the total number of foreign nationals under immediate custodial sentence in comparison with just 14% of British nationals. Female foreign national prisoners, in particular, are more likely to have been convicted for such crimes, with just under half (48%) of all female foreign national prisoners under immediate custody for drug offences. The penalties for drug smuggling are particularly severe, with average sentences of between five and eight years for a first offence. Consequently, three-quarters of all female foreign nationals and 63% of foreign national men in prison are serving sentences of more than four years, compared with a third of UK national women and half of all UK national men.

³⁶⁶ Bosworth, 2012: 126.

underscored by the fact that it is common for FNPs to remain in the same prison, if not the same cell, even though their detaining authority transfers to Immigration Act powers.³⁶⁷ As it takes place before a deportability or absconding determination can be made, this second, automatic incarceration contravenes the liberal bias for freedom

I identify two further normative issues emerging from the treatment of FNPs in the UK. First, some FNPs may claim asylum from within prison or be asylum seekers with criminal convictions, and these claims are not given the just treatment they morally deserve; and, second, many FNPs have lived in the UK for a long time prior to their criminal convictions and this “societal membership” has normative significance.

On the first normative issue, FNPs experience acute difficulties when attempting to lodge an asylum claim from within prison. Mary Bosworth (2011b: 16) recognises that

foreign national prisoners have limited access to legal aid and advice leaving many without sufficient tools with which to assert their [Refugee] Convention rights. They are vulnerable. Not only is it more difficult to claim asylum successfully from prison, due to limited access to legal aid and immigration advice, but also other rights, for example, to privacy, family life and freedom of religion, are more restricted in prison than without.

It is not always FNP first, asylum seeker second: as there are approximately fifty Immigration Act offences that could result in a custodial sentence, asylum seekers can be prosecuted and imprisoned for immigration offences in the UK, thereby becoming FNPs *after* lodging their claims. The destruction of identity papers and use of a “false instrument” – including stolen, borrowed, doctored, or unofficially created documents,

³⁶⁷In the UK, post-sentence FNPs can remain in prison even though responsibility for their incarceration has switched to Immigration Act powers. Why is this the case? Some former FNPs held in prison have been judged as unsuitable for transfer to IRCs on the basis that they pose a risk to themselves or to others. The more common, practical reasons why FNPs remain in prison include incomplete UK Border Agency paperwork, space issues in the detention estate, and discretionary choices of managing institutions such as the Home Office, the Criminal Case Directorate staff, and the Detainee Escorting and Population Management Unit (Bosworth, 2011b: 16).

usually to enter the UK or find employment are also serious and imprisonable crimes.³⁶⁸ This means that many IRBs are transformed into FNPs after being found to be illegally working, a complication for my categories of immigration detainees that I acknowledge but will bracket for the sake of brevity.

Under the UK Borders Act 2007, many identity offences receive 12-month prison sentences, meaning that individuals who used false identity documents can be imprisoned and subsequently detained and deported.³⁶⁹ Measures such as Section 2 of the Asylum and Immigration Act 2004³⁷⁰ have been criticised for criminalising asylum seekers who, under Article 31 of the Refugee Convention, should not be punished for their illegal entry or presence if they arrive from a country in which their life or freedom is threatened.³⁷¹ Most categories under the immigration rules require the applicant to demonstrate an intention to return home at the end of the stay in the UK. Asylum seekers, by definition, cannot meet those criteria. Therefore, asylum seekers who may be forced to lie about their intentions in order to get a visa to come to the UK can be legally penalised afterwards and labelled an FNP.³⁷² As with the criticism that the liberal state is implicated in creating the conditions that compel asylum seekers to abscond to escape destitution, so, too, does the liberal state's closure of legal passage contribute to "the over-representation of foreign nationals imprisoned for fraud and

³⁶⁸ Griffiths, 2012a: 720.

³⁶⁹ Griffiths, 2012a: 721.

³⁷⁰ Section 2 of the Asylum and Immigration Act 2004 made it illegal for anyone to enter the UK without a valid passport, increasing the difficulty for those seeking asylum to enter the country and further criminalising those individuals who do arrive without the appropriate documentation. Within a year of its implementation, 230 asylum seekers had been arrested and 134 convicted for failing to produce a passport upon arrival (Banks, 2011: 191).

³⁷¹ Banks, 2011: 191.

³⁷² Reynolds & Muggeridge, 2008: 26. The authors continue: "Many refugees face a fundamental problem in that they are unable to approach State authorities to obtain travel documents and visas for fear of the risk this would pose to their lives. Where the State apparatus has completely collapsed, as in the case of Somalia, there is no agency to issue passports. Our respondents described situations where they were denied passports due to targeted discrimination against a minority group or corruption" in the government.

forgery offences”.³⁷³

Moreover, there is no reason to believe that FNPs are more likely than British citizens to commit either non-violent or serious crimes.³⁷⁴ As such, even if the Automatic Deportation provision were adjusted to encompass only violent crimes, the UK government’s justification that it protects citizens from offenders makes little sense without first implementing individualised hearings on the FNP’s likelihood of re-offending. Post-sentence detention provisions contradict the liberal bias for freedom

On the second normative issue, many FNPs, like certain failed asylum seekers, have cultivated personal ties and family connections while living in the UK. In fact, it is not uncommon for FNPs to speak in the regional accents of metropolitan centres like Manchester and London. In a multicultural UK, these FNPs “are in all ways, other than their legal documents, indistinguishable from citizens.”³⁷⁵ As such, removal to a long-forgotten homeland is similar to being dropped in an unknown territory. One FNP with long-term connections to the UK describes the prospect of being deported to his country of origin as being akin to having his identity erased.³⁷⁶ The justifications for automatic post-sentence detention and eventual deportation lose force as time goes on. Detention and deportation when the crime has been committed shortly after a temporary admission is much more defensible than this practice of detaining and deporting *all* foreign nationals regardless of how long they have been in the UK.³⁷⁷

³⁷³ Banks, 2011: 195.

³⁷⁴ Banks, 2011: 195.

³⁷⁵ Bosworth, 2012: 132.

³⁷⁶ Bosworth (2012: 132) records the narrative of a Sudanese FNP who saw his homeland as an foreign and dangerous place that would wipe out his identity: “ ‘My whole life is going to be erased. Just imagine that! You know, when you erase old numbers from your mobile phone? Just imagine your whole life was erased just like that’ (Sudan, CH). For this man, the ‘otherness’ of the foreigner was no longer merely metaphorical: it would become absolute.”

³⁷⁷ See Bauböck (2010: 295) for the similar point about deportation of young FNPs in Austria: “There can be little objections against expulsion when the crime has been committed shortly after a temporary admission into the country. But the current practice of some European states (among them my own

Under the rubric of the claims of “societal membership”, I discuss how long-term residence diminishes the normative force of defensible detention and deportation in the next section of the chapter on IRBs.

Therefore FNPs are morally entitled to a bail hearing in which a compelling reason for their continuing incarceration should be presented to an immigration court. This reason must be a high likelihood of absconding, and it is ethically wrong to assume it to be true without first proving it before a judicial body. A bail hearing is included in some jurisdictions but not others. Discrete from an immigration status trial to determine deportability, this bail hearing would be similar to those in criminal cases. If the immigration court judge finds good reason that an FNP will show up for his deportation hearing then the FNP ought to be released either on his own recognisance or on bail conditions individualised to his circumstances. Factors that should be discussed at this bail hearing in relation to the FNP’s likelihood to abscond include: his roots in the UK, including family, community, and workplace commitments; his mental health; and the seriousness of his crime, including whether it was violent or non-violent like a drugs offence.³⁷⁸ As pertains the second hearing at which the immigration court judge decides whether the FNP is deportable, I think that the vulnerability to detention should be decided as follows: if the FNP is found to be non-deportable then he should definitely not be sent to detention; however, if he is found to be deportable, then an alternative to detention program should be considered as a first option and, if such a program is not available, he can be detained provided that periodic hearings are

country, Austria) of deporting even young foreigners, who have committed minor offences, from their state of birth is certain indefensible.”

³⁷⁸ Currently, and unfairly, qualitative research suggests that bail “is frequently refused on the basis that the applicant is likely to abscond, even if they have previously always reported as required; or because they have ‘no close ties’ in the country, even when have partners and children in the UK.” (Griffiths, 2012b: 11)

continuously scheduled until the case is resolved. I discuss alternatives to detention in the final section of this chapter.

Immigration rule-breakers

The third and final category of immigration detainees in the UK that I identify is comprised of immigration rule-breakers. A 2009 estimate by the London School of Economics suggests that there were between 524,00 and 947,00 IRBs in the UK in 2007, with a central total estimate of 725,000 people.³⁷⁹ There were an estimated 120,000 IRB children living in the UK in 2012,³⁸⁰ down from 155,000 IRB children at the end of 2007.³⁸¹ A large majority of these children are either born in the UK or immigrated to the state at an early age as dependents.³⁸² IRBs may have lived in the UK for a number of years, particularly if they migrated as young children

People who have entered the UK clandestinely make up a relatively small proportion of the IRB population in the UK while the majority enters the UK on an authorized visa and then overstays. There is also a proportion who are legally resident but not legally working.³⁸³ Destitute asylum seekers may engage in informal work, technically making them immigration rule-breakers; however, I have already established that it is normatively impermissible that the state's levels of support are so low that asylum seekers should have to engage in unauthorized work in the first place. IRBs mainly work in low-wage, low-skilled jobs, including construction, agriculture, textiles, hotels and restaurants, cleaning, care work, and domestic work.³⁸⁴ In response to a 2012 inspector's report that over 150,000 people who had been refused leave to

³⁷⁹ Gordon, Scanlon, Travers, & Whitehead, 2009.

³⁸⁰ Sigona & Hughes, 2012: iv.

³⁸¹ Sigona & Hughes, 2010: 29.

³⁸² These children were brought up in the UK, educated in British schools, and many speak English as their main language (Sigona & Hughes, 2012: 41).

³⁸³ Institute for Public Policy Research, 2009: 3.

³⁸⁴ Institute for Public Policy Research, 2009: 5.

remain were potentially still in the country,³⁸⁵ the Immigration Minister said that the UK Border Agency was conducting enforcement actions to remove IRBs and was “also working closely with other government departments to create a hostile environment which makes it much harder for migrants to live in the UK illegally.”³⁸⁶

As I mentioned earlier, distinctions amongst IRBs should be made between people arrested inside the territory for overstaying a valid visa and made vulnerable to deportation versus those who have had their deportability confirmed by an immigration court. Likewise, there is a difference in status between people suspected of having broken an immigration rule, and those who have been convicted by an immigration authority and are therefore deportable. The former are entitled to a hearing to determine the likelihood of their absconding before their immigration court hearing, similar to the bail hearing that I recommend for FNPs.

The final subcategory of IRBs pertains to those persons arrested inside territory after having entered territory with a false document or without detection and/or registering with a border guard. Members of this group are often rendered automatically deportable in the UK. There is a further trifold distinction here: people suspected of clandestine entry; those who have been convicted of this trespass; and those whose legal appeals are exhausted. Again, a key point here is to draw attention to the moral distinctions between people who have been arrested and are awaiting their deportability hearing, on the one hand, and those people whose deportability has been confirmed, on the other. Both a bail hearing and an immigration court trial are needed to determine the likelihood of the IRB absconding and, thus, the necessity of detaining her.

³⁸⁵ Vine, 2012.

³⁸⁶ Masters, 2012.

The principle of societal membership

The key normative issue with regards to IRBs is the moral value of both the time that they have spent in the UK and the relationships and responsibilities that formed during these years of living in the state. There is a strand of normative thought arguing that “the test of membership is the depth of one’s roots into a particular society, and the personal, social and economic costs of depriving them of that society.”³⁸⁷ According to this principle of “societal membership” account, IRBs’ time and social relationships mark the difference between someone simply living in a state to someone with roots in a community that make deportation socially and morally costly to both herself and others. Rainer Bauböck (2010: 295) explains the societal membership position as follows:

Certainly, a liberal welfare state must be interested in maintaining the rule of law and, more specifically, in preventing the spread of illegal employment. However, the facts of societal membership depend on the time of residence more than on legal status. If a state has been unable or unwilling to control illegal entries, residence and employment, it ought to consider the claims of those who have been residing in the country for a long period of time as relevant. This line of reasoning could support a general amnesty or an individual procedure for regularisation of long-term irregular immigrants.

In other words, the “transition through which an individual moves from being someone simply staying in the state to someone who is an informal member of the state” constitutes a moral basis for acknowledging an individual’s informal membership and claim to be free from detention.³⁸⁸ Indeed, qualitative research shows that detention and forced deportation cause more distress “where they take place after a prolonged period of residence in the country during which the person has had time to form ties and relationships within the community.”³⁸⁹ As Joseph H. Carens (2010: 18) puts it, at

³⁸⁷ Gibney, 2009/10: 35.

³⁸⁸ Gibney, 2008: 151.

³⁸⁹ Phuong, 2005: 118.

“some point a threshold is crossed, and [IRBs] acquire a moral claim to have their actual social membership legally recognised.” On this account, since many IRBs make moral claims against deportation, their deportability is called into question and, hence, the justification for their detention on this basis.

We have seen how societal membership accruing from time and long-term residence relate to deportability considerations for detention. How does long-term residence relate to absconding, the second criteria for detention of IRBs? Whether legally present or not, an individual typically interacts with the communities in which they are living. She may become a member of churches, community organisations and schools, and form a range of acquaintances, friendships, and partnerships.³⁹⁰ IRBs with such long-standing ties to the community are highly unlikely to abscond. After all, it would be a high cost to abdicate all responsibilities and forfeit meaningful relationships in order to avoid (temporarily) a hearing in immigration court. What sort of life would they be absconding to?

Based on these arguments, I therefore conclude that the UK and other liberal states are morally beholden to respect a rule that people *suspected* of immigration violations can be bailed from immigration detention automatically; that people *convicted* of immigration violations be given a bail hearing in which their individual likelihoods to abscond must be proven to the satisfaction of a judge; that convicted IRBs who are not deportable be given temporary leave to remain; and that all efforts to respect the principle of detention being used as a last resort be respected and avenues for employing alternative to detention programs be explored. It is to these programs that I turn in the final section of this chapter.

³⁹⁰ Gibney, 2008: 150.

Conclusion: The promise of alternatives to detention programs

Throughout this chapter, I advocate the implementation of bail hearings and immigration court hearings on deportability as well as recourse to alternative to detention programs as a more normatively permissible approach to immigration detention in the UK and other liberal states. The discussion until now has focussed on the moral propriety of individuals being detained. This final section of the chapter explains alternative to detention programs and explores how their increased use would benefit both non-citizens and states that are receiving them.

What is an alternative to detention program? This chapter follows Robyn Sampson, Grant Mitchell, and Lucy Bowring's (2011: 2) definition that an alternative to detention program is "any legislation, policy or practice that allows for asylum seekers, refugees, and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country." An alternative to detention program is thus a non-custodial means for the state to keep track of deportable and paroled non-citizens without incurring the liberty violations associated with immigration detention. Alternatives not only reduce the immigration detainee population in liberal states but are also by and large less expensive than formal custodial supervision in immigration detention centres.

The normative significance of an alternative to detention program is that it allows enrolled non-citizens to enjoy more rights and freedoms while simultaneously meeting the state's interests in ensuring that potentially deportable non-citizens are available for removal. This increased freedom of movement is particularly salient for long-term residents who have familial, workplace, community, and other commitments. While perhaps stigmatising in some ways (see below), the quality of life for enrolled non-citizens and their communities is much higher than with custodial immigration

detention. In other words, an alternative to detention program goes some distance towards dignifying the societal membership of non-citizens and satisfying the demands of the liberal bias for freedom.

Electronic surveillance combined with house arrest is commonly used in lieu of detention in formal immigration detention centres.³⁹¹ Electronic surveillance is usually coupled with daily or weekly reporting requirements and a curfew schedule.³⁹² Generally, non-citizens are “tagged” with ankle bracelets and tracked via satellite. Although the system does not track a wearer’s movements like a homing device, it is able to determine if he or she is at home when supposed to be. An analogous program is already legislated as an *additional*, though not alternative, measure to detention in the UK.³⁹³

The rationale behind electronic monitoring and some degree of house arrest is that this program ensures that an individual can be located at all times without detaining her in a formal centre. It also makes certain that the person does not enter proscribed places such as airports or ferry docks.³⁹⁴ Since it does not necessitate the large security or basic care apparatuses characteristic of detention centres, this form of supervised release is significantly less expensive than formalised immigration detention in a designated centre. The ability to move more freely with the electronic tag than in detention could also improve access to counsel as well as overall qualities of life

³⁹¹ Crawley, 2010b: 6. See discussion in Field & Edwards, 2006: 36 – 38.

³⁹² Section 56.3 of the Enforcement Instructions and Guidance in the UK provides for monthly reporting to a police station as well as to Immigration Service reporting centres. In early 2012, there are reporting centres with holding rooms in the UK at Becket House (London), Communications House (London), Dallas Court (Manchester), Eaton House (Heathrow), Electric House (Croydon), Festival Court (Glasgow), Lunar House (Croydon), Frontier House (Folkestone), Reliance House (Liverpool), Stanford House (Birmingham) and Waterside Court (Leeds).

³⁹³ Section 36 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 provides for the electronic monitoring of those over the age of 18 who are subject to immigration control and “at the lower end of the risk spectrum, or for those who, in the absence of suitable sureties, would otherwise have remained in detention.” (Crawley, 2010a: 5 – 6).

³⁹⁴ Black & Smith, 2003: 1 – 2.

stemming from enjoyment of (some) rights to movement, work, health, education, and family life.³⁹⁵ Although socially stigmatising because the ankle bracelet can be physically uncomfortable and noticeable by others,³⁹⁶ electronic monitoring is nevertheless more ethically acceptable in liberal states than immigration detention. This is true because the program makes great strides towards respecting individual rights to liberty as well as the aforementioned improvements to individuals' qualities of life while simultaneously satisfying the state's interests in tracking deportable individuals.

A community supervision program with non-citizens at liberty illustrates a much less intrusive instance of an alternative to detention. Indeed, whereas house arrest plus electronic monitoring is seen by some as an alternative *form* of detention, community supervision is a more genuine alternative *to* detention. The three key elements of community detention programs are competent legal advice, closer case management,³⁹⁷ and complete comprehension amongst enrolled non-citizens of the consequences of non-compliance. Running in Leeds from November 2006 until end of May 2007, the Solihull Pilot Project is considered a successful example of a community supervision program. The Solihull Project emphasised the importance of making available as much information as possible prior to the initial decision and, where necessary, exercising flexibility on processing times. The Project recorded a 0.4% - 0.5 % absconding rate compared with 2.3% - 5.3% for the rest of Leeds, and

³⁹⁵ Markowitz, 2009: 554.

³⁹⁶ Klein & Williams (2012: 746) report from their qualitative study of bracelet-wearing immigrant parolees in the UK: "Some wearers develop irritations from the tag's rubbing against their skin, and the others see the unbreakable plastic ring as stigmata of their condition. Our informants explained that the physical and psychological discomforts are heightened during the summer months when the heat is stronger and the tag is not hidden by clothing."

³⁹⁷ The Case Management Society of Australia defines case management as a "collaborative process of assessment, planning, facilitation and advocacy for options and services to meet an individual's needs through communication and available resources to promote quality cost-effective outcomes." (Gurd, 2011: 307).

any rises in the Legal Aid budget were offset by savings elsewhere.³⁹⁸

The UK is not the only liberal state to make use of community supervision programs. Most notably, the US, Canada, Sweden, and Australia all either use or have used versions of this program as an alternative to detention. The Vera Institute of Justice in New York City, for instance, ran a community supervision program called the Appearance Assistance Program (AAP) between February 1997 and March 2000. Vera found that (i) close community supervision is a practical possibility, even in a large metropolitan centre; (ii) community supervision will increase the efficiency of the expensive detention system; and (iii) that most irregular immigrants and asylum seekers “want to comply, and that good supervision more than makes up for any deterrent impact that the possibility of immediate re-detention might have.”³⁹⁹ The Reformed Church of Highland Park, New Jersey, USA, also operated a community supervision pilot program. This 2010 well-regarded alternative allowed deportable non-citizens to live with their families while their cases were pending so long as they submitted to close monitoring by members of the Reformed Church.⁴⁰⁰

Outside the US and UK contexts, the Toronto Bail Project is a well-established alternative to detention that has been funded by the Canadian government since 1996. Boasting a 96.35% compliance rate in the 2009–2010 financial year, this organisation identifies eligible detainees through a screening and assessment process, supports their application for release, and then monitors them in lieu of formal detention. The key components of the program are case management, support to access basic needs,

³⁹⁸ Aspden, 2008: 15, 5.

³⁹⁹ Stone, 2000: 686, *passim*.

⁴⁰⁰ The success of this program caused the Inter-American Commission on Human Rights to remark that it “is convinced that in many if not the majority of cases [in the US], detention is a disproportionate measure and the alternatives to detention programs would be a more balanced means of serving the State’s legitimate interest in ensuring compliance with immigration laws.” (Fialho, 2012: 88)

information and advice, reporting, and supervision. The cost is approximately CA\$10–12 per person per day compared with CA\$179 for detention in a designated centre.⁴⁰¹ The Swedish government also administers a well-regarded case management system with the aim to achieve cooperation from non-citizens through clear communication. Official figures reported that between January and September 2003, only 2,810 cases out of 22,314 processed were “annulled”, which includes both asylum seekers who absconded as well as voluntary returnees and cases closed for other miscellaneous reasons.⁴⁰² Finally, Australia introduced a number of community supervision programs between 2006 and 2008 that yielded a 6% compliance rate, with 67% of those not granted a visa to remain in the country voluntarily departing. The key findings of these programs were: (i) effective community arrangements allow for readier transition to life in the liberal state or willingness to be removed should their cases be rejected; and (ii) community arrangements entail fewer risks to mental health, safety, and wellbeing, particularly for asylum seekers.⁴⁰³

Therefore, it is not difficult to envisage a widespread system of community supervision in the UK that features case management, supervision, information, and advice (with optional electronic monitoring for identified high-risk individuals) that will not only cost less than formal immigration detention but will allow the deportable non-citizen to live in dignity until his or her removal date. Given these considerations, I find that it is morally incumbent upon the UK government to consider implementing alternative to detention programs as soon as possible. In the meantime, I turn in the

⁴⁰¹ Sampson, Mitchell, & Bowring, 2011: 44.

⁴⁰² Amnesty International, 2009: Footnote 40; and Banki & Katz, 2009: 3. But see Khosravi (2009) for an argument that the Swedish system is coercive and the communications received by asylum seekers are misleading.

⁴⁰³ They are likely to lead to lower rates of suicide and self-harm as well as fewer claims for compensation (Australian Human Rights Commission, 2012: 13).

next chapter to outlining a series of minimum standards to which conditions in immigration detention centres must be immediately raised.

Chapter Five: Minimum standards of treatment in immigration detention centres in liberal states

In Chapter Four, I explore the rationales behind immigration detention in the UK. After examining the cases of asylum seekers, foreign national prisoners, and immigration rule-breakers, I conclude that decisions to detain are normatively permissible only if the criteria of likelihood to abscond and deportability are proven. I also describe a number of alternative to detention programs that can be quickly and efficiently implemented in the UK in lieu of custodial immigration detention. However, simply urging states to adopt alternative to detention programs is not sufficient to meet the thesis's goal of finding a feasible framework for a morally permissible detention estate. To that end, this chapter explores the daily conditions of life inside an immigration detention centre and makes recommendations for improvements that can be quickly and sustainably implemented.

This chapter therefore outlines the ways that the UK and other liberal states are frequently failing to maintain a humane standard of treatment in immigration detention. I highlight a number of general problems and focus in particular on issues affecting children, mentally disabled adults, and detainees' access to legal counsel and judicial oversight. For each of these issues, I suggest a threshold of minimum standard of treatment. Taken together, these suggestions constitute my proposal to increase standards to a more acceptable level and quality of treatment for *all* detainees.

General problems with contemporary immigration detention estates

First, the *culture of disbelief* has become shorthand for describing the relationship between the Home Office and individual asylum seekers that is increasingly

characterised by mistrust or disbelief.⁴⁰⁴ It should be noted that first instance asylum adjudication is done by UK Border Agency officials; the court or tribunal becomes involved should the non-citizen appeal the official's decision. If a case does get to that stage, one critique of proceedings is that the system judges all applicants by the same adult standards and considers children, the mentally disabled, and other vulnerable people to have complete, adult-like competency until proven otherwise. Refugee and Migrant Justice (2009: 23) suggests that these issues are particularly pertinent in regards to questions of testimony and credibility:

[children are] expected to give consistent and coherent accounts of their past, whilst often having no independent adult to support them and sometimes without a legal representative .. many are even forced to repeat the process at the age of 17 and a half, damaging the new lives they have managed to build in a foreign country.

Some critics contend that the culture of disbelief is “leading to perverse and unjust decisions” and the “adversarial nature of the asylum process stacks the odds against asylum seekers, especially those who are emotionally vulnerable and lack the power of communication.”⁴⁰⁵ Arguably, the confrontational nature of the courts “starts with the Home Office and has contributed greatly to the perception of racist and discriminatory decision making by it.”⁴⁰⁶ The government's concerns over the credibility of identification documents – and the possibility of forgery or thievery - are rooted in this culture of disbelief.⁴⁰⁷

In lieu of devising proactive measures to tackle the culture of disbelief directly, which seems impossible without a sea change in thinking, a preliminary threshold for minimum standards would be to alter the courtroom environment to reduce the stress of

⁴⁰⁴ Hynes, 2009: 105.

⁴⁰⁵ Hobson, Cox, et al., 2008: 2.

⁴⁰⁶ Care, 2008: 200.

⁴⁰⁷ Crawley, 2007: 26 – 28.

immigration detention proceedings, particularly for children and mentally ill detainees. Judges can speak in less technical language, non-dangerous detainees would never be shackled or otherwise physically restrained, and accommodations would be made to encourage the presence of people who can provide emotional support (such as family, friends, clergy, or a therapist).⁴⁰⁸

Four other straightforward recommendations for change are instances of immediate improvements to the detention experience. These are: (i) appropriate communication and follow-up treatment with community mental health professionals for asylum seekers after release from detention;⁴⁰⁹ (ii) a remedy to the lack of drug and alcohol treatment facilities in detention; (iii) the facilitation of detainees' abilities to visit easily and satisfactorily with family, to go outside, to exercise, and to practise religion;⁴¹⁰ and (iv) the assurance that all detention facilities will be in metropolitan centres.⁴¹¹

A final, obvious requirement is to implement a maximum time limit for individual periods of immigration detention. There is an argument that strict time limits could potentially impede due process rights by hampering detainees' opportunities to gather the evidence for their asylum claims and credibility hearings. While it may initially seem like a potential subversion of due process rights, a maximum time limit on detention could nevertheless incentivise the state to provide more legal and material assistance to detained asylum seekers in order to resolve their statuses within the allotted time. There are multiple examples of liberal states

⁴⁰⁸ Clapman, 2011: 140.

⁴⁰⁹ Hodes, 2010: 622.

⁴¹⁰ Heeren, 2010: 933.

⁴¹¹ Examples include the 1,000-bed Bureau of Prisons centre used by INS in Oakdale, Louisiana located two and a half-hours away from Baton Rouge, the nearest major city, and the Scherger immigration detention centre located outside Weipa in Queensland, Australia (Joint Select Committee on Australia's Immigration Detention Network, 2012: 29; Kerwin, 2001: 05).

successfully operating detention systems with legislated maximum periods of duration.⁴¹² Moreover, if this were a concern of the UK government, it would do away with the Detained Fast Track since the end-to-end physical incarceration of detainees surely hampers their capacities to mount their cases.

A number of official recommendations for a reasonable upper time limit are suitable for the UK: the European Union Fundamental Rights Agency (2010) recommends that maximum periods of detention should not extend beyond six months; the Joint Committee on Human Rights (2007) recommends 28 days of pre-deportation detention for failed asylum seekers, and seven days for families with children; and the Joint Select Committee on Australia's Immigration Detention Network (2012) recommends a 90-day cap. Regardless of which standard is selected, the point is that choosing one will alleviate the mental torture of the "unknowingness" of indefinite detention that I describe below.

Each of these suggestions for minimum standards of treatment flags the fact that governments conceptualised and promulgated immigration detention as a short-term solution in reaction to perceived crises of asylum and migration. As it is currently functioning, the UK detention estate is capable only of "[dispensing] stopgap solutions to its long-term detainees."⁴¹³ As such, the system cannot accommodate long-term detainees adequately and must be reformed as soon as possible. The next three sections highlight basic human rights standards that are being abrogated in UK immigration detention facilities.

⁴¹² France, for instance, stipulates a maximum period of 32 days in administrative detention and 20 days in airport waiting zones, and Sweden maintains a fourteen day cap on administrative pre-deportation detention (Field & Edwards, 2006: 102 – 103, 187).

⁴¹³ Heeren, 2010: 933.

Mental disability

A lack of sensitivity and care for mentally disabled immigration detainees corresponds to a larger trend of affording poor treatment to mentally disabled asylum seekers and migrants across Europe and North America.⁴¹⁴ One difficulty with adequately caring for mentally disabled immigration detainees in the UK relates to the subcontracting of healthcare through a combination of private (e.g. Serco Health, Primecare Forensic Medical, and Saxonbrooke Healthcare) and public healthcare systems (the National Health Service). There is no centralised healthcare needs assessment: individual healthcare contractors carry out needs assessments for each IRC, and for make decisions on staffing levels of mental health professionals. Given the poorly defined boundaries between mental health care providers and immigration officials employed in immigration detention centres, detainees may also be hesitant to reveal their disabilities, thereby compounding the problem of identifying and assisting them.⁴¹⁵ This situation leads to defused responsibilities as well as transparency and accountability issues.⁴¹⁶

Why is it necessary to provide extra care and assistance to mentally disabled immigration detainees? They are at risk of making statements in court and to immigration officers that are against their interests. They are also at risk of making compromised decisions and “volunteering” for removal⁴¹⁷ when they have strong

⁴¹⁴ de Anstiss, Ziaian, et al., 2009; Henley & Robinson, 2011; Kirmayer, Narasiah, et al., 2011; Straimer, 2010.

⁴¹⁵ Human Rights Watch (2010a: 37) quotes a US attorney who suggests that “[a] lot of women are afraid that their psychological factors will be used against them—to have their kids taken away, for example.” Desai, Goulet, et al. (2006: 212) similarly warn that, in the context of juvenile detention, detainees “may be advised by their legal counsel not to speak with mental health clinicians, for fear of compromising their legal case.”

⁴¹⁶ McGinley & Trude, 2012: 6.

⁴¹⁷ Human Rights Watch, 2010a: 25 – 26.

claims to asylum.⁴¹⁸ Mentally disabled detainees can be denied asylum on the basis that they are not able to provide “credible” testimony from memory nor are they able to collect and present relevant biographical and factual evidence without support.⁴¹⁹

Minimum standards of treatment for mentally disabled adults

There are a number of factors that disadvantage mentally disabled immigration detainees and put them at risk of harm: a lack of obvious symptoms; reliance on self-identification; the stigma of disability; a lack of records documenting mental illness; and a lack of training for immigration officials when it comes to identifying and working with people who have mental disabilities.⁴²⁰ The poor screening requirements imply that detainees’ conditions are left to deteriorate before they are given medical attention. At least two landmark court cases were decided in 2012 that provide insights into the legal minimum standards for treatment of mentally disabled immigration detainees.⁴²¹

In a review of US juvenile detention facilities, Rani A. Desai, Joseph L. Goulet, Judith Robbins, John F. Chapman, Scott J. Midgole, & Michael A. Hoge (2006) propose a number of minimally required recommendations for mental health services provisions. Given that the normative responsibility towards mentally disabled adults is akin to one towards juveniles on the basis of *parens patriae* and other liberal doctrines to be discussed below, it is possible to make an application of these standards by analogy to immigration detention. Desai, Goulet, et al. (2006: 12) recommend that qualified mental health professionals should:

⁴¹⁸ Mark Lyttle, a bipolar, dyslexic man born in North Carolina, was detained and wrongfully deported from the US to Mexico in 2009. Pedro Guzman, a developmentally disabled man born in California, was detained and wrongfully deported to Mexico in 2007.

⁴¹⁹ Clapman 2011: 139.

⁴²⁰ Human Rights Watch, 2010a: 32 – 35.

⁴²¹ I detail these cases in Appendix Two.

(1) establish case management services; (2) provide general supportive counselling to all detainees to address general concerns as well as establish clinical alliances with detainees in need of more extensive mental health care; (3) develop brief drug abuse treatment programs using principles of 12-step and/or Cognitive Behavioural Therapy (CBT) strategies; (4) develop strategies to address other psychiatric symptoms, incorporating CBT principles where possible, but also being flexible to include a wide array of therapeutic techniques ; and (5) forge alliances with community providers to ensure continuity of care across systems once the detainee is released into the community.

These suggestions for more appropriate training for mental health professionals as well as for the guards, solicitors, judges, and other personnel working with immigration detainees collectively constitute a minimum threshold above which standards in detention must be brought.

Minimum age requirements

I outline the current situation for UK child immigration detention in Chapter Three, and I will pick up the discussion here. Like their adult counterparts, non-citizen children who are deemed to have no legal right to remain in the UK may be subject to detention and deportation; however, as a result of their minor chronological age, they are entitled to levels of welfare benefits, health care, and education that are regularly denied to adults. The scientific literature documents the harm of immigration detention for children, both directly and also because their parents are too depressed and anxious to provide adequate parenting.⁴²² What would a fair threshold of minimum treatment look like in the context of child immigration detention?

The immigration detention of children in the UK

The rights of children under immigration law are not clear-cut.⁴²³ David B. Thronson (2002: 992) explains that:

⁴²² Cleveland, Rousseau et al., 2012: 20.

⁴²³ Dalrymple, 2006: 137.

[in] the family setting, "children" are conceived as objects rather than actors, and their voices are largely ignored. In the unaccompanied setting, "minors" are subject to the same harsh laws and procedural complexities as adults. Through these frameworks, immigration law reinforces conceptions of children that limit their recognition as persons and silence their voices.

Since a "child" exists in relation to a parent, immigration law uses "minor" to refer to children who defy this definition and either arrive unaccompanied or find themselves unaccompanied after arrival; however, the "scattered and inconsistent references to 'minors' provide a sharp contrast to the painstaking thoroughness with which a 'child' is defined and used."⁴²⁴

Nevertheless, the liberal norm holds that the state's detention of child migrants to achieve an immigration-related goal is not permissible. In addition to being found in a number of laws and legislation,⁴²⁵ this norm is articulated in the United Nations Convention on the Rights of the Child (UNCRC) ratified by the UK in 1991. Encapsulating the view of children's rights as international human rights, the UNCRC gained worldwide acceptance quite quickly.⁴²⁶ It is thought to have codified, reaffirmed, and extended seemingly universal principles.⁴²⁷ Four Articles have assumed particular significance: Article 2 (non-discrimination), Article 3 (best interest of the child), Article 6 (right to life and development), and Article 12 (right to express

⁴²⁴ Thronson, 2002: 997.

⁴²⁵ Article 1 of the Children Act 1989 holds that, in judicial decisions relating to a child, the child's welfare should be the paramount consideration; the Act also provides that public actors should take into consideration the child's wishes, feelings and specific needs, current and future circumstances, their potential impact and harm, as well as family circumstances in order to come to the best solution for the child's well-being (Giner, 2006: 11). Section 55 of the Borders, Citizenship and Immigration Act 2009 imposes a statutory duty on the Home Secretary to make arrangements ensuring that immigration and asylum functions (among others) are discharged having regard to the need to safeguard and promote the welfare of children. The Home Office *Enforcement Instructions Guidance* stipulates that children are only to be detained as a last resort, with unaccompanied minors being detained only on the day when they are flown out of the UK.

⁴²⁶ Dalrymple, 2006: 143.

⁴²⁷ Shanahan, 2007: 417.

one's opinion and be heard).⁴²⁸ Article 3.1 reads “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Under Article 37(b), “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. On ratifying the UNCRC, the UK initially entered a reservation relating to immigration law and the detention of children. After concerted lobbying by a number of civil society organisations, however, the reservation was withdrawn in November 2008.⁴²⁹

The reason why the immigration detention of children appears to be impermissible to liberals is because of the high value that liberals place on *all* children.⁴³⁰ The idea of a child carries moral and political significance beyond age and maturity concerns.⁴³¹ While parents are the primary agents responsible for their children's moral upbringing and welfare, liberals argue that children's extreme vulnerability to mistreatment means that society has a collective responsibility to intervene when parents fail to uphold their duties as carers. Parental powers are not only rights in and of themselves but they are means to advance children's welfare.⁴³² Following the *parens patriae* doctrine, the state is an instrument of the community that needs to fulfil its responsibilities towards ensuring all children's welfare, regardless of

⁴²⁸ Quennerstedt, 2009.

⁴²⁹ Sankey, Farthing, et al. 2010: 6 – 7.

⁴³⁰ Meyer, 2007: 99.

⁴³¹ O'Connell Davidson (2005: 10) explains that, “[collectively] and individually, we look to 'the Child' to give meaning and coherence to our lives, to tell us who we are and what we hold dear, to provide a bulwark against the encroaching tides of change, and to reassure us that at least *some* of our social connections are fixed, indissoluble and beyond contract. But children only provide us such reassurance so long as we can be certain of their fundamental difference from ourselves. Thus we insist upon the innocence, dependency, [and] helplessness” of children.

⁴³² Dalrymple, 2006; Thronson, 2002: 988; Woodhouse, 1997 – 1998.

alienage or citizenship.⁴³³

As non-citizens subject to immigration enforcement, child immigration detainees fall between two competing normative frameworks: the child welfare concerns that focus on protection and assistance and considerations of alienage and legal status.⁴³⁴ The *parens patriae* duty means that the state safeguards children, but its duty as gatekeeper to the territory means that it enforces immigration law. Protection and enforcement issues of normative relevance also arise for charities like Barnardo's that provide aid and assistance to children but become open to criticism for lending moral legitimacy to the detention system as a whole.⁴³⁵

Unaccompanied asylum seeker children and "impostor children"

The UK government claims to treat unaccompanied asylum seeker children (UASC) more favourably than other asylum seekers, both in terms of reception services and asylum procedures.⁴³⁶ Official procedure is to "look after" UASC through guardianship outside of a detention setting.⁴³⁷ The local authority is obliged to safeguard and promote the minor's well being, and to treat the UASC in a manner

⁴³³ In its role of *parens patriae*, the UK state participates in shaping children's moral upbringing and ensuring their welfare interests are met. For example, it has legislated for compulsory education laws, prohibited child labour, banned children from driving cars, and prohibited sale of adult material to minors. The balance of responsibility for children's moral upbringing and welfare between parents and the state changes over time and is not necessarily consistent across policy arenas, including immigration. For a study of one age-related policy in the UK and the shifting ground of *parens patriae*, see Kay & Tisdall (2006). For a US case study, see Haubenreich (2008).

⁴³⁴ Bhabha (2000) makes a similar point about the double-status of children in immigration enforcement proceedings in the US context.

⁴³⁵ This pressure on charities working with immigration detainees is fairly common: between October 2008 and April 2009, for example, Médecins Sans Frontières, temporarily abandoned its mission to provide rudimentary health care to detainees on the Italian island of Lampedusa after failing to conclude a memorandum of agreement with the Italian government as to the nature of its role (Médecins Sans Frontières, 2008, 2009).

⁴³⁶ Bianchini, 2011: 52.

⁴³⁷ Crawley (2006: 100) explains that "A child is said to be 'looked after' when he or she has been provided with somewhere to live by a local authority whether or not he or she is subject to a care order. A 'looked after' child might be staying with foster carers, or in a children's home or boarding school, or in bed and breakfast accommodation or with another responsible adult who is known to the child, or the child's parents or guardians."

similar to a British child.⁴³⁸ The Home Office claims that it rarely detains *confirmed* UASC.

However, in order to access this preferential treatment, a UASC must either (i) be accepted as under eighteen years of age; or (ii) meet a legal challenge to prove his or her chronological age. The aforementioned culture of disbelief means that a “prematurely prejudiced assessment of an individual’s age” is not uncommon.⁴³⁹ The decision to challenge the age of a child is discretionary and based on subjective judgments made by an immigration officer during the initial screening process.⁴⁴⁰ This problem is not insignificant: in 2007, 1,913 out of a total 3,645 UASC applications in the UK were “age disputed.”⁴⁴¹ Crawley (2007: 37) reports that over the course of a year, 60% of age-disputed young people held at IRC Oakington in Cambridgeshire were later assessed as being children.

UASC confront practical difficulties when attempting to document their chronological ages.⁴⁴² Following a historical precedent,⁴⁴³ the UK employs a variety of technologies to determine the ages of UASC who cannot prove their minor ages. As of

⁴³⁸ Canada, the US, and other states provide similar protections for UASC: under US law, children may apply for “special immigrant juvenile status visa,” which allows abused, neglected, or abandoned children to leave detention but remain in the country, and, Canada, UASC are entitled to welfare benefits, education, help with employment, and housing outside of detention facilities (Glickman, 2002: 65; Ali, 2006).

⁴³⁹ Aynsley-Green, et al. 2012: 11.

⁴⁴⁰ Fekete, 2007: 99.

⁴⁴¹ These numbers dropped so that in 2010, there were 489 “age disputed” of a total 1,717 UASC applications, and then, in 2011, there were 354 disputed of a total number of 1,277 UASC applications (Dennis, 2012: 6).

⁴⁴² These difficulties include originating from a cultural context without birth certificates and fleeing without documents or having their documents taken away en route to the UK. UASC may have only partial knowledge of their countries of origin and the reasons for their flight. Children often find it emotionally difficult to recall past events and experiences in order to present the consistent narratives needed for credibility hearings (Crawley, 2010a: 165). See Herlihy, Scragg, et al., 2002.

⁴⁴³ On Ellis Island in the US at the turn of the century, a team of doctors used fecal analysis, psychological and agility quizzes, temperature-taking, strip searches, and, later, x-rays, to screen new arrivals for cholera vibrio, insanity or mental deficiencies, syphilis, and tuberculosis; they also employed a team of “‘perceptive’ women stationed around the Great Hall, scrutinizing the faces of young women who, it was supposed, might be lured into prostitution or who already earned a livelihood through harlotry.” (Birn, 1997: 301).

2012, two technologies are commonly employed: (i) bone age and dental maturity assessment through x-rays and magnetic resonance imaging and ultrasound; and (ii) anthropometric measurements without x-rays, including gaging aged based on physical size (height and weight growth) and sexual development (e.g. pubic hair or breast development). In addition to being physically and psychologically invasive, these technologies may psychologically harm children.⁴⁴⁴ Moreover, many of these technologies are not fully accurate predictors of age, with the likelihood of gaining an accurate age assessment decreases with age.⁴⁴⁵ The credibility of these technologies to properly and humanely gage someone's age has been challenged by the UK Children's Commissioner and other UK actors.⁴⁴⁶

These technologies also potentially play a role in enabling the culture of disbelief that allows for detaining first and determining chronological age second. There is a rhetorically powerful but mostly unsubstantiated rumour that non-citizens who are not children are taking advantage of this special treatment in order to facilitate their entries into liberal states. To gain access to these welfare benefits, the populist argument goes, cunning adults will send children ahead, steal children, or, most likely, pose as children themselves.⁴⁴⁷ However, this logic is circuitous: the Home Office is asking the age-disputed applicant to consent to a procedure that is not suitable for children in order to prove that he or she is in fact a child. Put another way, a child must make a very adult decision and submit to a procedure that is not medically proven but may harm them in order to gain relief from detention and access treatment befitting a child.

⁴⁴⁴ Aynsley-Green, et al, 2012: 14.

⁴⁴⁵ Aynsley-Green, et al., 2012: 12, *passim*; Cole, 2012: 12, *passim*; Crawley, 2007: 28 – 36; Mora, Bochet, et al., 2001; and Schmeling, Reisinger, et al., 2000.

⁴⁴⁶ Crawley, 2007 :36.

⁴⁴⁷ Bianchini, 2011: 52.

The state presents age assessments as a bulwark against abuse of a sympathetic system; however, it is troubling that the state does not acknowledge that any potential impostor-child desperately wants to obtain permission to stay, otherwise he or she would not subject herself to these technologies. Yet, the state *cannot* acknowledge the precarious positions of the impostor-children because that would lower the threshold for admission decisions, and tip the scales towards less-justifiable detention. By unearthing the occasional adult pretending to be a child, the state is able to shore up the divisions between children deserving of exception from detention, and the cunning adults who try to take advantage of a generous system. The implication is the latter group is comprised of cheaters or frauds and, therefore, can be dealt with through long periods of immigration detention.

Minimum standards for child immigration detainees

Since UASC are said to be rarely detained, the bulk of normative concern rests with the detention of families with children. A key issue here is whether children can consent to migrate or are always coerced by their parents, guardians, or another adult. If they were acting on their own motivations then it follows that children should be treated like adults; however, even if they consented, the state's *parens patriae* responsibilities mean that it is the ultimate arbiter of the child's future and is responsible for the child's welfare regardless of how she got into the territory. The state is also morally beholden to protect children from coercive exploitation by adults. As such, children ought to be removed from detention altogether. In the event of a legitimate deportation, the child can be detained for less than four hours before the flight, but must be held in a neutral or positive environment under the guardianship of a caseworker or trusted adult.

Access to fair legal treatment for *all* immigration detainees

Immigration detainees are not always able to enjoy their procedural rights. The Independent Monitoring Board (2011: 10) reports that it “struggles to find new ways to express the same old concerns that crop up each year about matters [at IRC Harmondsworth] in the remit of UKBA – the length of detention, the poor quality of communication about the progress of cases, lack of adequate access to legal advice and frequent movement of detainees from one detention centre to another.” The Jesuit Refugee Service – Europe (2011: p. 34 - 35) describes how poor quality legal assistance makes it difficult for UK detainees to challenge prolonged detention and/or poor bail conditions, as well as to appeal negative asylum application decisions. Likewise, UK Parliamentarians who attended a 15 June 2011 legal meeting “identified that the current arrangements for legal advice and assistance for those in immigration detention are inadequate.”⁴⁴⁸ Therefore, this final section on minimum standards of treatment for immigration detainees focuses on remediating the lack of judicial oversight and inadequate access to legal counsel.

Judicial oversight

As mentioned in Chapter Three, UK immigration detainees and their legal representatives make bail applications to an independent immigration judge at the First-tier Tribunal of the Immigration and Asylum Chamber (FTTIAC). The FTTIAC comprises the only independent review of detention (short of making an application to the higher courts).⁴⁴⁹ One or more immigration judges – and, sometimes, non-legal members of the FTTIAC – hear detainees’ appeals and ultimately decide whether or not to grant bail. The Tribunals Service appoints immigration judges to their roles.

⁴⁴⁸ Immigration Law Practitioners’ Association (2011: 2).

⁴⁴⁹ UK Ministry of Justice, 2011.

Yet, the FTTIAC can only assess eligibility for bail, which usually translates to disputes regarding absconding. The FTTIAC cannot hear challenges to the legality of an individual non-citizen's detention, and is therefore expected to bypass these arguments in its hearings.⁴⁵⁰

There are a number of concerns regarding the nature of the FTTIAC and its judges. First, there is limited oversight or accountability of the FTTIAC to a watchdog or the Home Office. More generally, the state is never called upon to prove the correctness of their case that a detainee is not a *bona fide* asylum seeker; it is incumbent upon the detainee to demonstrate that it is reasonably likely that, if returned, he or she may be persecuted.⁴⁵¹ It is questionable what the purpose is of maintaining a review court that is specifically instructed to forgo examining the core questions and controversies of immigration detention. The willingness of the FTTIAC to place itself within the jurisdiction of the Home Office speaks once again to the power that the executive branch of the UK government holds over immigration control.

Detention and the “refugee roulette”

A further concern is the inconsistencies in success rates for identically situated irregular migrants and asylum seekers in detention, depending on which court, and which judge, hears their cases for bail. The lack of uniformity in judgments correlates to the high degree of discretion afforded to the immigration officers making the initial decision to detain. In other words, the significant disparities in the rates of positive versus negative detention decisions amongst immigration officers⁴⁵² find analogous patterns in judicial decision-making. The fact that claimants' chances of success are highly dependent upon the judges before whom they appear raises significant questions

⁴⁵⁰ BID (Bail for Immigration Detainees), 2010: 61.

⁴⁵¹ Care, 2008: 200.

⁴⁵² Weber, 2003.

of justice for the immigration detention process and, indeed, granting permanent residence or ordering removal.

The legal and moral dubiousness of the inconsistencies apparent in refugee status determination (RSD) decisions⁴⁵³ borne out of judicial discretion is attracting a great deal of scholarly⁴⁵⁴ and legal attention.⁴⁵⁵ Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Peter Schrag (2007) examine a large number of cases in the US,⁴⁵⁶ and find that the outcome of an asylum claim hinges on the applicant's particular legal representatives, adjudicators, and the region in which the case is heard.⁴⁵⁷ Their central findings (2007: 378) suggest that whether an asylum claim will be successful "is very seriously influenced by a spin of the wheel of chance; that is, by a clerk's random assignment of an applicant's case to one asylum officer rather than another, or one immigration judge rather than another." This process of asking asylum seekers to participate in an unfair judicial system is termed the *refugee roulette*.

Fast-track detention programs compound the probability for disparities in treatment. One public defender is often tasked with representing six to ten defendants at a time. Further, the confined nature of fast-track programs means that choice is often

⁴⁵³ While international law provides a definition and guidance for judges on how to determine whether an asylum seeker qualifies as a Refugee Convention refugee, the RSD process, as it is known, is the individual application of these principles to determine the success of cases. Outcomes of the RSD process "can differ greatly depending on where it takes place, even among states with many institutional, cultural, geographical, and political similarities." (Hamlin, 2012: 933).

⁴⁵⁴ Alexander III, 2006; Benedetto, 2008; Hamlin, 2012; Legomsky, 2007b; Love, 2009; Vastine, 2010.

⁴⁵⁵ The American Bar Association questions significant disparities in the rates at which immigration court judges grant favourable decisions in the US, even among judges on the same court and for cases involving nationals from the same sending country. See American Bar Association, & Arnold & Porter LLP, 2010.

⁴⁵⁶ The authors examine 33,000 decisions involving nationals from eleven key countries rendered by 884 asylum officers over a seven-year period; 140,000 decisions of 225 immigration judges over a four-and-a-half-year period; 126,000 decisions of the Board of Immigration Appeals over a six-year period; and 4215 decisions of the U.S. courts of appeals during 2004 and 2005.

⁴⁵⁷ For example, in Los Angeles, one judge granted asylum to 9% of the 117 Chinese applicants who appeared before him, whereas another granted asylum to 81% of 118 Chinese applicants—nine times the rate of his colleague. The authors note that "the case in San Francisco is even more dramatic; one judge granted 84% of Indian asylum cases, a rate twenty-eight times that of another judge in the same courthouse who granted 3% of these cases" (Ramji-Nogales, Schoenholtz, et al., 2007: 339).

not an option for detainees. Jennifer Chacón (2012: 651) argues that the reason why disparate sentences are meted out for identically situated defendants is because of the increasing significance of where they happen to be apprehended. She warns that, inevitably, “the disparate interstate treatment of individuals whose only genuine offense is presence without authorisation will increase” over the coming years.

The refugee roulette seems to be influential in UK bail hearings. Amongst other scholars,⁴⁵⁸ Caroline White (2012) points out that discrepancies in rates of granting bail – and, hence, release - amongst immigration judges and courts are well known to detainees and their representatives. Indeed, detainees ask for transfers out of IRC Colnbrook and IRC Harmondsworth to IRC Dover or IRC Brook House where their bail applications will be heard at Taylor House immigration court (Islington) rather than at Hatton Cross (near Heathrow Airport). Their suspicions are confirmed by statistics: during 2009, 24.6% of the 3,680 applicants at Taylor House were granted bail whereas the rate was only 10.7% of the 3,040 applicants at Hatton Cross.⁴⁵⁹

The Canadian case is also instructive for illustrating the high stakes of the refugee roulette. There are at least four major studies of the Canadian RSD process. A 1992 study of the Federal Court of Canada (FCC) found that the likelihood of granting leave to remain on immigration decisions was significantly related to the backgrounds and attitudes of the individual judges (Greene & Shaffer, 1992). Rehaag (2009) found a great variance in grants of refugee status by Canadian officers at Immigration and Refugee Board hearings, with some officials granting protection in 95 and 96 per cent of their cases and others in 2, 7, and 9 per cent of cases. In a subsequent study of 23,000 cases of refugee applicants in Canada dating from 2005 to

⁴⁵⁸ See, also, the evidentiary support for patterns similar to the *refugee roulette* in other immigration courts provided by BID (Bail for Immigration Detainees), 2010, and MacKeith & Walker, 2011.

⁴⁵⁹ White, 2012: 3.

2010, Rehaag (2012: 28) once again concludes that “outcomes in applications for judicial review in the refugee law context all too often hinge on who decides the case.” Gould, Sheppard et al (2010: 481) demonstrate that “representation by an experienced attorney is the most influential factor in explaining” FCC decisions to grant leave, and “that judges’ ideological reputation, and to a lesser extent their background and language, help to explain their rulings on immigration appeals. The apparent contingency of the *refugee roulette* in which the immigration judge and court location are more significant in bail decisions than the merits of the application is unfair, inconsistent, arbitrary, and morally impermissible.

Access to high-quality legal counsel and legal aid

Many UK immigration detainees remain unrepresented through their appeal process, and by extension, without legal assistance during their bail applications.⁴⁶⁰ For instance, a 2006 sample of 22 detainees on the Detained Fast Track process found that 60% of detainees were not represented at their appeal hearing, and only one had an application for bail made at the appeal.⁴⁶¹ It is difficult to understate how important such high-quality legal representation is for success in the appeals system, yet immigration detainees are often unable to access free, high-quality legal advice and court representation either because they are isolated in detention centres or because there is not enough legal aid available.⁴⁶²

Legal representatives file bail applications as well as apply to a UK Border

⁴⁶⁰ BID (Bail for Immigration Detainees), 2011: 9.

⁴⁶¹ Oakley, 2007: 7

⁴⁶² For the benefit of contextualisation, it is significant to note that studies of the US immigration detention system reach similar conclusions. For example, the Constitution Project notes that nearly two-thirds of non-citizens in removal proceedings are unrepresented. The Project argues for appointing free legal representatives for detainees, and that this change “would benefit both non-citizens and the [US] government” (Constitution Project, 2009: 2). In his study of the US system, Markowitz (2009: 2) notes that the burden of unrepresented immigration detainees “falls most heavily upon the immigration judges who [are often forced to] play the dual role of impartial adjudicator and counselor to the respondent.”

Agency representative for Temporary Admission. Since the decision to detain is not automatically subject to independent review, it is incumbent upon the detainees to request their own hearings. One problem with this system is that many detainees are unaware of the possibility of applying for bail. Another problem is that newly arrived migrants in detention encounter difficulties with securing UK-based sureties for bail.⁴⁶³ Legal counsel is also required for the other options for release, including making an application to the Chief Immigration Officer for bail (CIO bail)⁴⁶⁴ as well as applying to the High Court for a judicial review of the government's decision to detain or to ask the court to issue a writ of Habeas Corpus to end a person's detention.⁴⁶⁵

Immigration detention is subject to fewer checks than detention within the criminal justice system and yet complex logistics could make solicitors wary of accepting immigration detention cases.⁴⁶⁶ For instance, visiting IRCs is time-consuming because of the designated hours and remote locations. It is also virtually impossible for people to gather evidence relevant to their cases while confined in detention. Another cause for concern is the growing use of video-link technology that allows for an immigration judge (and interpreter) in one courtroom to hear the case of an immigration detainee located in another courtroom miles away.⁴⁶⁷

To be valuable, legal counsel for detainees must be of a high quality; however, studies have demonstrated that the graduated fee scheme makes it difficult to provide

⁴⁶³ Bloch & Schuster, 2005.

⁴⁶⁴ In most cases, CIO bail requires two sureties who are able to put forward significant sums of money (between £3,000 and £5,000 each). There is no court hearing for CIO bail, and the decision on whether or not to grant bail is made by the CIO in his/her office (BID (Bail for Immigration Detainees), 2011: 8 – 9).

⁴⁶⁵ BID (Bail for Immigration Detainees), 2011: 8 -9

⁴⁶⁶ BID (Bail for Immigration Detainees), 2011: 1.

⁴⁶⁷ BID (Bail for Immigration Detainees), 2010: 16, 34; MacKeith & Walker, 2011: 13.

high-quality legal representation⁴⁶⁸ to all immigration detainees. The director of advocacy at the Refugee Council argues that the scheme makes the work barely profitable, and is causing firms to leave the marketplace and solicitors to devote less time on cases, thereby potentially weakening their clients' positions.⁴⁶⁹ In 2005 the charities BID and Asylum Aid reported that bureaucracy was restricting legal representation and driving down quality.⁴⁷⁰ In a 2010 literature survey, researchers found that the graduated fee scheme reduced the incentive for providers to strive for high-quality work, "in effect penalising those firms that do, and forcing the choice between financial survival and responsibility to their clients."⁴⁷¹

Cultural and linguistic barriers further complicate the positions of some detainees who would like to appeal the legality of their detentions. As well as knowing how to proceed through the asylum application and appeal processes, there is an assumption that detainees will abide by the rules of discourse.⁴⁷² Materials are not always provided in translation, and detainees who speak English are not always able to engage meaningfully because there is no one available to explain the materials to them.⁴⁷³ Detainees are also separated from their families and support networks that might otherwise provide assistance to them.

The problems posed by lack of access to high-quality legal representation are

⁴⁶⁸ Adeline & Gibbs (2010: 8 – 9) suggest that the three elements of a high-quality legal representation for immigration and asylum applicants are (i) professionalism and expertise; (ii) quality of one-to-one relationships; and (iii) sufficient time to review the case.

⁴⁶⁹ Puffett, 2010.

⁴⁷⁰ BID (Bail for Immigration Detainees) & Asylum Aid (2005): 4.3.

⁴⁷¹ Trude & Gibbs, 2010: 1.

⁴⁷² The four maxims of these "rules of conversation" are (i) The Maxim of Quality (roughly: 'Say the truth!'); (ii) The Maxim of Quantity (roughly: 'Do not give more nor less information than is required!'); (iii) The Maxim of Relation ('Be relevant!'); (iv) The Maxim of Manner ('Be perspicuous!'). (Herlihy, Gleeson, et al., 2010: 360)

⁴⁷³ Detention Action, 2011: 18. Hintjena (2006) provides case studies of the difficulties that Sudanese asylum seekers encountered in negotiating the legal process of immigration status regularisation. White (2002: 1064) suggests that only a "privileged elite" who "control access to resources in the asylum world" are able to engage with the legal "discourses" that requires "specialist knowledge of asylum [and immigration] law."

confounded for children and mentally disabled adults. International law stipulates that vulnerable groups be provided with the means to understand and meaningfully participate in the proceedings, receiving legal counsel when they cannot afford a solicitor.⁴⁷⁴ It is well settled that children lack the capacity to make legal decisions.⁴⁷⁵ Likewise, Article 12, Section 3 of the Convention on the Rights of Persons with Disabilities holds that “States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. Human Rights Watch (2010a: 56) suggests that “it may be less efficient to first provide fair competency proceedings for noncitizens with mental disabilities and to separately appoint attorneys for only those whose disabilities raise competency concerns than it is to ensure the appointment of attorneys for all non-citizens known to have, or suspected of having, a mental disability when that person cannot afford a lawyer.”

A minimum threshold would therefore be the provision for all immigration detainees of high-quality legal counsel – including legal aid - and increased judicial oversight.⁴⁷⁶ States should also endeavour to monitor and identify RSD problems and eliminate the *refugee roulette* altogether. The FTTIAC should also be reformed, and the remit of its judges expanded so as to be able to consider all circumstances in each case. Unsurprisingly, this call for appointing counsel for asylum seekers in liberal states as a matter of just public policy is echoed by an increasing cohort of scholars,

⁴⁷⁴ Article 13 of the International Covenant on Civil and Political Rights reads: “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

⁴⁷⁵ Berger & Figeroux, 2002: 869.

⁴⁷⁶ Dalrymple, 2006: 157 – 159; Human Rights Watch, 2010a: Footnote 189; Kaplan, 2012: 12; and Uram, 2008: 958, *passim*.

advocates, and government representatives.

Conclusion: A framework for minimum standards of treatment in immigration detention centres

Beyond increasing use of alternative to detention programs, my proposal to reform the immigration detention estate in the UK is comprised of three main sections. My framework includes raising general conditions, such as increasing access to fresh air, imposing time limits, expanding health care, and allowing for more family visits; it also contains specific recommendations as regards the treatment of mentally disabled adults and access to fair legal treatment. As well, I argue that it is not morally permissible to detain children under any conditions, and this practice needs to end immediately.

This framework is immediately implementable. It does not require revisions to the law or legislation and only minimal additional funds to bolster institutions which are either already in place or relatively easy to assemble. For instance, legal aid organisations are active in the UK and they should be supported, not short-changed. In addition, access to family and friends could be achieved through staffing additional visiting hours; follow-up with detainees could be taken up by community groups; and, instead of paying to upgrade institutions like IRC Campsfield House whose facilities have been routinely criticised as unfit, those refurbishment funds could be reallocated and subsidised to build new sites in metropolitan areas. Of course, implementing upper time limits and respecting a minimum age requirement are more complicated; however, there are numerous proposals already tabled that can direct governments in their efforts to realise these minimum standards with minimal financial outlay. Therefore, despite its limitations, my proposal promises to increase the overall level and quality of treatment for *all* detainees, including children, mentally disabled adults,

and those people encountering difficulties with accessing legal representation. By taking seriously this proposal for minimum standards, liberal states can move closer to respecting the rights of immigration detainees. The next chapter turns to look at what respecting these rights means for a normative theory of immigration control, and Chapter Seven explores whether the ultimate solution to the harms of immigration detention is to abolish immigration admissions controls altogether.

Chapter Six: Normative theory, immigration control, and detention

This chapter has a twofold argument: first, I suggest that the majority of normative theorists of immigration concede that some immigration control is necessary to realise liberal goals and values; and second, I argue that this concession opens up space for a morally permissible immigration detention framework because detention is necessary for immigration control. As I argue throughout this thesis for a more engaged conversation between normative theory and migration studies, I begin this chapter with a number of practical arguments for immigration control that demographers and sociologists cite as being of popular concern in the UK.

The next two sections examine what Veit Bader (2005a: 332) refers to as the “hard core” of normative theories of immigration control: the immigration admissions debate. Normative arguments for and against controlling immigration admissions appear in weak or strong forms.⁴⁷⁷ Since almost all strategies of control involve denying someone access to something that she desires, admissions control is automatically problematic for normative theory.⁴⁷⁸ Generally speaking, there are two sides in this debate: (i) “border control defenders” who do not see the exclusion from membership rights of non-citizens without special claims as not, in itself, unjust; and (ii) “free movement advocates” who argue that justice demands a significant easing of current immigration restrictions.⁴⁷⁹ I take Michael Walzer’s *Spheres of Justice: A Defence of Pluralism and Equality* (1983) as a starting point for the border control defence. After outlining Walzer’s idea of complex equality and his argument that community membership is the ultimate social good, I turn to explore how David Miller expands Walzer’s ideas and offers his own conceptualisations of public culture and

⁴⁷⁷ Bader, 2005a: 344.

⁴⁷⁸ Carens, 1997: 3.

⁴⁷⁹ This is Oberman’s (2009) terminology.

ethical particularism to augment this theory of justice. Moving on to the free movement advocates, I examine Joseph H. Carens's arguments that free movement is a human right and that all non-citizens residing in a state should enjoy basic social and political rights.

In the fourth section, I bring these theorists into conversation. I draw out a consensus that some immigration control is necessary for a liberal state, or, put another way, that borders should be much more open. I explain why I think this has an important implication that practising detention is morally permissible in liberal states. I also point out some of the ways that detention complicates some of the assumptions on which the admissions debate rests.

In the fourth and final section, I outline the predominant options for practising immigration control without immigration detention as I define it. These are known as alternatives to detention. I conclude that alternatives are ethically preferable to many systems of immigration detention as currently practiced but that they carry with them significant problems: these alternatives are difficult to implement; they impose heavy costs on the migrant and the state; and they fail to solve our core normative dilemmas concerning liberty deprivation and state coercion. The manifold issues with alternatives call into question their moral superiority to immigration detention, particularly the framework of detention with minimum standards that I propose.

Immigration admissions: the normative defence of border controls

Normative theory compares these popular arguments in association with liberal norms and values in order to ascertain whether immigration detention can be morally permissible as well as practical for liberal states. Shelley Wilcox (2009: 813) suggests that the normative defence of border controls comprises the “conventional view” on

immigration admissions that she describes as follows: liberal states “will typically admit immigrants whose talents, assets, characteristics, or skills are perceived to be in the national interest, but they are morally free to restrict immigration as they see fit, with few exceptions.” The premise of admitting migrants who can contribute to the state’s national interests is justified by the importance of community as a social good in itself. This *communitarian* position runs that the goods and values of a community are best enjoyed in a context or setting of a healthy communal life. People participate politically and socially in the construction of the state’s shared way of life.⁴⁸⁰

Kieran Oberman (2009: 127) unpacks the following list of sources of the liberal state’s right to deny admission and settlement to non-citizens that border control defenders commonly reference: (i) freedom of association means disassociation if need be; (ii) sovereignty leads to the state’s autonomous decision-making on who can enter and reside; (iii) democracy implies a right to establish future composition of the demos; (iv) self-determination equals freedom to decide who enters the state; and (v) territory is owned by states and thus they can exclude foreigners as they see fit.⁴⁸¹ Border control defenders therefore offer a highly socialised view of the normative ethics of immigration control whereby individuals make sense of their community vis-à-vis their social relationships.⁴⁸²

Michael Walzer

In his highly influential *Spheres of Justice: A Defence of Pluralism and*

⁴⁸⁰ McGuinness, 1995: 92 – 93.

⁴⁸¹ How and why these control arguments are articulated is explained in Carens, 2010a, 2010b; Cole, 2000; Miller, 2007: Chapter 8; Oberman, 2009: Chapter 3; Seglow, 2005a; Wellman & Cole, 2011; and Ypi, 2008.

⁴⁸² Spicker, 1994: 7.

Equality (1983),⁴⁸³ Michael Walzer argues that social goods should be distributed according to the distinct social meanings that the community attaches to those goods.⁴⁸⁴ Walzer (1983: 20) articulates the principle as follows: “No social good x should be distributed to men and women who possess some other good y merely because they possess y and without regard to the meaning of x.” For instance, health care might be distributed according to need, elementary and secondary public education according to a principle of equality, public office according to merit, and commodities according to free exchange.⁴⁸⁵ The community generates the "meaning of x" together, and it is his system of shared understandings that is crucial for a just redistribution of goods.⁴⁸⁶ David Morrice (2000: 237, 238) suggests that by focussing on social and cultural interpretation, Walzer’s methodology typifies “the communitarian meta-ethical denial of universal morality.” In this way, Walzer’s theory of justice stands in contrast to John Rawls’s influential theory of determining neutral universal principles from behind a veil of ignorance.⁴⁸⁷

To discover the meaning and content of justice using his communitarian

⁴⁸³ A number of *Spheres of Justice*’s core ideas are developed in "The Moral Standing of States: A Response to Four Critics" (1980) and “The Distribution of Membership” (1981).

⁴⁸⁴ Over time, in many and various ways, citizens sharing a political life develop common practices, norms, and understandings that lead to the co-production of social goods, including “security and welfare, money and commodities, office (i.e. positions of employment), hard work, free time, education, kinship and love, divine grace, recognition (i.e. marks of esteem, public honours, and so forth), and political power” (Miller, 1995a: 4). The notion of social good excludes privately valued goods, such as beautiful sunsets. “Social goods, in turn, are distributed according to procedures, agents, and criteria that vary depending on the social good. Walzer calls these sites and systems of distribution "distributive spheres." (Bosniak, 1994: 1078)

⁴⁸⁵ Song, 2011: 3.

⁴⁸⁶ Fishkin, 1984: 756 – 757. Cf. Kymlicka 1989a: Chapter 11; McGuinness, 1995: 97

⁴⁸⁷ Walzer (1983: xiv) explains his methodological commitments as follows:

One way to begin the philosophical enterprise—perhaps the original way—is to walk out of the cave, leave the city, climb the mountain, fashion for oneself (what can never be fashioned for ordinary men and women) an objective and universal standpoint. Then one describes the terrain of everyday life from far away, so that it loses its particular contours and takes on a different shape. But I mean to stand in the cave, in the city, on the ground. Another way of doing philosophy is to interpret to one’s fellow citizens the world of meanings that we share.

methodology, Walzer proposes the idea of “complex equality”.⁴⁸⁸ Complex equality follows from Walzer’s (1983: 19) ethical injunction that “no citizen’s standing in one sphere or with regard to one social good can be undercut by his standing in some other sphere, with regard to some other good”. Based on three general principles derived from historical examples,⁴⁸⁹ complex equality necessitates that all community members enjoy legal and procedural rights in order to prevent dominance of one sphere of justice by the other spheres. Simple equality converts into complex equality when all members of the community attain both formal inclusion of legal status and substantial inclusion in terms of positive rights.⁴⁹⁰

Walzer (1983: 39) argues that admissions control defends “the liberty and welfare, the politics and culture of a group of people committed to one another and to their common life”. He draws an analogy between the state and other associative communities such as neighbourhoods, clubs, and families. Similar to a club, admission to national membership should be controlled and emigration left open. Drawing on the family analogy, Walzer notes that liberal immigration policies often make membership more easily available to “ethnic relatives,” members of a type of extended family.⁴⁹¹ Admission to the state “family” means automatic entitlement to full membership. This

⁴⁸⁸ Walzer's "appeal to common meanings" as the basis of normative theory has drawn criticism for its relativism. Dworkin (1983: 4) argues, for example, that Walzer's "deep relativism" abandons the central idea that justice is "our critic not our mirror." Fishkin (1984) agrees that Walzer's theory risks being undermined by its relativism. Barry (1984) refers to Walzer's approach as "conventionalism" that embeds justice in extreme relativism. Cf. Downing & Thigpen, 1986: 470.

⁴⁸⁹ These principles are:

T]hat every political community must attend to the needs of its members as they collectively understand those needs; that the goods that are distributed must be distributed in proportion to need; and that the distribution must recognise and uphold the underlying equality of membership.

(Walzer, 1983: 84)

⁴⁹⁰ Bauböck, 1994a: 221. Walzer has been subject to criticism for his diminishment of the importance of universal principles – most notably, the principle of equality - in comprising the moral character of the community. See, e.g., Bader, 1995; Fishkin, 1984; Frazer, 1999; Haldane, 1996; Kukathas, 1992, 1996; and Oberman, 2009.

⁴⁹¹ Dauvergne, 1999: 602.

argument is nuanced by the principle of collective mutual aid: the state is obliged to provide welfare support to people who are the least wealthy, both within and outside the state's territory.

Walzer (1983: 42) argues that the state is most similar to a family or club, and so it does have the right to determine its membership. The family analogy emphasises cultural preservation⁴⁹² while the club analogy indicates that the state can choose amongst applicants for membership:

No longer bound by an imperative to *preserve*, club members have the freedom to *decide* who is privileged to be admitted. The prize value now is democratic self-determination; the resulting society may be plural and diverse. By contrast, the first argument about cultural preservation, need not involve any special commitment to democracy.

(Seglow, 2005: 321)

There is no unequivocal claim in justice for migrants to be admitted to the state,⁴⁹³ and the moral obligations to admit are resigned to those people who belong to the state-family.⁴⁹⁴ Although Walzer comes under criticism for his state-family analogy,⁴⁹⁵ he continues to endorse its principles: the state has a right to regulate immigration admissions on the basis of distributive justice, unique social cultures, and the right to community self-determination.⁴⁹⁶

Walzer (1983: 31) explains that the admission of migrants and asylum seekers implies the distribution of membership as a primary good:

The primary good that we distribute to one another is membership in

⁴⁹² Cf. Stevens (1999: 5 – 8) on how Walzer's idealisation of political community is influenced by his preclusion of distributive justice from the family and his understanding of a traditional form of family love.

⁴⁹³ Walzer, 1983: 61.

⁴⁹⁴ Cole, 2000a: 168; Seglow, 2005: 320.

⁴⁹⁵ Bader (2005b: 90), for example, argues that nations "are clearly not families, kinship or direct interaction-relations (arguments by analogy fail) and attempts to reasonably justify associative national duties have to refer to the characteristics that analytically distinguish nations from states."

⁴⁹⁶ Seglow, 2005: 319.

some human community. And what we do with regard to membership structures all our other distributive choices: it determines with whom we make those choices, from which we require obedience and collect taxes, to which we allocate goods and services.

The state should distribute membership according to shared understandings and principles of sovereignty and self-determination.⁴⁹⁷ The “men and women who are already there” should select the admissions policies.⁴⁹⁸ Adhering to Good Samaritan principles,⁴⁹⁹ Walzer qualifies his proposal to include a duty to admit asylum seekers and other “necessitous strangers.”⁵⁰⁰ Walzer (1983: 62, italics in the original) explains his principle in the following oft-cited quotation:

Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there would not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life.

Walzer maintains that while control over immigration admissions is necessary,⁵⁰¹ every person admitted to the territory is nonetheless entitled to the opportunities offered by membership, regardless of his or her citizenship status.⁵⁰²

⁴⁹⁷ Zilbershats, 2010: 142

⁴⁹⁸ Walzer, 1983: 43.

⁴⁹⁹ While a religious tenet, the core ethical messages of the parable of the Good Samaritan have been secularised and adopted into liberal societies as norms. The norm of the Good Samaritan originates in a parable from the Biblical Book of Luke (10:29 – 37). Waldron (2003, 2012) suggests that the parable demonstrates that the most demanding ethical requirements are those that insist on taking care of strangers and doing justice to those with whom we are not already bound by ties of kinship. Likewise, in Dummett’s (2004: 118) words, “Who was neighbour to the man who fell among thieves? The Good Samaritan, who did not say to himself, ‘This man is a Jew: I have a duty only to those of my own kind, other Samaritans.’ He said, ‘Here is a man in trouble.’”

⁵⁰⁰ Walzer, 1983: 46 – 51. This point alludes to Walzer’s (1983: 46 – 48) well-known comments on the *White Australia* policy, an attempt by the Australian government to exclude non-white would-be migrants under the banner of promoting cultural homogeneity. Walzer points out that the Australian “family” possesses a very large territory of which it occupies only a small part. Moreover, that territory was acquired through colonialism and suppression of the aboriginal population. It would thus be unjust to bar non-white necessitous strangers from entering Australia, regardless of its citizens’ opinions.

⁵⁰¹ Carens (1987: 268 – 270) suggests that a more expansive understanding of Walzer’s *communities of character* supports freedom of movement not admissions control. He argues that (i) principles of freedom and equality are core liberal values, and there is no moral difference between people living inside a state and those outside the state; and (ii) on the basis of the first point, Walzer’s arguments against deportation apply to admissions as well.

⁵⁰² Song, 2011: 4; Walzer 1983: 61, 62.

Therefore, while the state may exclude people at its territorial borders, it is beholden to the ethics of complex equality to be as inclusive as possible to all persons admitted to the territory. Linda Bosniak (2008: 99) characterises Walzer's approach as "hard on the outside and soft on the inside".

David Miller

Against this backdrop, David Miller has emerged as an eloquent defender of Walzer's communities of character. His normative theory encompasses the three broad fields of social justice, nationalism, and global justice. Miller defends a moderate interpretation of liberal nationalism that values the rights of the national community over and above claims for individual rights and universal equality. Other proponents of moderate liberal nationalism include Margaret Canovan (1996), Chaim Gans (1998, 2003), Will Kymlicka (1995), and Yael Tamir (1992). Liberal nationalism shares with all other kinds of nationalism the view that, ideally, political and cultural boundaries should coincide. Liberal nationalists are also committed to (i) the idea that belonging to a national community is not an intrinsic value, but an instrumental one, and (ii) that every nation has the same claim to self-determination and that minorities have rights to protect their culture against dominant majorities through pursuing their own projects of nation building.⁵⁰³ Miller provides arguments in favour of admissions control from culture, population control, and social trust and welfare.⁵⁰⁴

Although they appear more or less correlated in particular cases, citizenship is more similar to political membership than to nationality.⁵⁰⁵ There is a fivefold

⁵⁰³ Bauböck, 2008.

⁵⁰⁴ Benton, 2010: 25. This representation of liberal nationalism is sketched to apply to the challenges of the admissions control debate; other questions and claims that are addressed within liberal nationalism – including what *sorts* of social justice, egalitarianism, and so forth – are bracketed here. See, e.g., Laegaard, 2006: 400 – 402.

⁵⁰⁵ Laegaard, 2006: 401.

definition of the nation for Miller (1995b: 22 – 25): namely, the nation (i) exhibits shared beliefs and mutual commitments; (ii) demonstrates historical continuity; (iii) is active in character; (iv) is marked off by a recognisable political culture; and (v) is identified with a particular, territorially bounded geographic place.⁵⁰⁶ Mirroring the *communities of character* argument, Miller incorporates territory into his justification admissions control by alluding to the historical and cultural relationship between people and territory that he sees as part of the foundation for the nation⁵⁰⁷

Miller argues that the nation as a system of formal reciprocity allows a much clearer allocation of rights and duties, and provides mechanisms for binding collective decision-making.⁵⁰⁸ The nation's members are inspired to make the sacrifices necessary to sustain a healthy democracy, an equitable welfare state, and a fair system of social goods distribution.⁵⁰⁹ In this way, Miller (1988: 662) considers a common national identity to be a means to achieve a normative ideal:⁵¹⁰

if we begin from universalist criteria, we shall not end up with nationality as the optimal basis for special obligations. The point rather is that if we start out with selves already heavily laden with particularist commitments, including national loyalties, we may be able to rationalize those commitments from a universalist perspective.

In *On Nationality* (1995), Miller introduces the concepts of *political culture* and *ethical particularisms*. Political culture is understood as the independent variable upon

⁵⁰⁶ Miller (2000: 116 – 117) explains that:

The people who inhabit a certain territory form a political community. Through custom and practice as well as by explicit political decision they create laws, establish individual or collective rights, engage in public works, shape the physical appearance of the territory. Over time this takes on symbolic significance as they bury their dead in certain places, establish shrines or secular monuments and so forth. This in turn justifies their claim to exercise continuing political authority over that territory.

⁵⁰⁷ Meisels, 2009: 244.

⁵⁰⁸ Bader, 2005b: 94.

⁵⁰⁹ The nation's common identity and culture motivate people to sacrifice on behalf of others and to participate in the quintessentially liberal process of democratic decision-making (De Schutter & Tinnevelt, 2008: 371 – 372; Wellman, 2008: 118).

⁵¹⁰ Laegaard, 2006: 401. The implication here is that Miller's liberal nationalism will not convince anyone who believes that national membership has a non-instrumental value.

which distributive obligations rest.⁵¹¹ It provides a touchstone for finding consensus amongst more and less correct views about redistributive obligations.⁵¹² Political culture can perhaps be understood as a more advanced conceptualisation of national identity. Ethical particularism is a moral framework suggesting that the duties towards fellow-nationals are more extensive than those owed to humanity writ large.⁵¹³ In turning away from “a more heroic version of universalism, which attaches no intrinsic significance to national boundaries”⁵¹⁴, this framework is a “picture of the ethical universe, in which agents are already encumbered with a variety of ties and commitments to particular other agents, or to groups and collectivities”.⁵¹⁵ Through deriving the agent’s moral obligations from her communitarian bonds, ethical particularism attempts to close the gaps between moral obligations and moral motivations.⁵¹⁶

In “Immigration: The Case for Ethical Limits” (2005), Miller examines the influence of the relationship between individuals’ needs and state interests on the normative ethics of immigration admissions.⁵¹⁷ He is seeking a fair balance of costs and benefits imposed by immigration on both states and individuals.⁵¹⁸ He finds that

⁵¹¹ “It is not merely that I feel bound to a group of people defined in national terms; I feel bound to them as sharing in a certain way of life, expressed in the public culture. The content of my obligations stems immediately from that culture. Various interpretations of the public culture are possible, but some of these will be closer to getting it right than others, and this also shows to what extent debates about social justice are resolvable. It follows that what social justice consists in will vary from place to place, but not directly in line with sentiments or feelings.” (Miller, 1993: 14)

⁵¹² Weinstock, 1996: 93.

⁵¹³ Miller, 1995b: 11.

⁵¹⁴ Miller, 1995b: 64 – 65.

⁵¹⁵ Miller, 1995b: 50.

⁵¹⁶ Miller, 1995b: 50.

⁵¹⁷ Miller (2005: 194) asks, “Is it possible *both* to argue that every member of the political community, native or immigrant, must be treated as a full citizen, enjoying equal status and the equal respect of his or her fellows, *and* to argue that there are good grounds for setting upper bounds both to the rate and the overall numbers of immigrants who are admitted?”

⁵¹⁸ “I have tried to hold a balance between the interest that migrants have in entering the country they want to live in, and the interest that political communities [have] in determining their own character” (Miller, 2005: 204).

there are two good reasons to limit immigration in order to realise “communities of character”: (i) to preserve culture and (ii) to control population. On the first reason, he draws on the purchase of political culture to the members of a nation, the stake that members have in controlling how that culture develops, and the long-term vitality of the political community. The second good reason is defended on a global and a local level. In the face of mushrooming worldwide populations, an unencumbered right to migrate would provoke poorer states to begin to “export” their population through international immigration.⁵¹⁹ On a state level, nations have a right to decide whether to restrict their numbers, live more ecologically and humanely, or do neither and bear the costs.⁵²⁰ In addition, the liberal state is morally obligated to provide sanctuary to asylum seekers and conduct migrant selection without bias or prejudice.

In *National Responsibility and Global Justice* (2007) and “Immigrants, Nations, and Citizenship” (2008), Miller suggests that it is morally permissible for the liberal state to enjoy discretionary border closure.⁵²¹ He again makes an exception for asylum seekers and makes the proviso of unbiased and unprejudiced selection criteria. Miller provides three justifications for discretionary border closure: (i) the right to national self-determination that is highly valued by liberal nationalists; (ii) the idea that the nation must be able to shape its own cultural evolution; and (iii) the Walzerian conviction that every person admitted to state must be entitled to equal membership benefits. Miller (2007: 223 – 224) argues that some degree of “partiality is legitimate: the key issue is how strong the immigrant’s claim has to be before it can trump the

⁵¹⁹ Miller, 2005: 201.

⁵²⁰ Miller, 2005: 202.

⁵²¹ “Discretionary border closure” is Carens’s (2010c: 2 – 3) term to describe Miller’s (2007: 222) idea that “states must have some reason for denying entry to ordinary migrants (i.e., ones who have no special claim). States must have some legitimate public policy objective that might be hindered in some way by the admission of these migrants, but they do not need more than that to deny admission.”

goals of the receiving state.” On Miller’s view, the admissions debate centres on recognising the central role played by the community in the life of the individual. In order to cultivate the social goods that connote an ethical community and make the good life plausible, the state may withhold entry from migrants so long as they are not seeking asylum or the victims of selection prejudice.

Immigration admissions: The normative theory of free movement advocacy

The values of egalitarianism and universalism – or principles of freedom and humanity - are central for theories favouring free movement.⁵²² As normative scholars, Joseph H. Carens and the other free movement advocates do not abandon the state altogether; rather, while they acknowledge some normatively relevant benefits of nationality, they suggest that a right to free movement is a means to rectify the ethical deficiencies with the liberal state and its unfair distribution of scarce resources. Michael Dummett (2001, 2004) argues that, notwithstanding a serious threat of overpopulation or cultural swamping, individual freedom demands freedom of movement. Phillip Cole (2000b) and Jean Hampton (1995) both make the case for free movement to be considered a basic liberty. All concur that liberal states have a *prima facie* duty to open their borders more widely.

Joseph H. Carens

Carens has written more than any other normative theorist on the ethics of immigration admissions control.⁵²³ Carens describes his work as branching off into both idealistic and realistic modes.⁵²⁴ Carens is committed to freedom of movement across national borders as a quintessential liberal aspiration: “in principle, borders should generally be open and people should normally be free to leave their country of

⁵²² Bader, 2005a: 337; Goodin, 1992: 7; and Kukathas, 2005: 210 – 211.

⁵²³ Meilaender, 2001: 43.

⁵²⁴ Carens, 1996.

origin and settle in another.”⁵²⁵ Since worldwide support for open borders is not feasible today, freedom of movement serves chiefly to provide a critical standard by which to assess the ethics of existing practices and policies.⁵²⁶ he explains that his “realistic” assumption that liberal democratic states are more or less morally entitled to control immigration is a strategic move aimed at broadening his potential audience and grounding the debate in normativity.⁵²⁷ He offers two key arguments for a right to freedom of movement: (1) free movement is an important liberty or human right in itself and (2) it is required by the demands of global justice. Carens argues that all liberal states should respect a symmetry between the right to exit and the right to enter that is currently lacking.

If Walzer’s *Spheres of Justice* is the *locus classicus* for border control defenders and Miller’s work on ethical particularism is the most influential contemporary adaptation, then Carens’s article “Aliens and Citizens: The Case for Open Borders” (1987) is the point of departure for free movement advocates.⁵²⁸ Carens finds normative consensus for freedom of movement in the writings of Robert Nozick, utilitarian theorists,⁵²⁹ and John Rawls. On Rawls, in particular, Carens argues that once migration is factored into the original position,⁵³⁰ freedom of movement becomes identifiable as a universal moral right.⁵³¹ He finds that this convergence suggests that

⁵²⁵ Carens, 1992; 2010a: 1.

⁵²⁶ Carens, 1992: 45.

⁵²⁷ See, Carens, 2010b: 4 – 5 and, more generally, Carens, 2004.

⁵²⁸ Seglow, 2005: 324.

⁵²⁹ Carens sees Nozick’s argument for unfettered freedom for control of property as deligitimising the state’s control over the free movement for individuals. “It means rather that [Nozick’s theory] provides no basis for the *state* to exclude aliens and no basis for individuals to exclude aliens that could not be used to exclude citizens as well.” (Carens, 1987: 253) Utilitarians likewise would not support immigration restrictions because the free mobility of labour would maximize both the capital gains of both migrants and citizens (Carens, 1987: 263 – 264).

⁵³⁰ The original position is a thought experiment to illustrate which ethics might commit to if they have no knowledge of their personal circumstances or characteristics. In other words, Rawls is seeking to derive principles based on general, not particularistic, considerations. See Rawls, 1971: 136 – 141.

⁵³¹ “[A]nyone who wants to be moral will feel obliged to justify the use of force against other human

liberal theory offers few reasons to control immigration admissions and, more generally, that liberal states should recognise a *prima facie* duty to open their borders.⁵³²

In “Reconsidering Open Borders”,⁵³³ Carens (1999a: 1082) describes his uncertainty regarding the potential revelation in “Aliens and Citizens” of “a deep moral problem with the exclusionary practices of liberal states (which was the view I emphasized in the article) or the limitations of abstract liberal theory (which was a concern I pursued in subsequent work).” He revises his endorsement of the liberal state to argue for increased pluralism, more open-endedness in interpretations of the good life, and a continuance of upholding rights.

In these papers, Carens outlines two important qualifications to his free movement advocacy. The first qualification is methodological. In his 1999 paper, Carens argues that the majority of liberal theorists sidestep problems of free movement arguments.⁵³⁴ He (1999a: 1093, 1095) offers a “halfway house presupposition” that demonstrates that a normative argument need not be confined to liberal audiences. Carens is trying to show that, while these moral objections may be surmountable within

beings, whether they are members of the same society or not. In thinking about these matters we don't want to be biased by self-interested or partisan considerations, and we don't want existing injustices (if any) to warp our reflections. Moreover, we can take it as a basic presupposition that we should treat all human being, not just members of our own societies, as free and equal moral persons.” (Carens, 1987: 253)

⁵³² Dauvergne, 1997: 327; Odhiambo-Abuya, 2005: 268 - 269; Wilcox, 2009: 815.

⁵³³ This reflection was prompted by challenges raised by Meilaender (1999). Carens (1999a: 1093) identifies Meilaender's two-pronged challenge: the first is the relevance of the open borders argument to people who do not share its liberal presuppositions, and the second is that Carens's conception of liberalism is flawed given the evident lack of unanimity about its validity among other liberals.

⁵³⁴ No one has yet attempted to “lay out in a systematic way a fundamental moral justification for the right of states to exclude migrants in the world as it is, nor any to justify a general right of exclusion on the world as it ought to be. Liberals aspire to justify their institutions and practices by offering reasons for them that no one can reasonably reject. What reasons justify closure? How much do these reasons rest upon unexamined and highly contestable presuppositions about the entitlements of existing communities to preserve what they have regardless of what others do not have? What sorts of reasons can be offered to those who are excluded that it would be unreasonable for them to reject as a justification of their exclusion?” (Carens, 1999a: 1097)

specific partial accounts of liberalism, they have not been answered by liberalism as a whole.

The second qualification is normative. Carens (1987: 259) qualifies his arguments with suggestion for a “public order” restriction. He argues that states with open borders can temporarily control immigration admissions in certain situations of danger to the community, including when the state’s social or political institutions and/or physical infrastructure are threatened by overpopulation. Although the likelihood of needing the “public order” restriction is rare, it introduces the possibility of justifying short-term restrictions on migrants and asylum seekers’ rights to liberty and freedom of movement in service of the long-term enjoyment of these rights.

In more recent work, Carens articulates and expands his argument in a number of ways. “Migration and Morality” (1992) fleshes out an analogy between free movement within a nation-state and unencumbered international mobility. This argument is an extension of his controversial analogy of the sovereign state system with feudalism.⁵³⁵ Liberal egalitarians believe that “people should be free to pursue their own projects and to make their own choices about how to live their lives so long as this does not interfere with the legitimate claims of other individuals to do likewise.”⁵³⁶ Carens (1992: 27) points out the wide endorsement of the right to freedom of movement *within* the territory of a particular liberal state. The “radical disjuncture” between support for intra- and interstate movement “makes no sense” from a liberal egalitarian perspective.⁵³⁷ Carens also argues all non-citizens living in the liberal state are entitled

⁵³⁵ Carens’s (1987: 252, 1992: 27) contention that the modern system of sovereign nation-states is analogous to a feudal system has become the subject of much debate in the literature. For example, Risse (2005: 107) explicitly names and disagrees with this line of thinking. Interestingly, Carens was not the only theorist to articulate this analogy in the literature in the late-1980s: Dowty (1987: 55 - 94) also observes a similar dynamic in the treatment of asylum seekers that he calls “the new serfdom”.

⁵³⁶ Carens, 1992: 26.

⁵³⁷ Carens, 1992: 28.

to enjoy basic civil and legal rights. This text is notable for being one of the only ones under consideration that mentions immigration detention.

“The Rights of Irregular Migrants” (2008a) begins with a suggestion that people should enjoy basic rights “simply by virtue of being within the jurisdiction of the state, whether they have permission to be there or not and whether they are obeying the laws or not.”⁵³⁸ Carens finds that regardless of criminal status, irregular migrants should receive legal protection.⁵³⁹ Liberal norms and standards imply basic human rights, and these rights limit the state’s use of coercive measures in implementing immigration admissions control.⁵⁴⁰ Carens concludes by making the case for employer sanctions as a more ethical means to control irregular migration.⁵⁴¹

The final facet of Carens’s free movement position that I will examine⁵⁴² is the fundamental question of whether justice requires free movement, and, if so, how this requirement impacts the moral significance of membership in political communities. In “The Claims of Community” (2010c), Carens argues that, at the level of principles, a commitment to open borders is compatible with a deep appreciation for the value of

⁵³⁸ Carens, 2008a: 165.

⁵³⁹ “Providing fewer protections to those accused of immigration violations is justified on the grounds that the alleged violations are not criminal offenses, and detention and deportation are not criminal penalties. While this distinction can be abused (and clearly was in the United States in the wake of 9/11), it makes sense in principle. However, it entails the corresponding notion that the violators of immigration laws are not criminals; and this fact provides one reason (among many) for rejecting attempts to label irregular migrants as criminal.” (Carens, 2008a: 166)

⁵⁴⁰ A possible critique of this position is that increasing the number of legal rights granted to irregular migrants by a particular state will increase the incentives for migrants to choose that destination state, come, and stay. Carens counters that such an “incentive effect” cannot be regarded as a “sufficient justification to deny [irregular migrants] basic human rights” (Carens, 2008a: 167).

⁵⁴¹ He notes that the “fact that the state may be unable to use this mechanism effectively because of the political power of other forces within the state does not affect [the validity of] this normative argument.” (Carens, 2008a: 185).

⁵⁴² Carens’s discussion is quite rich and, like Miler’s, it is impossible to summarise his entire body of work. For further reading on his approaches to open borders as it relates to global poverty, alienage, status amnesties, and other issues, see the discussion in the May / June (2009) issue of the *Boston Review* for his feature article, responses from a number of liberal theorists, and his reply.

community and the importance of belonging.⁵⁴³ It is here that his theory of immigration admissions is most in conversation with Walzer, Miller, and the border control defenders. Without disputing their normative significance, Carens challenges the veracity of Walzer's argument that control over immigration admissions is integral to maintaining communities of character in the real world.⁵⁴⁴ Walzer's argument does not confront either the underlying issue of international inequality, or the ethically problematic fact that people are assigned from birth to a particular state.⁵⁴⁵ In addition, Carens (2010c: 34) identifies multiple ways that Miller's *state responsibility thesis*⁵⁴⁶ - a variant of the self-determination argument - does not hold up to scrutiny. He suggests that granting states the moral licence to control immigration admissions on the basis of self-determination goes too far in subordinating individuals to the communities to which they initially belong.

Two significant convergences

I have tried to indicate throughout this chapter where these theorists converge in spite of their divergent commitments and ethical priorities. I think that there are at least two primary points at which these theories intersect. The first concerns the allocation

⁵⁴³ Carens, 2010c: 1. In taking up this discussion, Carens directly addresses communitarian challenges that he is unfairly maligning the important claims of membership, welfare state preservation, shared culture, and communal self-determination. Due to space constraints, I will present only his discussion of community self-determination and collective responsibility because it is here that he explicitly addresses Walzer and Miller's arguments for immigration admissions control.

⁵⁴⁴ "It is not unreasonable to say that communities of character require relatively stable, intergenerational inhabitants who identify with the community, understand its past and care about its future. It does not follow that this requires that the community have a moral and institutional right to exercise discretionary control over entry or that it is appropriate to identify communities of character with the modern state." (Carens, 2010c: 34)

⁵⁴⁵ Carens, 2010c: 35; Shachar, 2011.

⁵⁴⁶ Carens defines the state responsibility thesis as follows: Different political communities will make different choices in accordance with their various collective values and judgments as these are filtered through their political processes. As such, there is an argument that significant inequalities between states are an inevitable and legitimate outcome of these political processes. Political communities should be responsible for the consequences of their communal choices, and discretionary control over immigration is necessary to ensure that they are. If people were free to leave poorer states for richer ones, it would create incentives for states to act irresponsibly and would penalize unfairly the ones that had made wise choices (Carens, 2010c: 35 – 36).

of membership benefits and the second relates to the short-term deprivation of liberty in the long-term interests of the community. A third, more obvious convergence is their uniform emphasis on warding against prejudice or bias in migrant selection processes.

On the first point, Walzer's commitment to community membership is coupled with a belief that any person permitted entry should be entitled to full membership benefits. Miller, too, believes that all members of the community are entitled to equal rights. These positions compare favourably to Carens's suggestion that everyone is entitled to basic social and political rights, regardless of status. In addition, all three emphasise the admissions and settlement of asylum seekers as a priority for liberal states' policy on immigration control. Further, while Carens rejects arguments from public culture and population control that are not extreme cases, he agrees with Walzer and Miller that the social goods and values generated in liberal states are meaningful and worth defending. Methodologically, all three are interested in deriving principles from practical situations and making them applicable and identifiable to the real world.

Moreover, Walzer, Miller, and Carens all prioritise the long-term vitality of the community. The state may intervene to stop non-citizens at the border and/or deport them if these actions directly facilitate community members' quality of life.⁵⁴⁷ This interpretation is easily discernible in Miller and Walzer, but it may be more difficult to spot in Carens. Recall Carens's (1987: 259) "public order" restriction: "liberty may be restricted for the sake of liberty" if the state is being fatally threatened and the state's moral standing will not be damaged. This emphasis on maintaining public order and the state's infrastructure is shared by the three theorists. The theorists are divided on

⁵⁴⁷ Again, the exception is for asylum seekers: none of the theorists advocate stopping asylum seekers at the border or deporting them.

when and against whom immigration admissions control can be enacted, but not the principle itself.

Highlighting detention in the immigration admissions debate

In the previous section, I outline the two sides in the immigration admissions debate through an overview of the work of Michael Walzer, David Miller, and Joseph H. Carens. I find that while these normative theorists are divided on justifying when and against whom immigration admissions control can be enacted, they do not object to the principle itself. However, there is an important caveat that normative theorists who argue for this concession often overlook: immigration admissions control implies immigration detention. I argue that an appreciation of the roles played by detention in effecting admissions controls must be factored into any normative theory of immigration and asylum. To demonstrate this point, I will discuss how normative theory neglects detention's roles and, relatedly, how taking notice of detention can draw critical attention to certain assumptions in normative theories of immigration admissions control.

Immigration detention fills the legal and ethical void for treatment of people who have no rights to stay but who are physically present and making claims on the state. States justify their use of detention by arguing that detainees are always welcome to leave by voluntarily departing. On closer inspection, however, it is apparent that this is a "prison with three walls" argument: despite being ostensibly free to leave, immigration detainees are truly barred from entry because of their unresolved immigration statuses. Without this status, the possibility of leaving detention is largely illusory because continued, even indefinite, detention is often the more attractive option than the prospect of returning to face the situation that the detainee was migrating away

from in the first place. In addition, smugglers' fees can be quite substantial⁵⁴⁸ and migrants who intended to earn more money before being apprehended may not want to return to face the smuggling agents prematurely. Also relevant here is the critique of detention that it is a means, or a motivating threat, to encourage "voluntary deportation".

Another reason why detention's roles may be overlooked in normative debates on immigration admissions control is because the practice is described in manifold terms and under multiple labels. "Warehousing", for example, is a form of interdiction, which is itself detention by another name: the growing permanence of warehousing reflects a turn away from durable solutions - such as voluntary repatriation, permanent local integration in the country of first asylum, or resettlement - and towards the institutionalisation of detention as a strategy to prevent asylum seekers from reaching the territories of wealthier, Northern states.⁵⁴⁹ In Turkey, detention centres where non-citizens are held involuntarily are referred to as "foreigners' guesthouses".⁵⁵⁰ For that matter, Miller's safety zones seem to be glorified detention centres because they restrict asylum seekers to a certain place for an unspecified period of time. In addition, safety zones appear to be another variation of the prison with three walls.

Immigration detention also points out certain temporal aspects of immigration control that are either taken for granted or assumed away in normative theory. Immigration decisions are discretionary decisions taken by a variety of state-employed actors working under non-ideal constraints. The period of an immigration detainee's waiting for official admission can be drawn out for months and potentially years as his

⁵⁴⁸ Spener, 2004; Van Hear, 2004.

⁵⁴⁹ Grewcock, 2007: 69.

⁵⁵⁰ Levitan, Kaytaz, et al., 2009: 81, *passim*.

or her case winds its way through the legal system.⁵⁵¹ Given these complexities, immigration detention decisions are particularly complicated. For each case of detention, questions of due process rights must be weighed against the daily deterioration of a detainee's wellbeing. This temporal aspect also extends past the initial detention decision: detention leaves lifelong effects on the former detainee's psyche that curbs his or her senses of belonging to the community and trust in the government, two values that are essential for a functioning welfare state.

In addition, detention brings attention to the fact that, in normative theory, the migrant usually remains faceless and nameless. Unless described as a *bona fide* refugee under the 1951 Geneva Convention Relating to the Status of Refugees Convention, it is rare for normative theorists to mention an age, race, class, or other notable characteristics of the subject under discussion.⁵⁵² In this way, the immigration admissions system – including, presumably, the detention estate - can be presented as roundly fair and non-discriminatory. In practice, however, immigration detention reveals that the targeting of men and certain ethnic groups.⁵⁵³ There are also children in immigration detention, a phenomenon that would probably be ruled unjust in normative theories of immigration control.

Another problem for normative theory presented by immigration detention relates to the shifting legal grounds for detention presented by the state to the detainee. While in normative theory the logic for general immigration control is clearly elucidated and defended, the reasons for immigration detention can often be vague,

⁵⁵¹ Although legal regulations stipulate that detention should only be used as a measure of last resort and for the shortest time possible, UK immigration detainees typically find themselves held for two to six months

⁵⁵² Coole (2000), Kittay (2009), Mills (2000, 2005, 2009), and Pateman (1998) make observations about the selective race, gender, and general minority blindness in normative theory, particularly ideal theory.

⁵⁵³ For example, in 2011, the majority of UK immigration detainees were single men from minority ethnic groups who had applied for asylum at some point during their immigration processes.

based on privileged information, or subject to categorical assumptions regarding the validity of a potential migrant's claim.⁵⁵⁴ The official reasons for a detainee's confinement may change even though (i) the detainee is not moved; (ii) the detainee and his or her solicitor are not notified; or (iii) nothing in the detainee's claims for admissions have changed. This seemingly arbitrary tendency for re-categorisation highlights the complexity of imagining and implementing an immigration control system in the already-unequal context of state coercion through detention.

Most importantly, detention enables the pacification of much of the unease around reconciling liberal dilemmas of asylum seekers' rights. A right to enter would entail a wholesale rethinking of state sovereignty and the migrant-citizen-state hierarchy. A right to request participation in an equitable burden-sharing arrangement would necessitate states to wrestle with questions of historic injustice, blame, and restitution in determining who owes what to whom. In the meantime, states can hold non-citizens in limbo through detention and put off answering these extremely difficult questions. Overall, then, the normative questions that are left unanswered when immigration detention is brought into the admissions debate concern how to conceptualise a fair balance of rights and obligations for both states and migrants in the context of a reasonable immigration detention system.

⁵⁵⁴ This is the case for the UK Detained Fast-Track or the Detained Non-Suspensive Appeals Process.

Chapter Seven: Why not open borders?

I will need to make a series of presumptions in order to explore the normative questions of how and under what conditions it is permissible for liberal states to detain immigrants and asylum seekers. This is because I am operating at the level of non-ideal theory. At the level of ideal theory, however, I might have wanted to argue for strict time limits, if not the abolishment of immigration detention altogether. As detailed in Chapter One, the scientific literature has definitively concluded that immigration detention causes severe psychological, social, and physiological harm. This harm increases with each day spent in detention. Other significant reasons for abolishing detention include the flaws that I highlighted in at immigration detainees are not being imprisoned for breaking criminal laws, that their numbers include children, mentally disabled adults, pregnant women, torture survivors, and other vulnerable people, and that faulty judicial systems are frequently failing to uphold detainees' procedural rights.

The prison abolitionist movements have influenced some of the more compelling critiques of immigration detention.⁵⁵⁵ Michael Flynn (2012c: 3), for example, suggests that unless immigration detention is eradicated worldwide, destination states will simply export or “externalise” detention to transit states with poorer infrastructure and deficits in the rule of law. Ultimately, as Gabriel Arkles (2009: 556) argues, the only way to end violence in immigration detention is to eliminate the practice altogether. However, this argument implies support for worldwide open borders: earlier chapters determined that immigration detention is deeply embedded in the global governance of migration and so it would seem that an

⁵⁵⁵ Simon, 1998: 603.

abolition of detention would amount to the end of immigration admissions controls. Put another way, free movement is the only coherent strategy for guaranteeing the extirpation of immigration detention.

This chapter therefore considers the arguments for open borders as a resolution to the normative questions raised by immigration detention in liberal states. I begin by examining normative arguments for open, or partially open, borders. I find that while the open borders proposal is compelling, it is a political “non-starter” for the time being: until there is the political will to implement open borders, I argue that the responsible action for liberal states is to focus on minimising the harms caused by immigration detention.

On an analytic note, open borders can be imagined in a variety of ways. For example, Onora O’Neill (1993) interprets open borders to mean the literal disappearance of borders as a state institution. Thus, for her, it is implicitly a proposal for a world government. The understanding that I have in mind is similar to Ricard Zapata-Barrero’s (2010: 328) idea of “stand-by borders”:

states maintain their borders, but allow freedom of movement in common agreement with other states, as in the case of the European Union's Schengen area. People are permitted to cross the border without controls, but the border as an institution remains and is activated when conflicts or serious problems arise (recall that Spain threatened France with respect to controlling the borders in the Pyrenees if it continued allowing immigrants to cross). Let us call these "stand-by borders" that can be "on-line" if a conflict arises. Hence, the debate should move from the simple question of border controls to the possibility of stand-by borders and occasional controls, with the border remaining as a basic state institution.

On this model of open borders, liberal states remain intact but they can no longer rely on the ethical force of sovereign power to justify the unilateral closure of their borders.

The promise of post-national membership

There is a variation of the open borders argument that is not necessarily

grounded in normative literature but which is germane here: a group of broadly cosmopolitan scholars suggest that we have achieved, or are soon to realise, a type of post-national membership in Europe that can effectively supersede borders. This argument runs as follows: developments in the post-World War II regime of international human rights proliferation were designed to implement transnational standards of civil, social, and occasional cultural rights for all people, regardless of immigration and citizenship status.⁵⁵⁶ As this regime started making inroads into states of the Global South, particularly after the fall of the Soviet Union and the advent of the European Union, a group of scholars began to predict the solidification of individual rights vis-à-vis the state. Strong and weak versions of this cosmopolitanism relating to citizenship and democracy were found in ideas of world polity⁵⁵⁷ and of cosmopolitan democracy.⁵⁵⁸ Held (2002: 9) identifies the basic, interrelated features of the emerging human rights regime as (i) the constitutive human rights agreements; (ii) the role of self-determination and the democratic principle that were central to the framework of decolonisation; and (iii) the recent recognition of the rights of minority groups.

These post-national approaches to post-national citizenship and democracy are by and large normative. Their proponents are committed to universalism over extensive engagement with existing political systems.⁵⁵⁹ The basic idea is “to globalise democracy while, at the same time, democratising globalisation.”⁵⁶⁰ In relation to migration, they scholars argue that contemporary liberal states are “losing

⁵⁵⁶ Bosniak, 2008: 25.

⁵⁵⁷ Wendt, 2003; Martinelli, 2007; Meyer, Boli, et al., 1997;

⁵⁵⁸ The proponents of cosmopolitan democracy, in particular, are reviving Kant’s conceptualisation of a federation of peace comprised of an alliance of peoples or republics (Held, 1995; Habermas & Derrida, 2003).

⁵⁵⁹ Delanty, 2006: 29.

⁵⁶⁰ Archibugi, 2004: 438.

control”⁵⁶¹ of their borders and immigration control systems, or, at the very least, losing their iron grips on admissions. Significant contributions to this literature include Yasemin Soysal (1994) on the emergence of “postnational membership,” David Jacobson (1996) on the expansion of “rights across borders,” and Rainer Bauböck (1994b) and Jonathan Fox (2005) on the possibility of “transnational citizenship.”

This literature focuses on the cosmopolitan promise of a post-national European Union. Given the increasing interconnectedness and pressing nature of issues pertaining to the global commons, a core idea in the post-national imaginary is captured in David Held’s (1995: 136; 2006: 159) idea of “overlapping communities of fate.” An expansive and inclusive European Union is thought to provide a model for a partial solution to endemic social, political, and ethical issues confronting liberal states:

There is no doubt that the current state of the European Union merits criticism. But where can we find suitable standards of criticism? In the national self-image, in laments over the loss of national sovereignty? No. The concept of a cosmopolitan Europe makes possible a critique of EU reality which is neither nostalgic nor national but radically European. ... The diagnosis of the crisis is ‘too little Europe’, and the cure, ‘more Europe’ – properly understood, that is, in a cosmopolitan sense!⁵⁶²

Further, these scholars of post-nationalism argue, since globalisation is inevitable, there is little choice but to hope for and to support the European Union’s realisation of this promise.⁵⁶³ Without necessarily displacing the individual’s relation to the state, these scholars are advocating an alternative frame of rights provision for migrants and asylum seekers that does not rely on national citizenship.⁵⁶⁴

⁵⁶¹ Sassen, 1996, Chapter 3.

⁵⁶² Beck, 2006: 166 cited in P. Hansen, 2009: 26.

⁵⁶³ P. Hansen, 2009: 27. See, e.g., Habermas & Derrida (2003), and Habermas, 2005.

⁵⁶⁴ Squire, 2011b: 5. See Abizadeh (2008: 56, 54) for a similar argument from democratic theory for “giving greater voice to foreigners over border control” that does not eliminate border controls:

To be democratically legitimate, any regime of border control must either be jointly controlled by citizens and foreigners or, if it is to be under unilateral citizen control, its control must be delegated, through cosmopolitan democratic institutions giving articulation to a “global demos,” to differentiated polities on the basis of arguments

However, in line with a number of other scholars who point to harmful immigration control practices,⁵⁶⁵ I argue that an examination of immigration detention indicates a contemporary reality that is closer to the opposite of post-national membership in Europe and elsewhere: instead of the demise of the legal/illegal distinction and the retreat of the state's regulatory authority in favour of relaxed migratory controls, the liberal state remains coercive and rights are allocated according to citizenship and immigration status.⁵⁶⁶

The normative case for open borders

Generally speaking, normative theorists advance a version of one of the two following proposals: (i) a qualified call for (partially) open borders that is accompanied by global resource redistribution from wealthier states to the global poor;⁵⁶⁷ and (ii) a direct argument for open borders as a necessary precursor to realise a universal moral (and legal) human right to free movement based on the autonomy of individuals.

On the first proposal, Robert E. Goodin (1992: 9) argues that normative concerns about immigration admissions should be sharply juxtaposed against the costs of forcing

addressed to all.

⁵⁶⁵ See, e.g., Betts, 2010; Guiraudon and Lahav, 2000; R. Hansen, 2009; Hollifield, Hunt, & Tichenor, 2008; and Shachar, 2007.

⁵⁶⁶ Scholars also argue that a focus on the cosmopolitan norms of the European Union seems to presuppose a sense of belonging based on racial and class solidarity that is atypical in the non-Western world. As Lee (2010: 182) suggests, without “reducing the marginality of disenfranchised workers and ethnic minorities, the idea of engaging with alternative cosmovisions would be meaningless.” See, also, Pichler (2008: 1123):

People with (strong) cosmopolitan orientations belong to a minority which is partly shaped by classical social divides across European societies. In addition, there are other constraints to cosmopolitan Europe which cannot be overlooked: large parts of the population either are not convinced about the good of European (political) integration in general or perceive contemporary Europe as a threat to their nationality. Furthermore, survey data do not answer the question about orientations of Europeans towards non-European people.

⁵⁶⁷ This position is inspired by the neoclassical economist argument that “leaving regulation to market forces will optimise the benefits of migration for both sending and receiving countries and help in the long run to equalise wages between them, leading to a new global economic equilibrium.” (Castles, 2004: 872)

people to stay in their home states:

The point can - and politically should - be put just that sharply. If the rich countries do not want to let foreigners in, then the very least they must do is send much more money to compensate them for their being kept out. Those capital transfers really must be understood as compensation rather than as charity. They are merely the fair recompense for their being blocked from doing something (that is, moving to a richer country) than could, and quite probably would, have resulted in their earning that much more for themselves.⁵⁶⁸

The optimal immigration policy to meet global justice obligations of the wealthier states to the global poor is to open borders fairly wide and to transfer resources directly to where the global poor are already living.⁵⁶⁹ In other words, the goal is to help people in their states of origin.⁵⁷⁰ Likewise, Will Kymlicka (2001: 270 – 271) argues for a consequentialist cosmopolitan understanding of partially open borders and poverty rectification:

Liberal egalitarians view people as moral equals. It follows that each person's well-being matters equally, from the point of view of liberal

⁵⁶⁸ Nonetheless, it is notable that there is also a sizable contribution to the normative literature contesting whether open borders could resolve poverty issues. This position is a partial iteration of the argument that unlimited immigration poses a threat to the most disadvantaged residents of the South *and* the North, or the poor states as well as the wealthier states. Higgins (2008: 529 – 530) argues pragmatically that often, it is not those individuals who are harmed most by the global economic order (those who are severely malnourished, those who are suffering from easily and cheaply preventable or treatable diseases, or those who do not have access to safe drinking water, etc.) who could take advantage of open borders policies were they to be implemented by the world's affluent liberal states. Rather, it is the middle classes and the most well-off in countries that are otherwise harmed by the global economic order who would benefit most from such policies. And so, at best, open border policies would fail to help the economically least well-off—those for whom the liberals' concern motivated them to propose these policies.

Pogge (2002) argues a similar argument based in normative theory that since only well-off residents of the South have the financial capacity to migrate, open borders without institutional reform could localise remittances in the hands of the wealthy and exacerbate “brain drain”, thereby leading to further embedding of unequal distribution. Isbister (2000: 634) summarises this “good argument against unlimited immigration” as “(1) a country is justified in meeting the needs of its own disadvantaged citizens before the needs of disadvantaged citizens before the needs of disadvantaged foreigners, and 2) that unlimited immigration poses a threat to the most disadvantaged residents of rich countries.” In a different context, Smith (2011) argues that the US has an obligation to increase foreign aid to immigrant-receiving states to offset its coercive attempts to demonise Mexican migrants.

⁵⁶⁹ Wellman (2011: 123) argues that obligations towards refugees can be addressed thusly: “But just as one can satisfactorily discharge one's duty to the vulnerable child without permanently adopting it, a state can entirely fulfil its responsibility to persecuted refugees without allowing them to immigrate into its political community.”

⁵⁷⁰ Holtug, 2011: 11.

theory. Liberal egalitarians cannot accept, therefore, any system of boundaries which condemns some people to abject poverty while allowing others a life of privilege. Yet this is precisely what occurs today, given the grossly unequal international distribution of resources between states, combined with limitations on mobility... It is not permissible, in the liberal egalitarian view, to restrict admission if this involves hoarding an unfair share of resources.

Similarly, following her discussion of Rawls and the redistribution of wealth as redress for unfair national boundaries, Margaret Moore (1996: 524) concludes that if normative theory

does indeed require, or presuppose, political boundaries, a moral justification of these boundaries would seem to be necessary. This justification would also involve some discussion of how these particularist attachments, with their necessary principles of exclusion, can be justified on a liberal framework, which sees individual freedom and equality as fundamental values.⁵⁷¹

Veit Bader (2005: 337, 341) glibly summarises his own position of “fairly open borders” as, “Open your wallets or open your borders!”

Open borders could also potentially harm asylum seekers by eliminating the distinction between asylum and other types of migration: Castles (2004:873) argues that although the current adjudication system is defective, “in a situation of widespread conflict and human rights abuse, especially in less-developed countries, the international refugee regime remains the only means of protection for millions of vulnerable people.”⁵⁷² Bader (2005: 34) argues that this qualified proposal is better contextualised and more prudential than a straightforward call for open borders based on the human right to free movement. Out of fear of a predicted public backlash and securitisation of migration in the long term, Matthew J. Gibney’s (2004) “humanitarian principle” makes a similarly qualified recommendation for expanding the moral community to include asylum seekers but not opening borders completely. As Shelley

⁵⁷¹ See, also, Cole, 2000.

⁵⁷² Castles, 2004: 873.

Wilcox (2009: 813) puts it, these and other normative theorists⁵⁷³ are arguing that “liberal states have much broader duties to admit immigrants than the conventional position implies, yet without defending open borders *per se*.”

On the second, more straightforward normative proposal, open borders is a necessary precursor for realising a universal moral (and legal) human right to free movement based on the autonomy of individuals. Mathias Risse (2008: 28) articulates a normative defence of open borders based on common ownership of the Earth: this cosmopolitan position defends irregular migration “if a country limits immigration in a manner that goes beyond what it is morally entitled to.” Similar to Joseph H. Carens (1992, 1999, 2010a), Michael Dummett (2001) argues that there is a presumption in favour of individual freedom, barring serious over-population or complete cultural submergence. Phillip Cole (2000: 202) cites the imbalance in restrictions on entry and exit, and argues that liberal theories of social justice “cannot provide a justification for membership control and remain a coherent political philosophy.” It is not surprising, therefore, that Dummett (2001: 22 - 26), Cole (2000: 198 - 202), and Carens (1992: 34 - 6) all propose that open borders could help to alleviate poverty and promote the global spread of equal opportunity.⁵⁷⁴ These open borders arguments are therefore, at base, universal and egalitarian proposals for a more just world.⁵⁷⁵

For Rainer Bauböck (2009: 8 - 9), there are at least three additional consequentialist-ethical arguments that strengthen the case for a universal ethical right to free movement based on the autonomy of individuals. First, sending societies can benefit from emigrants’ transnational ties to their homelands. Such transnational ties can lead to increased economic development, democratic transition and consolidation,

⁵⁷³ See Brock, 2009; and Pevnick, 2011.

⁵⁷⁴ Seglow, 2008: 19.

⁵⁷⁵ Goodin, 1992: 7.

and improvements in access to ideas, networks, and markets abroad. Second, it is conceivable that immigration control undermines, not benefits, the welfare state and that certain kinds of universalistic welfare regimes can keep borders more easily open without attracting too many immigrants.⁵⁷⁶ Open borders could also, under certain conditions, “promote a cultural liberalization of democracies without undermining their capacity to maintain effective welfare regimes.” Third, every act of immigration implies a contract between states, and increased freedom of movement could promote peaceful, friendly intrastate relations. He concludes that theorists must justify immigration control not only to individuals seeking admission at the borders of liberal states but “justification is also owed to those states whose citizens the would-be immigrants are.”

Discussion

A common argument against open borders is that it would precipitate enormous, unmanageable flows of people into the Global North. Moreover, this argument is often coupled with warnings of impending “brain drain”: the movement of human capital from the poorest areas of the world to the wealthier states, thereby handicapping the already-disadvantaged states. A major concern is that health care workers, in particular, would migrate to wealthier states, leaving their states of origin with the bill for their training and precipitating a potential crisis of public health; preventing the wholesale, permanent emigration of doctors, nurses, and other health care professionals

⁵⁷⁶ Here, Bauböck cites the case of “the much more comprehensive welfare state in Sweden”: one of three EU member states to have opened their labour markets to citizens from the new EU member states since 2004, including to Romania and Bulgaria, “Sweden has received much smaller absolute and relative numbers of immigrants from the accession countries than the neoliberal regimes of the UK and Ireland.” (Bauböck, 2009: 8)

has been a perennial issue for development studies, medical migration, and post-colonialism scholars since the 1970s.⁵⁷⁷

As a matter of justice, David Miller (2005, 2007) and John Rawls (1999) suggest, it is counterintuitive to argue for fully open borders because of this risk that it could increase brain drain.⁵⁷⁸ In other words, the uncertainty that an open borders arrangement may engender more inequality between states and populations makes it less morally defensible. Miller (2005: 198) explains:

Simply shutting one's borders and doing nothing else is not a morally defensible option here. People everywhere have a right to a decent life. But before jumping to the conclusion that the way to respond to global injustice is to encourage people whose lives are less than decent to migrate elsewhere, we should consider the fact that this policy will do little to help the very poor, who are unlikely to have the resources to move to a richer country. Indeed, a policy of open migration may make such people worse off still, if it allows doctors, engineers, and other professionals to move from economically undeveloped to economically developed societies in search of higher incomes, thereby depriving their countries of origin of vital skills. Equalizing opportunity for the few may diminish opportunities for the many.

On a related note, the numbers of migrants and asylum seekers entering the territory at one time following the opening of state's borders could impede the state's ability to adequately and equitably distribute goods, resources, and services to everyone.⁵⁷⁹

However, it seems that these assumptions that open borders arrangements lead to permanent brain drain and, eventually, international inequality, may be overly

⁵⁷⁷ The majority of this literature finds that the brain drain of health professionals is devastating for the local population – include damaging health service delivery but also educational resources, leadership, and family life - and, hence, the emerging consensus is that brain drain is morally wrong. Chen & Buofford, 2005; Connell & Engels, 1983; Connell, Zurn, Stilwell, Awases, & Braichet, 2007; J. Johnson, 2005; Mackintosh, Mensah, Henry, & Rowson, 2006; Martineau, Decker, & Bundred, 2004; Mullan, 2005; Raghuram, 2009; Ross, Polsky, & Sochalski, 2005; and Rutten, 2009. Cf. Gish & Godfrey; and Kangasniemi, Winters, & Commander, 2004. This issue is also relevant for certain normative theories of immigration admissions control; see Brock, 2009: 198 – 203; Ypi, 2008: 402.

⁵⁷⁸ Barry & Valentini (2009: 500) characterise their three justifications for not fully opening borders as follows: "(i) it would place unfair burdens on the most productive political communities; (ii) it would undermine national self-determination, and (iii) it would disincentivise political communities from taking responsibility for their fate."

⁵⁷⁹ Verlinden, 2010: 65.

determinative.⁵⁸⁰ Although border and immigration admission controls constitute the major obstacles thwarting migrants and asylum seekers from reaching liberal states and returning to their states of origin at will, they are not the only factor determining migration trajectories: the migration studies literature challenges the linear model of sending states in the South and destination states in North, and offers instead overlapping frameworks of circular, transit, and return migration, remittances and development, and transnational networks.⁵⁸¹ It seems that no one can truly predict what would happen in a world of open borders and so making normative arguments based on assumptions of how this arrangement would affect the populations of less-wealthy states might be overstepping the hypothesis.⁵⁸²

The reality of the sovereign right to control immigration admissions

Chapter One explained that normative theories that do not bridge the gap between the “ought” and the “is” risk becoming what Carens (1996: 168) calls “privileged speculations that do little to help us reflect upon the moral choices we must make or to guide us to act responsibly in the world.”⁵⁸³ In this section, I argue that an analogous point can be made about the coherency of normative theories stressing open borders. Although committed to open borders, Dummett (2004: 121 – 122) reflects that opening borders is not an option for liberal states in the realistic future:

⁵⁸⁰ Cole (2011: 247) suggests that this scenario is relies on unproven consequentialism:

If the very existence of a nation-state were threatened, it may be that we can agree that the right [to free movement] can be limited in some way. What we might insist on, though, is that this has to be a real and actual threat to the existence of the nation, rather than a hypothetical possibility... Even if we imagine a case where it were that sudden and overwhelming, this hypothetical and extremely remote possibility cannot be used to justify all states possessing the unilateral right to exclude outsiders, which they can enact in any way they want.

⁵⁸¹ Bakewell, 2009; Constant & Zimmerman, 2011; De Haas, 2005, 2007; Hagan, Eschbach, & Rodriguez, 2008; Newland, 2009; Vadean, & Piracha, 2009; and Vertovec, 2007. Cf. Wickramasekara, 2011.

⁵⁸² As well, as Carens (2010a: 15) argues, it would be implausible to suggest that wealthier states are controlling their borders out of a sense of assistance to poorer states and populations.

⁵⁸³ Carens, 1996: 168.

No state .. could at this time open its borders to all save those particular individuals – criminals and rabblers – from whom it must protect its citizens. No state could do this without creating an unmanageable influx. To arrive at a position in which the acceptance of immigrants was the norm, all countries would have to move together towards it. Such a movement would require an immediate liberalisation of immigration laws and immediate public recognition by government of the benefits of immigration and the determined discouragement of xenophobic propaganda against it. It would require an end to the hypocrisy of denouncing people-smugglers as traffickers in human misery while preventing anyone from getting in by any other means, and while scouting the idea that there is any real human misery from which refugees are trying to escape.

Carens (2010a: 4) similarly describes the plausibility of open borders:

From a political perspective, the idea of open borders is a non-starter. Most citizens of states in Europe and North America are already worried about current levels of immigration and about their states' capacities to exclude unwanted entrants. They feel that their states are morally entitled to control immigration (for the most part) and they would see open borders, if anyone actually proposed it, as deeply contrary to their interests. Any political actor advocating such a view would quickly be marginalised (and so none will).

Likewise, Aristide Zolberg (2012: 16) argues that the two normative concerns motivating open borders positions – namely, alleviating global inequality and free movement as a human rights – are politically implausible. He concludes that, while open borders is not a realistic proposal, liberal states are not thereby excused from moral responsibility for the harms caused by their systems of immigration control.

Drawing on Dummett, Carens, and Zolberg, I argue that although open borders is politically unlikely, it does not follow that liberal states should be given free license to practise any form of immigration control enforcement. The power for immigration detention, in particular, derives from the principle of state sovereignty which allows states to autonomously admit or exclude non-citizens as they see fit.⁵⁸⁴ Yet, as Michael Walzer (1981: 10) indicates, “to say that states have a right to act in certain areas is not

⁵⁸⁴ This power is subject to international obligations such as the *non-refoulement* of refugees and protection of family life (Schotel, 2006: 3).

to say that anything they do in those areas is right.” Despite their legal entitlements, state practices of immigration detention are not without limits, both legally and ethically. People, too, have legal rights, and a core liberal value holds that no immigration, citizenship, or other status can trump the claims of individuals to their basic and procedural rights.⁵⁸⁵ Finding a balance amongst the legal status quo that undergirds sovereign power, liberal states’ underlying normative ideals, and current state practices is necessary for establishing the ethical limits of immigration detention.⁵⁸⁶

To return to my non-ideal methodological commitments, my goal is to appeal to principles and arguments that take the highest number of interests into account and are most feasible given present conditions. Therefore, open borders will be shelved for now and I will forgo normatively ranking the harms of detention. In this context of second-best ethical immigration control practices, the next chapter outlines my argument that both states *and* migrants could have duties to cooperate as much as possible with a morally permissible immigration detention practice.

⁵⁸⁵ Kelly, 2004: 10.

⁵⁸⁶ This search for balance is reflected in international law as well: Article 9 of the International Covenant on Civil and Political Rights reads: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Article 10 further stipulates that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Chapter Eight: Rethinking immigration detention

I have three tasks for this final chapter. First, I will evaluate the merits of my proposal for thresholds of minimum treatment as a successful framework for morally permissible detention practices in liberal states. Next, I will extrapolate on five interrelated themes that I draw out from the thesis, and which collectively indicate the need for a reorientation in thinking about immigration detention by both normative theorists and migration studies scholars. Finally, I will conclude by suggesting some areas for future research.

Framework evaluation

This thesis demonstrates that immigration detention is a hugely complicated practice whose administrative status belies its normative complexity. The thesis shows that the growth of detention has practical and theoretical implications for a wide range of actors and their disparate, sometimes conflicting, interests. This range of actors includes people and organisations directly involved in the estate, such as the detainees, solicitors, health workers, government staff, and private firms who run the IRCs; the net also stretches to encompass the wider moral community of detainees' networks, government bureaucrats, politicians, citizens who support and oppose detention, and, indeed, the potential migrants who are ostensibly deterred by detention from attempting to immigrate. There is normative value in each of these connections and relationships both in a "societal membership" fashion and in relation to immigration detention. How far does my proposal for minimum standards of treatment in immigration detention go towards addressing the normative complexity posed by immigration detention?

One advantage of my framework is that it integrates detention into the conversation on the normative theory of immigration control. This literature is

increasingly preoccupied with the normative ethics of deportation, amnesty, the rights of guest workers, the expansion of citizenship beyond borders, state coercion, and the elimination of border controls. While each of these issues is of significant moral concern, I am dubious that immigration detention receives the attention it deserves when these topics are foregrounded in the normative discussion. Although it is intimately linked with each of these processes, detention is treated, at best, as a footnote in the explanation. This thesis demonstrates that detention plays a vital role in the manifold immigration policies and practices of the UK and other liberal states, and that it would be a mistake to underestimate its importance.

In addition, those theorists who do acknowledge the presence of detention tend to gloss over the details of who is in detention, for what reasons, and for how long. Yet, these features point to a range of ethical concerns about immigration control practices that must be subject to interrogation: how should we take account of the fact that it is mostly single men from minority ethnic groups in detention within the wider questions of discrimination in immigration control? Is it morally permissible to automatically detain someone arriving from a so-called safe country on the basis that this state is presumed not to produce genuine refugees? Why is it that people jailed for criminal convictions know when their imprisonments will end but the UK does not provide immigration detainees with firm time limits for their detention? These questions are not fully answered in the thesis and need further research.

The second contribution that my framework makes is its advancement of the discussion of what constitutes a just immigration detention estate. Instead of stalling the debate on whether two days, two weeks, or two months is the most appropriate upper time limit, my framework draws attention to the web of rights, duties, and

obligations that would be generated from implementing any legitimate upper time limit. Although I outline a number of minimum standards of treatment, my point is to progress the debate beyond convincing policy-makers of the importance of thresholds. I aim to develop a deeper, practically applicable understanding of the complex moral landscape of immigration detention and immigration admissions control.

The third advantage of my framework is that it meets the feasibility requirements of non-ideal normative theory. As described in Chapter One, there is support amongst a number of theorists of immigration control for a non-ideal version of normative theory. As opposed to utopian or ideal theory, this type of theorising is meant to be effective and responsive to the practicalities of the “here and now”. Joseph H. Carens (1996, 1997, 2012), Matthew J. Gibney (2004, 2006), David Miller (2007), Lea Ypi (2008), and others⁵⁸⁷ argue that major consideration should be given to the feasibility of a theoretical framework, and that a convincing argument should be both descriptive and prescriptive. My framework meets this challenge. It relies on thresholds of minimum treatment that derive from necessary improvements to the detention estate identified by professional observers and support workers. Each threshold is feasible and, more importantly, essential for achieving conditions of basic dignity for detainees.

This point about feasibility links to the final contribution of my framework. This contribution is based on the thesis’s unique amalgamation of migration studies, public policy studies, and normative theory in the discussion of a just immigration detention estate. I demonstrate at various points in this thesis where I think that normative theorists present an inaccurate view of the complications of migration, both as a policy domain and as an individual life-choice. For example, Miller’s proposal for

⁵⁸⁷ Barry & Valentini, 2009; Chang, 2002; Goodin, 1995; Räikkä, 1998; Schramme, 2008.

safety zones amounts to temporary shelter for refugees in neighbouring states; it fails to explain how, why, or at what point these camps become permanent or where to send their residents when that time limit has been reached. I also show that scholars of public policy studies and migration studies may make cognitive leaps in their logical inferences about detention. The most glaring manifestation of this is when scholars assume that because the practice of detention leads to morally questionable outcomes, it is itself inherently wrong. In Chapter Two's discussion of detention-as-spectacle, I try to unravel the *a priori* ethical assumptions built into the more popular frameworks for understanding detention. Although more work remains to be done on this, I try to set out why it is mutually advantageous for normative theorists to engage with migration studies and public policy studies, and *vice versa*, in the examination of immigration detention practices in liberal states.

Nonetheless, there are some limitations to the framework I develop in this thesis. I consider many of these limitations throughout the thesis, of which my bracketing of open borders as the ethical solution to immigration detention's harms is the most significant. There are two additional sets of limitations to consider: the first group is critical that that my framework further legitimises and solidifies the long-term future of detention in liberal states, and the second group is more particular in its critique of its applicability to all categories of migrants and asylum seekers.

The first critique to consider is that my framework surreptitiously entrenches detention as an acceptable practice whereas it is actually an emerging development with an uncertain future. This critique is a variation of the liberal arguments against the removal of children from detention: the critique maintains that by arguing *for* alternatives instead of *against* detention, adults' deprivation of liberty becomes

acceptable in comparison with the unacceptable harms experienced by children. There is certainly more than a modicum of truth in this critique. For example, it is true that the harms caused by deprivation of liberty cannot truly be militated against despite the realisation of thresholds. It is also true that a vulnerable detainee will most likely fall through the protection net and suffer unnecessarily and egregiously.

In response, I would point to the many empirical indications of detention's worldwide growth trajectory and argue that my framework comes to terms with this reality and places limits on its expansion. In other words, in the absence of seismic change, detention will become entrenched in the political and moral landscape and so it is important to come to terms with an ethical version of how it is functioning in the here and now. Finally, I would argue that my framework is contingent on a number of factors and that each of these stipulations goes further than conventional arguments do in mounting a moral case against immigration detention in liberal states in many respects.

The second limitation of my framework is that it fails to grapple with the detention of migrants who are, in Joseph H. Carens's (2008b) words, "hard to locate." For example, is it less harmful to place deportable migrant children in foster care in a foreign community with different cultural and linguistic traditions, or to keep them with their parents in detention? What about torture survivors? Since they are not always able to document their experiences, torture survivors may be detained and suffer disproportionately despite the thresholds of minimum treatment.

I would respond that, if alternatives to detention are not available, parents accompanying children and torture survivors can be provisionally detained for the

shortest possible time while their identities are being determined; however, this detention can take place only upon identification of an individual risk of absconding.

Five themes

This second section identifies five themes that emerge from the thesis. Since they are detailed at various points throughout the thesis, this section is intended to be a précis as opposed to an exploration of these themes.

I discuss the first theme in the above section on advantages of my framework: normative theorists ought to develop a deeper understanding of the real-world complexities of migration control, and migration studies scholars ought to re-evaluate their *a priori* ethical assumptions. On a related note, the second theme is that normative arguments animate the public debate about immigration detention but they often go unacknowledged. As a polarising topic, some people rely on their ethical intuitions to judge the moral propriety of detention. I provide historical evidence of this phenomenon in Chapter Three. However, there have been very few attempts to take a step back from these heated discussions to interrogate the normativity of immigration detention. This second theme is therefore a sustained argument for using a combination of normative theory with migration studies and public policy studies to find a feasible recommendation for resolving the core ethical issues of immigration detention.

The third theme is comprised of my repeated arguments for greater recognition that detention plays a number of vital roles in effecting immigration control. The view that detention can be understood solely as an administrative fiat underestimates the growing interdependency of detention estates and larger systems of immigration control. It also underestimates the extent of the discretionary powers afforded to

immigration officers and low-level bureaucrats in deciding whether or not someone will be deprived of her or his liberty for an indefinite period of time.⁵⁸⁸ By characterising immigration detention as a benign tool in the state's arsenal of immigration control, this perspective risks minimising the harms caused by detention and diminishing the extent of its impact of the daily lives of non-citizens and their communities. In other words, it undermines the political spectacle of immigration detention. Following Peter H. Schuck (1998: 36), immigration detention is an “awesome power in its own right” and more scholarly attention should be devoted to this fact.

The fourth, related theme is that immigration detention did not arise *de novo* but has a rich, complicated history that is linked inextricably to the contemporary liberal state. I raise this point repeatedly in Chapter Three. It is also echoed in an emerging literature on the historical place of detention and deportation in liberal states.⁵⁸⁹ On a connected point, the gendered, racialised, and class-based roots of immigration control are reflected in the shaping of detention laws and the demographic composition of the detainee populations. Detention's historical foundations as a short-term measure mean that detention is only ever a stopgap solution: the normative issues associated with migration and immigration control cannot be addressed through increasing, expanding, or tweaking detention; instead, detention can only be entrusted to hold temporarily those deportable non-citizens at risk of absconding. Detention is not a panacea for irregular immigration.

The fifth and final theme is that immigration detention is an example of an illiberal means to achieve liberal ends. Scholars are increasingly pointing out ethical

⁵⁸⁸ Hamlin, 2012; Weber, 2003; Weber & Gelsthorpe, 2000.

⁵⁸⁹ Buff, 2008; Fassin, 2011; Hernández, 2008; Kanstroom, 2007; Nethery, 2012; and Zolberg, 2006.

disconnects in immigration control practices between the goods and values that these practices are supposedly protecting and the harms that they are causing.⁵⁹⁰ Linda Bosniak (2008) demonstrates that the non-citizen is disadvantaged in theoretical and practical attempts to find a legally and morally permissible balance between community rights and individual rights. I am sympathetic to this conclusion and argue repeatedly that the normative questions of immigration detention cannot be separated from the central tension in theories of immigration control that seek to balance liberty rights with a state's sovereign control of its borders.

Areas for future research

By way of conclusion, I would like to suggest some avenues for future research. First, engaging in comparative research is a promising possibility to open up new insights into immigration detention. I intend for this UK case study to be both an investigation of the particular moral difficulties confronting one particular state as it builds its detention estate but also an illustration of the more general normative issues that apply to all liberal states. I would be particularly interested in in-depth comparisons amongst the UK and states sharing its Anglo-American values such as Australia, Canada, and the US. It would also be worthwhile to investigate the pan-European commonalities and differences in detention.

Second, my thesis focuses on the limits placed on detention by a broadly conceived commitment to liberal norms, principles, and values. The application and ramifications of a commitment to democracy for the normative ethics of immigration detention would be a very fruitful research agenda. Arash Abizadeh (2008, 2010), David Miller (2010), Laura Valentini (2011), and other normative theorists⁵⁹¹ are

⁵⁹⁰ Adamson, Triadafilopoulos, et al., 2011; Hagan, Rodriguez, et al., 2011; and Hiemstra, 2010.

⁵⁹¹ Benton, 2010a, 2010b; Lenard & Straehle, 2012; and Saunders, 2011.

currently engaged in a debate over whether the rights of liberal states to regulate their admissions necessitates democratic justification and, if this is not forthcoming, whether an unjustifiable and untenable situation of coercion over non-citizens is created. It would be interesting to explore how the nuances of democratic justification can factor into the discussion of immigration detention.

Also related to the idea of state coercion is the potential to make the state's responsibility towards its detainees more explicit. This research would tackle questions such as: is detention the equivalent of protective custody and/or state sectioning of dangerous but mentally ill adults? I explore in this thesis the legal theory and immigration studies literatures. However, I would like to take this agenda one step further by investigating the state's responsibilities towards people in its custody, and discovering what further insights can be gleaned from incorporating a criminological or sociological viewpoint. I am also very interested in the roles played by technology both in issues of age assessment technologies applied to child immigration detainees, and in the evolving options for alternative to detention programs.

In sum, then, I hope that my thesis provides a variety of novel insights as well as jumping-off points for future research. Immigration detention is growing every year and causing harm to thousands of people because of their alienage status; these and other strong arguments imply that detention deserves more sustained scholarly attention.

Appendix One: *Amuur v. France, Chahal v. United Kingdom, and R (Saadi) v Secretary of State for the Home Department*

Amuur v. France, (1996) EHRR 533; *Chahal v. United Kingdom* (1997) 23 EHRR 413; and *R (Saadi) v Secretary of State for the Home Department* (2002) UKHL 41 may be considered the three principal European Court of Human Rights cases which set out the limits on immigration detention.

All three cases were decided with respect to Article 5(1) of the European Convention of Human Rights. Article 5 (Right to liberty and security) states that “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law”. Subsection (f) of Article 5(1) states one such exception: “the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

In the case of *Amuur*,⁵⁹² Galina Cornelisse (2010b: 280 – 281) explains, “the Court decided that to hold asylum seekers in the international zone of an airport upon arrival constitutes a restriction of liberty which under certain circumstances can turn into a deprivation of liberty.” Since the applicants were subject to strict and constant police surveillance and had no access to legal or social assistance, “the Court concluded that their situation amounted to a deprivation of liberty which fell under the scope of Article 5.” The *Amuur* judgment is a reminder that human rights apply wherever detention occurs, whether it is an international zone or otherwise.⁵⁹³

⁵⁹² Mahad, Lahima, Abdelkader and Mohammed Amuur, siblings from Somalia, arrived at the Paris-Orly Airport via Syria. The four asylum seekers were held for twenty days in the international transit zone and a nearby hotel specifically adapted for holding asylum seekers.

⁵⁹³ Edwards, 2011: 9.

In the case of *Chahal*,⁵⁹⁴ the Court decided that predeportation detention can be justified only as long as removal proceedings are in progress; if these proceedings are not carried out with due diligence, the detention will cease to be lawful under the right to personal liberty laid down in Article 5.⁵⁹⁵ The removal should take place as soon as practically possible to minimise time spent in detention. However, as Cathryn Costello (2012: 281) notes, “having rejected the criterion of ‘reasonable necessity,’ the Court asserted that detention was only lawful as long as deportation proceedings were in progress and prosecuted with ‘due diligence.’ Strikingly, the Court held that detention while the asylum claim was still being assessed fell under Article 5(1)(f).” In other words, *Chahal* set a precedent for lawful predeportation detention of asylum seekers so long as removal is being pursued with due diligence. The case demonstrated that

the Court, at least when it concerns predeportation detention, barely perceives a difference between what the Convention recognises as legitimate aims of immigration detention, on the one hand, and the question under which circumstances the advancement of these aims by the state may justify the decision to deprive an individual of his liberty on the other.⁵⁹⁶

Finally, in the case of *Saadi*,⁵⁹⁷ the Court examined the short-term detention of asylum seekers to prevent unauthorised entry and for administrative purposes where deportation is not in view. The Court found in *Saadi* that whilst such detention should not be arbitrary, there is no inherent requirement of "necessity" and it does not

⁵⁹⁴ Karamjit Singh Chahal is an Indian national who was detained pending the execution of a deportation order made against him on national security grounds; he remained in detention for 3.5 years during the national proceedings and 6 years in total. Chahal’s applications for bail and judicial review of his detention had been rejected by the UK national courts because they are not empowered to hear challenges to the legality of an individual non-citizen’s detention.

⁵⁹⁵ Cornelisse, 2004: 101.

⁵⁹⁶ Cornelisse, 2010b: 291.

⁵⁹⁷ Dr Saadi is an Iraqi who, having applied for asylum on arrival and being granted temporary admission for three days, was subsequently detained on the Detained Fast Track at IRC Oakington in 2000. He was released seven days later, and, after an initial refusal of his claim, was granted asylum in January 2003.

constitute a violation of Article 5(1).⁵⁹⁸ The Court decided that the UK detention system to be reasonably aimed at preventing unlawful entry, and that the UK government had acted in good faith in detaining Saadi as his case had been considered suitable for Detained Fast Track processing.⁵⁹⁹ Front-end detention should be for the shortest time possible.

⁵⁹⁸ O’Nions, 2008b: 34.

⁵⁹⁹ Detention Action, 2011: 13 – 14; Hailbronner, 2007: 165 – 166

Appendix Two: Chart of common categories of immigration detainees

Primary Category	Subcategories	
Asylum seekers	-cases that have not been decided, claim suspected to be fraudulent or otherwise likely to be eventually refused	
	-cases that are refused by immigration courts and person rendered deportable; all legal appeals exhausted	
Foreign national prisoners (FNPs)	- valid visa holders or permanent residents serving time in prison for criminal convictions; these convictions make them vulnerable to deportation	
	- case decided by immigration court, conditions of legal stay violated, and rendered deportable; all legal appeals exhausted	
Immigration rule-breakers	- detained after arrest in territory for overstaying a valid visa, rendered deportable	- detained after arrest in territory for overstaying a valid visa, rendered deportable; all legal appeals exhausted
	-suspected of having broken rules for valid visa or residency conditions, e.g. illegal working	
	-convicted of having broken rules for valid visa or residency conditions, rendered deportable; all legal appeals exhausted	
	-arrested inside territory after having entered territory with a false document or without detection and/or registering with a border guard, rendered automatically deportable; all legal appeals exhausted	

Appendix Three: *Franco-Gonzales v. Holder and R (HA (Nigeria)) v SSHD*

At least two landmark court cases were decided in 2012 that provide insights into the legal minimum standards for treatment of mentally disabled immigration detainees. The first case was decided in US courts and the second in UK courts.

The August 2010 case of *Franco-Gonzales v. Holder* is a class action lawsuit filed by the American Civil Liberties Union (ACLU) on behalf of non-citizens with mental disabilities. The proposed class included all individuals who are or will be in DHS custody for removal proceedings in California, Arizona, and Washington, who have been identified by medical personnel, DHS or an immigration judge as having a serious mental disability that may render them incompetent to represent themselves in removal proceedings, and who are presently unrepresented. The case centres on Jose Antonio Franco-Gonzalez, a Mexican citizen suffering from moderate mental retardation (a condition defined by an IQ level of between 35 and 55) who does not know his own age or birthday and cannot tell time or dial phone numbers. When he appeared in immigration court, the immigration judge said that his deportation proceedings would be suspended until he could undergo a psychological evaluation. Without legal representation, however, the case fell through the cracks and Franco-Gonzalez remained in Southern California immigration detention for four years.⁶⁰⁰ On 27 December 2010, the United States District Court of Central California ruled in favour of the ACLU and held that the government must provide a "qualified representative" to represent the mentally disabled non-citizens involved in the case.⁶⁰¹

⁶⁰⁰ Arulanantham, 2012; Kaplan, 2012: 8 – 10.

⁶⁰¹ The qualified representative does not have to be an attorney, but must satisfy five requirements; he or she must 1) be obligated to provide zealous representation; 2) be subject to sanction by the Executive Office for Immigration Review (EOIR) for ineffective assistance; 3) be free of any conflicts of interest; 4) have adequate knowledge and information to provide representation that is at least as competent as that provided by a detainee with ample time, motivation, and access to legal materials; and 5) be

The second case was decided in 2012 when the UK High Court found six cases of detention of mentally disabled non-citizens to be unlawful.⁶⁰² *R (HA (Nigeria)) v SSHD*⁶⁰³ concerns HA, an overstaying visitor and asylum seeker. Under the automatic deportation provisions of the UK Borders Act 2007,⁶⁰⁴ HA was detained in August 2009 following his release from prison for a drug-related offence. In January 2010, a psychiatrist recommended HA's transfer to a mental hospital for assessment and treatment; however, the transfer did not occur until July 2010. HA was finally diagnosed with Paranoid Schizophrenia and given compulsory treatment. Despite medical advice that continued detention was likely to cause significant deterioration in his condition and that he could instead be safely discharged into the community, HA was returned to an IRC in November 2010 for another month until he was granted bail. Mr Justice Singh stated that in respect of the period up to HA's transfer to the hospital in July 2010, the combination of acts and omissions for whom the Home Secretary was in law responsible, amounted to degrading treatment, and that HA's return to detention following his transfer to hospital breached Article 3 of the European Convention on Human Rights. *Inter alia*, the policy introduced on 26 August 2010 in relation to detention of people with mental illness was unlawful in breach of the Home Secretary's duties under section 71 of the Race Relations Act 1976 and section 49A of the Disability Discrimination Act 2005. The monthly reviews in HA's case contained no

obligated to maintain client confidentiality (Klepps, 2012: 548 – 549).

⁶⁰² *R (S) v Secretary of State for the Home Department* [2011] EWHC 2120 (Admin), *R (BA) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin), *R (HA(Nigeria)) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin), *R (C) v Secretary of State for the Home Department* [2012] EWHC 1543 (Admin), *R (Aziz Lamari) v Secretary of State for the Home Department* [2012] EWHC 1630 (Admin), and *R (Rahul Anam) v Secretary of State for the Home Department* [2012] EWHC 1770 (Admin).

⁶⁰³ *R (HA (Nigeria)) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin).

⁶⁰⁴ I describe this Act in much detail in Chapter Four.

proper assessment of his mental illness and the likely effect of detention on it.⁶⁰⁵ The Immigration Law Practitioners' Association (2012: 6) argues that “these cases together form a pattern and are indicative of grave shortcomings in the UK Border Agency’s treatment of immigration detainees.”

⁶⁰⁵ Eskarie, 2012; Garden Court Chambers, 2012.

Bibliography

- Abend, L. (2008, 20 June). Spain will pay unemployed migrant workers to leave. *Christian Science Monitor*. Retrieved 1 July, 2011, from <http://www.csmonitor.com/World/Europe/2008/0620/p12s01-woeu.html>.
- Abizadeh, A. (2008). Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders. *Political Theory*, 36(37), 29.
- Ackerman, B. A. (1980). *Social Justice in the Liberal State*. New Haven and London: Yale University Press.
- Adamson, F. B. (2006). Crossing Borders: International Migration and National Security. *International Security*, 31(1), 165 - 199.
- Adamson, F. B., Triadafilopoulos, T., & Zolberg, A. R. (2011). The Limits of the Liberal State: Migration, Identity and Belonging in Europe. *Journal of Ethnic and Migration Studies*, 37(6), 843 - 859.
- Afeef, K. F. (2006). The Politics of Extraterritorial Processing: Offshore Asylum Policies in Europe and the Pacific, *RSC Working Paper No. 36* (pp. 42). Oxford: Refugee Studies Centre.
- Agamben, G. (1993). *The Coming Community* (M. Hardt, Trans.). Minneapolis: University of Minnesota Press.
- Agamben, G. (1998). *Homo Sacer: Sovereign Power and Bare Life* (D. Heller-Roazen, Trans.). Stanford, Calif.: Stanford University Press.
- Agamben, G. (2005). *State of Exception* (K. Attell, Trans.). Chicago: University of Chicago Press.
- Aguirre Jr., A., E. Rodriguez, et al. (2011). "The cultural production of Mexican identity in the United States: an examination of the Mexican threat narrative." *Social Identities*, 17(05): 695 - 707.
- AIM25: Archives in London and the M25 Area (2009). Charter 87, *University of East London Archives*. London: AIM25.
- Akram, S. M., & Karmely, M. (2005). Immigration and Constitutional Policies Involving Arabs and Muslims in the United States: Is Alienage a Distinction without a Difference? *UC Davis Law Review*, 58(3), 609 - 700.
- Alberti, G. (2010). Across the Borders of Lesvos: The gendering of migrants' detention in the Aegean. *Feminist Review*, 94, 138 - 147.
- Aleinikoff, T. A. (2007). Comments on the Rights of Others. *European Journal of Political Theory*, 6(4), 424-430.
- Alexander III, S. B. (2006). "A Political Response to Crisis in the Immigration Courts." *Georgetown Immigration Law Journal*, 21(01): 1.
- Ali, M. A. (2006). Children Alone, Seeking Refuge in Canada. *Refuge* 23(2): 68 - 80.
- Ambroso, G., Crisp, J., & Albert, N. (2011). No turning back: A review of UNHCR's response to the protracted refugee situation in eastern Sudan (pp. 39). Geneva, Switzerland: United Nations High Commissioner for Refugees Policy Development and Evaluation Services.
- American Bar Association, & Arnold & Porter LLP. (2010). Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases: Executive Summary. Retrieved 10 February, 2010, from http://www.abanet.org/media/nosearch/immigration_reform_executive_summary_012510.pdf

- American Civil Liberties Union of Ohio, T. (2011). Prisons for Profit: A look at prison privatization (pp. 24). Cleveland: The ACLU of Ohio.
- Amnesty International (2005). UK: Seeking Asylum is not a crime: detention of people who have sought asylum. *EUR 45/015/2005* Retrieved 1 May, 2011, from <http://www.amnesty.org/en/library/asset/EUR45/015/2005/en/0f333954-d4e4-11dd-8a23-d58a49c0d652/eur450152005en.pdf>
- Amnesty International (2009a). Jailed without Justice: Immigration Detention in the U.S.A. Washington, D.C., Amnesty International: 56.
- Amnesty International (2009b, 1 April). "Irregular migrants and asylum-seekers: Alternatives to immigration detention." *Amnesty International Publications*. Retrieved 1 August, 2012, from <http://www.amnesty.org/en/library/asset/POL33/001/2009/en/08b817ac-d5ae-4d47-a55c-20c36f7338cf/pol330012009en.pdf>.
- Amnesty International UK. (2006). Down and Out in London: The road to destitution for rejected asylum seekers. *Amnesty International Research Reports* Retrieved 04 February, 2013, from http://www.amnesty.org.uk/uploads/documents/doc_17382.pdf
- Amnesty International UK (2011, 7 July). Out of Control: The case for a complete overhaul of enforced removals by private contractors. *Amnesty International UK Briefings*, from http://www.amnesty.org.uk/uploads/documents/doc_21634.pdf
- Amoore, L., & Hall, A. (2010). Border theatre: on the arts of security and resistance. *Cultural Geographies*, 17(3), 299 - 319.
- Anderson, B. (2000). *Doing the Dirty Work? The Global Politics of Domestic Labour*. London, Zed Books.
- Anderson, B. (2010). Migration, immigration controls and the fashioning of precarious workers. *Work, Employment and Society*, 24(2), 300 - 317.
- Anderson, B. (forthcoming) The Making of Migrants. *Us Versus Them: The Dangerous Politics of Immigration Controls*. Oxford: Oxford University Press.
- Anderson, B., Sharma, N., & Wright, C. (2011). Editorial: Why No Borders? *Refuge*, 26(2), 5 - 18.
- Andreas, P. (2001). The Transformation of Migrant Smuggling across the U.S.-Mexican Border. In D. Kyle & R. Koslowski (Eds.), *Global Human Smuggling: Comparative Perspectives*. Baltimore: Johns Hopkins University Press.
- Andrijasevic, R. (2006). Lampedusa in focus: Migrants caught between the Libyan desert and the deep sea. *Feminist Review*, 82, 120 - 125.
- Andrijasevic, R. (2009). Sex on the move: Gender, subjectivity, and differential inclusion. *Subjectivity*, 29, 389 - 406.
- Andrijasevic, R. (2010). From Exception to Excess: Detention and Deportations across the Mediterranean Space. *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. N. P. DeGenova and N. Peutz. London, Duke University Press: 147 - 165.
- Anker, D. E., Fitzpatrick, J., & Shacknove, A. E. (1998). Crisis and Cure: A Reply to Hathaway/Neve and Schuck. *Harvard Human Rights Journal*, 11, 295 - 310.
- Aradau, C. (2007). Law Transformed: Guantánamo and the 'Other' Exception. *Third World Quarterly*, 28(3), 489 - 501.
- Archibugi, D. (2004). Cosmopolitan Democracy and its Critics: A Review. *European Journal of International Relations* 10(03): 437 - 473.
- Arendt, H. (1951). *The Origins of Totalitarianism* (First ed.). London: Harcourt, Brace,

- Inc.
- Arkles, G. (2008 - 2009). Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention. *Temple Political and Civil Rights Law Review*, 18, 515 - 560.
- Arulanantham, A. (2012, 7 February). Four years frozen in ICE. *ACLU of Southern California Blog*. Retrieved 1 August, 2012, from <http://www.aclu-sc.org/four-years-frozen-in-ice/>
- Ashford, M. (1993). *Detained without Trial: A Survey of Immigration Act Detention*. London: Joint Council for the Welfare of Immigrants.
- Association of Visitors to Immigration Detainees (2011). Immigration Detention: Size of the Detention Estate, 15 June 2011, *AVID Publications* (pp. 2). London: Association of Visitors to Immigration Detainees.
- Asylum Welcome (2008). Asylum Welcome's report on Immigration Detention for the *Independent Asylum Commission* (pp. 6). London: Asylum Welcome.
- Athwal, H. and J. Bourne (2007). Driven to despair: asylum deaths in the UK. *Race & Class* 48(4): 106 - 114.
- Australian Human Rights Commission. (2012). *Community arrangements for asylum seekers, refugees, and stateless persons: Observations from Visits Conducted by the Australian Human Rights Commission from December 2011 to May 2012*. Canberra: Australian Human Rights Commission.
- Aynsley-Green, S. A., Cole, T. J., Crawley, H., Lessof, N., Boag, L. R., & Wallace, R. M. M. (2012). Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control. *British Medical Bulletin, Advance Access* 14 May 1 - 26.
- Bacon, C. (2005). The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies. *RSC Working Papers*. Oxford, Refugee Studies Centre: 39.
- Bader, V. (1995). Citizenship and Exclusion: Radical Democracy, Community, and Justice. or, What is wrong with Communitarianism? *Political Theory*, 23(2), 211 - 246.
- Bader, V. (2005a). The Ethics of Immigration. *Constellations*, 12(3), 331 - 361.
- Bader, V. (2005b). Reasonable Impartiality and Priority for Compatriots. A Criticism of Liberal Nationalism's Main Flaws. *Ethical Theory and Moral Practice* 8(1): 83 - 103.
- Bailey, R. (2009a). Strategy, rupture, rights: reflections on law and resistance in immigration detention. *Australian Feminist Law Journal* 31(01): 33 - 56.
- Bailey, R. (2009b). Up Against the Wall: Bare Life and Resistance in Australian Immigration Detention. *Law Critique*, 20(2), 113 - 132.
- Bakewell, O. (2009). South-South Migration and Human Development: Reflections on African Experiences, *Human Development Research Paper 2009/07* (pp. 80). Geneva: United Nations Development Programme.
- Baldwin-Edwards, M. (2008). Towards a Theory of Illegal Migration: historical and structural components. *Third World Quarterly* 29(7): 1449 - 1459.
- Bâli, A. Ü. (2006). Scapegoating the Vulnerable: Preventive Detention of Immigrants in America's "War on Terror". In A. Sarat (Ed.), *Studies in Law, Politics and Society, Volume 38* (pp. 25 - 69): Emerald Group Publishing Limited.
- Banki, S., & Katz, I. (2009). Resolving Immigration Status, Part 2: Comparative Case Studies, *Report for: The Department of Immigration and Citizenship* (pp. 137).

- Australia: Social Policy Research Centre, University of New South Wales.
- Banks, J. (2008). The Criminalisation of Asylum Seekers and Asylum Policy. *Prison Service Journal*, 175, 43 - 49.
- Banks, J. (2011). Foreign National Prisoners in the UK: Explanations and Implications. *The Howard Journal of Criminal Justice*, 50(2), 184 - 198.
- Barber, P. G. (2008). "The Ideal Immigrant? Gendered class subjects in Philippine–Canada migration." *Third World Quarterly* 29(07: Special Issue: Globalisation and Migration: new issues, new politics?): 1265 - 1285.
- Barrett, D. and C. Freeman (2012, 21 October). "Britain facing new eastern Europe immigration surge: Britain is facing a new wave of Eastern European immigration which will put British workers' jobs at risk, experts have warned." *The Telegraph*. Retrieved 15 January, 2013, from <http://www.telegraph.co.uk/news/uknews/immigration/9637967/Britain-facing-new-eastern-Europe-immigration-surge.html>.
- Barry, B. (1984). Intimations of Justice: A Review of Michael Walzer, *Spheres of Justice*. *Columbia Law Review*, 84, 806 – 815.
- Barry, B. (1992). The Quest for Consistency: A Sceptical View. *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*. B. Barry and R. E. Goodin. New York, Harvester Wheatsheaf: 279 - 287.
- Barry, C. and L. Valentini (2009). Egalitarian challenges to global egalitarianism: a critique. *Review of International Studies* 35(03): 485 - 512.
- Barutciski, M., & Suhrke, A. (2001). Lessons from the Kosovo Refugee Crisis: Innovations in Protection and Burden-Sharing. *Journal of Refugee Studies*, 14(02), 95 - 115.
- Bashford, A., & Strange, C. (2002). Asylum-Seekers and National Histories of Detention. *Australian Journal of Politics and History*, 48(4), 19.
- Bauböck, R. (1994a). Changing the Boundaries of Citizenship. The Inclusion of Immigrants in Democratic Polities. In R. Bauböck (Ed.), *From Aliens to Citizens: Redefining the Status of Immigrants in Europe* (pp. 199 - 232). Aldershot: Avebury.
- Bauböck, R. (1994b). Transnational Citizenship: Membership and Rights in International Migration. Aldershot, Edward Elgar.
- Bauböck, R. (2008). What went wrong with liberal multiculturalism? *Ethnicities*, 8(1), 271 - 276.
- Bauböck, R. (2009). Global Justice, Freedom of Movement and Democratic Citizenship. *Archives Européennes de Sociologie* 50(1): 1 - 32.
- Bauböck, R. (2010). Changing the boundaries of citizenship: the inclusion of immigrants in democratic politics. In M. Martiniello & J. Rath (Eds.), *Selected Studies in International Migration and Immigrant Incorporation* (pp. 275 - 315). Amsterdam: Amsterdam University Press.
- Bauder, H. (2008). "Media discourse and the new German immigration law." *Journal of Ethnic and Migration Studies*, 34(01): 95 - 112.
- BBC World Service, T. (2004, 2 September). Asylum centre expansion rejected. *BBC World News: UK*, Retrieved 15 November 2011 from http://news.bbc.co.uk/2/hi/uk_news/england/oxfordshire/3619772.stm
- BBC World Service, T. (2006, 9 October). How the deportation story emerged. *BBC News Online*. Retrieved 16 January, 2010, from http://news.bbc.co.uk/1/hi/uk_politics/4945922.stm.

- BBC World Service, T. (2007, 6 August). Campsfield's troubled history. *BBC News Online*. Retrieved 14 January 2012 from http://news.bbc.co.uk/2/hi/uk_news/6449465.stm
- BBC World Service, T. (2008, 16 July). Immigration 'harming communities'. *BBC News Online*. Retrieved 12 January, 2011, from http://news.bbc.co.uk/1/hi/uk_politics/7508096.stm
- BBC World Service, T. (2011). Asylum seekers 'granted amnesty' by UK Border Agency. *BBC News Online*. Retrieved 2 June, 2011, from <http://www.bbc.co.uk/news/uk-politics-13617183>
- BBC World Service, T. (2013, 13 January). "Eric Pickles: New EU 'influx' may add to housing problems." *BBC News Online*. Retrieved 15 January, 2013, from <http://www.bbc.co.uk/news/uk-politics-21002988>.
- Beck, U. (2006). *The Cosmopolitan Vision*. Cambridge, Polity.
- Beckett, K. and N. Murakawa (2012). Mapping the shadow carceral state: Toward an institutionally capacious approach to punishment. *Theoretical Criminology* 16(2): 221 - 244.
- Benedetto, M. (2008). "Crisis on the Immigration Bench: An Ethical Perspective." *Brooklyn Law Review* 73(02): 467 - 523.
- Benson, L. B. (1997). "Back to the Future: Congress Attacks the Right to Judicial Review of Immigration Proceedings." *Immigration and Nationality Law Review*, 18: 253 – 341.
- Benson, L. B. (2010). "As Old as the Hills: Detention and Immigration." *Intercultural Human Rights Law Review*, 5(01): 11 - 56.
- Benton, M. (2010a). A Theory of Denizenship, *Doctoral Thesis*. (pp. 177). London: University College London.
- Benton, M. (2010b). The Tyranny of the Enfranchised Majority? The Accountability of States to their Non-Citizen Population. *Res Publica*, 16(4), 397 - 413.
- Berger, L., & Figeroux, D. (2002). Protecting Accompanied Child Refugees from the One-Year Deadline: Minority as a Legal Disability. *Georgetown Immigration Law Journal*, 16(04), 855 - 870.
- Bernstein, N. (2009a, 2 April). Immigrant Detainee Dies, and a Life Is Buried, Too. *The New York Times*. Retrieved 1 September, 2009, from http://www.nytimes.com/2009/04/03/nyregion/03detain.html?_r=1&hp.
- Bernstein, N. (2009b, 3 May). Mentally Ill and in Immigration Limbo. *The New York Times*. Retrieved 1 February, 2012, from <http://www.nytimes.com/2009/05/04/nyregion/04immigrant.html>
- Bernstein, N. (2010, 9 January). Documents Reveal Earlier Immigrant Deaths. *New York Times*. Retrieved 10 January, 2010, from <http://www.nytimes.com/2010/01/10/nyregion/10detainside.html>.
- Betts, A. (2003). Public Goods Theory and the Provision of Refugee Protection: The Role of the Joint-Product Model in Burden-Sharing Theory. *Journal of Refugee Studies*, 16(03), 274 - 296.
- Betts, A. (2010a). Towards a "Soft Law" Framework for the Protection of Vulnerable Irregular Migrants. *International Journal of Refugee Law* 2(2): 209 – 236.
- Betts, A. (2010b). The Refugee Regime Complex. *Refugee Survey Quarterly*, 29(1), 12 - 37.
- Bhabha, J. (2000). Lone Travelers: Rights, Criminalization, and the Transnational Migration of Unaccompanied Children. *University of Chicago Law School*

- Roundtable*, 7, 269 - 294.
- Bianchini, K. (2011). Unaccompanied asylum-seeker children: flawed processes and protection gaps in the UK. *Forced Migration Review*, 37(March), 52 - 53.
- BID (Bail for Immigration Detainees) (2008). Briefing paper on the detained fast track. London, BID (Bail for Immigration Detainees).
- BID (Bail for Immigration Detainees) (2010). A nice judge on a good day: immigration bail and the right to liberty, *BID Reports* (pp. 80). London: BID (Bail for Immigration Detainees).
- BID (Bail for Immigration Detainees), T. (2011). *Immigration Detention in the UK - key facts and figures*. London: Bail for Immigration Detainees.
- Bigo, D. (2002). Security and immigration: toward a critique of the governmentality of unease. *Alternatives: Global, Local, Political*, 27, 63 - 92.
- Bigo, D. (2007). Detention of Foreigners, States of Exception, and the Social Practices of Control of the Banopticon. In P. K. Rajaram & C. Grundy-Warr (Eds.), *Borderscapes: Hidden Geographies and Politics at Territory's Edge* (First ed., pp. 3 - 33). London: University of Minneapolis Press.
- Birn, A.-E. (1997). Six Seconds Per Eyelid: The Medical Inspection of Immigrants at Ellis Island, 1892-1914. *Dynamis: Acta Hisp. Med. Sci. Hist. Illus.* 17: 281 - 316.
- Black, M., & Smith, R. G. (2003). Electronic Monitoring in the Criminal Justice System, *Trends and Issues in Criminal Justice Working Paper No. 254* (pp. 6). Canberra: Australian Institute of Criminology.
- Black, R. (2003). Breaking the Convention: Researching the “Illegal” Migration of Refugees to Europe. *Antipode*, 35(1), 34 - 54.
- Blinder, S. (2011, 27 May). UK Public Opinion toward Migration: Determinants of Attitudes. *Migration Observatory Briefings*. Retrieved 20 February, 2012, from <http://migrationobservatory.ox.ac.uk/briefings/uk-public-opinion-toward-migration-determinants-attitudes>
- Bloch, A. (2000). A New Era or More of the Same? Asylum Policy in the UK. *Journal of Refugee Studies*, 13(1), 29 - 42.
- Bloch, A. (2002). *The Migration and Settlement of Refugees in Britain*. Basingstoke: Palgrave Macmillan.
- Bloch, A., and Schuster, L. (2002). Asylum and welfare: Contemporary Debates. *Critical Social Policy*, 22(3), 393 - 414.
- Bloch, A., and Schuster, L. (2005). At the extremes of exclusion: Deportation, detention, and dispersal. *Ethnic and Racial Studies*, 28(3), 491 - 512.
- Bosniak, L. (1994). Membership, Equality, and the Difference Alienage Makes. *New York University Law Review*, 69(6), 1047 - 1149.
- Bosniak, L. (2000). Universal Citizenship and the Problem of Alienage. *Northwestern University Law Review*, 94(3), 963 - 982.
- Bosniak, L. (2008). *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Oxford: Princeton University Press.
- Bosworth, M. (2007). Identity, Citizenship, and Punishment. In M. Bosworth & J. Flavin (Eds.), *Race, Gender, and Punishment: From Colonialism to the War on Terror* (pp. 134 - 148). London: Rutgers University Press.
- Bosworth, M. (2008a, November). Perrie Lectures: Foreign Nationals in Prison and Detention. *Prison Service Journal* from http://www.hmprisonservice.gov.uk/assets/documents/10004231Perrie_Lecture_Mary_Bosworth.pdf

- Bosworth, M. (2008b). Border Control and the Limits of the Sovereign State. *Social & Legal Studies*, 17(2), 200 - 217.
- Bosworth, M. (2011a). Immigration Detention: Policy Challenges, *Migration Policy Observatory Policy Primers* (pp. 7). Oxford: COMPAS.
- Bosworth, M. (2011b). Deportation, detention and foreign national prisoners in England and Wales, *University of Oxford Legal Research Paper Series No. 33/2011* (pp. 30). Oxford: University of Oxford.
- Bosworth, M. (2012). Subjectivity and identity in detention: Punishment and society in a global age. *Theoretical Criminology* 16(2): 123 - 140.
- Bowcott, O. and N. Hanman (2010, 1 August). Asylum seeker takes his own life after losing legal aid: Refugee support group blames immigration policy for leaving asylum seekers without help to pursue claims. *The Guardian*. Retrieved 15 August, 2011, from <http://www.guardian.co.uk/world/2010/aug/01/asylum-seeker-osman-rasul-death-legal-aid>.
- Brake, T. (2010, 16 November). Lib Dems are keeping their promises on child detention: We will end this cruel practice – and maintain the integrity of our immigration system. *The Guardian*, from <http://www.guardian.co.uk/commentisfree/2010/nov/16/lib-dem-child-immigration-detention>
- Branche, A. (2011). *The Cost of Failure: The Burden of Immigration Enforcement in America's Cities*. Washington, DC: The Drum Major Institute for Public Policy.
- Briskman, L., Zion, D., and Loff, B. (2010). Challenge and collusion: health professionals and immigration detention in Australia. *The International Journal of Human Rights*, 14(7), 1092 - 1106.
- Brock, G. (2005). What do we owe co-nationals and non-nationals? Why the liberal nationalist account fails and how we can do better. *Journal of Global Ethics*, 1(2), 127 - 151.
- Brock, G. (2009). *Global Justice: A Cosmopolitan Account*. Oxford, Oxford University Press.
- Brock, G., & Atkinson, Q. D. (2008). What Can Examining the Psychology of Nationalism Tell Us About Our Prospects for Aiming at the Cosmopolitan Vision? *Ethical Theory and Moral Practice*, 11(2), 165 - 179.
- Broeders, D. (2010). Return to sender? Administrative detention of irregular migrants in Germany and the Netherlands. *Punishment & Society*, 12(2), 169 - 186.
- Brouwer, A. and J. Kumin (2003). Interception and Asylum: When Migration Control and Human Rights Collide. *Refuge* 21(4): 6 - 24.
- Brown, J. (2011, 4 February). New centres 'to detain child asylum seekers'. *The Independent*. Retrieved 15 February 2011 from <http://www.independent.co.uk/news/uk/home-news/new-centres-to-detain-child-asylum-seekers-2203843.html>
- Browning, J. (2007). "The Only Thing They Have to Bargain with Is Their Own Self": Masculinity and Protesting Immigration Detention. *Transforming Cultures eJournal*, 2(21), 78 - 95.
- Bruegel, I., & Natamba, E. (2002). Maintaining contact: What happens after detained asylum seekers get bail?, *Social Science Research Paper No. 16*. London: South Bank University.
- Bryan, C. and M. Denov (2011). "Separated Refugee Children in Canada: The Construction of Risk Identity." *Journal of Immigrant & Refugee Studies* 9(03):

242 - 266.

- Buff, R. I. (2008). The Deportation Terror. *American Quarterly*, 60(03), 523 - 551.
- Buonfino, A. (2004). "Between unity and plurality: the politicization and securitization of the discourse of immigration in Europe." *New Political Science*, 26(01): 23 - 49.
- Burnett, J. (2007, November). Detaining the Destitute. *PAFRAS Briefing Paper Number 2* Retrieved 1 August, 2011, from http://www.pafra.org.uk/wp-content/uploads/2010/09/2_Detaining_the_Destitute.pdf
- Burnett, J., & Chebe, F. (2010). Captive labour: asylum seekers, migrants and employment in UK immigration removal centres. *Race & Class*, 51(4), 95 - 103.
- Burnham, E. (2003). Challenging Immigration Detention: A Best Practice Guide (pp. 168). London: Immigration Law Practitioners' Association & BID (Bail for Immigration Detainees).
- Burrell, I. (2002, 8 February). Blunkett to shut 'outdated' and hated Campsfield. *The Independent*, from <http://www.independent.co.uk/news/uk/politics/blunkett-to-shut-outdated--and-hated-campsfield-659898.html>
- Butler, J. (2004). *Precarious Life: The Powers of Mourning and Violence*. London: Verso.
- Byrne, L. (2008, 3 April). UK Border Agency launched. *Speech by Liam Byrne, Minister of State for Borders and Immigration, to staff of the new UK Border Agency at HM Treasury on 3 April 2008*, from <http://press.homeoffice.gov.uk/Speeches/speech-lb-uk-border-agency>
- Cairns, S. (2004). Drifting: Architecture/Migrancy. *Drifting: Architecture and Migrancy*. S. Cairns. London, Routledge: 17 - 47.
- Calvert, G. (2004). Childhood in Detention. *Australian & New Zealand Journal of Family Therapy*, 25(2), 113 - 114.
- Caney, S. (2001). Review Article: International Distributive Justice. *Political Studies*, 49(5), 974 - 997.
- Caney, S. (2006). *Justice Beyond Borders*. Oxford: Oxford University Press.
- Canovan, M. (1996). *Nationhood and Political Theory*. Cheltenham: Edward Elgar Publishing Limited.
- Capdevila, R. and J. M. Callaghan (2008). "'It's not Racist. It's Common Sense'. A Critical Analysis of Political Discourse Around Asylum and Immigration in the UK." *Journal of Community & Applied Social Psychology*, 18(1): 1 - 16.
- Care, G. (2008). Life after Refusal to Enter: Reflections of an Immigration Judge. *Refuge* 25(2): 195 - 201.
- Carens, J. H. (1987). Aliens and Citizens: The Case for Open Borders. *Review of Politics*, 49(2), 251 - 273.
- Carens, J. H. (1992). Migration and Morality: A liberal egalitarian perspective. In B. Barry and R. E. Goodin (Eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (pp. 25 - 47). London: Harvester Wheatsheaf.
- Carens, J. H. (1996). Realistic and Idealistic Approaches to the Ethics of Migration. *International Migration Review*, 30(1), 156 - 170.
- Carens, J. H. (1997). The Philosopher and the Policymaker: Two Perspectives on the Ethics of Immigration with Special Attention to the Problem of Restricting Asylum. In K. Hailbronner, D. A. Martin and H. Motomura (Eds.), *Immigration Admissions: the Search for Workable Policies in Germany and the United States*

- (pp. 3 - 50). Oxford: Berghan Books.
- Carens, J. H. (1999). Reconsidering Open Borders. *International Migration Review*, 33(4), 1082 - 1097.
- Carens, J. H. (1999b). Reply to Meilaender: Reconsidering Open Borders. *International Migration Review* 33(4): 1082 - 1097.
- Carens, J. H. (2004). A Contextual Approach to Political Theory. *Ethical Theory and Moral Practice*, 7(2), 117 - 132.
- Carens, J. H. (2008a). The Rights of Irregular Migrants. *Ethics and International Affairs*, 22(2), 23.
- Carens, J. H. (2008b). Live-in Domestic, Seasonal Workers, and Others Hard to Locate on the Map of Democracy. *The Journal of Political Philosophy*, 16(4), 419 - 445.
- Carens, J. H. (2009). The Case for Amnesty: Time erodes the state's right to deport. *Boston Review*, May / June (New Democracy Forum), <http://bostonreview.net/BR34.33/carens.php>.
- Carens, J. H. (2010a). Mapping the Ethics of Immigration, *Who Belongs? Immigration, Democracy and Citizenship* (Unpublished Manuscript ed., pp. 8).
- Carens, J. H. (2010b). Open Borders, *Who Belongs? Immigration, Democracy and Citizenship* (Unpublished Manuscript ed., pp. 20).
- Carens, J. H. (2010c). The Claims of Community, *Who Belongs? Immigration, Democracy and Citizenship* (Unpublished Manuscript ed., pp. 53).
- Carens, J. H. (2010d). The Case for Open Borders. *Who Belongs? Immigration, Democracy and Citizenship* (Unpublished Manuscript): 20.
- Carens, J. H. (2010e). *Immigrants and the Right to Stay*. Cambridge, MA: The Massachusetts Institute of Technology Press.
- Carens, J. H. (2012). Appendix: Reflections on the Challenges of Thinking Normatively about Immigration, *Who Belongs? The Ethics of Immigration* (Unpublished Manuscript) (pp. 15).
- Carens, J. H. (forthcoming). Permanent Residents. *The Ethics of Immigration* (pp. 41)
- Carey, M. (2003). "You Don't Know if They'll Let You Out in One Day, One Year, or Ten Years..." Indefinite Detention of Immigrants after *Zadvydas v. Davis*. *Chicano-Latino Law Review*, 24(1), 12 - 42.
- Carter, D., & Merrill, H. (2007). Bordering Humanism: Life and Death on the Margins of Europe. *Geopolitics*, 12(2), 248 - 264.
- Castles, S. (2004). The Factors that Make and Unmake Migration Policies. *International Migration Review* 38(3): 852 - 884.
- Castles, S. and M. J. Miller (2003). *The Age of Migration, Third Edition*. Basingstoke, Palgrave Macmillian.
- Chacón, J. M. (2007). Commentary: Blurred Boundaries in Immigration: Unsecured Borders: Immigration Restrictions, Crime Control and National Security. *Connecticut Law Review*, 39(5), 1827-1893.
- Chacón, J. M. (2009). Managing Migration Through Crime. *Columbia Law Review*, 109(1), 135 - 148.
- Chacón, J. M. (2012). "Overcriminalizing Immigration." *The Journal of Criminal Law & Criminology*, 102(03): 613 - 652.
- Chahal v. United Kingdom (1997) 23 EHRR 413, paragraph 113.
- Chan, W. (2006). Crime, deportation and the regulation of immigrants in Canada. *Crime, Law & Social Change*, 44(2), 153 - 180.

- Chang, H. F. (2002). Liberal Ideals and Political Feasibility: Guest-Worker Programs as Second-Best Policies, *Institute for Law and Economics Research Papers* (pp. 16). Pennsylvania: University of Pennsylvania Law School.
- Chaudry, A. (2011). Children in the Aftermath of Immigration Enforcement. *Journal of the History of Childhood and Youth* 4(1): 137 - 157.
- Chávez, K. R. (2010). Border (In)Securities: Normative and Differential Belonging in LGBTQ and Immigrant Rights Discourse. *Communication and Critical/Cultural Studies* 7(02): 136 - 155.
- Chavez, L. R. (2007). Spectacle in the Desert: The Minuteman Project on the US-Mexico Border. *Global Vigilantes: Anthropological Perspectives on Justice and Violence*. D. Pratten and A. Sen. London, HURST Publishers Ltd.: 25 - 46.
- Chen, L. C., & Buofford, J. I. (2005). Fatal Flows - Doctors on the Move. *The New England Journal of Medicine*, 353, 1850 - 1852.
- Cheong, P. H., R. Edwards, et al. (2007). "Immigration, social cohesion and social capital: A critical review." *Critical Social Policy* 27(1): 24 - 49.
- Chertoff, M. (2009). "Tools Against Terror: All of the Above." *Harvard Journal of Law & Public Policy*, 32(01): 219 - 230.
- Chimni, B. S. (1998). The Geopolitics of Refugee Studies: A View from the South. *Journal of Refugee Studies*, 11(4), 350 - 374.
- Cholewinski, R. (2010). "Human Rights of Migrants: The Dawn of a New Era?" *Georgetown Immigration Law Journal* 24: 585 - 615.
- Cisneros, J. D. (2008). "Contaminated Communities: The Metaphor of "Immigrant as Pollutant" in Media Representations of Immigration." *Rhetoric & Public Affairs*, 11(04): 569 - 601.
- Clapman, A. (2011). Hearing Difficult Voices : The Due Process Rights of Mentally Disabled Individuals in Removal Proceedings. *New England Law Review*, 45, 101 - 142.
- Clarke, S. G., and Simpson, E. (1989). Introduction: The Primacy of Moral Practice. In S. G. Clarke and E. Simpson (Eds.), *Anti-Theory in Ethics and Moral Conservatism* (pp. 1 - 29). Albany: State University of New York.
- Clayton, G. (2006). *Textbook on Immigration and Asylum Law* (Second ed.). Oxford: Oxford University Press.
- Cleveland, J., Rousseau, C., & Kronick, R. (2012, January). Bill C-4 : The impact of detention and temporary status on asylum seekers' mental health. *Brief for submission to the House of Commons Committee on Bill C-4, the Preventing Human Smugglers from Abusing Canada's Immigration System Act* Retrieved 14 July, 2012, from http://www.globaldetentionproject.org/fileadmin/Canada_cleveland.pdf
- Coffey, G. J., Kaplan, I., Sampson, R., and Tucci, M. M. (2010). The meaning and mental health consequences of long-term immigration detention for people seeking asylum. *Social Science & Medicine*, 70(12), 2070 - 2079.
- Cohen, R. (1989). The Detention of Asylum-Seekers in the UK. In R. Cohen & D. Joly (Eds.), *Reluctant Hosts: Europe and its Refugees* (pp. 145 - 161). Aldershot: Avebury.
- Cohen, R. (1994). *Frontiers of Identity: The British and the Others*. London: Longman.
- Cohen, S. (2002). The local state of immigration controls. *Critical Social Policy*, 22(3), 518 - 543.
- Cole, D. (2002). In Aid of Removal: Due Process Limits on Immigration Detention.

- Emory Law Journal* 51: 101 - 136.
- Cole, P. (2000a). Communitarianism and Immigration: Walzer on 'Members and Strangers'. In G. Calder, E. Garrett & J. Shannon (Eds.), *Liberalism and Social Justice: International Perspectives* (pp. 165 - 185). Aldershot: Ashgate.
- Cole, P. (2000b). *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Paperback ed.). Edinburgh: Edinburgh University Press.
- Cole, P. (2011). The Case Against the Right to Exclude. *Debating the Ethics of Immigration: Is There a Right to Exclude?* P. Cole and C. H. Wellman. Oxford, Oxford University Press: 173 - 232.
- Cole, T. (2012). People smugglers, statistics and bone age. *Significance*, 9(3), 8 - 12.
- Coleman, M. (2008a). US immigration law and its geographies of social control: lessons from homosexual exclusion during the Cold War. *Environment and Planning D: Society and Space* 26(6): 1096 - 1114.
- Coleman, M. (2008b). Between Public Policy and Foreign Policy: U.S. Immigration Law Reform and the Undocumented Migrant. *Urban Geography*, 29(1), 4 - 28.
- Coleman, M. (2012). "The "Local" Migration State: The Site-Specific Devolution of Immigration Enforcement in the U.S. South." *Law & Policy*, 34(02): 159 - 190.
- Coleman, N. (2003). *Non-Refoulement* Revised - Renewed Review of the Status of the Principle of *Non-Refoulement* as Customary International Law *European Journal of Migration and Law*, 5(01), 23 - 68.
- Coles, A., & Farthing, S. (2010). Liberty's submission to the Review into Ending the Detention of Children for Immigration Purposes, *Liberty's Policy Papers* (pp. 19). London: Liberty.
- Connell, J., & Engels, B. (1983). Indian doctors in Australia: costs and benefits of the brain drain. *Australian Geographer*, 15(05), 308 - 318.
- Connell, J., Zurn, P., Stilwell, B., Awases, M., & Braichet, J.-M. (2007). Sub-Saharan Africa: Beyond the health worker migration crisis? *Social Science & Medicine*, 64(09), 1876 - 1891.
- Connolly, W. E. (2007). The Complexities of Sovereignty. In M. Calarco & S. DeCaroli (Eds.), *Giorgio Agamben: Sovereignty and Life* (pp. 23 - 42). Stanford: Stanford University Press.
- Constant, A. F., & Zimmerman, K. F. (2011). Circular and Repeat Migration: Counts of Exits and Years Away from the Host Country. *Population Research and Policy Review*, 30(04), 495 - 515.
- Constitution Project, T. (2009). Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings (pp. 56). Washington, DC: The Constitution Project.
- Cook, B. (2004). Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee Market. *Georgetown Immigration Law Journal* 19(02): 333 - 362.
- Cook, M. L. (2008). Unauthorized Migration and Border "Control": Three Regional Views. Ithaca, NY, Cornell University, School of Industrial and Labor Relations: 32.
- Coole, D. (2000). Cartographic Convulsions: Public and Private Reconsidered. *Political Theory*, 28(3), 337 - 254.
- Cooper, E. (2003 - 2004). Embedded Immigrant Exceptionalism: An Examination of California's Proposition 187, the 1996 Welfare Reforms and the Anti-Immigrant Sentiment Expressed Therein. *Georgetown Immigration Law Journal* 18(2): 345 -

372.

- Cornelisse, G. (2004). Human Rights for Immigration Detainees in Strasbourg: Limited Sovereignty or a Limited Discourse? *European Journal of Migration and Law*, 6(1), 93 - 110.
- Cornelisse, G. (2010a). Immigration Detention and the Territoriality of Universal Rights. *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. N. P. DeGenova and N. Peutz. London, Duke University Press: 101 - 122.
- Cornelisse, G. (2010b). *Immigration Detention and Human Rights: Rethinking Territorial Sovereignty*. The Netherlands, Martinus Nijhoff Publishers.
- Cornelius, W. A., and Rosenblum, M. R. (2005). Immigration and Politics. *Annual Review of Political Science*, 8, 99 - 119.
- Corrigan, O. (2010). Migrants, Welfare Systems and Social Citizenship in Ireland and Britain: Users or Abusers? *Journal of Social Policy*, 39(3), 415 - 437.
- Costello, C. (2005). The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection. *European Journal of Migration and Law*, 7(01), 35 - 70.
- Costello, C. (2012). Human Rights and the Elusive Universal Subject: Immigration Detention Under International Human Rights and EU Law. *Indiana Journal of Global Legal Studies* 19(1): 257 - 303.
- Costello, K. (2001). Without a Country: Indefinite Detention as Constitutional Purgatory. *University of Pennsylvania Journal of Constitutional Law*, 3(1), 503 - 539.
- Coutin, S. B. (2010). Confined within: National territories as zones of confinement. *Political Geography*, 29(4), 200 - 208.
- Cox, J. W., & Minahan, S. (2004). Unravelling Woomera: Lip Sewing, Morphology, and Dystopia. *Journal of Organizational Change Management*, 17(3), 10.
- Cranfield, A. (2009). Review of the Alternative to Detention (A2D) project, IMO 08 215/1002, *Report for the UK Border Agency* (pp. 17). London: Tribal Group.
- Crawley, H. (2006). Child First, Migrant Second: Ensuring that Every Child Matters, *ILPA Policy Papers* (pp. 93). London: Immigration Law Practitioners' Association.
- Crawley, H. (2007). When is a child not a child? Asylum, age disputes and the process of age assessment, *ILPA Research Reports* (pp. 225). London: Immigration Law Practitioners' Association.
- Crawley, H. (2010a). "No one gives you a chance to say what you are thinking": finding space for children's agency in the UK asylum system." *Area* 42(2): 162 - 169.
- Crawley, H. (2010b, June). Ending the detention of children: developing an alternative approach to family returns. *Centre for Migration Policy Research Briefing Papers* Retrieved 30 May, 2011, from http://www.swan.ac.uk/media/Alternatives_to_child_detention.pdf
- Crawley, H. (2011). What are the alternatives to child detention?, *COMPAS Breakfast Briefings* (pp. 2). Oxford: ESRC Centre on Migration, Policy, and Society.
- Crawley, H., and Lester, T. (2005). No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards (pp. 95). London: The Save the Children Fund.
- Crépeau, F. (2012). A/HRC/20/24: Report of the Special Rapporteur on the human

- rights of migrants, François Crépeau. *Human Rights Council Twentieth session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*. Geneva, United Nations General Assembly: 20.
- Crépeau, F., & Nakache, D. (2006). Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Concerns. *IRPP Choices: Immigration and Refugee Policy*, 12(1), 44.
- Cresswell, T. (2006). *On the Move: Mobility in the Modern Western World*. London, Routledge.
- Crisp, J. (2003). Refugees and the Global Politics of Asylum. *The Political Quarterly*, 74(Issue Supplement S1), 75 - 87.
- Crosby, A. (2006). The Boundaries of Belonging: Reflections on Migration Policies in the 21st Century, *Inter Pares Occasional Paper No. 7* (pp. 16). Ottawa: Inter Pares.
- Cunningham, S. and J. Tomlinson (2005). 'Starve them out': does every child really matter? A commentary on Section 9 of the Asylum and Immigration (Treatment of Claimants, etc.) Act, 2004. *Critical Social Policy* 25(2): 253 - 275.
- Curtis, F. and K. J. Mee (2012). "Welcome to Woodside: Inverbrackie Alternative Place of Detention and performances of belonging in Woodside, South Australia, and Australia." *Australian Geographer*, 43(04): 357 - 375.
- Cutler, S., & Cenada, S. (2004). 'They Took Me Away' Women's Experiences of Immigration Detention in the UK (pp. 127). London: Asylum Aid.
- Dalrymple, J. K. (2006). Seeking Asylum Alone: Using the Best Interests of the Child Principle to Protect Unaccompanied Minors. *Boston College Third World Law Journal*, 26(01), 131 - 168.
- Darling, J. (2009). Becoming bare life: asylum, hospitality, and the politics of encampment. *Environment and Planning D: Society and Space*, 27(4), 649 - 665.
- Dauvergne, C. (1997). Beyond Justice: The Consequences of Liberalism for Immigration Law. *Canadian Journal of Law and Jurisprudence*, 10, 323 - 342.
- Dauvergne, C. (1999). Amoralism and Humanitarianism in Immigration Law. *Osgoode Hall Law Journal*, 37(3), 597 - 624.
- de Anstiss, H., Ziaian, T., Procter, N. G., Warland, J., & Baghurst, P. (2009). Help-seeking for Mental Health Problems in Young Refugees: A Review of the Literature with Implications for Policy, Practice, and Research. *Transcultural Psychiatry*, 46(04), 584 - 607.
- De Genova, N. P. (2002). Migrant 'Illegality' and Deportability in Everyday Life. *Annual Review of Anthropology*, 31(1), 419 - 447.
- De Genova, N. P. (2004). The Legal Production of Mexican/Migrant "Illegality". *Latino Studies*, 2(2), 160 - 185.
- De Genova, N. P. (2007). The Production of Culprits: From Deportability to Detainability in the Aftermath of "Homeland Security". *Citizenship Studies*, 11(5), 421 - 448.
- De Haas, H. (2005). International migration, remittances and development: myths and facts. *Third World Quarterly*, 26(08), 1269 - 1284.
- De Haas, H. (2007). Turning the Tide? Why Development Will Not Stop Migration. *Development and Change*, 38(05), 819 - 841.
- De Londras, F. (2007). The Right to Challenge the Lawfulness of Detention: An International Perspective on US Detention of Suspected Terrorists. *Journal of*

- Conflict & Security Law*, 12(2), 223 - 260.
- De Schutter, H., & Tinnevelt, R. (2008). David Miller's theory of global justice. A brief overview. *Critical Review of International Social and Political Philosophy*, 11(4), 369 - 381.
- de Zayas, A. (2005). Human rights and indefinite detention. *International Review of the Red Cross*, 87(857), 15 - 38.
- DeChickera, A. (2009). The Protection of Stateless Persons in Detention under International Law, *Legal Working Papers* (pp. 59). London: The Equal Rights Trust.
- Dear, M. (1992). "Understanding and Overcoming the NIMBY Syndrome." *Journal of the American Planning Association*, 58(03): 288 - 300.
- Delanty, G. (2006). The cosmopolitan imagination: critical cosmopolitanism and social theory. *The British Journal of Sociology* 57(01): 25 - 47.
- den Boer, M. (1995). Moving between bogus and bona fide: the policing of inclusion and exclusion in Europe. In R. Miles & D. Thränhardt (Eds.), *Migration and European Integration: The Dynamics of Inclusion and Exclusion* (pp. 92 - 111). London: Pinter Publishers Ltd.
- Dench, J., & Crépeau, F. (2003). Introduction: Interdiction at the Expense of Human Rights: A Long-Term Containment Strategy. *Refugee*, 21(4), 2 - 5.
- Dennis, J. (2012). Not a minor offence; unaccompanied children locked up as part of the asylum system. *Refugee Council Briefings*: 17.
- Desai, R. A., Goulet, J. L., Robbins, J., Chapman, J. F., Midgole, S. J., & Hoge, M. A. (2006). Mental Health Care in Juvenile Detention Facilities: A Review. *The Journal of the American Academy of Psychiatry and the Law*, 34, 204 - 214.
- Detention Action (2011). Fast Track to Despair: The unnecessary detention of asylum-seekers. In J. Phelps & T. Alger (Eds.) (pp. 52). London: Detention Action.
- Detention Watch Network (2008). The Influence of the Private Prison Industry in Immigration detention. *Detention Watch Network / International Detention Coalition Reports* Retrieved 1 February, 2012, from <http://www.detentionwatchnetwork.org/privateprisons>
- Detention Watch Network, & Black, A. (2009, 7 October). Shift in immigration policy welcome, greater reform needed. *USA: DWN Press Releases* Retrieved 9 November, 2009, from <http://idc.rfbf.com.au/usa-dwn-press-release-shift-in-immigration-detention-policy-welcome-greater-reform-needed/>
- Díaz Jr., J. (2011). Immigration Policy, Criminalization and the Growth of the Immigration Industrial Complex: Restriction, Expulsion, and Eradication of the Undocumented in the U.S. *Western Criminology Review*, 12(2), 35 - 54.
- Dobrowolsky, A. (2007). "(In)Security and Citizenship: Security, Im/migration and Shrinking Citizenship Regimes." *Theoretical Inquiries in Law* 8(2): 628 - 662.
- Doğan, E. (2007). Locating Xenophobia in Turkey. *Irregular Migration, Informal Labour and Community: A Challenge for Europe*. E. Berggren, B. Likić-Brborić, G. I. Toksöz and N. Trimikliniotis. Maastricht, Shaker Publishing: 430 - 445.
- Doty, R. L. (2009). *The Law into Their Own Hands: Immigration and the Politics of Exceptionalism*. Arizona, University of Arizona Press.
- Dow, M. (2007). Designed to Punish: Immigration Detention and Deportation. *Social Research*, 74(2), 533 - 546.
- Downing, L. A., & Thigpen, R. B. (1986). Beyond Shared Understandings. *Political Theory*, 14(3), 451 - 472.

- Dowty, A. (1987). *Closed Borders: The Contemporary Assault on Freedom of Movement*. London: Yale University Press.
- Dummett, A. (1992). The transnational migration of people seen from within a national law tradition. *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*. B. Barry and R. E. Goodin. London, Harvester Wheatsheaf: 169 - 180.
- Dummett, A., & Nicol, A. (1990). *Subjects, Citizens, Aliens and Others: Nationality and Immigration Law*. London: Weidenfeld and Nicolson.
- Dummett, M. (2001). *On Immigration and Refugees*. London: Routledge.
- Dummett, M. (2004). Immigration. *Res Publica*, 10(2), 115 - 122.
- Dunn, K. M., N. Klocker, et al. (2007). "Contemporary racism and Islamophobia in Australia: Racializing religion." *Ethnicities*, 7(04): 564 - 589.
- Dworkin, R. (1983). To Each His Own. *New York Review of Books*, April 14.
- Edelman, M. (1988). *Constructing the Political Spectacle*. Chicago, University of Chicago Press.
- Edkins, J., & Pin-Fat, V. (2005). Through the Wire: Relations of Power and Relations of Violence. *Millennium: Journal of International Studies*, 34(1), 1 - 24.
- Edwards, A. (2005). Human Rights, Refugees and the Right to 'Enjoy' Asylum. *International Journal of Refugee Law* 17: 297 - 330
- Edwards, A. (2009). Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders. *Michigan Journal of International Law* 30(03): 763 - 808.
- Edwards, A. (2011, April). Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants. *PPLA/2011/01.Rev.1*. Retrieved 10 July, 2011, from <http://www.unhcr.org/refworld/docid/4dc935fd2.html>.
- Edwards, J. (2001). Asylum Seekers and Human Rights. *Res Publica*, 7(2), 159 - 182.
- Eisner, H. (2011). Disabled, Defenseless, and Still Deportable: Why Deportation Without Representation Undermines Due Process Rights of Mentally Disabled Immigrants. *University of Pennsylvania Journal of Constitutional Law*, 14, 511.
- Ek, R. (2006). Giorgio Agamben and the spatialities of the camp: an introduction. *Geografiska Annaler, Series B* 88(04): 363 - 386.
- Ellermann, A. (2009). Undocumented Migrants and Resistance in the State of Exception, *Paper for Presentation at the European Union Studies Association* (pp. 25). Vancouver: University of British Columbia.
- Enns, D. (2004). Bare Life and the Occupied Body. *Theory and Event*, 7(3), 1 - 20.
- Eskarie, K. (2012, 23 April). Irrational, inhuman and degrading: detention of a mentally ill asylum-seeker was unlawful. *UK Human Rights Blog* Retrieved 1 May, 2012, from <http://ukhumanrightsblog.com/2012/04/23/irrational-inhuman-and-degrading-detention-of-a-mentally-ill-asylum-seeker-was-unlawful/>
- European Council on Refugees and Exiles, T. (2010, 3 February). Pushbacks to Libya. *ECRE Topics: Access to Europe* Retrieved 31 May, 2011, from http://www.ecre.org/topics/access_to_europe/pushbacks_to_libya
- European Union Agency for Fundamental Rights (FRA). (2010, November). Detention of third-country nationals in return procedures - Fact Sheet. *FRA Publications* Retrieved 22 January, 2011, from http://www.fra.europa.eu/fraWebsite/attachments/infosheet-detention_EN.pdf

- Every, D. & Augoustinos, M. (2008). "'Taking advantage' or fleeing persecution? Opposing accounts of asylum seeking." *Journal of Sociolinguistics*, 12(05): 648 - 667.
- Fanlund, K. (2008). Our Safety or Their Lives - Legislative Changes Impacting Immigration and the Risks Posed to Immigrant Women. *Wisconsin Journal of Law, Gender, and Society*, 23(1), 135 - 160.
- Farrelly, C. (2007). Justice in Ideal Theory: A Refutation. *Political Studies*, 55(4), 844 - 864.
- Fassin, D. (2011). Policing Borders, Producing Boundaries: The Governmentality of Immigration in Dark Times. *Annual Review of Anthropology*, 40, 213 - 226.
- Fazel, M., and Silove, D. (2006). Detention Of Refugees: Australia Has Given Up Mandatory Detention Because It Damages Detainees' Mental Health. *BMJ: British Medical Journal*, 332(7536), 251 - 252.
- Feinberg, L. (2007, 13 September). Death of Trans Immigrant in Detention Forces United Protests. *Workers World*, from <http://www.workers.org/pdf/2007/ww091307.pdf>
- Fekete, L. (2005). The Deportation Machine: Europe, asylum and human rights. *Race & Class*, 47(1), 64 - 91.
- Fekete, L. (2007). Detained: foreign children in Europe. *Race & Class*, 49(1), 93 - 104.
- Fekete, L. (2011). Accelerated removals: The human cost of EU deportation policies. *Race & Class*, 52(4), 89 - 97.
- Fekete, L., & Webber, F. (2010). Foreign nationals, enemy penology and the criminal justice system. *Race & Class*, 51(4), 1 - 25.
- Fernandes, D. (2007). *Targeted: Homeland Security and the Business of Immigration*. New York: Seven Stories Press.
- Fialho, C. M. (2012). Rethinking Pre-removal Immigration Detention in the United States: Lessons from Europe and Proposals for Reform. *Refugee Survey Quarterly*, 31(3), 69 - 100.
- Field, O., & Edwards, A. (2006). Alternatives to Detention of Asylum Seekers and Refugees, *UNHCR Legal and Protection Policy Research Series* (pp. 264). Geneva: United Nations High Commissioner for Refugees Division of International Protection Services.
- Fitzpatrick, J. (2000). Temporary Protection of Refugees: Elements of a Formalized Regime. *The American Journal of International Law*, 94(02), 279 - 306.
- Fillmore, E. (2010). The effects of immigration detention on the health of children and families in the UK. *Adoption & Fostering Journal*, 34(1), 88 - 91.
- Fisher, M., Kostelnik, M., et al. (2012, 29 February). "Joint Testimony before House Appropriations Committee, Subcommittee on Homeland Security." Retrieved 13 July, 2012, from http://www.cbp.gov/linkhandler/cgov/newsroom/congressional_test/appropriation.ctt/appropriation.pdf.
- Fishkin, J. S. (1984). Defending Equality: A View from the Cave. *Michigan Law Review*, 82(4), 755 - 760.
- Fitzpatrick, J. (2000). Temporary Protection of Refugees: Elements of a Formalized Regime. *The American Journal of International Law* 94(02): 279 - 306.
- Flinn, M. (2011, 2 June). When detaining foreign criminals the rules are the rules, says Supreme Court. *UK Human Rights Blog*. Retrieved 3 June, 2011, from <http://ukhumanrightsblog.com/2011/06/02/in-immigration-law-the-rules-are-the->

- rules-rules-supreme-court/
- Flood, C., S. Hutchings, et al. (2011). "Between Impartiality and Ideology: The BBC's paradoxical remit and the case of Islam-related television news." *Journalism Studies*, 12(02): 221 - 238.
- Florida Immigrant Advocacy Center (2009). *Dying for Decent Care: Bad Medicine in Immigration Custody*. Miami, Florida Immigrant Advocacy Center: 77.
- Flynn, D. (2005). "New borders, new management: The dilemmas of modern immigration policies." *Ethnic and Racial Studies* 28(3): 463 - 490.
- Flynn, M. (2011). *Immigration Detention and Proportionality, Global Detention Project Working Paper No. 4*. Geneva: The Graduate Institute.
- Flynn, M. (2012a). *Concealing and Revealing: On the Schizophrenic Evolution of Immigration Detention. PhD Thesis*. Geneva, Switzerland, Graduate Institute of International and Development Studies.
- Flynn, M. (2012b). Who must be Detained? Proportionality as a Tool for Critiquing Immigration Detention Policy. *Refugee Survey Quarterly Advance Access*.
- Flynn, M. (2012c). On the Unintended Consequences of Human Rights Promotion on Immigration Detention. *Global Detention Project Working Papers*. Geneva, The Graduate Institute, Programme for the Study of Global Migration: 4.
- Flynn, M., & Cannon, C. (2009). *The Privatization of Immigration Detention: Towards a Global View*. Geneva: The Graduate Institute.
- Ford, R. (2006, 7 June). Hundreds of foreign prisoners will not be deported. *Times Online*. Retrieved 15 January, 2010, from <http://www.timesonline.co.uk/tol/news/uk/crime/article672416.ece>.
- Foster, M. (2007). "Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in another State." *Michigan Journal of International Law* 28(02): 223 - 286.
- Fox, J. (2005). Unpacking 'Transnational Citizenship'. *Review of International Studies* 8: 171 - 201.
- Franklin, S. B., & Bloom, P. S. (2011, Winter). Limiting Immigration Detention and Promoting Access to Counsel. *The Constitution Project / Community Banking Project*. Retrieved 03 January, 2013, from http://www.bos.frb.org/commdev/c&b/2011/winter/Franklin_Bloom_immigrant_detention.pdf
- Frazer, E. (1999). *The Problems of Communitarian Politics: Unity and Conflict*. Oxford: Oxford University Press.
- Freeman, G. P. (1994). Can Liberal States Control Unwanted Migration? *The Annals of the American Academy of Political and Social Science*, 534(1), 17 - 30.
- French, M. (2007). In the Shadow of Canada's Camps. *Social & Legal Studies*, 16(1), 49 - 69.
- Frey, B. A., & Zhao, X. K. (2011). The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law. *Law and Inequality: A Journal of Theory and Practice*, 29(2), 279 - 312.
- Friend, M. (2010). Representing Immigration Detainees: The Juxtaposition of Image and Sound in "Border Country". *Forum: Qualitative Social Research / Sozialforschung* 11(2): 1 - 25.

- Frith, M. (2006, 22 July). Asylum-seeker's 'despair' drove him to suicide. *The Independent*, from <http://www.independent.co.uk/news/uk/this-britain/asylumseekers-despair-drove-him-to-suicide-408882.html>
- Frost, M. (1998). A turn not taken: Ethics in IR at the Turn of the Century. *Review of International Studies*, 24(5), 119 - 132.
- Fussell, E. (2011). The Deportation Threat Dynamic and Victimization of Latin Migrants: Wage Theft and Robbery. *The Sociological Quarterly*, 52, 593 - 615.
- Gabrielatos, C. and P. Baker (2008). "Fleeing, Sneaking, Flooding: A Corpus Analysis of Discursive Constructions of Refugees and Asylum Seekers in the UK Press, 1996-2005." *Journal of English Linguistics*, 36(01): 5 - 38.
- Gainer, B. (1972). *The Alien Invasion: The Origins of the Alien Act of 1905*. London: Heinemass Educational Books.
- Gale, P. (2004). "The refugee crisis and fear: Populist politics and media discourse." *Journal of Sociology*, 40(04): 321 - 340.
- Galston, W. A. (1982). Defending Liberalism. *The American Political Science Review*, 76(3), 621 - 629.
- Galston, W. A. (1991). *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State*. Cambridge: Cambridge University Press.
- Gamboa, S., & Miller, K. (2010, 8 August). Nun's death rallies anti-immigration forces. *The Associated Press* Retrieved 8 August, 2010, from <http://www.google.com/hostednews/ap/article/ALeqM5gkIjwPy8WCReOR2OqGB4BivBFdUAD9HFGJN01>
- Gammeltoft-Hansen, T. (2012, 1 April). Can Privatization Kill? *The New York Times*. Retrieved 3 April, 2012, from http://www.nytimes.com/2012/04/02/opinion/when-it-comes-to-immigration-privatization-can-kill.html?_r=2.
- Gans, C. (1998). Nationalism and Immigration. *Ethical Theory and Moral Practice*, 1(2), 159 - 180.
- Gans, C. (2003). *The Limits of Nationalism*. Cambridge: Cambridge University Press.
- Garcia y Griego, M. (1986). The Rights of Undocumented Mexicans in the United States after Plyler v. Doe: A Sketch of Moral and Legal Issues. *Journal of Law & Education* 15(1): 57 - 82.
- Gardbaum, S. A. (1991). Why the Liberal State Can Promote Moral Ideals After All. *Harvard Law Review*, 104(6), 1350 - 1371.
- Garden Court Chambers. (2012, 26 April). The High Court rules detention under mental health policy unlawful. *News* Retrieved 1 July, 2012, from http://www.gardencourtchambers.co.uk/news/news_detail.cfm?iNewsID=734
- Garland, D. (1996). The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society. *British Journal of Criminology* 36(4): 445 - 471.
- Garland, D. (2001). *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press.
- Gibney, M. J. (1999). Liberal Democratic States and Responsibilities to Refugees. *The American Political Science Review*, 93(1), 169 - 181.
- Gibney, M. J. (2000). Outside the Protection of the Law: The Situation of Irregular Migrants in Europe, *Refugee Studies Centre Working Papers* (pp. 27). Oxford: Jesuit Refugee Service - Europe.
- Gibney, M. J. (2004). *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*. Cambridge: Cambridge University Press.

- Gibney, M. J. (2006). 'A Thousand Little Guantánamos': Western States and Measures to Prevent the Arrival of Refugees. In K. E. Turnstall (Ed.), *Displacement, Asylum, Migration: The Oxford Amnesty Lectures 2004* (pp. 139 - 169). Oxford: Oxford University Press.
- Gibney, M. J. (2008). Asylum and the Expansion of Deportation in the United Kingdom. *Government and Opposition*, 43(2), 146 - 167.
- Gibney, M. J. (2009/10). Precarious Residents: Migration Control, Membership and the Rights of Non-Citizens, *Human Development Research Paper* (pp. 53). Geneva: United Nations Development Programme.
- Gibney, M. J. (2011). Asylum Policy, *Migration Policy Observatory Policy Primers* (pp. 7). Oxford: The Migration Observatory.
- Gibney, M. J. and R. Hansen (2003). *Deportation and the liberal state: The forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom*. Geneva, United Nations High Commissioner for Refugees.
- Gil-Bazo, M.-T. (2006). "The Practice of Mediterranean States in the context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited." *International Journal of Refugee Law* 18(3-4): 571 - 600.
- Gilboy, J. A. (1990). "Administrative Review in a System of Conflicting Values." *Immigration and Nationality Law Review*, 1990: 491 - 556.
- Gilboy, J. A. (1991). "Setting Bail in Deportation Cases: The Role of Immigration Judges." *San Diego Law Review*, 24: 347 - 401.
- Gill, N. (2009). Governmental mobility: The power effects of the movement of detained asylum seekers around Britain's detention estate. *Political Geography*, 28(1), 186 - 196.
- Gill, N. (2010). New state-theoretic approaches to asylum and refugee geographies. *Progress in Human Geography*, 34(5), 626 - 645.
- Giner, C. (2006). Asylum and Childhood in the UK: A Highly Political Relationship, *RSC Working Paper No. 34* (pp. 38). Oxford: Refugee Studies Centre.
- Gish, O., & Godfrey, M. (1979). A reappraisal of the "brain drain"—With special reference to the medical profession. *Social Science & Medicine. Part C: Medical Economics*, 13(01), 1 - 11.
- Global Roundtable on Alternatives to Detention of Asylum-Seekers, R., Migrants and Stateless Persons, (2011). Meeting in Geneva, Switzerland, 11-12 May 2011. *International Journal of Refugee Law* 23(04): 876 -883.
- Glickman, L. S. (2002). Seeking Freedom: A Child Finds Himself behind Bars. *Refugee*, 20(3), 65 - 67.
- Golash-Bazo, T. M. (2009). "The Immigration Industrial Complex: Why We Enforce Immigration Policies Destined to Fail." *Sociology Compass*, 3(02): 295 - 309.
- Goldschmidt, E. (2006). Storming the Fences: Morocco and Europe's Anti-Migration Policy. *Middle East Report*, 239.
- Gomberg-Muñoz, R. (2010). Willing to Work: Agency and Vulnerability in an Undocumented Immigrant Network. *American Anthropologist*, 112(2), 295 - 307.
- Goodin, R. E. (1992). If people were money... In B. Barry & R. E. Goodin (Eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (pp. 6 - 22). London: Harvester Wheatsheaf.
- Goodin, R. E. (1995). Political Ideals and Political Practice. *British Journal of Political Science*, 25(1), 37 - 56.

- Goodin, R. E., & Reeve, A. (1989). Liberalism and Neutrality. In R. E. Goodin & A. Reeve (Eds.), *Liberal Neutrality* (pp. 1 - 8). London: Routledge.
- Goodwin-Gill, G. (1985). "Non-Réfoulement and the New Asylum Seekers." *Virginia Journal of International Law* **26**: 897 - 920.
- Goodwin-Gill, G. (1986). International Law and the Detention of Refugees and Asylum Seekers. *International Migration Review* **20**(2): 193 - 219.
- Goodwin-Gill, G. (2000). Migration: International Law and Human Rights. *Managing Migration: Time for a New International Regime?* B. Ghosh. Oxford, Oxford University Press: 160 - 190.
- Goodwin-Gill, G. (2003). Refugees and Responsibility in the Twenty-First Century: More Lessons Learned from the South Pacific. *Immigration and Nationality Law Review* **24**: 323 - 350.
- Goodwin-Gill, G., and McAdam, J. (2007). *The Refugee in International Law* (Third ed.). Oxford: Oxford University Press.
- Gordon, I., Scanlon, K., Travers, T., & Whitehead, C. (2009). Economic impact on London and the UK of an earned regularisation of irregular migrants in the UK: Interim Report from LSE. Retrieved 05 January, 2011, from <http://www.london.gov.uk/mayor/publications/2009/03/earned-amnesty-interim.jsp>
- Gould, J. B., C. Sheppard, et al. (2010). "A Refugee from Justice? Disparate Treatment in the Federal Court of Canada." *Law & Policy* **32**(4): 454–486.
- Gower, M. (2011). Ending child immigration detention, SN/HA/5591, *Update to Research Report, Home Affairs Section* (pp. 12). London: House of Commons Library.
- Green, J. P., and Eagar, K. (2009). The health of people in Australian immigration detention centres. *Medical Journal of Australia*, **192**(3), 154 - 157.
- Green, P. (2006). State Crime Beyond Borders. *Borders, Mobility and Technologies of Control*. S. Pickering and L. Weber. The Netherlands, Springer: 149 - 167.
- Green, P. and M. Grewcock (2002). "The War against Illegal Immigration: State Crime and the Construction of a European Identity." *Current Issues in Criminal Justice*, **14**(1): 87 - 101.
- Green, S. (2007). Divergent Traditions, Converging Responses: Immigration and Integration Policy in the UK and Germany. *German Politics*, **16**(1), 95 - 115.
- Greene, I. and P. Shaffer (1992). "Leave to Appeal and Leave to Commence Judicial Review in Canada's Refugee-Determination System: Is the Process Fair?" *International Journal of Refugee Law* **4**(01): 71 - 83.
- Gregory, D. (2006). The black flag: Guantánamo Bay and the space of exception. *Geografiska Annaler, Series B*, **88**(4), 405 - 427.
- Grewcock, M. (2007). Crimes of exclusion: The Australian state's responses to unauthorised migrants, *PhD Thesis* (pp. 399). Australia: University of New South Wales, Faculty of Law.
- Grewcock, M. (2009, 18 April). A system of penal abuse: Australia's immigration detention experience. *University of New South Wales Faculty of Law Research Series*. Retrieved 14 December, 2011, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1415147
- Grewcock, M. (2012). Public Criminology, Victim Agency and Researching State Crime. *University of New South Wales Faculty of Law Working Paper No 43*. Sydney, University of New South Wales: 17.

- Griffiths, M. (2010, 21 May). "I'm not a criminal but I've been here 11 months" - the Criminalisation of Asylum Seekers in a British Immigration Detention Centre. *One-Day Workshop on The Meaning and Practice of Immigration Detention: Perspectives from Legal, Social, and Political Theory* Retrieved 1 October, 2010, from <http://tinyurl.com/2uju4al>
- Griffiths, M. (2012a). Anonymous Aliens? Questions of Identification in the Detention and Deportation of Failed Asylum Seekers. *Population, Space and Place*, 18(06: Special Issue: Immigration Detention), 715 - 727.
- Griffiths, M. (2012b). 'Vile liars and truth distorters'; Truth, trust and the asylum system. *Anthropology Today*, 28(05), 8 - 12.
- Guild, E. (2005). A Typology of Different Types of Centres in Europe. *Report for the European Parliament: Directorate General Internal Policies of the Union*. Geneva, The European Parliament: 19.
- Guild, E. (2006). The Europeanisation of Europe's Asylum Policy. *International Journal of Refugee Law* 18(3 - 4): 630 - 651.
- Guiraudon, V. and G. Lahav (2000). A Reappraisal of the State Sovereignty Debate: The Case of Migration Control. *Comparative Political Studies* 33(2): 163 - 195.
- Gurd, R. (2011). Redefining the Borders: The Call for Indefinite Detention Reform in the United Kingdom. *Journal of Immigrant & Refugee Studies*, 9(03), 304 - 310.
- Habermas, J. (2005). Equal Treatment of Cultures and the Limits of Postmodern Liberalism. *The Journal of Political Philosophy* 13(01): 1 - 28.
- Habermas, J. and J. Derrida (2003). February 15, or what binds Europeans together: a plea for a common foreign policy, beginning in the core of Europe. *Constellations* 03: 291 - 297.
- Hagan, J., Eschbach, K., & Rodriguez, N. (2008). U.S. Deportation Policy, Family Separation, and Circular Migration. *International Migration Review*, 42(1), 64 - 88.
- Hagan, J. M., Rodriguez, N., & Castro, B. (2011). Social effects of mass deportations by the United States government, 2000–10. *Ethnic and Racial Studies*, 34(08), 1374 - 1391.
- Hailbronner, K. (1993). The Concept of "Safe Country" and Expeditious Asylum Procedures: A Western European Perspective. *International Journal of Refugee Law*, 5(01), 31 - 65.
- Hailbronner, K. (1994). Temporary and Local Responses to Forced Migrations: A Comment *Virginia Journal of International Law*, 35(01), 81 - 100.
- Hailbronner, K. (2007). Detention of Asylum Seekers. *European Journal of Migration and Law*, 9, 159 - 172.
- Haldane, J. (1996). The Individual, the State, and the Common Good. In E. F. Paul, F. D. Miller Jr. & J. Paul (Eds.), *The Communitarian Challenge to Liberalism* (pp. 59 - 79). Cambridge: Cambridge University Press.
- Hall, A. (2010). 'These People Could Be Anyone': Fear, Contempt (and Empathy) in a British Immigration Removal Centre. *Journal of Ethnic and Migration Studies*, 36(6), 881 - 898.
- Hall, L. (2004). Nomads under the Tent of Blue: Migrants Fuel the U.S. Prison Industry. *Rutgers Race & the Law Review* 6(2): 265 - 364.
- Hallas, P., Hansen, A. R., Staehr, M. A., Munk-Andersen, E., and Jorgensen, H. L. (2007). Length of stay in asylum centres and mental health in asylum seekers: A retrospective study from Denmark. *BMC Public Health*, 7, 288 - 294.

- Hammar, T. (1989). *Democracy and the Nation State, Aliens, Denizens and Citizens in a World of International Migration*. Avebury: Aldershot.
- Hamlin, A., and Stemplowska, Z. (2011, October). Theory, Ideal Theory and the Theory of Ideals. *Stanford University McCoy Family Center for Ethics in Society Working Papers* Retrieved 10 January, 2012, from [http://ethicsinsociety.stanford.edu/apps/stanfordeis/files/wysiwyg_images/Stemplowska_3\(1\).pdf](http://ethicsinsociety.stanford.edu/apps/stanfordeis/files/wysiwyg_images/Stemplowska_3(1).pdf)
- Hamlin, R. (2012). "International Law and Administrative Insulation: A Comparison of Refugee Status Determination Regimes in the United States, Canada, and Australia." *Law and Social Inquiry* 37(04): 933 - 968.
- Hampton, J. (1995). Immigration, Identity and Justice. In W. F. Schwartz (Ed.), *Justice in Immigration*. Cambridge: Cambridge University Press.
- Hansard HC Deb 8 June 2009 Col 628.
- Hansard HC Deb 20 October 2010 Col 755W.
- Hansen, P. (2009). Post-national Europe — without cosmopolitan guarantees. *Race & Class* 50(04): 20 - 37.
- Hansen, R. (2000). *Citizenship and Immigration in Post-war Britain: The Institutional Origins of a Multicultural Nation*. Oxford, Oxford University Press.
- Hansen, R. (2003). Migration to Europe since 1945: Its History and its Lessons. *The Political Quarterly*, 74(1), 25 - 38.
- Hansen, R. (2009). The poverty of postnationalism : citizenship, immigration, and the new Europe. *Theory and Society* 38(1): 1 - 24.
- Hansen, R., & King, D. (2000). Illiberalism and the New Politics of Asylum: Liberalism's Dark Side. *The Political Quarterly*, 71(4), 396 - 403.
- Hanson, S. (2010). Gender and mobility: new approaches for informing sustainability. *Gender, Place & Culture*, 17(1), 5 - 23.
- Hartley, L. & Pedersen, A. (2007). "Asylum seekers: How Attributions and Emotion Affect Australians' Views on Mandatory Detention of "the Other"." *Australian Journal of Psychology*, 59(3): 13.
- Harvey, C. (1997). "Restructuring Asylum: Recent Trends in United Kingdom Asylum Law and Policy." *International Journal of Refugee Law*, 9(1), 14.
- Harvey, C. & Barnidge Jr., R. P. (2007). "Human Rights, Free Movement, and the Right to Leave in International Law." *International Journal of Refugee Law* 19(1): 21.
- Hassan, L. (2000). Deterrence Measures and the Preservation of Asylum in the United Kingdom and the United States. *Journal of Refugee Studies*, 13(2), 184 - 204.
- Hathaway, J. (1997). *Reconceiving International Refugee Law*. The Hague: M. Nijhoff Publishers.
- Hathaway, J. C., & Neve, R. A. (1997). Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection. *Harvard Human Rights Journal*, 10, 115 - 211.
- Hatton, T. J. (2004). Seeking Asylum in Europe. *Economic Policy*, 5 - 62.
- Haubenreich, S. N. S. (2008). Parental Rights in MySpace: Reconceptualizing the State's Parens Patriae Role in the Digital Age. *Working Paper Series*, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1217872
- Hayes, D. (2002). From aliens to asylum seekers: a history of immigration controls and welfare in Britain. In S. Cohen, B. Humphries & E. Mynott (Eds.), *From Immigration Controls to Welfare Controls* (pp. 30 - 46). London: Routledge.

- Hayter, T. (2003). No Borders: The Case Against Immigration Controls. *Feminist Review*, 73, 6 - 18.
- Healey, S. A. (2004). The Trend toward the Criminalization and Detention of Asylum Seekers. *Immigration and Nationality Law Review*, 25(1), 181 - 192.
- Heeren, G. (2010). Pulling Teeth: The State of Mandatory Immigration Detention. *Harvard Civil Rights-Civil Liberties Law Review*, 45, 901 - 934.
- Held, D. (1995). *Democracy and the Global Order*. Cambridge, Polity.
- Held, D. (2002). Law of States, Law of Peoples: Three Models of Sovereignty. *Legal Theory* 08(01): 1 - 44.
- Held, D. (2006). Reframing global governance: Apocalypse soon or reform! *New Political Economy* 11(02): 157 - 176.
- Helton, A. C. (1991). The Detention of Asylum-Seekers in the United States and Canada. *Refugee Policy: Canada and the United States*. H. Adelman. Toronto, York Lanes Press Ltd.: 253 - 267.
- Henley, J., & Robinson, J. (2011). Mental health issues among refugee children and adolescents. *Clinical Psychologist*, 15(02), 51 - 62.
- Herlihy, J., Gleeson, K., & Turner, S. (2010). What Assumptions about Human Behaviour Underlie Asylum Judgments? *International Journal of Refugee Law*, 22(3), 351 - 366.
- Herlihy, J., Scragg, P., & Turner, S. (2002). Discrepancies in autobiographical memories – implications for the assessment of asylum seekers: repeated interview study. *British Medical Journal*, 321, 324 - 327.
- Her Majesty's Chief Inspectorate of Prisons (2002). An Inspection of Campsfield House Immigration Removal Centre (pp. 108). London: HM Inspectorate of Prisons.
- Hernández, C. C. G. (2012). "The Perverse Logic of Immigration Detention: Unraveling the Rationality of Imprisoning Immigrants Based on Markers of Race and Class Otherness." *Columbia Journal of Race and Law*, 1(03): 353 - 364.
- Hernández, D. M. (2008). Pursuant to Deportation: Latinos and Immigrant Detention. *Latino Studies*, 6, 35 - 63.
- Heyman, J. M. (1999). Why Interdiction? Immigration Control at the United States-Mexico Border. *Regional Studies*, 33(7), 619 - 630.
- Hickman, T. R. (2005). Between Human Rights and the Rule of Law: Indefinite Detention and the Derogation Model of Constitutionalism. *Modern Law Review* 68(4): 655 - 667.
- Hiemstra, N. A. (2010). Immigrant "Illegality" as Neoliberal Governmentality in Leadville, Colorado. *Antipode* 42(1): 74 - 102.
- Hiemstra, N. A. (2012). Geopolitical Reverberations of US Migrant Detention and Deportation: The View from Ecuador. *Geopolitics*, 17(2), 239 - 311.
- Higgins, P. (2008). Open Borders and the Right to Immigration. *Human Rights Review* 9(4): 525 - 535.
- Hing, B. O. (2009). Institutional Racism, ICE Raids, and Immigration Reform, Research Paper No. 197. *UC Davis Legal Studies Research Paper Series*. California, UC Davis: 50.
- Hintjena, H. (2006). 'Like leaves in the wind': desperately seeking asylum in the UK. *Race & Class*, 48(1), 79 - 85.
- Hjerm, M., & Nagayoshi, K. (2011). The composition of the minority population as a threat: Can real economic and cultural threats explain xenophobia? *International*

- Sociology, Advanced Online Edition*, 1 - 29.
- HM Chief Inspector of Prisons (2009). Report on an unannounced full follow-up inspection of Yarl's Wood Immigration Removal Centre (pp. 133). London: Her Majesty's Inspectorate of Prisons.
- HM Chief Inspector of Prisons (2011). Report on an announced inspection of Yarl's Wood Immigration Removal Centre, 4–8 July 2011. London, Her Majesty's Inspectorate of Prisons: 97.
- Hobson, C., Cox, J., & Sagovsky, N. (2008). *Report of Interim Findings of the Independent Asylum Commission*. London: The Independent Asylum Commission.
- Hodes, M. (2010). The mental health of detained asylum seeking children. *European Child & Adolescent Psychiatry*, 19(07), 621 - 623.
- Holian, A. (2012). The Ambivalent Exception: American Occupation Policy in Postwar Germany and the Formation of Jewish Refugee Spaces. *Journal of Refugee Studies* 25(03): 452 - 473.
- Hollifield, J. F. (2000). The politics of international migration: How can we "bring the state back in"? In C. B. Brettell & J. F. Hollifield (Eds.), *Migration Theory: Talking Across Disciplines* (pp. 137 - 185). London: Routledge.
- Hollifield, J. F., V. F. Hunt, & Tichenor, D.J. (2008). The Liberal Paradox: Immigrants, Markets and Rights in the United States. *SMU Law Review* 61(1): 67 - 98.
- Holtug, N. (2011). The Ethics of Immigration Policy. *Nordic Journal of Migration Research* 1(1): 4 - 12.
- Hope, C. (2012, 11 November). "Theresa May admits: Britain is powerless to stop tens of thousands of Eastern European immigrants from coming to live in Britain from next year, Theresa May has admitted." *The Telegraph*. Retrieved 17 January, 2013, from <http://www.telegraph.co.uk/news/uknews/immigration/9670141/Britain-powerless-to-stop-tens-of-thousands-of-Bulgarians-and-Romanians-moving-to-UK-next-year-Theresa-May-admits.html>.
- Hotham Mission (2002). Alternative approaches to asylum seekers: Hotham Mission as a Model of Community Release. *Submissions to National Inquiry into Children in Immigration Detention*, from http://www.hreoc.gov.au/Human_RightS/children_detention/submissions/hotham.html
- Hubbard, P. (2005a). "Accommodating Otherness: anti-asylum centre protest and the maintenance of white privilege." *Transactions of the Institute of British Geographers*, 30(01): 52 - 65.
- Hubbard, P. (2005b). "'Inappropriate and incongruous': opposition to asylum centres in the English countryside." *Journal of Rural Studies*, 21(1): 3 - 17.
- Human Rights Watch (2010a). *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System* (pp. 104). New York: Human Rights Watch.
- Human Rights Watch (2010b, 23 February). *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, from <http://www.hrw.org/node/88671>
- Human Rights Watch (2010c, 25 August). *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*. *Human Rights Watch Publications*, from <http://www.hrw.org/en/reports/2010/08/25/detained-and-risk>

- Huysmans, J. (2000). The European Union and the Securitization of Migration. *Journal of Common Market Studies*, 38(5), 751 - 777.
- Hyndman, J. (2000). *Managing Displacement*. Minneapolis, MN, University of Minnesota Press.
- Hyndman, J. (2005). Migration wars: refuge or refusal? *Geoforum*, 36, 3 - 6.
- Hyndman, J., & Mountz, A. (2008). Another Brick in the Wall? Neo-Refoulement and the Externalization of Asylum by Australia and Europe. *Government and Opposition*, 43(2), 249 - 269.
- Hynes, P. (2009). Contemporary Compulsory Dispersal and the Absence of Space for the Restoration of Trust. *Journal of Refugee Studies*, 22(1), 97 - 121.
- ICAR (The Information Centre About Asylum and Refugees in the UK) (2007). Detention of Asylum Seekers in the UK: Thematic Briefing prepared for the Independent Asylum Commission, *ICAR Publications* (pp. 25). London: School of Social Sciences, City University.
- ICAR (The Information Centre About Asylum and Refugees in the UK) (2009). Key Statistics About Asylum Seeker Applications in the UK, *ICAR Statistics Paper 1* (pp. 16). London: ICAR (The Information Centre About Asylum and Refugees in the UK).
- Immigration Law Practitioners' Association and M. Davies (2008). The Detained Fast Track Process: A Best Practice Guide. London, The Immigration Law Practitioners' Association: 145.
- Immigration Law Practitioners' Association (2011). ILPA BRIEFING Legal Aid, Sentencing and Punishment of Offenders Bill, June 2011: Matters of relevance to Immigration Detention. *ILPA Briefings*. London, Immigration Law Practitioners' Association: 2.
- Immigration Law Practitioners' Association. (2012, 2 July). ILPA briefing for House of Commons debate re "The work of the UK Border Agency ", Document No. 12.07.14954. Retrieved 1 August, 2012, from <http://www.ilpa.org.uk/data/resources/14954/12-07-04-ILPA-for-HC-debate-Work-of-UK-Border-Agency.pdf>
- Immigration Policy Center (2009, 17 June). Keeping Migrants Here: Recent Research Shows Unintended Consequences of U.S. Border Enforcement. Retrieved September 2010, from <http://www.immigrationpolicy.org/sites/default/files/docs/Keeping%20Migrants%20Here.pdf>
- Independent Monitoring Board (2011). Harmondsworth Immigration Removal Centre. *Annual Report 2010*. London, Harmondsworth Independent Monitoring Board: 21.
- Independent Monitoring Board. (2012, March). Harmondsworth Immigration Removal Centre, Annual Report 2011. *Department of Justice* Retrieved 15 February, 2013, from <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2011/harmondsworth-2011.pdf>
- Inlender, T. (2011, 12 July). Immigration detainees: Lost in America: The immigration courts system is failing those detainees who have serious mental disabilities. *Los Angeles Times* Retrieved 1 September, 2012, from <http://articles.latimes.com/2011/jul/12/opinion/la-oe-inlender-detainees-20110712>
- Institute for Public Policy Research. (2009). Irregular Migration in the UK: An ippr

- update (pp. 9). London: Institute for Public Policy Research.
- Institute for Public Policy Research. (2010). Alternatives to Child Immigration Detention: What are the options for the Coalition government? (pp. 8). London: IPPR.
- Instone, L. (2010). Walking towards Woomera: touring the boundaries of 'unAustralian geographies'. *Cultural Geographies* 17(03): 355 - 378.
- International Day Against Homophobia (IDAHO) (2008). Home Office homophobia on asylum: Anti-gay bias exposed. *Petratchell.net*. 19 May, from <http://www.petratchell.net/asylum/homophobicasylumssystem.htm>.
- International Detention Coalition. (2009, June). Case management as an alternative to immigration detention: The Australian Experience. Retrieved 12 December, 2012, from <http://idcoalition.org/wp-content/uploads/2009/06/casemanagementinaustralia.pdf>
- Isbister, J. (2000). A Liberal Argument for Border Controls: Reply to Joseph Carens. *International Migration Review*, 34(2): 629 - 635.
- Jackson, A. (2003). The Detention of Asylum Seekers in the UK: Bail for Immigration Detainees. *Feminist Review*, 73, 118 - 122.
- Jacobson, D. (1996). *Rights Across Borders: Immigration and the Decline of Citizenship*. Baltimore: Johns Hopkins University Press.
- Jesuit Refugee Service - Europe (2011). From Deprivation to Liberty: Alternatives to detention in Belgium, Germany and the United Kingdom. Brussels, Jesuit Refugee Service Europe aisbl: 58.
- Johns, F. (2005). Guantánamo Bay and the Annihilation of the Exception. *European Journal of International Law*, 16(4), 613 - 635.
- Johnson, J. (2005). Stopping Africa's medical brain drain: The rich countries of the North must stop looting doctors and nurses from developing countries. *British Medical Journal*, 331(7507), 2 - 3.
- Johnson, K. R. (1996 - 1997). 'Aliens' and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons. *University of Miami Inter-American Law Review*, 28, 263 - 292.
- Johnson, K. R. (2001 - 2002). "The End of 'Civil Rights' as We Know It?: Immigration and Civil Rights in the New Millennium." *UCLA Law Review*, 49: 1481 - 1511.
- Johnson, K. R. (2003). "Open Borders." *UCLA Law Review*, 51(1): 193 - 267.
- Johnston, C. (2009). "Indefinite Immigration Detention: Can it be Justified?" *Journal of Immigration, Asylum, and Nationality Law* 23(4): 351 - 364.
- Joint Committee on Human Rights (2007). *The Treatment of Asylum Seekers*. London, House of Lord and House of Commons.
- Joint Select Committee on Australia's Immigration Detention Network. (2012). *Final Report*. Canberra: Parliament House.
- Joppke, C. (1996). "Multiculturalism and immigration: A comparison of the United States, Germany, and Great Britain." *Theory and Society* 25(4): 449 - 500.
- Joppke, C. (1998). "Why Liberal States Accept Unwanted Immigration." *World Politics*, 50(2): 266 - 293.
- Joppke, C. (2005). "Exclusion in the Liberal State: The Case of Immigration and Citizenship Policy." *European Journal of Social Theory*, 8(1), 42 - 61.
- Juss, S. S. (2005). "The Decline and Decay of European Refugee Policy." *Oxford Journal of Legal Studies*, 25(4), 749 - 792.
- Kacowicz, A. M. (2005). *The Impact of Norms in International Society: The Latin*

- American Experience, 1881 - 2001*. Indiana, University of Notre Dame Press.
- Kagan, S. (1998). *Normative Ethics*. Oxford: Westview Press.
- Kahn, R. S. (1996). *Other People's Blood: U.S. Immigration Prisons in the Reagan Decade*. Boulder, CO, Westview Press.
- Kalhan, A. (2010). Rethinking Immigration Detention. *Columbia Law Review* 110: 42 - 58.
- Kan, L. (2010). Spectacle. *The University of Chicago Theories of Media Keywords Glossary*. Retrieved 20 June, 2011, from <http://csmt.uchicago.edu/glossary2004/spectacle.htm>.
- Kangasniemi, M., Winters, L. A., & Commander, S. (2004). Is the medical brain drain beneficial? Evidence from overseas doctors in the UK, *CEPDP*, 618 (pp. 63). London: Centre for Economic Performance, London School of Economics and Political Science.
- Kanstroom, D. (2000). Deportation, Social Control, and Punishment: Some Thoughts About Why Hard Laws Make Bad Cases. *Harvard Law Review*, 113(Symposium: United States Immigration Policy at the Millennium), 47.
- Kanstroom, D. (2005). Immigration Law as Social Control: How Many People Without Rights Does It Take to Make You Feel Secure? In C. Mele & T. Miller (Eds.), *Civil Penalties, Social Consequences* (pp. 254 - 297). London: Routledge.
- Kanstroom, D. (2007). *Deportation Nation: Outsiders in American History*. Cambridge, Massachusetts: Harvard University Press.
- Kant, I. (1991 (1795)). Perpetual Peace, A Philosophical Sketch (H. B. Nisbet, Trans.). In H. Reiss (Ed.), *Political Writings* (pp. 93 - 130). Cambridge: Cambridge University Press.
- Kaplan, A. B. (2012). Disabled and Disserved: The Right to Counsel for Mentally Disabled Aliens in Removal Proceedings, *Legal Research Paper Series Paper No. 2012-2*: Lewis & Clark Law School
- Kapp, Y., & Mynatt, M. (1997). *British Policy and the Refugees, 1933 - 1941*. London: Frank Cass.
- Kaufman, E. (2012). Finding 'Foreigners': Race and the Politics of Memory in British Prisons. *Population, Space and Place*, 18(06): 701 - 714.
- Kaushal, A., & Dauvergne, C. (2011). The Growing Culture of Exclusion: Trends in Canadian Refugee Exclusions. *International Journal of Refugee Law*, 23(1), 54 - 92.
- Kawani, F. (2006). In Memory of Bereket Yohannes: Detention is not the Solution. *A Vigil in Memory of Bereket Yohannes*. London, Refugee Council: 2.
- Kay, E., & Tisdall, M. (2006). Antisocial behaviour legislation meets children's services: challenging perspectives on children, parents and the state. *Critical Social Policy*, 26(1), 101 - 120.
- Kaye, R. (1999). The Politics of Exclusion: The Withdrawal of Social Welfare Benefits from Asylum Seekers in the UK. *Contemporary Politics*, 5(1), 25 - 45.
- Keller, A. S., Rosenfeld, B., Trinh-Shevrin, C., Meserve, C., Sachs, E., Leviss, J. A., et al. (2003). Mental health of detained asylum seekers. *The Lancet*, 362(9397), 1721 - 1723.
- Kelly, P. (2004). What is Liberalism? *Liberalism*. London, Polity: 1 - 16.
- Kenney, J. (2010, 1 November). On the record: Jason Kenney. *The Globe and Mail* Retrieved 2 November, 2010, from <http://tinyurl.com/33agkju>
- Kerwin, D. (2001). Looking for asylum, suffering in detention. *Human Rights*, 28(1), 3

- Khosravi, S. (2009). Sweden: detention and deportation of asylum seekers. *Race & Class* 50(4): 38 - 56.
- Kirk, D. S., A. V. Papachristos, et al. (2012). "The Paradox of Law Enforcement in Immigrant Communities: Does Tough Immigration Enforcement Undermine Public Safety?" *The Annals of the American Academy of Political and Social Science*, 641: 79 - 98.
- Kirmayer, L. J., Narasiah, L., Munoz, M., Rashid, M., Ryder, A. G., Guzder, J., et al. (2011). Review: Common mental health problems in immigrants and refugees: general approach in primary care. *CMAJ: Canadian Medical Association Journal*, 183(12).
- Kittay, E. F. (2009). The Ethics of Philosophizing: Ideal Theory and the Exclusion of People with Severe Cognitive Disabilities. In L. Tessman (Ed.), *Feminist Ethics and Social and Political Philosophy: Theorizing the Non-Ideal* (pp. 121 - 148). London: Springer.
- Klein, A., & Williams, L. (2012). Immigration Detention in the Community: Research on the Experiences of Migrants Released from Detention Centres in the UK. *Population, Space and Place*, 18(06), 741 - 753.
- Klepps, C. (2012). What Kind of 'Process' is This? Solutions to the Case-by-Case Approach in Deportation Proceedings for Mentally Incompetent Non-Citizens. *Quinnipiac Law Review*, 30(03), 545 - 585.
- Klingsberg, E. A. (1990). Penetrating the Entry Doctrine: Excludable Aliens' Constitutional Rights in Immigration Processes. *Immigration and Nationality Law Review*, 1990, 93 - 112.
- Klocker, N. (2004). "Community antagonism towards asylum seekers in Port Augusta, South Australia." *Australian Geographical Studies*, 42(01): 1 - 17.
- Klug, F., Starmer, K., & Weir, S. (1996). *The Three Pillars of Liberty: Political Rights and Freedoms in the United Kingdom*. London: Routledge.
- Knell, Y. (2010, 06 June). The Africans risking all on the Egypt-Israel border. *BBC News Online*. Retrieved 02 January, 2013, from <http://www.bbc.co.uk/news/10240699>
- Kofman, E., Lukes, S., D'Angelo, A., & Montagna, N. (2009). The equality implications of being a migrant in Britain, *Research Report No. 19* (pp. 188). Middlesex University: Social Policy Research Centre and the Equality and Human Rights Commission.
- Koser, K., & Black, R. (1999). Limits to Harmonization: The 'Temporary Protection' of Refugees in the European Union. *International Migration*, 37(3), 521 - 543.
- Koulish, R. (2007). Profit, Plenary Powers and Militarization: A 'Perfect Storm' Scenario for Immigration Control. *Journal of Migration and Refugee Issues* 3(4): 149 - 176.
- Kritzman-Amir, T. (2009). Not in My Backyard: On the Morality of Responsibility Sharing in Refugee Law. *Brookings Journal of International Law* 34(02): 355 - 394.
- Kritzman-Amir, T., & Berman, Y. (2011). Responsibility Sharing and the Rights of Refugees: The Case of Israel. *George Washington International Law Review*, 41, 619 - 649.
- Kroeger, A. (2007). Malta struggles with migrants. *BBC News Online*. Valletta. **9 July**: <http://news.bbc.co.uk/1/hi/world/europe/6283736.stm>.

- Kronick, R., Rousseau, C., and Cleveland, J. (2011). Mandatory detention of refugee children: A public health issue? *Paediatric Child Health*, 16(8), 65- 67.
- Kubal, A. (2012). Conceptualizing semi-legality in migration research. *IMI Working Paper No. 58*. Oxford, International Migration Institute: 26.
- Kukathas, C. (1992). Are There Any Cultural Rights? *Political Theory*, 20(1), 105 - 139.
- Kukathas, C. (1996). Liberalism, Communitarianism, and Political Community. In E. F. Paul, F. D. Miller Jr. & J. Paul (Eds.), *The Communitarian Challenge to Liberalism* (pp. 80 - 104). Cambridge: Cambridge University Press.
- Kukathas, C. (2005). The case for open immigration. In A. I. Cohen & C. H. Wellman (Eds.), *Contemporary Debates in Applied Ethics* (pp. 207 - 220). Oxford: Blackwell Publishing Ltd.
- Kurzban, I. J. (2008). Democracy and Immigration. *Keeping out the Other: A Critical Introduction to Immigration Enforcement Today*. D. C. Brotherton and P. Kretsedemas. New York, Columbia University Press: 63 - 78.
- Kushner, T., & Knox, K. (1999). *Refugees in an Age of Genocide: Global, National and Local Perspectives during the Twentieth Century*. London: Frank Cass.
- Kurzban, I. J. (2008). Democracy and Immigration. In D. C. Brotherton & P. Kretsedemas (Eds.), *Keeping out the Other: A Critical Introduction to Immigration Enforcement Today* (pp. 63 - 78). New York: Columbia University Press.
- Kymlicka, W. (1989a). Liberal Individualism and Liberal Neutrality. *Ethics*, 99(4), 883 - 905.
- Kymlicka, W. (1989b). *Liberalism, Community, and Culture*. Oxford: Clarendon Press.
- Kymlicka, W. (2001). Territorial Boundaries: A Liberal Egalitarian Perspective. *Boundaries and Justice: Diverse Ethical Perspectives*. D. Miller and S. H. Hashmi. Oxford, Princeton University Press: 249 - 275.
- Laegaard, S. (2006). Feasibility and Stability in Normative Political Philosophy: The Case of Liberal Nationalism. *Ethical Theory and Moral Practice*, 9, 399 - 416.
- Laegaard, S. (2007). David Miller on Immigration Policy and Nationality. *Journal of Applied Philosophy*, 24(3), 283 - 298.
- Laegaard, S. (2010). What is the Right to Exclude Immigrants? *Res Publica*, 16(3), 245 - 262.
- Larmore, C. (1987). *Patterns of Moral Complexity*. Cambridge: University of Cambridge.
- Lavenex, S. (2006). Shifting up and out: The foreign policy of European immigration control. *West European Politics*, 29(2), 329 - 350.
- Lavenex, S., & UçArer, E. M. (2004). The External Dimension of Europeanisation: The Case of Immigration Policy. *Cooperation and Conflict*, 39(04), 417 - 443.
- Lavrysen, L. (2012). "European Asylum Law and the ECHR: An Uneasy Coexistence." *Goettingen Journal of International Law* 4(01): 197 - 242.
- Lee, M. T., R. Martinez Jr., et al. (2001). "Does Immigration Increase Homicide?: Negative Evidence From Three Border Cities." *The Sociological Quarterly*, 42(04): 559 - 580.
- Lee, R. L. M. (2010). On the margins of belonging: Confronting cosmopolitanism in the late modern age. *Journal of Sociology* 46(02): 169 - 186.

- Legomsky, S. H. (2005). "The Ethnic and Religious Profiling of Noncitizens: National Security and Human Rights." *Boston College Third World Law Journal*, 25(1): 161 – 220.
- Legomsky, S. H. (2007a). The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms. *Immigration and Nationality Law Review* 28: 679 - 713.
- Legomsky, S. H. (2007b). "Learning to Live with Unequal Justice: Asylum and the Limits to Consistency." *Stanford Law Review* 60(2): 413 - 474.
- Levinson, A. (2005, 1 September). Why Countries Continue to Consider Regularization Migration. *Migration Information Source*. Retrieved 15 May, 2011, from <http://www.migrationinformation.org/Feature/print.cfm?ID=330>.
- Levitan, R., E. Kaytaz, et al. (2009). Unwelcome Guests: The Detention of Refugees in Turkey's "Foreigners' Guesthouses". *Refugee* 26(1): 77 - 90.
- Levy, C. (2010). Refugees, Europe, Camps/State of Exception: "Into The Zone", the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-seekers (Theories and Practice). *Refugee Survey Quarterly* 29(01): 92 - 119.
- Lewis, H. (2009). Still Destitute: A worsening problem for refused asylum seekers (pp. 32). York: Joseph Rowntree Charitable Trust.
- Lewis, P. and M. Taylor (2012, 17 July). Jimmy Mubenga death: G4S guards will not face charges; Crown Prosecution Service says three escorts will not be charged over death of Angolan refugee on deportation flight. *The Guardian*. Retrieved 14 August, 2012, from <http://www.guardian.co.uk/uk/2012/jul/17/jimmy-mubenga-guards-no-charges>.
- Liberty (2012). The Fast-Track System. *Asylum and Borders*. Retrieved 15 February, 2012, from <http://www.liberty-human-rights.org.uk/human-rights/asylum/the-fast-track-system/index.php>
- Lippert, R. K. (1999). Governing Refugees: The Relevance of Governmentality to Understanding International Refugee Regime. *Alternatives: Global, Local, Political*, 24(03), 295 - 328.
- Lippert, R. K., and Williams, J. W. (2012). Taking Exception: The Cases of Financial and Urban Governance. *Social & Legal Studies, Online Edition*, 1 - 22.
- Loescher, G. (1993). *Beyond Charity: International Cooperation and the Global Refugee Crisis*. Oxford: Oxford University Press.
- Loescher, G., & Scanlan, J. A. (1986). *Calculated Kindness: Refugees and the Half-open Door - 1945 to the Present*. New York City: Free Press.
- Loke, T.-L. (1996 - 1997). Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women. *Boston University Public Interest Law Journal*, 6(2), 589 - 628.
- Lorek, A., Ehntholt, K., Nesbitt, A., Way, E., Githinji, C., Rossor, E., et al. (2009). The mental and physical health difficulties of children held within a British immigration detention center: A pilot study. *Child Abuse and Neglect*, 33(9), 573 - 585.
- London Detainee Support Group (2006, September). Submission by London Detainee Support Group. *Inquiry into the Treatment of Asylum Seekers, Joint Committee on Human Rights*. Retrieved February, 2009, from <http://www.ldsg.org.uk/files/uploads/0708jchrs submissionsep06.pdf>.
- Longazel, J. (2013). "Subordinating Myth: Latino/a Immigration, Crime, and

- Exclusion." *Sociology Compass*, 7(02): 87 - 96.
- Love, C. A. (2009). Balancing Discretion: Securing the Rights of Accompanied Children in Immigration Detention. *Columbia Public Law Research*, Available at SSRN: <http://ssrn.com/abstract=1375645> or <http://dx.doi.org/10.2139/ssrn.1375645>.
- Loyd, J., A. Burridge, et al. (2009). Thinking (and Moving) Beyond Walls and Cages: Bridging Immigrant Justice and Anti-Prison Organizing in the United States. *Social Justice* 36(2): 85 - 103.
- Lui, R. (2002). Governing Refugees 1919-1945. *Borderlands E-Journal*. Retrieved 1 September, 2012, from http://www.borderlands.net.au/vol1no1_2002/lui_governing.html.
- Luibhéid, E. (2008). Queer/Migration: An Unruly Body of Scholarship. *GLQ: A Journal of Lesbian and Gay Studies* 14(02 - 03): 169 - 190.
- Luibhéid, E. (2011). Nationalist Heterosexuality, Migrant (Il)legality, and Irish Citizenship Law: Queering the Connections. *The South Atlantic Quarterly*, 110(1), 179 - 204.
- Lutheran Immigration and Refugee Service. (2011, October). Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy. Retrieved 20 February, 2013, from <http://lirs.org/wp-content/uploads/2012/05/RPTUNLOCKINGLIBERTY.pdf>
- Lynn, N. and S. Lea (2003). "'A Phantom Menace and the new Apartheid': The Social Construction of Asylum-Seekers in the United Kingdom." *Discourse & Society*, 14(4): 425 - 452.
- MacGrady, B. (1997). Resort to International Human Rights Law in Challenging Conditions in U.S. Immigration Detention Centers. *Brooklyn Journal of International Law*, 23, 271 - 308.
- MacKeith, B. (2011). Regular Meetings & Demos. *Campaign to Close Campsfield*. from <http://closecampsfield.wordpress.com/meetings-monthly-demos/>.
- MacKeith, B., & Walker, B. (2011). Immigration Bail Hearings: A Travesty of Justice? Observations from the Public Gallery. *Campaign to Close Campsfield Publications*. Retrieved 2011, 1 August, from <http://closecampsfield.files.wordpress.com/2011/03/ccp-bop-report-low-res.pdf>
- MacKinnon, C. A. (1989). *Toward a Feminist Theory of the State*. London: Harvard University Press.
- Mackintosh, M., Mensah, K., Henry, L., & Rowson, M. (2006). Aid, restitution and international fiscal redistribution in health care: implications of health professionals' migration. *Journal of International Development*, 18(06), 757 - 770.
- Macklin, A. (2005). Disappearing Refugees: Reflections on the Canada-U.S. Safe Third Country Agreement. *Columbia Human Rights Law Review*, 36(2), 365 - 426.
- Mainwaring, C. (2012). Constructing a Crisis: the Role of Immigration Detention in Malta. *Population, Space and Place*, 18(06), 687 - 700.
- Malloch, M. S., & Stanley, E. (2005). The detention of asylum seekers in the UK: Representing risk, managing the dangerous. *Punishment & Society*, 7(1), 53 - 71.
- Malkki, L. H. (1992). National Geographic: The Rooting of Peoples and the Territorialization of National Identity Among Scholars and Refugees. *Cultural Anthropology* 7(1 - Space, Identity, and the Politics of Difference): 24 - 44.
- Malmberg, M. (2004). Control and Deterrence: Discourses of detention of asylum-

- seekers, *Sussex Migration Working Paper no. 20* (pp. 20). Brighton: University of Sussex.
- Mares, S., Newman, L., Dudley, M., and Gale, F. (2002). Seeking Refuge, Losing Hope: Parents and Children in Immigration Detention. *Australian Psychiatry*, 10(2), 6.
- Markowitz, P. L. (2009). Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility - A Case Study. *Fordham Law Review*, 78, 541 - 572.
- Marrington, D. (1986). Commitment and contradiction in immigration law. *Legal Studies*, 6(3), 272 - 291.
- Martin, D. A. (1998). Introduction: The New Asylum Seekers. In D. A. Martin (Ed.), *The New Asylum Seekers: Refugee Law in the 1980's: The Ninth Sokol Colloquium on International Law* (pp. 1 - 22). The Netherlands: Martinus Nijhoff Publishers.
- Martin, L. (2011). The geopolitics of vulnerability: children's legal subjectivity, immigrant family detention and US immigration law and enforcement policy. *Gender, Place & Culture* 18(4): 477 - 498.
- Martin, P. (1995). Proposition 187 in California. *International Migration Review* 29(1): 255 - 263.
- Martineau, T., Decker, K., & Bundred, P. (2004). "Brain drain" of health professionals: from rhetoric to responsible action. *Health Policy*, 70(01), 1 - 10.
- Martinelli, A. (2007). Evolution from World System to World Society? *World Futures: The Journal of Global Education* 63(5 - 6): 425 - 442.
- Martínez, G. A. (2008). "Immigration: Deportation and the Pseudo-Science of Unassimilable Peoples." *Southern Methodist University Law Review*, 61 (Symposium on Immigration): 7 - 20.
- Masters, S. (2012, 5 July). UK Border Agency loses 150,000 migrants staying illegally. *The Independent*. Retrieved 5 July, 2012, from <http://www.independent.co.uk/news/uk/home-news/uk-border-agency-loses-150000-migrants-staying-illegally-7912816.html>
- Matthews, J. & Brown, A. R. (2012). "Negatively shaping the asylum agenda? The representational strategy and impact of a tabloid news campaign." *Journalism*, 13(06): 802 - 817.
- McCaslin, C. (2000 - 2001). 'My Jailor is my Judge': Kestutis Zadvydas and the Indefinite Imprisonment of Permanent Resident Aliens by the INS. *Tulane Law Review*, 75, 193 - 230.
- McDermott, P. M. (2005). Internment during the Great War - A Challenge to the Rule of Law. *The University of New South Wales Law Journal*, 2005(2), 34.
- McDonald, J. (2009). Migrant Illegality, Nation-Building, and the Politics of Regularization in Canada. *Refuge*, 26(2), 65 - 77.
- McDowell, M. C. (2009). Keeping Migrants in Their Place: Technologies of Control and Racialized Public Space in Arizona. *Social Justice* 36(2): 1 - 15.
- McGinley, A., & Trude, A. (2012). Positive duty of care? The mental health crisis in immigration detention, *A briefing paper by the Mental Health in Immigration Detention Project* (pp. 20). London: AVID (Association of Visitors to Immigration Detainees) & BID (Bail for Immigration Detainees).
- McGregor, J. (2011). Contestations and consequences of deportability: hunger strikes and the political agency of non-citizens. *Citizenship Studies*, 15(5), 597 - 611.

- McGregor, J. (2012). Rethinking detention and deportability: Removal centres as spaces of religious revival. *Political Geography* 31(04): 236 - 246.
- McGuinness, B. (1995). Communitarian politics, justice and diversity. *Contemporary Politics*, 1(2), 92 - 101.
- McKanders, K. M. (2011). "Unforgiving of Those Who Trespass Against U.S.: State Laws Criminalizing Immigration Status." *Loyola Journal of Public Interest Law*, 12: 331 - 363.
- McLaren, L. and M. Johnson (2007). "Resources, Group Conflict and Symbols: Explaining Anti-Immigration Hostility in Britain." *Political Studies* 55(04): 709 - 732.
- McLoughlin, P. J., and Warin, M. J. (2008). Corrosive places, inhuman spaces: Mental health in Australian immigration detention. *Health & Place*, 14(2), 254 - 264.
- McMaster, D. (2002). Asylum-seekers and the insecurity of a nation. *Australian Journal of International Affairs*, 56(2), 279 - 290.
- McNevin, A. (2011). *Contesting Citizenship: Irregular Migrants and New Frontiers of the Political*. New York: Columbia University Press.
- Médecins Sans Frontières (2004). The health and medical needs of immigration detainees in the UK: MSF's experiences *Fit to be detained? Challenging the detention of asylum seekers and migrants with mental health needs* (pp. Annex I). London: Bail for Immigration Detainees.
- Médecins Sans Frontières. (2008, 31 October). MSF forced to leave island of Lampedusa after 6 years of activities. *MSF Press Releases* Retrieved 1 September, 2010, from <http://www.msf.ca/news-media/news/2008/10/msf-forced-to-leave-island-of-lampedusa-after-6-years-of-activities/>
- Médecins Sans Frontières. (2009, 27 April). Lampedusa, Italy: MSF Medical Team Resumes Assistance to Migrants. *MSF Field Notes* Retrieved 1 September, 2010, from <http://www.doctorswithoutborders.org/news/article.cfm?id=3570&cat=field-news>
- Medical Justice, Birnberg Pierce & Partners, & National Coalition of Anti-Deportation Campaigns (2008). *Outsourcing Abuse: The use and misuse of state-sanctioned force during the detention and removal of asylum seekers*. London: Medical Justice.
- Medina, M. I. (1997). The Criminalization of Immigration Law: Employer Sanctions and Marriage Fraud. *Immigration and Nationality Law Review* 18: 643 - 706.
- Meilaender, P. C. (1999). Liberalism and Open Borders: The Argument of Joseph Carens. *International Migration Review*, 33(4), 1062 - 1081.
- Meilaender, P. C. (2001). *Towards a Theory of Immigration*. Basingstoke: Palgrave.
- Meisels, T. (2009). Global Justice and Territorial Rights. *Studies in Ethnicity and Nationalism*, 9(2), 231 - 251.
- Menz, G. (2011). Neo-liberalism, Privatization and the Outsourcing of Migration Management: A Five-Country Comparison. *Competition & Change*, 15(2), 116 - 135.
- Mertus, J. (1998). The State and the Post-Cold War Refugee Regime: New Models, New Questions. *International Journal of Refugee Law*, 10(3), 321 - 348.
- Meyer, A. (2007). The Moral Rhetoric of Childhood. *Childhood*, 14(1), 85 - 104.
- Meyer, J. W., J. Boli, et al. (1997). World Society and the Nation-state. *American Journal of Sociology* 103(01): 144 - 181.

- Mezzadra, S. and B. Neilson (2003). Né qui, né altrove: migration, detention, desertion. A dialogue. *Borderlands ejournal* 2(1).
- Michaelsen, S., & Cutler Shershow, S. (2004). Beyond and before the law at Guantánamo Bay. *Peace Review*, 16(3), 293 - 303.
- Miller, D. (1993). In Defence of Nationality. *Journal of Applied Philosophy*, 10(1), 3 - 16.
- Miller, D. (1988). The Ethical Significance of Nationalism. *Ethics*, 98(4), 647 - 662.
- Miller, D. (1995a). Introduction. In D. Miller & M. Walzer (Eds.), *Pluralism, Justice, and Equality* (pp. 1 - 16). Oxford: Oxford University Press.
- Miller, D. (1995b). *On Nationality*. Oxford: Clarendon Press.
- Miller, D. (2000). *Citizenship and National Identity*. Oxford: Polity Press.
- Miller, D. (2001). *Principles of Social Justice*. London, Cambridge MA: Harvard University Press.
- Miller, D. (2005). Immigration: The Case for Limits. In A. I. Cohen & C. H. Wellman (Eds.), *Contemporary Debates in Applied Ethics* (pp. 193 - 206). Oxford: Blackwell Publishing Ltd.
- Miller, D. (2007). *National Responsibility and Global Justice*. Oxford: Oxford University Press.
- Miller, D. (2008a). Political Philosophy for Earthlings. In D. Leopold and M. Stears (Eds.), *Political Theory: Methods and Approaches* (pp. 29 - 48). Oxford: Oxford University Press.
- Miller, D. (2008b). Immigrants, Nations, and Citizenship. *Journal of Political Philosophy*, 16(04), 371 - 390.
- Miller, D. (2012). Grounding human rights. *Critical Review of International Social and Political Philosophy*, 15(4), 407 - 427.
- Miller, T. (2002). The impact of mass incarceration on immigration policy. In M. Mauer & M. Chesney-Lind (Eds.), *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (pp. 214 - 238). New York: New Press.
- Miller, T. (2003). Citizenship & Severity: Recent Immigration Reforms and the New Penology. *Georgetown Immigration Law Journal*, 17, 611 - 666.
- Miller, T. (2005). Blurring the Boundaries Between Immigration and Control After September 11th. *Boston College Third World Law Journal* 25(1): 81 - 124.
- Mills, C. W. (2000). Race and the Social Contract Tradition. *Social Identities*, 6(4), 441 - 462.
- Mills, C. W. (2005). "Ideal Theory" as Ideology. *Hypatia*, 20(03), 165 - 183.
- Mills, C. W. (2009). Rawls on Race / Race in Rawls. *The Southern Journal of Philosophy*, 47(S1), 161 - 184.
- Mitchell, G. (2000). Alternatives to Detention: The Swedish Model of Detention. *Refugee Council of Australia Publications*. Retrieved October, 2010, from <http://www.refugeecouncil.org.au/current/alt-swedish.html>.
- Mitchell, K. (2006). Geographies of Identity: The New Exceptionalism. *Progress in Human Geography*, 30(1), 95 - 106.
- MITIE Group PLC. (2011, 23 May). Preliminary announcement of results for the year ended 31 March 2011. *Regulatory Announcements* Retrieved 1 August, 2012, from http://www.mitie.com/news-centre/regulatory_announcements/2011/1566518
- Moehler, D. C., & Backer, D. (2012). The Puzzling Persistence of Semi-Permanent Refugee Camps. *UPenn / Harvard Works in Progress* Retrieved 1 September,

- 2012, from
http://www.cid.harvard.edu/neudc07/docs/neudc07_s5_p16_moehler.pdf
- Moore, M. (1996). A "Reasonable" Immigration Policy. *The European Legacy* 1(2): 520 - 525.
- Mora, S., Boechat, M., Peitka, E., Huang, H., & Gilsanz, V. (2001). Skeletal age determinations in children of European and African descent: applicability of the Greulich and Pyle standards. *Pediatric Resident*, 50, 624 - 627.
- Morel, M. (2009). The lack of refugee burden-sharing in Tanzania: tragic effects. *Afrika Focus*, 22(01), 107 - 114.
- Morrell, G. (2008). Multiculturalism, Citizenship and Identity, *ICAR's Refugee Rights and Responsibilities Project* (pp. 47). London: Information Centre about Asylum and Refugees.
- Morrell, G., & Wainwright, S. (2006). Destitution amongst refugees and asylum seekers in the UK, *ICAR Briefing May 2006* (pp. 10). London: Information Centre about Asylum and Refugees.
- Morrice, D. (2000). The liberal-communitarian debate in contemporary political philosophy and its significance for international relations. *Review of International Studies*, 26(2), 233 - 251.
- Morris, J. C. (2003). The Spaces in Between: American and Australian Interdiction Policies and Their Implications for the Refugee Protection Regime. *Refuge*, 21(4), 51 - 62.
- Morris, M.-H. (2008). Babies and Bathwater: Seeking an Appropriate Standard on Review for the Asylum Applications of Former Child Soldiers. *Harvard Human Rights Journal*, 21(02), 281 - 300.
- Morris, N. (2012, 09 December). Refugees 'are forced into destitution' *The Independent / Refugees Daily* Retrieved 20 January, 2013, from <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=50c589e95>
- Motha, S. (2002). The Sovereign Event in a Nation's Law. *Law and Critique*, 13(3), 311 - 338.
- Motomura, H. (2011). "The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil-Criminal Line." *UCLA Law Review*, 58: 1819 - 1858.
- Mountz, A. (2011a). Where asylum-seekers wait: feminist counter-topographies of sites between states. *Gender, Place & Culture*, 18(3), 381 - 399.
- Mountz, A. (2011b). The enforcement archipelago: Detention, haunting, and asylum on islands. *Political Geography*, 30(1), 118 - 128.
- Mountz, A., Coddington, K., Catania, R. T., & Loyd, J. (2012). Conceptualizing detention: Mobility, containment, bordering, and exclusion. *Progress in Human Geography, Advanced Access*.
- Mountz, A., Wright, R., Miyares, I., & Bailey, A. J. (2002). Lives in Limbo: Temporary Protected Status and Immigrant Identities. *Global Networks*, 2(4), 21.
- Mukhopadhyay, R. (2009). Death in Detention: Medical and Mental Health Consequences of Indefinite Detention of Immigrants in the United States. *Seattle Journal for Social Justice*, 7(2), 693 - 736.
- Mullan, F. (2005). The Metrics of the Physician Brain Drain. *The New England Journal of Medicine*, 353, 1810 - 1818.
- Nakache, D. (2012). The Human and Financial Cost of Detention of Asylum-Seekers in Canada (pp. 104). Geneva: The United Nations High Commissioner for

Refugees.

- Nandy, L. (2009). An evaluative report on the Millbank Alternative to Detention Pilot, *The Children's Society Reports* (pp. 7). London: The Children's Society & BID (Bail for Immigration Detainees).
- National Immigration Forum (2011). *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies Executive* (pp. 10). Washington, DC: National Immigration Forum.
- Nethery, A. (2012). Partialism, Executive Control, and the Deportation of Permanent Residents from Australia. *Population, Space and Place*, 18(06), 729 - 740.
- Newland, K. (2009). Circular Migration and Human Development, *Human Development Research Paper 2009/42* (pp. 30). Geneva: United Nations Development Programme.
- Newman, L., Dudley, M., and Steel, Z. (2008). Asylum, Detention, and Mental Health in Australia. *Refugee Survey Quarterly*, 27(3), 110 - 127.
- Ngai, M. M. (2004). *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Oxford, Princeton University Press.
- Nicholson, F. (1997). Implementation of the Immigration (Carriers' Liability) Act 1987: Privatising Immigration Functions at the Expense of International Obligations? *The International and Comparative Law Quarterly*, 46(3), 49.
- Nickels, H. C., L. Thomas, et al. (2012). "De/Constructing 'Suspect' Communities: A critical discourse analysis of British newspaper coverage of Irish and Muslim communities, 1974 - 2007." *Journalism Studies*, 13(03): 340 - 355.
- Nielsen, S. S., Norredam, M., Christiansen, K. L., Obel, C., Hilden, J., and Krasnik, A. (2008). Mental health among children seeking asylum in Denmark – the effect of length of stay and number of relocations: a cross-sectional study. *BMC Public Health*, 8, 293 - 302.
- Norman, R. (2000). Applied Ethics: What is Applied to What? *Utilitas*, 12(2), 119 - 136.
- Noll, G. (2003). Risky Games? A Theoretical Approach to Burden-Sharing in the Asylum Field. *Journal of Refugee Studies* 16(03): 236 - 252.
- O'Connell Davidson, J. (2005). *Children in the Global Sex Trade*. Cambridge: Polity Press.
- O'Doherty, K. and A. Lecouteur (2007). "'Asylum seekers', 'boat people', and 'illegal immigrants': Social Categorisation in the Media." *Australian Journal of Psychology*, 59(1): 12.
- O'Neill, O. (1993). Justice and Boundaries. *Political Restructuring in Europe: Ethical Perspectives*. C. Brown. London, Routledge: 65 - 84.
- O'Neill, O. (2009). Applied Ethics: Naturalism, Normativity and Public Policy. *Journal of Applied Philosophy* 26(3): 219 - 230.
- O'Nions, H. (2008a). No Right to Liberty: The Detention of Asylum Seekers for Administrative Convenience. *European Journal of Migration and Law*, 10(1), 149 - 185.
- O'Nions, H. (2008b). Exposing Flaws in the Detention of Asylum Seekers: A Critique of Saadi. *Nottingham Law Journal*, 17, 34 - 51.
- O'Nions, H. (2010). "What Lies Beneath: Exploring Links Between Asylum Policy and Hate Crime in the UK." *Liverpool Law Review*, 31(3): 233 - 257.
- Oakley, S. (2007). Accelerated Procedures for Asylum in the European Union: Fairness Versus Efficiency, *Sussex Migration Working Paper no. 43* (pp. 25). University

- of Sussex.
- Oakley, S., & Crew, K. (2006). Working against the clock: Inadequacy and injustice in the fast track system, *BID (Bail for Immigration Detainees) Research Reports* (pp. 42). London: Bail for Immigration Detainees.
- Oberman, K. (2009). Immigration and Freedom of Movement, *Doctoral Thesis* (pp. 272). Oxford: University of Oxford.
- Ochoa, K. C., Pleasants, G. L., Penn, J. V., and Stone, D. C. (2010). Disparities in Justice and Care: Persons With Severe Mental Illnesses in the U.S. Immigration Detention System. *Journal of the American Academy of Psychiatry and the Law*, 38(3), 392 - 399.
- Odhiambo-Abuya, E. (2005). A Critical Analysis of Liberalism and Postcolonial Theory in the Context of Refugee Protection. *King's College Law Journal*, 16(2), 263 - 292.
- Office of the Auditor General of Canada, T. (2008). *May 2008 Report of the Auditor General of Canada - Detention and Removal of Individuals - Canada Border Services Agency*. Ottawa: Office of the Auditor General of Canada.
- Olivas, M. A. (2007). "Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement." *University of Chicago Legal Forum*: 27 - 56.
- Onishi, N. (2009, 26 November). A Remote Island Seeks a Boom Without a Bust. *The New York Times* Retrieved 26 November, 2009, from <http://www.nytimes.com/2009/11/27/world/asia/27island.html>
- Owen, P. (2007, 26 January). Plans for tougher deportation laws announced. *The Guardian*. Retrieved 15 January, 2010, from <http://www.guardian.co.uk/politics/2007/jan/26/immigrationpolicy.immigration>.
- Owens, P. (2009). Reclaiming 'Bare Life'?: Against Agamben on Refugees. *International Relations*, 23(4), 567 - 582.
- Pages, M. (2003). Indefinite Detention: Tipping the Scale Toward the Liberty Interest of Freedom after *Zadvydas v. Davis*. *Albany Law Review*, 66(4), 1213 - 1240.
- Palmer, M. (2005). Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau (pp. 248). Sydney: Commonwealth of Australia.
- Papastergiadis, N. (2006). The Invasion Complex: The Abject Other and Spaces of Violence. *Geografiska Annaler, Series B*, 88(4), 429-442.
- Panayi, P. (2005). A Marginalized Subject? The Historiography of Enemy Alien Internment in Britain. In R. Dove (Ed.), *"Totally Un-English"?: Britain's Internment of "enemy Aliens" in Two World Wars* (pp. 17 - 28). New York: Rodopi.
- Paul, K. (1997). *Whitewashing Britain: Race and Citizenship in the Postwar Era*. Ithaca: Cornell University Press.
- Parsley, C. (2003). Performing the Border: Australia's Judgment of Unauthorised Arrivals at the Airport. *Australian Feminist Law Journal*, 18(1), 55 - 76.
- Pateman, C. (1988). *The Sexual Contract*. Stanford: Stanford University Press.
- Peretz, L. (2011, 3 August). Press Release – Campaign to Close Campsfield - Suicide in Campsfield House. *IndyMedia UK*. Retrieved January, 2012, from <http://www.indymedia.org.uk/en/2011/08/482977.html>.
- Perks, K., & Clifford, J. (2009). The legal limbo of detention. *Forced Migration Review*, 32, 42 - 43.
- Peterson, V. S. (Ed.). (1992). *Gendered States: Feminist (Re)Visions of International*

- Relations Theory*. London: Lynne Reiner Publishers.
- Peterson, V. S. (2004). Feminist Theories Within, Invisible To, and Beyond IR. *The Brown Journal of World Affairs*, 10(2), 35 - 46.
- Peutz, N. (2006). Embarking on an Anthropology of Removal. *Current Anthropology*, 47(2), 25.
- Pevnick, R. (2011). *Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty*. Cambridge, Cambridge University Press.
- Pevnick, R., P. J. Cafaro, et al. (2008, 8 October). An Exchange: The Morality of Immigration. *Carnegie Council: Ethics and International Affairs*. Retrieved 10 January, 2010, from http://www.cceia.org/resources/journal/22_3/exchange/001.html.
- Philpott, S. (2002). Protecting the Borderline and Minding the Bottom Line: Asylum Seekers and Politics in Contemporary Australia. *Refuge*, 20(3), 63 - 75.
- Phuong, C. (2005). The removal of failed asylum seekers. *Legal Studies*, 25(01), 117 - 141.
- Physicians for Human Rights (2011). Punishment Before Justice: Indefinite Detention in the US (pp. 45). Cambridge, MA: Physicians for Human Rights.
- Physicians for Human Rights, and The Bellevue/NYU Program for Survivors of Torture (2003). From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers (pp. 230). Cambridge, MA & New York City: Physicians for Human Rights.
- Pichler, F. (2008). How Real is Cosmopolitanism in Europe? *Sociology* 42(06): 1107 - 1126.
- Pickering, S. (2001). "Common Sense and Original Deviancy: News Discourses and Asylum Seekers in Australia." *Journal of Refugee Studies*, 14(02): 169 - 186.
- Pickering, S. (2005a). *Refugees and State Crime*. Sydney, Federation Press.
- Pickering, S. (2005b). "Crimes of the State: The Persecution and Protection of Refugees." *Critical Criminology*, 13: 23.
- Pickering, S., & Lambert, C. (2002). Deterrence: Australia's Refugee Policy. *Current Issues in Criminal Justice*, 14(1), 65 - 86.
- Pinter, I. (2012). 'I don't feel human': Experiences of destitution among young refugees and migrants. *The Children's Society* Retrieved 04 January, 2013, from http://www.childrenssociety.org.uk/sites/default/files/tcs/research_docs/thechildrenssociety_idontfeelhuman_final.pdf
- Pogge, T. (2002). Responsibilities for Poverty-Related Ill Health. *Ethics & International Affairs*, 16(2), 71 - 79.
- Pogge, T. (2008). *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*. Cambridge, Polity.
- Pourgoirides, C. (1997). A second exile: The mental health implications of detention of asylum seekers in the UK. *The Psychiatrist*, 21, 673 - 674.
- Pratt, A. (2005). *Securing Borders: Detention and Deportation in Canada*. Toronto / Vancouver: UBC Press.
- Pratt, A., & Valverde, M. (2002). From deserving victims to "masters of confusion": Redefining refugees in the 1990s. *Canadian Journal of Sociology*, 27(2), 135 - 161.
- Press Association, T. (2008, 21 May). Smith lifts deportation order for gay Iranian teenager. *The Guardian* Retrieved January, 2010, from <http://www.guardian.co.uk/uk/2008/mar/13/immigration.iran/print>

- Press Association, T. (2011, 17 June). Immigration detention firm G4S gets more than 700 complaints. *The Guardian*. Retrieved July, 2011, from <http://www.guardian.co.uk/uk/2011/jun/17/g4s-immigration-detention-700-complaints>.
- Pressman, S. D. (1995). The Legal Issues Confronting Conditional Resident Aliens Who Are Victims of Domestic Violence: Past, Present, and Future Perspectives. *Maryland Journal of Contemporary Legal Issues*, 6(1), 129 - 154.
- Price, R. M. (2008). Moral Limit and Possibility in World Politics. *International Organization*, 62, 191 - 220.
- Puffett, N. (2010, 4 May). Loss of refugee legal charity leads to drop in asylum-seeking families receiving help. *Children & Young People Now*. Retrieved 1 August, 2011, from <http://www.cypnow.co.uk/go/news/article/1067791/loss-refugee-legal-charity-leads-drop-asylum-seeking-families-receiving-help/>
- Pugliese, J. (2008). The Tutelary Architecture of Immigration Detention Prisons and the Spectacle of 'Necessary Suffering'. *Architectural Theory Review* 13(2): 206 - 221.
- Pupavac, V. (2008). Refugee advocacy, traumatic representations and political disenchantment. *Government and Opposition*, 43(02), 270 - 292.
- Quennerstedt, A. (2009). Balancing the Rights of the Child and the Rights of Parents in the Convention on the Rights of the Child. *Journal of Human Rights*, 8(2), 162 - 176.
- Raghuram, P. (2009). Caring about 'brain drain' migration in a postcolonial world. *Geoforum*, 40(01), 25 - 53.
- Räikkä, J. (1998). The Feasibility Condition in Political Theory. *The Journal of Political Philosophy*, 6(1), 27 - 40.
- Raj, K. V. (2006). Paradoxes on the Borders of Europe. *International Feminist Journal of Politics*, 8(4), 512 - 534.
- Rajaram, P. K., & Grundy-Warr, C. (2004). The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand. *International Migration*, 42(1), 32.
- Ramboll Management Consulting and Eurasyllum Limited (2010). Study on the Feasibility of Establishing a Mechanism for the Relocation of Beneficiaries of International Protection. Report No. JLX/2009/ERFX/PR/1005. Denmark, Ramboll: 144.
- Ramji-Nogales, J., A. I. Shoenholtz, et al. (2007). "Refugee roulette: Disparities in asylum adjudication." *Stanford Law Review* 60(02): 295 - 411.
- Rawls, J. (1971). *A Theory of Justice* (Revised Edition ed.). London: Harvard University Press.
- Rawls, J. (1985). Justice as Fairness: Political not Metaphysical. *Philosophy & Public Affairs*, 14(3), 223 - 251.
- Rawls, J. (1988). The Priority of Right and Ideas of the Good. *Philosophy & Public Affairs*, 17(4), 251 - 276.
- Rawls, J. (1999). *The Law of Peoples*. Cambridge, Cambridge University Press.
- Refugee and Migrant Justice. (2009). Does every child matter? Children seeking asylum in Britain, *Refugee and Migrant Justice / Lawyers Defending Human Rights Reports* (pp. 32). London: Refugee and Migrant Justice Publications.
- Refugee Council, T. (1992). UK Asylum Statistics, 1982 - 1992 (pp. 31). London: Policy and Information Division, The Refugee Council.

- Refugee Council, T. (2006, 27 January). Shock as another detained asylum seeker takes his own life. *Refugee Council News Stories*. Retrieved May, 2010, from <http://www.refugeecouncil.org.uk/news/news/2006/january/20060127shock.htm>.
- Rehaag, S. (2009). "Troubling Patterns in Canadian Refugee Adjudication." *Ottawa Law Review* **39**: 335 - 366.
- Rehaag, S. (2012). The Luck of the Draw? Judicial Review of Refugee Determinations in the Federal Court of Canada (2005-2010). *Osgoode CLPE Research Paper No. 9/2012*. Toronto, Osgoode Law School: 30.
- Researching Asylum in London (2006). Commonwealth migration and non-European refugees, *History of Asylum in London*. London: Researching Asylum in London Publications.
- Reuters (2012, 28 June). Israel: Crackdown on Illegal Immigrants Continues. *The New York Times*. Retrieved 12 July, 2012, from http://www.nytimes.com/2012/06/29/world/middleeast/israel-crackdown-on-illegal-immigrants-continues.html?_r=1&src=recg.
- Reynolds, S., & Muggeridge, H. (2008). *Remote Controls: how UK border controls are endangering the lives of refugees*. London: The Refugee Council.
- Risse, M. (2005). What We Owe to the Global Poor. *The Journal of Ethics*, 9(1 - 2), 81 - 117.
- Risse, M. (2008). On the Morality of Immigration. *Ethics and International Affairs* **22**(1): 25 - 33.
- Robjant, K., Hassan, R., and Katona, C. (2009). Mental health implications of detaining asylum seekers: systematic review. *The British Journal of Psychiatry*, 194, 306-312.
- Romero, M. (2011). "Are Your Papers in Order: Racial Profiling, Vigilantes, and America's Toughest Sheriff." *Harvard Latino Law Review*, 14(01): 337 - 358.
- Ross, S., Polsky, D., & Sochalski, J. (2005). Nursing shortages and international nurse migration. 52, 04(253 - 262).
- Rousseau, C., J. Cleveland, et al. (2010). Bill C-49 will harm the vulnerable: children, pregnant women, trauma victims. *Canadian Council for Refugees Email Newsletter (4 November)*. Montreal, Canadian Council for Refugees.
- Royal College of General Practitioners, T., Royal College of Paediatrics and Child Health, T., Royal College of Psychiatrists, T., and UK Faculty of Public Health, T. (2009). Intercollegiate Briefing Paper: Significant Harm - the effects of administrative detention on the health of children, young people and their families: 10. London.
- Ruddick, E. (2008). The Indefinite Detention of Unremovable Aliens: Legal and Policy Perspectives. *Migration Working Group Papers*. Florence, European University Institute: 26.
- Ruhs, M., and Chang, H.-J. (2004). The Ethics of Labor Immigration Policy. *International Organization*, 58(1), 62 - 102.
- Rumbaut, R. G. & Ewing, W. A. (2007, 23 May). "The Myth of Immigrant Criminality." *Border Battles: The U.S. Immigration Debates*. Retrieved 10 July, 2012, from http://borderbattles.ssrc.org/Rumbault_Ewing/printable.html.
- Ryan, B. (2010). Extraterritorial Immigration Control: What Role for Legal Guarantees? In B. Ryan & V. Mitsilegas (Eds.), *Extraterritorial Immigration Control: Legal Challenges* (pp. 3 - 38). Leiden: Martinus Nijhoff Publishers.
- Rygiel, K. (2010). *Globalizing Citizenship*. Vancouver: UBC Press.

- Saito, N. T. (2005). Beyond the Citizen/Alien Dichotomy: Liberty, Security, and the Exercise of Plenary Power. *Temple Political and Civil Rights Law Review*, 14(2), 389 - 408.
- Sales, R. (2002). The Deserving and the Undeserving? Refugees, asylum seekers and welfare in Britain. *Critical Social Policy*, 22(3), 456 - 478.
- Salsbury, J. (2003). Evading "Residence": Undocumented Students, Higher Education, and the States. *American University Law Review* 53(2): 459 - 490.
- Sampson, R., Mitchell, G., & Bowring, L. (2011). *There are Alternatives: A handbook for preventing unnecessary immigration detention*. Australia: International Detention Coalition and the La Trobe Refugee Research Centre.
- Sanchez, G. & Romero, M. (2010). "Critical Race Theory in the US Sociology of Immigration." *Sociology Compass* 4(9): 779 - 788.
- Sandel, M. J. (1998). *Liberalism and the Limits of Justice (Second Edition)*. Cambridge: Cambridge University Press.
- Sankey, I., & Coles, A. (2009). Liberty's Briefing on the Borders, Citizenship & Immigration Bill for Second Reading in the House of Lords, *Liberty (The National Council for Civil Liberties) Briefings* (pp. 14). London: Liberty.
- Sankey, I., Farthing, S., & Coles, A. (2010, July). Liberty's submission to the Review into Ending the Detention of Children for Immigration Purposes. Retrieved 19 December, 2010, from <http://tinyurl.com/32baeep>
- Santa Anna, O. (2002). *Brown Tide Rising: Metaphors of Latinos in Contemporary American Public Discourse*. Austin, Texas, University of Texas Press.
- Santa Anna, O. (2013). *Juan in a Hundred: The Faces and Stories of Latinos on the Evening News*. Austin, Texas, University of Texas Press.
- Sarikakis, K. (2012). "Access denied: the anatomy of silence, immobilization and the gendered migrant." *Ethnic and Racial Studies*, 35(5): 800 - 816.
- Sassen, S. (1996). *Losing Control?: Sovereignty in an Age of Globalization*. New York, Columbia University Press.
- Saunders, B. (2011). Immigration, Rights, and Democracy. *Theoria*, 58(129), 58 - 77.
- Sawyer, C., & Turpin, P. (2005). Neither Here Nor There: Temporary Admission to the UK. *International Journal of Refugee Law*, 17(4), 41.
- Schaeffer, P. (2010). Refugees: On the Economics of Political Migration. *International Migration*, 48(01), 1 - 22.
- Schinkel, W. (2009). 'Illegal Aliens' and the State, or: Bare Bodies vs the Zombie. *International Sociology*, 24(6), 779 - 806.
- Schizophrenia Society of Ontario (2010). Double Jeopardy: Deportation of the Criminalized Mentally Ill, *Schizophrenia Society of Ontario Discussion Papers* (pp. 44). Ontario: Schizophrenia Society of Ontario.
- Schloenhardt, A. (2002). To Deter, Detain and Deny: Protection of Onshore Asylum Seekers in Australia. *International Journal of Refugee Law*, 14(2/3), 302 - 328.
- Schmeling, A., Reisinger, W., Loreck, D., Vendura, K., Markus, W., & Geserick, G. (2000). Effects of ethnicity on skeletal maturation: consequences for forensic age estimations. *International Journal of Legal Medicine*, 113, 253 - 258.
- Schotel, B. (2006). How Political and Legal Theorists Can Change Admission Laws. *Éthique et économique/Ethics and Economics* 4(1): 1 - 8.
- Schramme, T. (2008). On the Relationship between Political Philosophy and Empirical Sciences. *Analyse & Kritik*, 30, 613 - 626.

- Schriro, D. (2009). *Immigration Detention: Overview and Recommendations*. Washington, D.C.: U.S. Department of Homeland Security.
- Schuck, P. H. (1997). Refugee Burden-Sharing: A Modest Proposal. *Yale Journal of International Law* 22.
- Schuck, P. H. (1998). *Citizens, Strangers, and In-Betweens: Essays on Immigration and Citizenship*. Oxford: Westview Press.
- Schuck, P. H. (2007a). The Disconnect between Public Attitudes and Policy Outcomes in Immigration. In C. M. Swain (Ed.) *Debating Immigration*. Cambridge, Cambridge University Press: 17 - 31.
- Schuck, P. H. (2007b). "Taking Immigration Federalism Seriously." *University of Chicago Legal Forum*: 57 - 92.
- Schulte Beerbühl, M. (2003). British Nationality Policy as a Counter-Revolutionary Strategy During the Napoleonic Wars: The Emergence of Modern Naturalization Regulations. In A. Fahrmeir, O. Faron & P. Weil (Eds.), *Migration Control in the North Atlantic World: The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period* (pp. 55 - 72). London: Berghahn Books.
- Schuster, L. (1998). Why Do States Grant Asylum? *Politics*, 18(1), 11 - 15.
- Schuster, L. (2005). The Realities of a New Asylum Paradigm, *COMPAS Working Paper 05-20*. Oxford: Centre on Migration Policy and Society.
- Schuster, L. (2011). Turning refugees into 'illegal migrants': Afghan asylum seekers in Europe. *Ethnic and Racial Studies*, 34(8), 1392 - 1407.
- Scottish Refugee Council, & Refugee Survival Trust. (2012). Open Your Eyes to Destitution in Scotland Campaign: Learn. Retrieved 05 February, 2013, from <http://www.stopdestitution.org.uk/learn.php>
- Seglow, J. (2005). The Ethics of Immigration. *Political Studies Review*, 3(3), 18.
- Seglow, J. (2006). Immigration and justice: towards a global agreement. *Contemporary Politics*, 12(3 & 4), 233 - 246.
- Seglow, J. (2008). Immigration and Citizenship Acquisition in the European Union: A Normative Approach. *Challenges of Global Migration: EU and its Neighbourhood*. A. Gunes-Ayata. Ankara, KORA - Center for Black Sea and Central Asia & METU - Middle East Technical University: 13 - 27.
- Seyfert, M. (1984). His Majesty's Most Loyal Internees. In G. Hirschfeld (Ed.), *Exile in Great Britain: Refugees from Hitler's Germany* (pp. 163 - 194). London: Berg Publishers.
- Shachar, A. (2007). The Shifting Border of Immigration Regulation. *Stanford Journal of Civil Rights & Civil Liberties*, 3(2), 165 - 195.
- Shachar, A. (2011). Earned Citizenship: Property Lessons for Immigration Reform. *Yale Journal of Law and the Humanities*, 23(01), 110 - 158.
- Shacknove, A. E. (1993). From Asylum to Containment. *International Journal of Refugee Law*, 5(4), 18.
- Shah, A. (2009, 24 June). Alternative to detention pilot 'a missed opportunity'. *The Children's Society Press Releases*. Retrieved 1 September, 2011, from <http://www.childrenssociety.org.uk/news-views/press-release/alternative-detention-pilot-missed-opportunity>
- Shah, A., & Trude, A. (2009). Out of Sight, Out of Mind: Experiences of Immigration Detention in the UK, *BID (Bail for Immigration Detainees) Research Reports* (pp. 52). London: BID (Bail for Immigration Detainees).

- Shah, P. (2000). *Refugees, Race, and the Legal Concept of Asylum in Britain*. London: Cavendish Publishing, Ltd.
- Shanahan, S. (2007). Lost and Found: The Sociological Ambivalence Toward Childhood. *Annual Review of Sociology*, 33, 407 - 428.
- Shapiro, H. R. (2002). Battered Immigrant Women Caught in the Intersection of U.S. Criminal and Immigration Laws: Consequences and Remedies *Temple International & Comparative Law Journal*, 16(1), 27 - 42.
- Shaw, S. (2004). *Investigation into Allegations of Racism, Abuse and Violence at Yarl's Wood Removal Centre*. Unpublished manuscript, London.
- Sheller, M., & Urry, J. (2006). The New Mobilities Paradigm. *Environment and Planning A*, 38(2), 207 – 226.
- Shor, E. (2000). Domestic Abuse and Alien Women in Immigration Law: Response and Responsibility. *Cornell Journal of Law and Public Policy*, 9(3), 697 - 714.
- Shorten, A. (2007). Borders and Belonging: Recent Work in Cosmopolitan Philosophy. *European Journal of Political Theory*, 6(2), 227 - 238.
- Shortland, D. (2011, 25 February). Mitie profits from Campsfield House. *NCADC News Round-Up*, 25 February. Retrieved 1 March, 2011, from <http://ncadc.wordpress.com/2011/02/25/mitie-profits-from-campsfield-house/>.
- Sigona, N., & Hughes, V. (2010). Being children and undocumented in the UK: A background paper, *COMPAS Working Paper No. 78*. Oxford: ESRC Centre on Migration, Policy and Society.
- Sigona, N., & Hughes, V. (2012, May). No Way Out, No Way In: Irregular migrant children and families in the UK. *ESRC Centre on Migration, Policy and Society Research Report*. Retrieved 04 January, 2013, from [http://wsmp.org.uk/documents/wsmp/Migration%20\(general\)%20research%20and%20reports/no%20way%20in%20no%20way%20out.pdf](http://wsmp.org.uk/documents/wsmp/Migration%20(general)%20research%20and%20reports/no%20way%20in%20no%20way%20out.pdf)
- Silove, D., Steel, Z., and Mollica, R. F. (2001). Detention of asylum seekers: assault on health, human rights, and social development. *Lancet*(357), 2.
- Silverman, S. J. (2008). Redrawing the Lines of Control: What Political Action Undertaken by Refugees in Border Detention Centres Tell Us About International Politics. *Proceedings of the Dead/Lines: Contemporary Issues in Legal and Politics Theory Conference*. Edinburgh: University of Edinburgh.
- Silverman, S. J. (2010). Immigration Detention in America: A History of its Expansion and a Study of its Significance, *COMPAS Working Paper 10 - 80* (pp. 33). Oxford: Centre on Migration Policy and Society.
- Silverman, S. J. (2011a, 8 March). Policy Briefing: Immigration Detention in the UK. *Migration Observatory*. Retrieved 20 March, 2011, from <http://www.migrationobservatory.ox.ac.uk/briefings/immigration-detention-uk>
- Silverman, S. J. (2011b, 24 July). Legal but Unfair: The High Stakes of the UK Immigration Detention System. *The COMPAS Blog*. Retrieved 1 September, 2011, from <http://compasoxfordblog.co.uk/?p=37#more-37>.
- Silverman, S. J. (2012). "Regrettable but Necessary"? A Historical Study of the UK Immigration Detention Estate and its Opposition " *Politics & Policy* 40(6): 1131 - 1157.
- Silverman, S. J. and R. Hajela (2012). Immigration Detention in the UK - Updated. *Migration Observatory Briefings*. Oxford, The Migration Observatory: 7.
- Simmons, A. J. (2010). Ideal and Nonideal Theory. *Philosophy & Public Affairs*, 38(1), 5 - 36.

- Simpson, A. W. B. (1988 - 1989). Detention without Trial in the Second World War: Comparing the British and American Experiences. *Florida State University Law review*, 16, 225 - 268.
- Simon, J. (1998). Refugees in a Carceral Age: The Rebirth of Immigration Prisons in the United States. *Public Culture* 10(3): 577 - 607.
- Singer, P. (2005). Ethics and Intuitions. *The Journal of Ethics*, 9(3 - 4), 331 - 352.
- Siskin, A. (2008, 27 June). Health Care for Noncitizens in Immigration Detention. *CRS Report for Congress Order Code RL34556*. Retrieved 18 January, 2012, from http://assets.opencrs.com/rpts/RL34556_20080627.pdf.
- Sklansky, D. A. (2012). "Crime, Immigration, and Ad Hoc Instrumentalism." *New Criminal Law Review* 15(02): 157 - 223.
- Slack, J. (2012, 31 May). Thousands of illegal immigrants are being freed 'to safeguard their human rights': 1,665 immigration detainees granted bail last year, of which 277 absconded. *The Daily Mail Online* Retrieved 02 February, 2013, from <http://www.dailymail.co.uk/news/article-2152478/Thousands-illegal-immigrants-freed-safeguard-human-rights.html>
- Sloane, R. D. (2001). Outrelativizing Relativism: A Liberal Defense of the Universality of International Human Rights. *Vanderbilt Journal of Transnational Law*, 34(3), 527 - 596.
- Smith, H. (2011, 6 February). Fortress Europe: Greece bids to stem migrant surge from Turkey with guns, wire and a 'wall'. *The Guardian*. Retrieved 7 February, 2011, from <http://www.guardian.co.uk/world/2011/feb/06/fortress-europe-greece-migrant-surge>.
- Smith, J. (2008). Shared protections, shared values: next steps on migration. A speech by the Home Secretary, Jacqui Smith, at the London School of Economics and Political Science on 5 December 2007. Retrieved 21 May, 2008, from <http://press.homeoffice.gov.uk/Speeches/sp-hs-migration-lse-dec-07>.
- Smith, J. F. (2005). United States Immigration Law as We Know It: *El Clandestino*, the American Gulag, Rounding up the Usual Suspects. *UC Davis Law Review*, 58(3), 747 - 814.
- Smith, M. L. (2004). *Political spectacle and the fate of American schools*. New York, Routledge.
- Smith, R. C. (2004). Outsourcing Refugee Protection Responsibilities: The Second Life of an Unconscionable Idea *Journal of Transnational Law & Policy*, 14(01), 137 - 154.
- Smith, R. M. (2011). Living in a Promiseland?: Mexican Immigration and American Obligations. *Perspectives on Politics* 9(3): 545 - 557.
- Soldatic, K., & Fiske, L. (2009). Bodies 'locked up': intersections of disability and race in Australian immigration. *Disability & Society*, 24(3), 289 - 301.
- Somerville, W., Sriskandarajah, D., & Latorre, M. (2009, July). United Kingdom: A Reluctant Country of Immigration. *Migration Policy Institute*. Retrieved 3 February, 2011, from <http://www.migrationinformation.org/Profiles/display.cfm?ID=736>
- Song, S. (2011). Rethinking Citizenship through Alienage and Birthright Privilege: Bosniak and Shachar's Critiques of Liberal Citizenship. *Issues in Legal Scholarship*, 9(1), Article 6.
- Soysal, Y. (1994). *Limits of Citizenship: Migrants and Postnational Membership in Europe*. Chicago, University of Chicago Press.

- Spencer, I. R. G. (1997). *British Immigration Policy Since 1939: The Making of Multi-Racial Britain*. London: Routledge.
- Spener, D. (2004). "Mexican migrant-smuggling: A cross-border cottage industry." *Journal of International Migration and Integration* 5(03): 295 - 320.
- Spicker, P. (1994). Understanding Particularism. *Critical Social Policy*, 13(1), 5 - 20.
- Squire, V. (2005). 'Integration with diversity in modern Britain': New Labour on nationality, immigration and asylum. *Journal of Political Ideologies*, 10(1), 51 - 74.
- Squire, V. (2009). *The Exclusionary Politics of Asylum*. Basingstoke: Palgrave Macmillan.
- Squire, V. (2011a). "From Community Cohesion to Mobile Solidarities: The City of Sanctuary Network and the Strangers into Citizens Campaign." *Political Studies* 59: 290 - 307.
- Squire, V. (2011b). The contested politics of mobility: Politicizing mobility, mobilizing politics. In V. Squire (Ed.), *The Contested Politics of Mobility: Borderzones and Irregularity* (pp. 1 - 26). Abingdon: Routledge.
- Stears, M. (2005). The Vocation of Political Theory: Principles, Empirical Inquiry and the Politics of Opportunity. *European Journal of Political Theory*, 4(4), 325 - 350.
- Steinbock, D. (2003). The Qualities of Mercy: Maximizing the Impact of U.S. Refugee Resettlement. *University of Michigan Journal of Law Reform*, 36(04), 951 - 1006.
- Steiner, N. (2009). *International Migration and Citizenship Today*. Abingdon: Routledge.
- Steel, Z., Momartin, S., Bateman, C., Hafshejani, A., Silove, D., Everson, N., et al. (2004). Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia. *Australian and New Zealand Journal of Public Health*, 28(6), 527 - 536.
- Steel, Z., Silove, D., Brooks, R., Momartin, S., Alzuhari, B., and Susljik, I. (2006). Impact of immigration detention and temporary protection on the mental health of refugees. *British Journal of Psychiatry*, 188, 58 - 64.
- Stevens, D. (1998). The Asylum and Immigration Act 1996: Erosion of the Right to Seek Asylum. *The Modern Law Review*, 61(2), 207 - 222.
- Stevens, D. (2004). *UK Asylum Law and Policy: Historical and Contemporary Perspectives*. London: Sweet & Maxwell.
- Stevens, D. (2010). The Law's Approach to Detention of Asylum Seekers: Help or Hindrance? (Paper presented at The Theory and Practice of Immigration Detention Workshop, University of Oxford, 21 May 2010). *Legal Studies Research Paper No. 2010-21*, University of Warwick School of Law: 14.
- Stevens, J. (1999). *Reproducing the State*. Chichester: Princeton University Press.
- Stevens, J. (2011). U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens. *Virginia Journal of Social Policy & the Law* 18(03): 606 - 720.
- Stone, C. (2000). Supervised Release as an Alternative to Detention in Removal Proceedings: Some Promising Results of a Demonstration Project *Georgetown Immigration Law Journal*, 14(03), 673 - 688.
- Story, B. (2005). Politics as Usual: The Criminalization of Asylum Seekers in the United States, *RSC Working Papers* (pp. 41). Oxford: Refugee Studies Centre.
- Straimer, C. (2010). Vulnerable or invisible? Asylum seekers with disabilities in Europe, *New Issues in Refugee Research Paper No. 194* (pp. 32). Geneva:

- UNHCR: The UN Refugee Agency.
- Stumpf, J. (2006). The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power. *American University Law Review*, 56(2), 367 - 419.
- Stumpf, J. (2008). "States of Confusion: The Rise of State and Local Power over Immigration." *North Carolina Law Review*, 86(6): 1557 - 1618.
- Suhrke, A. (1998). Burden-sharing during Refugee Emergencies: The Logic of Collective Action versus National Action. *Journal of Refugee Studies*, 11(04), 396 - 415.
- Sulaiman-Hill, C. M. R., S. C. Thompson, et al. (2011). "Changing Images of Refugees: A Comparative Analysis of Australian and New Zealand Print Media 1998–2008." *Journal of Immigrant & Refugee Studies*, 9(04): 345 - 366.
- Sullivan, L. (2010, 28 October). Prison Economics Help Drive Ariz. Immigration Law. *National Public Radio*. Retrieved 1 August, 2012, from <http://www.npr.org/templates/story/story.php?storyId=130833741>.
- Sultan, A., and O'Sullivan, K. (2001). Psychological disturbances in asylum seekers held in long term detention: a participant-observer account. *Medical Journal of Australia*, 3(17), 593 - 596.
- Sutton, R., & Vigneswaran, D. (2011). A Kafkaesque state: deportation and detention in South Africa. *Citizenship Studies*, 15(5), 627 - 642.
- Sweeney, M. A. (2009). "Fact or Fiction: The Legal Construction of Immigration Removal for Crimes." *University of Maryland Legal Studies Research Paper No. 2009 - 08*. Retrieved 12 January, 2013, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1361670.
- Syal, R. (2013, 27 January). Immigration: Romanian or Bulgarian? You won't like it here: Ministers consider launching negative ad campaign in two countries to persuade potential immigrants to stay away from UK. *Guardian* Retrieved 27 January, 2013, from <http://www.guardian.co.uk/uk/2013/jan/27/uk-immigration-romania-bulgaria-ministers>
- Tabuchi, H. (2009). Japan Pays Foreign Workers to Go Home, Forever. *The New York Times*. Retrieved 1 July, 2011, from http://www.nytimes.com/2009/04/23/business/global/23immigrant.html?_r=1&em.
- Tamir, Y. (1992). *Liberal Nationalism*. Princeton, NJ: Princeton University Press.
- Tan, K.-C. (2002). Liberal Nationalism and Cosmopolitan Justice. *Ethical Theory and Moral Practice*, 5(4), 431 - 461.
- Tan, K.-C. (2004). *Justice without Borders: Cosmopolitanism, Nationalism, and Patriotism*. Cambridge: Cambridge University Press.
- Taylor, D. (2012, 25 May). "Detention centre failures contributed to death of asylum seeker, inquest finds: Colnbrook Immigration Removal Centre staff failed to act quickly enough to save Muhammad Shukat, who suffered heart attack." *The Guardian*. Retrieved 1 September, 2012, from <http://www.guardian.co.uk/uk/2012/may/25/detention-centre-death-asylum-seeker>.
- Taylor, D. and M. Taylor (2011, 5 August). Detention centre deaths spark police investigations: Safety fears raised after three detainees die and MP John McDonnell says system can't cope with number of people. *The Guardian*. Retrieved 15 August, 2011, from <http://www.guardian.co.uk/uk/2011/aug/05/detention-centre-deaths-police>

- investigations.
- Taylor, M. H. (1995). "Detained Aliens Challenging Conditions of Confinement and the Porous Border of the Plenary Power Doctrine " *Hastings Constitutional Law Journal*, 22(4): 1087 - 1158.
- Taylor, M. H. (2004). "Dangerous by Decree: Detention without Bond in Immigration Proceedings." *Loyola Law Review*, 50: 149 - 171.
- Taylor, S. (2000). "Protecting the Human Rights of Immigration Detainees in Australia: An Evaluation of Current Accountability Mechanisms." *Sydney Law Review* 22(01): 50 - 92.
- Therborn, G. (1993). "Children's Rights since the Constitution of Modern Childhood: A Comparative Study of Western Nations." In J. Qvortrup (Ed.), *Childhood as a Social Phenomenon: Lessons from an International Project* (pp. 105 - 138). Vienna: European Centre for Social Welfare Policy and Research.
- Thielemann, E. (2003a). "Between Interests and Norms: Explaining Burden-Sharing in the European Union." *Journal of Refugee Studies*, 16(03): 253 - 273.
- Thielemann, E. (2003b). "Does Policy Matter? On Governments' Attempts to Control Unwanted Migration." *Working Paper No. 112*. San Diego, The Center for Comparative Immigration Studies, University of California: 34.
- Thielemann, E. (2004). Why Asylum Policy Harmonization Undermines Refugee Burden-Sharing *European Journal of Migration and Law*, 6(01), 47 - 66.
- Thielemann, E. (2005). Symbolic Politics or Effective Burden-Sharing? Redistribution, Side-payments and the European Refugee Fund. *Journal of Common Market Studies*, 43(04), 807 - 824.
- Thielemann, E., & Dewan, T. (2006). The myth of free-riding: Refugee protection and implicit burden-sharing. *West European Politics*, 29(02), 351 - 269.
- Thielemann, E., & El-Enany, N. (2010). Refugee protection as a collective action problem: is the EU shirking its responsibilities? *European Security*, 19(02), 209 - 229.
- Tholen, B. (2009). Privileging the near and dear?: Evaluating special ties considerations in EU migration policy. *Ethnicities*, 9(1), 32 - 52.
- Thronson, D. B. (2002). Kids Will Be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law. *Ohio State Law Journal*, 63(3), 979 - 1016.
- Thym, D. (2008). Respect for Private and Family Life Under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay? *International and Comparative Law Quarterly*, 57(1), 87 - 112.
- Toft, M. D. (2007). The Myth of the Borderless World: Refugees and Repatriation Policy. *Conflict Management and Peace Science*, 24(2), 139 - 157.
- Torpey, J. (2000). *The Invention of the Passport: Surveillance, Citizenship and the State*. Cambridge, Cambridge University Press.
- Tower, H. (2009). Foreign National Prisoners, Deportations, and Gender. In H. Stalford, S. Currie & S. Velluti (Eds.), *Gender and Migration in 21st Century Europe* (pp. 183 - 209). Surrey: Ashgate.
- Travis, A. (2002, 16 February). Rampage sets back deportation plans: Loss of centre leaves Blunkett with a problem. *The Guardian*. Retrieved 1 September, 2010, from <http://www.guardian.co.uk/uk/2002/feb/16/immigration.immigrationandpublicservices>.
- Travis, A. (2011, 26 July). 'Inhumane' act of taking deportation reserves to airport

- condemned: Prisons inspector Nick Hardwick says 'objectionable practice' by escort staff at Gatwick airport should cease immediately. *The Guardian*. Retrieved 18 August, 2011, from <http://www.guardian.co.uk/uk/2011/jul/26/deportation-reserves-airport-condemned>.
- Travis, A. (2012, 23 July). Border agency criticised by MPs over 'Bermuda Triangle' backlog: UKBA has built up backlog of 276,460 immigration and asylum cases that it has not resolved. *The Guardian* Retrieved 27 July, 2012, from <http://www.guardian.co.uk/uk/2012/jul/23/mps-border-agency-backlog>
- Tremlett, G. (2005, 9 May). Spain grants amnesty to 700,000 migrants. *The Guardian*. Retrieved 1 June, 2011, from <http://www.guardian.co.uk/world/2005/may/09/spain.gilestremlett>.
- Trude, A. (2012). The liberty deficit: long-term detention & bail decision-making: A study of immigration bail hearings in the First Tier Tribunal, *BID Publications* (pp. 108). London: BID (Bail for Immigration Detainees).
- Trude, A., & Gibbs, J. (2010). Review of quality issues in legal advice: measuring and costing quality in asylum work (pp. 82). City University, London: The Information Centre about Asylum and Refugees.
- Tsangarides, N. (2012). "The Second Torture": The immigration detention of torture survivors - Summary document (pp. 132). London: Medical Justice.
- Turner, J. (2013). "Disciplinary Engagements with Prisons, Prisoners and the Penal System." *Geography Compass*, 7(01): 35 - 45.
- Tyler, I. (2006). 'Welcome to Britain': The Cultural Politics of Asylum. *European Journal of Cultural Studies*, 9(2), 185 - 202.
- Tyler, I. (2010). Designed to fail: A biopolitics of British citizenship. *Citizenship Studies* 14(1): 61 - 74.
- UK Border Agency (2010, 16 December). New compassionate approach to family returns. *UK Border Agency Latest News and Updates*. Retrieved March, 2011, from <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2010/dec/48-family-returns>.
- UK Border Agency, T. (2011a). Immigration Removal Centres. *About Us*. Retrieved 19 June, 2011, from <http://www.ukba.homeoffice.gov.uk/aboutus/organisation/immigrationremovalcentres/>.
- UK Border Agency (2011b). Section 4 support. *UK Border Agency Asylum Support*. Retrieved 15 September, 2011, from <http://www.ukba.homeoffice.gov.uk/asylum/support/apply/section4/>.
- UK Border Agency. (2011c). Family Migration: A Consultation (pp. 77). London: Home Office / UK Border Agency.
- UK Border Agency. (2012, 18 October). Eleven arrested in Wales-wide immigration raids. *Latest News and Updates* Retrieved 20 February, 2013, from <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/october/44-wales-raids>
- UK Home Office, T. (1998, July). Fairer, Faster, and Firmer - A Modern Approach to Immigration and Asylum. *White Papers*. Retrieved 19 June, 2011, from <http://www.archive.official-documents.co.uk/document/cm40/4018/4018.htm>.
- UK Home Office, T. (2002, February). Secure Borders, Safe Haven – Integration with Diversity in Modern Britain. *White Papers*. Retrieved 4 August, 2010, from

- <http://www.archive2.official-documents.co.uk/document/cm53/5387/cm5387.pdf>.
- UK Home Office, T. (2004). Asylum and Immigration (Treatment of Claimants, etc.) Act. No. 1602 (C. 64). London.
- UK Home Office, T. (2008). UK Borders Act 2007, *IMMIGRATION 2008 No. 99 (C.2)*.
- UK Home Office, T. (2009). *Borders, Citizenship and Immigration Act 2009 (Ch. 11)*. Retrieved 1 June, 2011, from http://www.legislation.gov.uk/ukpga/2009/11/pdfs/ukpga_20090011_en.pdf.
- UK Home Office, T. (2010a, August). Control of Immigration Statistics: United Kingdom 2009. *Home Office Statistical Bulletins*. Retrieved 20 December, 2010, from <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1510.pdf>.
- UK Home Office, T. (2010b). Control of Immigration 2009: Supplementary Tables. *Immigration and Asylum Statistics*. Retrieved 13 February, 2011, from <http://rds.homeoffice.gov.uk/rds/immigration-asylum-stats.html>.
- UK Home Office, T. (2011, 24 February). Control of Immigration: Quarterly Statistical Summary, United Kingdom: Quarter 4 2010 (October - December). *Home Office Statistical Bulletins*. Retrieved 20 March, 2011, from <http://rds.homeoffice.gov.uk/rds/pdfs11/control-immigration-q4-2010.pdf>.
- UK Home Office, T. (2012a, 24 May). Detention, Valid: 24 May to 30 August 2012. *Immigration Statistics*. Retrieved 1 September, 2012, from <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q1-2012/detention-q1-2012>.
- UK Home Office, T. (2012b, 29 November). Asylum data tables: July - September 2012. *Immigration Statistics*. Retrieved 01 February, 2013, from <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q3-2012/asylum1-q3-2012-tabs>
- UK Home Office, T. (2012, 24 May). Asylum Statistics, Valid 24 May to 30 August 2012. *UK Home Office Immigration Statistics January - March 2012*. Retrieved 12 February, 2013, from <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q1-2012/asylum-q1-2012>
- UK Ministry of Justice (2011, 25 August). About the Immigration and Asylum Chamber, First-tier Tribunal (FTTIAC). *Immigration and Asylum FAQ*. Retrieved 28 August 2012, from <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/first-tier/faq.htm#FAQ1>
- UNHCR: The UN Refugee Agency. (2001, December). Protecting Refugees: A Field Guide for NGOs. Retrieved 02 February, 2013, from <http://www.unhcr.org/jp/protect/pdf/ProtectingRefugees-FieldGuideforNGOs.pdf>
- UNHCR: The UN Refugee Agency (2012). *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*. Retrieved September 15, 2012, from <http://www.unhcr.org/refworld/docid/503489533b8.html>.
- UNLOCK UK (2011, 4 May). Information & Advice: Prison - Foreign National Prisoners. *Practical Guide for Foreign National Prisoners Detained for Deportation*. Retrieved 2 February, 2012, from <http://www.unlock.org.uk/xoffenders.aspx?sid=117>.
- Uram, J. (2008). *Les Enfants de Mauvais Souvenir: Conceived through Violence, Born*

- as Outcasts, Living in Danger - Why Parentless and Orphaned Children of Rape Should Receive Refugee or Asylum Status. *Penn State International Law Review*, 26(04), 935 - 962.
- US Department of Homeland Security (2012). Departmental Management and Operations. *Fiscal Year 2012 Congressional Justification*. Retrieved 10 July, 2012, from <http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf>.
- Valenta, M. and K. Thorshaug (2011). Failed Asylum-Seekers' Responses to Arrangements Promoting Return: Experiences from Norway. *Refugee Survey Quarterly* 30(2): 1 - 23.
- Valentini, L. (2009). On the Apparent Paradox of Ideal Theory. *Journal of Political Philosophy*, 17(3), 332 – 355.
- Valentini, L. (2011). Coercion and (Global) Justice. *American Political Science Review*, 105(1), 205 - 220.
- van den Haag, E. (1981). Punishment as a Device for Controlling the Crime Rate. *Rutgers Law Review*, 33(03), 706 - 720.
- Van Hear, N. (2004). 'I went as far as my money would take me': conflict, forced migration and class. *COMPAS Working Paper 04-06*. Oxford, Centre on Migration, Policy and Society: 37.
- Vargas-Silva, C. (2011, 11 March). The Fiscal Impact of Immigration in the UK. *The Migration Observatory Briefings* Retrieved 10 February, 2012, from <http://migrationobservatory.ox.ac.uk/briefings/fiscal-impact-immigration-uk>
- Vastine, M. S. (2010). "Good Things Come to Those Who Wait? Reconsidering Indeterminate and Indefinite Detention as Tools in U.S. Immigration Policy." *Intercultural Human Rights Law Review* 5(01): 125 - 166.
- Verlinden, A. (2010). Free Movement? On the Liberal Impasse in Coping with the Immigration Dilemma. *Journal of International Political Theory*, 6, 51 - 72.
- Vertovec, S. (2007). Circular Migration: The way forward in global policy?, *Working Paper No. 4* (pp. 9). Oxford: International Migration Institute.
- Vertovec, S. (2011). The Cultural Politics of Nation and Migration. *Annual Review of Anthropology*, 40, 241 - 256.
- Vine, J. (2011). A thematic inspection of how the UK Border Agency manages foreign national prisoners, *Independent Chief Inspector of the UK Border Agency Inspection Reports* (pp. 40). London: Independent Chief Inspector of the UK Border Agency.
- Vine, J. (2012). An inspection of the Hampshire and Isle of Wight Local Immigration Team, September 2011 - January 2012. *Independent Chief Inspector of Borders and Immigration Reports* Retrieved 05 February, 2013, from <http://icinspector.independent.gov.uk/wp-content/uploads/2012/06/ICIBI-Inspection-of-Hants-IOW-LIT.pdf>
- Vitus, K. (2010). Waiting Time: The de-subjectification of children in Danish asylum centres. *Childhood*, 17(1), 26 - 42.
- Vukov, T. (2003). "Imagining Communities Through Immigration Policies: Governmental Regulation, Media Spectacles and the Affective Politics of National Borders." *International Journal of Cultural Studies*, 6(3): 335 – 353.
- Waites, N. (2008). Immigration and Asylum Law under the Human Rights Act: A Three Branch Analysis. *Journal of Migration and Refugee Issues* 4(01): 25 - 65.

- Waldron, J. (1987). Theoretical Foundations of Liberalism. *The Philosophical Quarterly*, 37(147), 127 - 150.
- Waldron, J. (2003). Who is My Neighbor? - Proximity and Humanity. *The Monist* 86(3).
- Walker, C. (2009, 13 January). Campsfield: 'Staff ignored suicide threat'. *The Oxford Mail*. Retrieved February, 2010, from http://www.oxfordmail.co.uk/news/yourtown/oxford/4042172.Campsfield__Staff_ignored_suicide_threat_/.
- Walker, R. B. J. (1993). *Inside/Outside: International Relations as Political Theory*. Cambridge: Cambridge University Press.
- Walsh, B. (1993). Detention and deportation of foreign nationals in the United Kingdom during the Gulf conflict. In P. Rowe (Ed.), *The Gulf War 1990 - 91 In International and English Law* (pp. 304 - 332). London: Routledge.
- Walters, N. (2011, 27 July). Britain is still no refuge for refugees: Despite Nick Clegg's promises, child detention never quite went away and is now making a comeback. *The Guardian*. Retrieved 28 July, 2011, from <http://www.guardian.co.uk/commentisfree/2011/jul/27/refugees-nick-clegg-promises-detention>.
- Walters, W. (2004). Secure Borders, Safe Haven, Domopolitics. *Citizenship Studies*, 8(3), 237 - 260.
- Walters, W., & Haahr, J. H. (2005). *Governing Europe: Discourse, governmentality and European integration*. Abingdon: Routledge.
- Walzer, M. (1980). The Moral Standing of States: A Response to Four Critics. *Philosophy & Public Affairs*, 9(3), 209 - 229.
- Walzer, M. (1981). The Distribution of Membership. In P. G. Brown & H. Shue (Eds.), *Boundaries: National Autonomy and Its Limits* (pp. 1 - 36). Totowa, New Jersey: Rowman and Littlefield.
- Walzer, M. (1983). *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books, Inc.
- Webber, F. (1996). *Crimes of Arrival : Immigrants and Asylum-Seekers in the New Europe*. Crossmaglen, Northern Ireland: Statewatch.
- Weber, L. (2002). The Detention of Asylum Seekers: 20 Reasons Why Criminologists Should Care. *Current Issues in Criminal Justice*, 14(1), 9 - 30.
- Weber, L. (2003). Down that Wrong Road: Discretion in Decisions to Detain Asylum Seekers Arriving at UK Ports. *The Howard Journal of Criminal Justice*, 42(3), 248 - 262.
- Weber, L., & Bowling, B. (2004). Policing Migration: A Framework for Investigating the Regulation of Global Mobility. *Policing and Society*, 14(3), 195 - 212.
- Weber, L. & Bowling, B. (2008). "Valiant beggars and global vagabonds: Select, eject, immobilize." *Theoretical Criminology*, 12(3): 355 - 375.
- Weber, L. & Gelsthope, L. (2000). *Deciding to Detain: How Decisions to Detain Asylum Seekers are Made at Ports of Entry*. Cambridge, Institute of Criminology, University of Cambridge.
- Weber, L. & Pickering, S. (2011). *Globalization and Borders: Death at the Global Frontier*. Basingstoke, Palgrave Macmillan.
- Weinstock, D. M. (1996). Is there a Moral Case for Nationalism? *Journal of Applied Philosophy*, 13(1), 87 - 100.
- Welch, M. (2000). "The Role of the Immigration and Naturalization Service in the

- Prison Industrial Complex." *Social Justice*, 27(03): 73 - 88.
- Welch, M. (2003). Ironies of Social Control and the Criminalization of Immigrants. *Crime, Law & Social Change*, 39, 319 - 337.
- Welch, M. (2011). "The Sonics Of Crimmigration In Australia: Wall of Noise and Quiet Manoeuvring." *British Journal of Criminology, Advanced Access*, (October): 21.
- Welch, M., & Schuster, L. (2005a). Detention of asylum seekers in the UK and USA: Deciphering noisy and quiet constructions. *Punishment & Society*, 7(4), 397 - 417.
- Welch, M., & Schuster, L. (2005b). Detention of asylum seekers in the US, UK, France, Germany, and Italy: A critical view of the globalizing culture of control. *Criminal Justice*, 5(4), 331 - 355.
- Wellman, C. H. (2008). Immigration and Freedom of Association. *Ethics*, 119, 109 - 141.
- Wellman, C. H. (2011). Refugees. *Debating the Ethics of Immigration: Is There a Right to Exclude?* C. H. Wellman and P. Cole. Oxford, Oxford University Press: 117 - 124.
- Wellman, C. H. and P. Cole (2011). *Debating the Ethics of Immigration: Is There a Right to Exclude?* Oxford, Oxford University Press.
- Wendt, A. (2003). Why a World State is Inevitable. *European Journal of International Relations* 09(04): 491 - 590.
- White, A. (2002). Geographies of asylum, legal knowledge and legal practices. *Political Geography*, 21(8), 1055 - 1073.
- Wickramasekara, P. (2011). Circular Migration: A Triple Win or a Dead End, *GURN Discussion Paper No. 15* (pp. 116). Geneva: Global Union Research Network.
- Wiener, J. (2011, 27 July). The Trouble With Tomatoes: Slave Labor (and That Cardboard Taste). *The Nation*. Retrieved 10 July, 2012, from <http://www.thenation.com/blog/162307/trouble-tomato-slave-labor>.
- Wilcox, S. (2009). The Open Borders Debate on Immigration. *Philosophy Compass*, 4(5), 813 - 821.
- William, E. (2009). The criminalisation of asylum seekers in the UK, *Refugee Watch Issue No 33, June* (pp. 74 - 83). Kolkata: Mahanirban Calcutta Research Group.
- Williams, R., & Kaye, M. (2010). At the end of the line: Restoring the integrity of the UK's asylum system. *Still Human, Still Here Campaign*, from <http://stillhumanstillhere.files.wordpress.com/2009/01/at-the-end-of-the-line-2010.pdf>
- Williams, P. J. H. (2011). "Victimizing the Victims: The Effects of U.S. Immigration Laws on the Children of Illegal Immigrants " *Children's Legal Rights Journal*, 31(02): 12 - 27.
- Wills, S. (2009). Between the hostel and the detention centre: Possible trajectories of migrant pain and shame in Australia. *Places of Pain and Shame: Dealing with 'Difficult Heritage'*. W. Logan and K. Reeves. London, Routledge: 263 - 280.
- Wilsher, D. (2008). The Administrative Detention of Non-Nationals Pursuant to Immigration Control: International and Constitutional Law Perspectives. *International and Comparative Law Quarterly*, 53(1), 897 - 934.
- Wilsher, D. (2012). *Immigration Detention: Law, History, Politics*. Cambridge: Cambridge University Press.
- Wilson, G. (2012, 05 December). "Romania and Bulgaria migrants 'to treble': MP

- warns on new work rules." *The Sun*. Retrieved 15 January, 2013, from <http://www.thesun.co.uk/sol/homepage/news/politics/4681410/Romania-and-Bulgaria-migrants-to-treble.html>.
- Winterbottom, D. (2000). Economic History, 1830 - 1996. In R. Chiverrell & J. Belchem (Eds.), *A New History of the Isle of Man* (Vol. Five: The Modern Period, 1830 - 1999: 207 - 278). Liverpool: Liverpool University Press.
- Wishnie, M. J. (2004). "State and Local Police Enforcement of Immigration Laws." *Immigration and Nationality Law Review*, 25(1): 741 - 772.
- Witteborn, S. (2011). Constructing the Forced Migrant and the Politics of Space and Place-making. *Journal of Communication* 61(06): 1142 - 1160.
- Wolfe, T. (2012). The Detention of Asylum Seekers in Europe. *International Law LLM Thesis*, University of Bristol: 41.
- Wolton, S. (2006). Immigration Policy and the "Crisis of British Values". *Citizenship Studies*, 10(4), 453 - 467.
- Woodhouse, B. B. (1997 - 1998). From Property to Personhood: A Child-Centered Perspective on Parents' Rights. *Georgetown Journal on Fighting Poverty*, 5(2), 313 - 320.
- Wright, W. E. (2005). "The Political Spectacle of Arizona's Proposition 203." *Educational Policy*, 19(05): 662 - 700.
- Yanez, L. R. & Soto, A. (1994). "Local Police Involvement in the Enforcement of Immigration Law." *Hispanic Law Journal*, 1: 9 - 52.
- Youssef, S. (2011). Immigration Prisons: Brutal, Unlawful and Profitable *Corporate Watch Briefings* (pp. 22). London: Corporate Watch.
- Ypi, L. (2008a). Sovereignty, Cosmopolitanism and the Ethics of European Foreign Policy. *European Journal of Political Theory*, 7(3), 349-364.
- Ypi, L. (2008b). Justice in Migration: A Closed Borders Utopia? *The Journal of Political Philosophy* 16(4): 391 - 418.
- Zannettino, L. (2012). From Auschwitz to mandatory detention: biopolitics, race, and human rights in the Australian refugee camp. *The International Journal of Human Rights* 16(07): 1094 -1119.
- Zapata-Barrero, R. (2010). Theorizing State Behavior in International Migrations: An Evaluative Ethical Framework. *Social Research*, 77(1), 325 - 352.
- Zedner, L. (2003). "Too much security?" *International Journal of the Sociology of Law*, 31(03): 155 - 184.
- Zedner, L. (2010). Security, the State, and the Citizen: The Changing Architecture of Crime Control. *New Criminal Law Review*, 13(2), 379 - 403.
- Zetter, R. (2007). "More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization." *Journal of Refugee Studies*, 20(2): 172 - 192.
- Zilbershats (2010). Sovereign States' Control of Immigration: A Global Justice Perspective. *Israel Law Review*, 43, 126 - 163.
- Zion, D., Briskman, L., and Loff, B. (2009). Nursing in asylum seeker detention in Australia: care, rights and witnessing. *Journal of Medical Ethics*, 35(9), 546 - 551.
- Zolberg, A. R. (2006). *A Nation by Design: Immigration Policy in the Fashioning of America*. Cambridge, Massachusetts: Harvard University Press.
- Zolberg, A. R. (2012). Why Not the Whole World? Ethical Dilemmas of Immigration Policy. *American Behavioral Scientist Online First*.

