

Key Academic Research on Detention and Asylum

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Introduction to the Literature

This annotated bibliography is meant to serve as a resource for exploring academic work on detention and asylum. It is grouped thematically according to a series of overarching categories. A weakness of this approach is that the divisions amongst these categories are inevitably imperfect and so some authors and sources may be found under an unexpected heading. A major benefit to this approach, however, is that it allows the reader to process principal arguments, bodies of evidence, and hypotheses and conclusions of a large amount of quality research in a short period of time. While the focus is centred on asylum seekers in detention, the bibliography would be incomplete if it did not consider a number of other issues of importance; such issues that relate indirectly but importantly to asylum and detention include constitutionalism, criminalization, discretion, gender and sexuality, privatization, social control, and detention of vulnerable people who may not be claiming asylum. This bibliography is by no means exhaustive and suggestions for academic work to be included here are always welcome by the Detention and Asylum Cluster team.

Australian Detention

Alison BASHFORD and Carolyn STRANGE (2002). "Asylum-Seekers and National Histories of Detention." Australian Journal of Politics and History 48(4): 19.

Bashford and Strange explore how the then-ongoing practice of mandatory detention of asylum seekers in Australia finds historical precedents in both wartime internment of so-called enemy aliens and in quarantine detention. Through tracing a historical genealogy of Australian carceral practices, they find that the coerced isolation of these three groups – asylum seekers, enemy aliens, and the ill - was driven by racism and fear of foreign threats. Bashford and Strange argue that the discourses justifying the contemporary Australian practice of mandatory detention of asylum seekers was motivated by a complex military/security/defense rationale while the disparate groups lobbying against the practice were united in their reliance on a liberal discourse of universal human rights to oppose the practice.

Further reading:

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- Grewcock, M. (2013). "Australia's ongoing border wars." Race & Class 54(03): 10 - 32.
- Lovell, L. (2011). "Why Australia's 'Malaysian Solution' is No Solution at All." Oxford Monitor of Forced Migration 1(02): 38 - 41.
- McNevin, A. (2010). "Border Policing and Sovereign Terrain: The Spatial Framing of Unwanted Migration in Melbourne and Australia." Globalizations 7(03): 407 - 419.
- Nethery, A. (2012). "Partialism, Executive Control, and the Deportation of Permanent Residents from Australia." Population, Space and Place 18(06): 729 - 740.

- Nethery, A. (2012). "Separate and Invisible: A Carceral History of Australian Islands." *Shima: The International Journal of Research into Island Cultures* 6(01): 85 - 96.
- Nethery, A., B. Rafferty-Brown, et al. (2012). "Exporting Detention: Australia-funded Immigration Detention in Indonesia." *Journal of Refugee Studies* **Advanced Access**.
- Perera, S. *Australia and the Insular Imagination: Beaches, Borders, Boats, and Bodies*. New York: Palgrave Macmillan, 2009.
- Saul, B. (2013). Dark Justice: Australia's Indefinite Detention of Refugees on Security Grounds under International Human Rights Law. *Legal Studies Research Paper No. 13/02*. Sydney, Sydney Law School: 47.
- Skulan, C. (2006). "Australia's Mandatory Detention of Unauthorized Asylum Seekers: History, Politics and Analysis under International Law." *Georgetown Immigration Law Journal* 21(01): 61 - 110.
- 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.
- Taylor, S. and B. Rafferty-Brown (2010). "Waiting for Life to Begin: the Plight of Asylum Seekers Caught by Australia's Indonesian Solution." *International Journal of Refugee Law* 22(04): 558 - 592.
- Weber, L. (2007). "Policing the Virtual Border: Punitive Preemption in Australian Offshore Migration Control." *Social Justice* 34(02): 77 - 93.
- Welch, M. (2011). "The Sonics Of Crimmigration In Australia: Wall of Noise and Quiet Manoeuvring." *British Journal of Criminology* **Advanced Access**(October): 21.

Child Detainees: Mental and Physical Health Deterioration

Ann LOREK, Kimberly EHNTHOLT, Anne NESBITT, Emmanuel WAY, Chipu GITHINJI, Eve ROSSOR, Rush WICKRAMASINGHE (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.

Although not the first research project undertaken to evaluate the mental and physical health effects of detention of children, this multi-author article was the first to study the UK detention context. The researchers are unequivocal in their conclusion that the children in their study "are clearly vulnerable, marginalized, and at risk of mental and physical harm as a result of state sanctioned neglect (inadequate care and protection), and possibly abuse in the sense of exposure to violence within the detention facilities themselves." (584) Detention "is not in the best interest of the child and should not be used for the purposes of immigration control." (583)

On the mental health side, the researchers discovered that 8 out of 11 of the children (73%) were categorized as psychiatric cases, and the majority of parents (6 out of the 9 adults) had contemplated suicide. (578, 579) On the physical health side, the authors relay "concerns related to poor nutrition within the detention center, high levels of health complaints of recent onset, chronic medical problems, and missed follow-up health appointments including those for vaccinations." (579) In particular, "most of the 20 children seen by a pediatrician complained of recent onset or exacerbation of physical symptoms." (580) In regards to the distressing nature of the

immigration raids that picked up the children for transfer to detention, “the older children said that they missed their friends and school and were distressed that they had not been given an opportunity to say goodbye.” (580) The researchers also report concerns about inadequate child protection and sexualized behavior amongst children in the detention centre. (581) Finally, the research team notes that since approximately one-third of the child detainees will be released back into the UK, the trauma could impact the children’s reintegration – including their education and socialization skills – and might need to be addressed through the public health system, causing additional costs to both the families and the general tax-paying public. (582)

Further reading:

- Calvert, G. (2004). "Childhood in Detention." Australian & New Zealand Journal of Family Therapy **25**(2): 113 - 114.
- 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.
- Jureidini, J. and J. Burnside (2011). "Children in immigration detention: a case of reckless mistreatment." Australian and New Zealand Journal of Public Health **35**(4): 304 - 306.
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- Steel, Z., D. Silove, et al. (2006). "Impact of immigration detention and temporary protection on the mental health of refugees." British Journal of Psychiatry **188**: 58 - 64.

Child Immigration Detainees: Sociological, Socio-Legal, and Legal Approaches

Katherine VITUS (2010). "Waiting Time: The de-subjectification of children in Danish asylum centres." Childhood 17(1): 26 - 42.

This article employs sociology, political theory, ethnography, and childhood studies to make sense of the experiences of children in Danish asylum centres as they contended with waiting for their ordeals to end. After 5 months of fieldwork with children aged 6–17 living in 2 centres, Kathrine Vitus finds that the greatest impediment to the children’s healthy experiences of detention is its devastating impact on their senses of the future and its potential prospects; Vitus refers to this state as “the unbearable temporality of [a detained child’s] life.” (39) Indeed, Vitus argues that the open-ended waiting time overshadowed the lives of the children, some of whom had been living in the asylum-seeking process in a range of European

countries for 4–8 years, some for a shorter period, and the majority for 2–8 years in Denmark (31 - 32)

Drawing on Bourdieu and Heidegger, Vitus characterized the relentless boredom felt by the children as a capacity to “colonize our state-of-mind and our being in the world, creating – like other moods – a basic framework for the understanding and experiencing of being and time.” (34) The future was no longer a viable reference point and compromised the children’s visions of future versions of themselves. (40) The children expressed their boredom through restlessness, fatigue, and despair; waiting created powerlessness for them, particularly if the existential value of time is lost along with the denial of a residence permit. (39 – 40) Vitus therefore captures the children’s feelings of waiting as a process of de-subjectification of “no one” in “no place”. (41)

Further reading:

- Baum, J., A. Kamhi, et al. (2012). "Most in Need But Least Served: Legal and Practical Barriers to Special Immigrant Juvenile Status for Federally Detained Minors." Family Court Review **50**(04): 621 - 628.
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- Byrne, O. (2008). Unaccompanied Children in the United States: A Literature Review. Vera Institute of Justice Publications. New York City, Vera Institute of Justice: 47.
- Clark, S. H. (1992). "Substantive Due Process in a State of Flux: Should Courts Develop New Fundamental Rights for Alien Children?" Boston University Law Review **72**(3): 579 - 606.
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- Georgopoulos, A. (2005). "Beyond the Reach of Juvenile Justice: The Crisis of Unaccompanied Immigrant Children Detained by the United States." Law and Inequality: A Journal of Theory and Practice **23**(1): 117 - 156.
- Giner, C. (2007). "The Politics of Childhood and Asylum in the UK." Children & Society **21**(4): 249–260.
- Jarawan, R. (2007). "Young, Illegal, and Unaccompanied: One Step Short of Legal Protection." Washington and Lee Journal of Civil Rights and Social Justice **14**(1): 125 - 154.
- Kaskade, S. G. (2009). "Mothers Without Borders: Undocumented Immigrant Mothers Facing Deportation and the Best Interests of Their U.S. Citizen Children " William & Mary Journal of Women and the Law **15**(2): 447 - 467.
- Khashu, A. (2010). "What is a Child - The Impact of Cultural Norms on the Development of Detention Policies for Unaccompanied Minors in Mexico and the United States." UC Davis Journal of Juvenile Law & Policy **14**(2): 383 - 390.
- Martin, L. L. (2012). "Governing through the family: struggles over US noncitizen family detention policy." Environment and Planning A **44**(4): 866 - 8881.
- Martin, L. L. (2012). "'Catch and Remove': Detention, Deterrence, and Discipline in US Noncitizen Family Detention Practice." Geopolitics **17**(2): 312 - 334.
- Nafziger, L. Y. (2006). "Protection or Persecution?: The Detention of

- Unaccompanied Immigrant Children in the United States." Hamline Journal of Public Law & Policy **28**(1): 357 - 404.
- Nugent, C. (2006). "Whose Children Are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children." Boston University Public Interest Law Journal **15**(1): 219 - 236.
 - Olivas, M. (1990). "Unaccompanied Refugee Children: Detention, Due Process, and Disgrace." Stanford Law and Policy Review **2**: 159 - 166.
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 - Rabin, N. (2011). "Disappearing parents: Immigration Enforcement and the Child Welfare System." Connecticut Law Review **44**(1): 99 - 160.
 - Reyes, C. L. (2010). "Gender, Law, and Detention Policy: Unexpected Effects on the Most Vulnerable Immigrants." Wisconsin Journal of Law, Gender, and Society **25**.
 - Seeberg, M. L., C. Bagge, et al. (2009). "No Place: Small children in Norwegian asylum-seeker reception centres." Childhood **16**(3): 395 - 411.
 - Somers, M. A., P. Herrera, et al. (2010). "Constructions of Childhood and Unaccompanied Children in the Immigration System in the United States." UC Davis Journal of Juvenile Law & Policy **14**(1): 311 - 382.
 - Teitelbaum, L. E. and J. W. Ellis (1978 - 1979). "The Liberty Interests of Children: Due Process Rights and Their Application." Family Law Quarterly **12**(3): 153 - 202.
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Class, Disability, and Race Intersections in Detention Systems

César Cuauhtémoc García HERNÁNDEZ (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.

In this article, César Cuauhtémoc García Hernández contributes to the ongoing discussion of the criminalization of detention by providing a crisp and pointed discussion of its racial and class-based elements. He argues that "an anti-immigrant fervor" has mobilized political actors in the US, and the federal government has responded by adopting "a mass incarceration scheme as part of its immigration law enforcement strategy." (354) It is the presence and "threat" of criminal non-citizens that justifies targeting with surveillance and arrest a population of "people of color and poor people" (mostly men). (361, 360) Indeed, race and class combine with the convergence of criminal law and immigration law to make mass detention seem "inevitable". (354)

According to Hernández's analysis, the US detention centre exists as a sorting mechanism, or "immigration law's necessary purgatory, the physical in-between space that must exist to facilitate the welcoming embrace of the 'good immigrant' and [the federal government's] concerted efforts to remove unwanted immigrants." (358) It is premised on an assumption that illegality "attaches according to the usual

outward markers of exclusion—race and class.” (359) The “steadfast convergence of criminal law and immigration law” can be dated to a slew of 1990s legislation that increased the scope of criminal offenses that resulted in detention and triggered removal proceedings. (360) In the time since the legislation, Hernández argues, the public imagination has painted all immigrants from certain regions – including Latin America, Haiti, Jamaica, and any number of African nations – as potentially criminal and, hence, always potentially detainable. (362) Hernández concludes that there is no evidence against the continued growth of this trend (356) and that ignoring “the role of race and class in immigration law policing is to render invisible the people who inevitably will be thrown behind barbed wire fences for little more than having the wrong look.” (364)

Further reading:

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- Chacón, J. M. (2012). "Overcriminalizing Immigration." The Journal of Criminal Law & Criminology **102**(03): 613 - 652.
- Das, A. (2013). "Immigration Detention: Information Gaps and Institutional Barriers to Reform." University of Chicago Law Review **80**(01): 137 - 164.
- Dolovich, S. (2011). "Exclusion and Control in the Carceral State." Berkeley Journal of Criminal Law **16**(02): 259 - 339.
- Fekete, L. and F. Webber (2010). "Foreign nationals, enemy penology and the criminal justice system." Race & Class **51**(4): 1 - 25.
- Frey, B. A. and X. K. Zhao (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.
- 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.
- 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.
- Hernández, C. C. G. (2011). "When State Court Meets *Padilla*: A Concerted Effort is Needed to Bring State Courts Up to Speed on Crime-Based Immigration Law Proceedings." Loyola Journal of Public Interest Law **12**(02): 299 - 330.
- Johnson, K. R. (1995 - 1996). "Fear of an 'Alien Nation': Race, Immigration, and Immigrants." Stanford Law and Policy Review **7**(2): 111 - 126.
- Johnson, K. R. (2009). "The Intersection of Race and Class in U.S. Immigration Law and Enforcement." Law & Contemporary Problems **72**(4): 1 - 36.
- Kaufman, E. (2012). "Finding ‘Foreigners’: Race and the Politics of Memory in British Prisons." Population, Space and Place **18**(06): 701 - 714.
- Stumpf, J. (2006). "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power." American University Law Review **56**(2): 367 - 419.
- Legomsky, S. H. (2006). "The USA and the Caribbean Interdiction Program." International Journal of Refugee Law **18**(3 - 4): 677 - 695.
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- Pratt, A. (2005). Securing Borders: Detention and Deportation in Canada. Toronto / Vancouver, UBC Press.
- Provine, D. M. and G. Sanchez (2011). "Suspecting immigrants: exploring links between racialised anxieties and expanded police powers in Arizona." Policing and Society **21**(4): 468 - 479.
- 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.
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Conceptualizing and Identifying Modern Regimes of Detention

Alison MOUNTZ, Kate CODDINGTON, R. Tina CATANIA, and Jenna LOYD. (2013). "Conceptualizing detention: Mobility, containment, bordering, and exclusion." Progress in Human Geography 37(4): 520 – 539.

The four authors of this article use a geographic lens to attempt to make sense of the multi-sited, multi-purposed, and multi-scalar practices of detention. Mountz, Coddington, Catania, and Loyd are interested in how detention plays out in acts, issues, and meanings of entrapment, isolation, identity formation, state power, extra-legal and extra-territorial control, and security. They are fundamentally interested in the paradox of detention, mobility, and containment: "Detention requires both containing the individual and making mobile the collective threat that the individual represents." (8) To meet this ambitious research agenda, the authors survey and interrogate the logics, discourses, and regulatory functions of detention in Australia, the United States, and the European Union, in particular. As this précis suggests, the article is magisterial in its ambition and provides an impressive overview of the complexity inherent to ascertaining what, exactly, is being referred to as "detention."

Mountz, Coddington, Catania, and Loyd introduce the geography of detention by noting its key influences of privatization and capital, prisons, institutional fixing of identities, and the work already done by feminist analyses in bringing mobility, bordering, and exclusion to academic attention. They astutely note the tautology of criminalizing migrants through detention: "migrants *might* be criminals, necessitating detention; migrants *must* be criminals, because they are detained." (6) The authors argue that "the geography of detention shapes how its paradoxical underpinnings take form and reveals the need for more research on detention processes and practices." (9) Detention is intricately related to the "racialized entrapment" of imprisonment that, together "rely on commonsense binaries between the innocent citizen and violent, criminal, or guilty person." (13) Mountz, Coddington, Catania, and Loyd conclude that detention cannot fulfill its promise of security and safety but only begets "containment, borders, and exclusion" and more detention. (16)

Further reading:

- Coleman, M. and A. Kocher (2011). "Detention, deportation, devolution and immigrant incapacitation in the US, post 9/11." The Geographical Journal **177**(3): 228 - 237.
- Kalhan, A. (2010). "Rethinking Immigration Detention." Columbia Law Review **110**: 42 - 58.
- Flynn, M. and C. Cannon (2009). *The Privatization of Immigration Detention: Towards a Global View*. Global Detention Project Working Papers. Geneva, The Graduate Institute: 25.
- 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.
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- 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.
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- Martin, L. and M. L. Mitchelson (2009). "Geographies of Detention and Imprisonment: Interrogating Spatial Practices of Confinement, Discipline, Law, and State Power." Geography Compass **3**(1): 459 - 477.
- Mountz, A. and L. Briskman (2012). "Introducing Island Detentions: The Placement of Asylum Seekers and Migrants on Islands." Shima: The International Journal of Research into Island Cultures **6**(02): 21 - 26.
- Pugliese, J. (2008). "The Tutelary Architecture of Immigration Detention Prisons and the Spectacle of 'Necessary Suffering'." Architectural Theory Review **13**(2): 206 - 221.
- Silverman, S. J. and E. Massa (2012). "Why Immigration Detention is Unique." Population, Space and Place **18**(06): 677 - 686.

Constitutional and Other Legal Issues Related to Indefinite and/or Mandatory Detention in US Detention

Kevin COSTELLO (2001). "Without a Country: Indefinite Detention as Constitutional Purgatory." University of Pennsylvania Journal of Constitutional Law **3(1): 503 - 539.**

In this article, Costello describes the plight of "lifers" – non-citizens who are stuck in indefinite detention in the USA, often in prisons or prison-like facilities – and the choices then facing the US Supreme Court over how to decide their constitutional rights in a pre-9/11 world. Costello focuses on the troubling legal, historical, and discretionary aspects of the US practice, for example noting that, effectually, "low-level INS [now ICE] bureaucrats are using their own discretion to determine whether or not the lifer poses a threat to the community." (528)

Costello highlights the significant legal differences between “deportable aliens” and “excludable aliens” in indefinite detention: the former are people who entered the US on valid tourist, work, student, or other visas but were subsequently found in breach of visa conditions, and then usually imprisoned for a criminal offence before being transferred to detention; whereas the latter are people who were never given legal permission to enter the state and must have passed through the border without being detected. The choice facing the courts over deportable aliens is complex: “On the one hand, a lifer’s release into the United States on immigration parole is in tension with her final order of deportation. On the other, prolonged, indefinite detention without criminal conviction and supported only by a vacuous administrative purpose contradicts our basic notions of liberty for all persons within our borders.” (534 – 535) Excludable aliens also present notable legal difficulties, mostly related to the entry fiction: namely, the notion that because non-citizens whose legal status does not permit them entry are nevertheless arrested inside the territory, the law permits the state to treat them as though they were found still standing at the border and requesting permission to enter. Therefore, “because their status of being outside our border leaves them beyond the cloak of constitutional protection, courts have allowed for their prolonged detention.” (536) Since not all “lifers” are excludable but rather deportable aliens, however, Costello argues that the state owes a duty to its legal permanent residents that includes access to constitutional rights such as substantive due process rights that could set limits to their periods of time spent in detention.

Further reading:

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Discretion? Interrogating Decisions to Detain Non-Citizens

Weber, Leanne (2002). "The Detention of Asylum Seekers: 20 Reasons Why Criminologists Should Care." *Current Issues in Criminal Justice* 14(1): 9 - 30.

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Weber, Leanne. and Loraine Gelsthope (2000). *Deciding to Detain: How Decisions to Detain Asylum Seekers are Made at Ports of Entry*. Cambridge, Institute of Criminology, University of Cambridge.

Weber builds on her coauthored research in the “Deciding to Detain” reports to make an early case in *20 Reasons* for increasing criminological attention on the international policing of immigration. In the “Deciding to Detain” works, Weber and her coauthors conduct qualitative research amongst UK immigration officers to discover how they employ their discretionary powers of detention. In *20 Reasons*, Weber argues that “ 'criminal justice-like' powers are escaping from the confines of the criminal justice system” (24) and that criminologists interested in accountability should follow them, even if immigration enforcement is not a traditional area of scholarship.

Weber identifies a number of themes that she sees as animating the literature on immigration control that should resonate with criminologists. These themes include: immigration control as the new purview of state-based social control; the pattern of criminalizing migrants that may be following a familiar cycle of deviancy amplification; the state’s rhetorical linking of “refugee problem” with “transnational organized crime”, and concurrent denial of any roles in creating an international marker in people smuggling and trafficking; the public’s perception that dangerousness and insecurity can be stopped at the border; the drift towards preventive detention; and the perils of discretionary powers. Each of these themes are linked to the growth of detention in the UK and elsewhere. In presenting these arguments for the professional incorporation of immigration as a field of criminological study, Weber makes a compelling argument for the importance of contextualising the growth of detention in a wide, interdisciplinary context.

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Gender, Sexuality, and Activism in Detention

Gabriella ALBERTI (2010). "Across the Borders of Lesvos: The gendering of migrants' detention in the Aegean." Feminist Review **94: 138 - 147.**

Alberti details her experiences participating in a No Borders camp constructed to protest the Pagani "reception centre" in Mytilene, Lesvos, an island in the Aegean Sea between Greece and Turkey. She narrates the march to Pagani and the shock when the women detainees refused an eventual offer by the Greek government to relocate them and their children to a presumably better detention centre; the reason they cited was that they did not want to be separated from their partners and fathers. The detainees' collective act of refusing "gentler detention" (141) brings to the fore a number of insights into the positions of the No Borders movement, NGO actors, European states, migrants, and, indeed, academics trying to understand the dynamics of (irregular) migration. Most notably, Alberti draws attention to the facts that sexuality and gender play integral roles in producing the conditions of illegality; that NGOs tend to depict migrants as "stuck" in detention centres whereas the reality is closer to one of "patterns of circularity, periods of mobility and immobility, spaces of negotiations and escape" (142); that in portraying women detainees as victims with greater vulnerability than the men, the Greek government was attempting to dispossess the women of their political agency and to undermine the political nature of their demand for release and liberty; and that activists need to recognize their social positions and be mindful of a tendency to romanticize the detainee as a heroic or revolutionary figure because of a presumption of what a political act entails.

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International, Human Rights, and European Legal Approaches to Detention

Kay HAILBRONNER (2007). "Detention of Asylum Seekers." *European Journal of Migration and Law* 9: 159 - 172.

The question of how international, human rights, and European law govern detention – particularly of asylum seekers - is fraught. Indeed, while there are many ways that the law *could* curtail countries' sovereign rights to use detention, it is not always clear *how* it accomplishes this task. Kay Hailbronner here provides a legal opinion on the limits of European Member States' legal abilities to detain asylum seekers (and indicates the places where these countries overstep their restrictions). Hailbronner points to the so-called abuse argument as the most plausible legal argument for detention of asylum seekers: namely, European governments admit that there is no reason to detain bona fide asylum seekers, especially considering their vested interests in a rapid recognition procedure, but they do employ detention to prevent unlawful entry of asylum seekers seeking to bypass immigration restrictions.

(160) He also draws attention to the dearth of facts about detention in Europe, the “wide range of approaches to detention” in Europe (165), and a concern that “a number of Member States have resorted to the increased use of [detention] for the effective transfer of asylum seekers to the responsible Member State” under the Dublin II Regulation. (163 - 164)

Pinning down when, where, why, and how obligations *not* to detain constrain European Member States occupies the majority of the article. Hailbronner notes that the “European Convention of Human Rights does grant a wide margin of discretion to contracting states to detain asylum seekers for the very purpose of preventing unlawful entry.” (166) The Directive on Minimum Standards of Asylum Procedure as well as the Directive on Minimum Standards on the Reception of Asylum Seekers both provide rules for detention. (166) However, the Directives leave outstanding a number of issues, among which questions of time limits, necessity, proportionality, individual assessments, arbitrariness, and the treatment of children loom largest (169 - 171). Hailbronner concludes by stressing the need to develop better protection standards as well as studies on the efficiency of detention in order to “get a more rational basis for assessing the legitimacy of detention practices”. (172)

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Incarceration, Detention, and the Growth of the Industrial Immigration Complex

Jonathan SIMON (1998). "Refugees in a Carceral Age: The Rebirth of Immigration Prisons in the United States." Public Culture **10(3): 577 - 607.**

In this article, Simon rescues the history of detention from its status as forgotten relic to relevant factor in contemporary criminological, political, and socio-legal practice in the US. Referring to "the second great confinement", Simon locates detention in a history of "absolutist power mediated, in part, by unaccountable local (and, today, transnational) hierarchies." (600, 604)

Simon employs a broad judicial-historical sweep to explain the "awesome" and "vast formal power of the U.S. government" to detain. (585) Simon notes that the shifting gaze of disfavour historically fell on Central Americans, Chinese, Mariel Cubans, and, particularly, Haitians. Indeed, racist US stereotypes of African Americans as prone to welfare dependence and criminality further disadvantaged the Haitians and made them more vulnerable to prolonged detention. (590 – 595) Covering the modern history of imprisonment, nationalism, Foucauldianism, and democracy and the rule of law, Simon argues that "imprisonment... remains what it was at the birth of the prison in the eighteenth century: a tool of accountability, guaranteeing that a person is on hand and in a certain condition." (600) Yet, he concludes, while US imprisonment was historically intended to shape populations for participation in a market economy and democracy, the conditions of the contemporary detention estate exemplify the traits of flexibility, low cost, and conditions "appropriate" to subjects socialized in low-wage, racist societies with archaic notions of belonging and exclusion.

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Mental Health Deterioration in Adult Immigration Detainees: Health Professional Perspectives

Derrick SILOVE, Zachary STEEL, and Charles WATTERS (2000). "Policies of Deterrence and the Mental Health of Asylum Seekers." JAMA 284(5): 604 - 611.

This article is one of the first and most influential research papers to develop a link between detention and the increased mental and physical deterioration of asylum seekers. Building on the then-recent policy changes in Australia, Derrick Silove, Zachary Steel, and Charles Watters argue that "the medical profession has a legitimate role in commenting on the general and mental health risks of imposing restrictive and discriminatory measures on asylum seekers, especially when some of these administrative procedures threaten one of the fundamental principles underpinning the practice of medicine: *primum non nocere*." (610)

The authors begin by explaining the context for Australia's turn to detention as a deterrence measure and the processes by which asylum seekers claim refugee status in that and other developed countries. (605) They note that it is "only recently that the mental health of asylum seekers has attracted specific scientific attention" but that "there is at least prima facie evidence of substantial psychological morbidity among asylum groups residing in several recipient countries." (606) After examining the intersection of "disability and disadvantage" confronting some asylum seekers, Silove, Steel, and Watters explain the perils of detaining non-citizens. After covering some salient issues facing children, detainees with orders to transfer to other facilities, and the inadequate judicial review process (607), they explain the health risks of detention. For example, they point to a report that, in July 1999, 90 asylum seekers held at a detention center in Queens, NY, USA contracted tuberculosis from a fellow inmate. (607 - 608) Psychological distress indicators amongst detainees include "depression, suicidal ideation, posttraumatic stress, anxiety, panic, and physical symptoms," particularly when "compared with compatriot asylum seekers, refugees, and immigrants living in the community." (608) They note the contrast between the treatment of authorized refugees who "are provided with specialist services such as torture and trauma treatment programs" versus that of spontaneous arrivals who are subjected to "prisonlike detention centers in which conditions are antithetical to the principles of rehabilitation." (608) They conclude the article by calling for a more robust research agenda and a renewal of health professionals' collective commitment to set up voluntary networks who can work with, and advocate, for asylum seekers both in and out of detention. (609 - 610)

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Mentally Ill, Disabled, or Incompetent Immigration Detainees: Legal Treatment Issues

Alice CLAPMAN (2011). "Hearing Difficult Voices: The Due Process Rights of Mentally Disabled Individuals in Removal Proceedings." New England Law Review 45: 101 - 142.

In this article, Alice Clapman provides an overview of the potential safeguards and remedies that ought to be due to mentally ill, disabled, or incompetent adults in US detention facilities. Although the US Supreme Court has required appointment of counsel in involuntary commitment proceedings and in juvenile delinquency proceedings, detention and deportation hearings are not included in this list. (114) This is odd because removal in particular "is akin to, and often worse than, penal incarceration." (123) Nevertheless, Alice Clapman argues that there are three relevant, interrelated strands of law: "first, the rights of non-citizens in removal proceedings generally; second, the rights of individuals involved in civil matters where fundamental interests are at stake; and third, the rights of individuals in both civil and criminal proceedings who suffer from mental disabilities such that they cannot protect their own interests." (111) She notes the relevance of the *Mathews v. Eldridge* factors that indicate the constitutional requirements for any civil procedure in the US: namely, (1) the private interests at stake; (2) the government's interests; and (3) the risk of an erroneous decision in the absence of the safeguard at issue." (115) An analogy would be that, in the absence of special assistance, mentally disabled defendants cannot exercise the basic civil procedural rights that the US Constitution requires, even for an immigration hearing. (121)

After outlining the manifest issues related to immigration hearings involving mentally ill non-citizens, Clapman offers a range of possible solutions. The most significant is the provision of counsel or a guardian. (127) She suggests filling the gap of implementing "a workable definition (or definitions) of incompetence". (123) Courts should be instructed to determine whether respondents are capable of consulting with counsel, making decisions, presenting arguments for bail, and presenting defenses against removal. (123 - 124) She discusses the benefits and pitfalls of allowing family members to act as guardians ad litem (129 - 138) and argues that the imperfect but "best possible option" is the use of accredited representatives (136). Clapman also makes more general comments on the problematic nature of courts' reliance on credible testimony – that is, consistent, persuasive presentation of evidence – and the adversarial nature of the courtroom. She advocates making accommodations for non-dangerous detainees, including removals of physical restraints and availability of emotional supports in the courtroom. (139 – 140)

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Private Firms and the Expansion of Detention

Christine BACON (2005). The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies: An RSC Working Paper. Oxford, Refugee Studies Centre: 39.

In this study of the development of the UK detention estate, Bacon draws attention to the essential roles played by the politically and economically influential private prison industry. She points out that the reliance of this powerful industry on continued profits may have contributed to the development of the 'fast-track' and end-to-end detention procedures as well as the secret 'White List' of countries presumed to produce only 'clearly unfounded' refugee claims. Importantly, Bacon concludes, the growing commercial interest in detention will inevitably curb any emerging official or

popular impetus towards exploring non-custodial alternatives or developing a presumption that migrants *won't* abscond if not detained (as opposed to the current assumption that they will flee).

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Protest and Resistance in Detention Centres

JoAnn MCGREGOR (2010). "Contestations and consequences of deportability: hunger strikes and the political agency of non-citizens." *Citizenship Studies* **15(5): 597 - 612.**

JoAnn McGregor here explores the resistance and the "the desperation, distress and division" (608) animating a hunger strike amongst Zimbabweans in a UK detention centre in summer, 2005. Drawing on qualitative interviews with 21 ex-detainees who had been confined in removal centres for between 6 weeks and 2 years in various episodes over the period 2001–2009, McGregor spoke with 8 people detained during the strike itself. While it was a serious hunger strike, the intention was not a mass suicide but relief from deportation: " 'We were clear in our heads', one participant recalled, 'this was not about killing ourselves, it was a protest against being removed . . . ' " (603) The strikers were sometimes reluctant participants, sometimes only superficially going through the motions. (604) All interviewees spoke about the stigma of being treated like a criminal, both by the state and by their

families and friends who assumed they had mishandled their own cases. (606) They also had mixed attitudes towards British authorities with some people blaming the state and others trying to understand why they have been subjected to detention. (607)

To understand the protest and protestors, McGregor argues for a nuanced framing that could incorporate, but is not coextensive of, both Agamben's biopolitical state of exception and the medicalised vocabularies on the effects of detention. (599) Instead, she argues for an accounting of religious beliefs and a politicized diaspora in fueling detainee protests, particularly in the case of Zimbabweans. (600 - 601) Indeed, the success of the strike "depended on detainees' links to a strongly politicised, highly educated and well-connected diaspora." (608) McGregor is careful to link the actions within the detention centre, as well as the post-release experiences of the strikers, to the broader consequences of experiencing insecure immigration status and the UK's turn to detention and deportation.

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Risk, the Media, and Detention

Margaret S. MALLOCH and Elizabeth STANLEY (2005). "The detention of asylum seekers in the UK: Representing risk, managing the dangerous." *Punishment & Society* 7(1): 53 - 71.

Margaret Malloch and Elizabeth Stanley here present one of the first in-depth bodies of research linking media-reinforced stereotypes of asylum seekers, political propagandizing, fear of security and material threats, NIMBY-ism, and the rise of the detention estate in the UK. They point out that, despite apparent public support for detention, the fact that local residents protest plans for nearby detention centres illustrates a sense of "xeno-racism" (58), as well as people trying to "assert their own management of risk (to perceived threats to employment; threats to services; criminal threats; threats of the 'other' changing the local landscape)." (62) In other words, the management of risk is supported at official, government levels but detention is not really trusted as an instrument of security at the local level. Malloch and Stanley critique a concept central to detention theory and policy that is increasingly gaining traction in popular and policy circles: namely, that detention of asylum seekers is justified because asylum seekers are unknowable intruders who may be liars, violent conmen, benefits cheats, inassimilable strangers, or worse.

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Social Control and Detention

Mary BOSWORTH (2008). "Border Control and the Limits of the Sovereign State." *Social & Legal Studies* 17(2): 200 - 217.

Concentrating on legislation passed under the New Labour government in the UK from 1997 until writing this article in 2008, Bosworth makes the point that detention underpins a new "criminal justice" agenda for immigration and asylum policy in that country and beyond. Bosworth argues that the New Labour approach was to attempt to reduce the numbers of arriving refugees while also limiting the possibility of legal, permanent migration to the most skilled labour migrants. These policies have been underpinned "at the deepest end by threats of detention." (210) She contends further that the advent of ever-stricter immigration and asylum controls foster local fear and mistrust of "foreigners" as threats to the British social order. Through profound state interventions that subject people to surveillance, control, and, ultimately, detention, resident non-citizens are criminalized and the frontiers of the British nation-state are shifted from the territorial borders into the community; paradoxically, however, this move of constricting the liberty of foreigners "may ultimately undermine the agency and freedoms of citizens just as much as foreigners." (201)

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State of Exception

Giorgio AGAMBEN (1998). *Homo Sacer: Sovereign Power and Bare Life*. Stanford, Calif., Stanford University Press.

Agamben, Giorgio. (2005). *State of Exception*. Chicago, University of Chicago Press.

Agamben is perhaps the most famous critic of border camps and detention centres. Using a variant of post-structuralist political theory, Agamben groups most people into either "bare" life or political/"sacred" life. The chaotic, Hobbesian state of nature is the exception and the threshold that constitutes the community where the citizens, or sacred life, are meant to exist in orderly, political harmony. Under the "sovereign ban", the bare life, also known as *homo sacer*, become barred from the community; this usually occurs to *homo sacer* because they are non-citizens, refugees, bandits, or, more ominously, they are being punished with death. *Homo sacer* reflects the sovereign view of a non-citizen as an approximation between person and beast whose death is not important.

The epitome of the sovereign ban is the state of exception, of which refugee camps and detention centres are prime examples. The camp/detention centre is violence without juridical form that places its occupants in a condition of suspension outside the reach of law. In the state of exception, human rights are suspended and all life becomes "sacred" in the Romanic sense of "destined to die". Since it exists primarily to serve as a state of exception normalizing sovereign law in the city, the camp marks the threshold for the power of the sovereign. It normalizes and spatializes power while standing outside of power. For Agamben, the state of exception/refugee camp/detention centre practically defines modern political life, so arguing against it is futile.

While Agamben's state of exception is seminal for recognizing, describing, and naming the inside/outside condition of the camp/detention centre, it has been critiqued for a number of reasons. For one thing, Agamben has come under scholarly fire for making banal analogies between the Nazi genocide camp and the camp/detention centre. In addition, his portrayal of the subjectivities of refugees,

citizens, states, and immigration detainees appears to some scholars to be too static. Certain scholars are concerned that Agamben's account minimizes the political and social agency of irregular migrants and asylum seekers by "trapping" them into a situation where arbitrary, violent things "are always done to them, not by them." (Walters, 2008: 188) Agamben's account of sovereignty at times appears pessimistic and all-encompassing, and this treatment flattens the potential of other forms of political power that scholars are documenting in detention centres, refugee camps, and other so-called states of exception.

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